



## The New South Wales Bar Association



Annual Report 2006 - 2007



The New South Wales Bar Association

### **'Servants of all yet of none'**

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

#### **Corporate Directory**

Incorporating the annual report of  
The New South Wales Bar Association  
ABN 18 526 414 014  
The Indigenous Barristers' Trust  
ABN 53 124 431 831

#### **Financial results for**

Barristers' Benevolent Association of NSW  
ABN 18 466 736 745

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#### **Auditor**

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Email: [mailbox@hlbnsw.com.au](mailto:mailbox@hlbnsw.com.au)  
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#### **Bankers**

National Australia Bank  
75 Elizabeth Street  
Sydney 2000

#### **Annual General Meeting**

The Annual General Meeting will be held  
at 1.00pm on Friday, 2 November 2007  
in the Bar Association Common Room.

Photo: Barristers depart the Red Mass at St Mary's Cathedral in Sydney. AFR Picture by Tamara Voninski / Fairfaxphotos

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## President's report



The year past gave the New South Wales Bar Association many opportunities to make its voice heard in public debate. Frequently and especially during the March 2007 state election, it was necessary for us to defend the administration of justice and affirm important legal principle. We explained the need for:

- proper pay and conditions for juries;
- independent financial administration for New South Wales courts;
- fair compensation for injured people;
- just reforms to criminal procedure and sentencing;
- witnesses to be free to give evidence without public humiliation by the media; and
- secure tenure and independence for the DPP.

It was also a year in which the Bar Association improved many of its functions, benefiting members and reinforced the collegiality of the Bar. On an almost nightly basis, the common room has hosted guest lectures, continuing professional development seminars or social functions. Members have enjoyed talks by distinguished local and international guests. The successful Rhetoric Series, for example, drew record audiences. In February 2007 the association's art collection was complemented when a portrait of the Hon Mary Gaudron was unveiled at a well-attended ceremony.

These and other events unfolded quickly in what became a very busy year.

### Support for New South Wales citizens as jurors

In August 2006 the Bar Association wrote to the premier and the then leader of the opposition concerning practical support for both criminal and civil juries in this state. Twenty years before, in August 1986, the NSW Law Reform Commission published a report entitled *Criminal Procedure: The Jury in a Criminal Trial*, which recommended paying jurors average weekly earnings for trials over five days duration and improving their conditions of service. Since then this recommendation has been neglected by successive governments. The Bar Association called on the New South Wales Government to implement the report and to provide adequate financial support to all our citizens who serve on juries.

We reminded the government of its responsibility to ensure that its citizens do not suffer unreasonable financial hardship when performing this fundamental public duty, which is as important as voting. Improvements to the current poor pay and substandard physical conditions in which jurors must work will improve their commitment and will result in juries that are more representative of the wider community. The government referred the association's proposal to the Law Reform Commission. The commission's report is awaited at the time of this annual report going to print.

### Financial independence for New South Wales courts

In September 2006 the Bar Council resolved to raise for public discussion the question of whether state courts should be given the financial and managerial independence to determine how they spend monies appropriated for them by parliament. The executive branch of the New South Wales Government currently manages the budgets of all state courts.

A generation ago federal legislation pioneered models for independent court administration. *The High Court of Australia Act 1979* (Cth) removed administrative and financial responsibility for the High Court from the federal Attorney-General's Department to the court itself. Here in New South Wales, the financial stringency now being demanded of the Supreme and District courts is such that decent standards of civil and criminal justice are difficult to maintain. Public commentators would be astonished to learn that in the District Court it is possible to be convicted and sentenced to a substantial term of imprisonment without the accused even having the benefit of a contemporaneous daily trial transcript of the evidence. The courts are the ones best placed to decide where greater efficiencies can be introduced and how to manage their finite resources without sacrificing the quality of justice. The Bar Association invited parliamentarians to hold discussions with the state's judiciary on this question after the March 2007 election.

The Bar Association has written to the premier and the leader of the opposition, emphasising that a statutory basis for independent administration of state courts is increasingly recognised as necessary to reinforce public confidence in the independence of the judiciary.

### Fair Go for Injured People: the tort law reform campaign

On Tuesday, 19 September 2006, six months out from the March 2007 state election, the Bar Association, the Law Society of New South Wales, the Law Council of Australia and Australian Lawyers Alliance launched a public campaign entitled 'A Fair Go For Injured People'. Apart from a break during the December - January holiday period, the campaign ran up to the election. It was an initiative on behalf of seriously injured people in this state who are unable to claim just compensation for pain and

suffering and for their permanent disabilities. The campaign has continued after the election, but at lower intensity.

The campaign was strictly non-partisan. Its purpose was to create public awareness of an important policy issue for all people affected by the New South Wales Government's changes to motor accident and workers compensation laws in 1999 and 2001. These changes introduced harsh, whole person impairment threshold tests that must be passed before an action for general damages is available even to seriously injured people. Statutory elections denying future medical expenses to those wishing to sue at common law were also introduced and have deterred the bringing of common law proceedings even for very serious injuries in the workplace.

These thresholds have operated with all the brutality that might be expected. It is now uneconomic to bring an action for damages in 90 per cent of motor accident cases and 95 per cent of workers compensation cases. This exclusory regime would have been unthinkable to motorists and workers only a generation ago. As the injured and the prospectively injured are not organised to speak on this issue, the Bar Association and these three other legal bodies gave them a voice.

The campaign aimed at consistency in the law. The campaign accepted that (subject to some amendments) the *Civil Liability Act 2002* (NSW) is the appropriate standard of fair compensation for all kinds of personal injury in this state, no matter where the injury occurs. The detailed campaign proposals can be found on the campaign web site, [www.faircompensation.com.au](http://www.faircompensation.com.au). The principal objectives of this continuing campaign are that New South Wales:

- adopt a uniform standard for all personal injury compensation schemes, based upon the *Civil Liability Act 2002* (NSW);
- abolish the exclusionary whole person impairment thresholds based upon AMA Guides;
- remove the arbitrary election rules which deter workers from bringing common law

proceedings; and

- require final disputes in personal injury claims to be determined by public processes in state courts, not behind close doors.

Although the government has not yet acknowledged the wisdom of the campaign's policy proposals, A Fair Go For Injured People was still a success. It brought to public recognition that the 1999 – 2001 tort reforms had gone too far. The present compensation system is so arbitrary and unjust that it must lose public support in the long term. Ultimately, injured people will receive fair compensation: either through improved policy making by the present government or changes implemented by future governments. The policy platform was almost identical to the recommendations of a bipartisan Legislative Council committee, which reported to parliament in December 2005. Indeed, the aims of A Fair Go For Injured People received unanimous endorsement from members of that committee. The Greens and Christian Democrats supported our objectives from the start of the election campaign. Just before the election the Coalition provided an important platform for the future by supporting the campaign objectives, provided they did not lead to increases in green slip prices or workers compensation costs.

Many individual members of the Bar donated money, time and energy in the hope of bringing about fair compensation for injured people. Special thanks for their contributions are due to Ross Letherbarrow SC, Andrew Morrison SC, John Rowe, Andrew Stone and members of the Bar Association's Common Law Committee. Two association staff members, Alastair McConnachie and Chris Winslow managed the detail of the campaign daily for almost six months on top of their other duties. I have separately thanked the members of all the other organisations that supported the campaign.

The campaign demonstrated the capacity of the Bar and other legal bodies to bring an important issue of principle to public attention. The campaign addressed community groups in marginal seats, engaged

with the media, interviewed seriously injured people, conducted an electronic and print advertising blitz, organised outdoor events, and was translated into many foreign languages, including Greek, Korean and Vietnamese. It also revealed an under-utilised strength of the Bar. Many barristers, who speak a second language, helped us to connect with non-English speaking communities around the state.

## The inaugural National Indigenous Legal Conference

The Bar Association hosted the inaugural National Indigenous Legal Conference in the Bar Common Room on 22- 23 September 2006. The conference brought 185 Indigenous law students, solicitors and barristers from around Australia together to meet and discuss issues of common interest and to promote the important idea of Australia's Indigenous peoples having better opportunities to make their way within the legal profession. The keynote address for the conference, entitled 'Indigenous Australians and the Law' was delivered by Sir Gerard Brennan AC KBE.

The conference was funded principally by members' donations to the Indigenous Barristers Trust – the Mum Shirl Fund. Funding also came from the Australian Bar Association and other Bars around the country. We were also thankful for a financial assistance package given by the federal Attorney-General's Department.

Surprisingly, no national conference for Indigenous lawyers had been held before in Australia and this was the first time that many of the Indigenous barristers and law students from around the country had met one another. The conference will promote long term opportunities for Indigenous people at the Australian Bars and in the legal profession generally.

The conference resulted from careful planning over many months by Chris Ronalds AM SC and Tony McAvoy. With flawless efficiency, Bar Association staff Cindy Penrose and Travis Drummond managed

the difficult task of coordinating the arrival of 185 people from all around Australia, organising their accommodation and the conference dinner. The Queensland Bar Association is hosting a follow up conference in September 2007.

## Mental Health issues

In November 2006 a special heads of chambers meeting was organised to hear an address by Dr Jonathon Phillips to assist members to deal with mental illness at the Bar. Depression and other mental illnesses probably affect the Bar no less than other parts of Australian society. Significantly, for many of the barristers affected, depressive illnesses may well be exacerbated by the stresses of professional life. I wish to thank and recognise the members of the Bar who quietly support colleagues who are being treated for mental illness.

## The Honourable Mary Gaudron

Sally Robinson's powerful portrait of the Hon Mary Gaudron was unveiled in the Common Room on Wednesday 21 February 2007. This inspiring portrait will be one of the lasting historical images of its famous subject. Mary Gaudron's story at the New South Wales Bar is also one of heroism and great endurance. Against many obstacles she won a leading practice and in turn created opportunities for all women at the Bar. As solicitor-general, she fostered the careers of other women, many

of whom became leaders of the profession. In her speech of thanks Mary emphasised the profound value to our society of having an independent Bar which speaks publicly for the rights of individuals.

Mary's early work and some initiatives in the last ten years have changed the Bar. Growth in the numbers of women practising at the Bar in this decade is at last showing an upward trend. Between 1985 and 2000 the number of women in practice at the Bar increased from about nine per cent to a little over 13 per cent of all practising barristers. In the six years between 2001 and 2007 the percentage of women barristers rose from about 13 per cent to about 17 per cent, showing that the rate of increase and retention of women at the Bar is accelerating.

I wish to thank Liz Olsson SC and all those involved in the Equal Opportunity Committee for their continued operation of the mentoring scheme and the female university students' visits scheme and the other initiatives that have helped drive this pleasing change.

## The March 2007 state election

The policy proposals generated at the Bar Association's Criminal Law Conference held on Friday, 1 September 2006 became the centrepiece of its Criminal Justice Policy. Stephen Odgers SC and the Criminal Law Committee used the conference proceedings to formulate proposals for reform to criminal

procedure and sentencing. The Bar Council adopted those proposals for which there was a consensus among prosecutors and defence counsel and released them for wider debate before the election.

Apart from policies in respect of improved pay and conditions for juries, maintaining reasonable budgets for the Office of the Director of Public Prosecutions and legal aid and providing transcripts for criminal cases in the District Court, which are discussed elsewhere in this annual report, the Criminal Justice Policy also suggested, among other ideas, the simplification of the s21A of the Crimes (Sentencing Procedure) Act, the adjustment of s291 of the Criminal Procedure Act to give trial judges a discretion to allow the families of accused persons into the court room in sexual assault trials, and the removal of executive discretion over the release of forensic patients.

This year the Bar continued its approach of immediately defending the courts whenever they were attacked by politicians or in the media. There were surprisingly few attacks on the judiciary and the courts during the election campaign.

## Improvements to the senior counsel selection process

In April 2007 the Bar Council considered a range of proposed changes to the senior counsel selection process. Several of these were adopted and introduced. Others, such as whether or not to charge an application fee, were deferred for future decision. The changes made have not required any amendment to the Protocol for the Appointment of Senior Counsel but are improvements to aid the operation of the protocol.

This year some practical aspects of the operation of the protocol have been explained on the Bar Association's web site in more detail and a seminar about the process was held for prospective applicants. The consultation forms this year have asked a question about the level of direct experience that the person being consulted has of the applicant.



The Hon Mary Gaudron QC with artist Sally Robinson



This has been done in order to eliminate the use of second hand opinions about applicants.

## The Daily Telegraph and Patrick Power

On Saturday, 5 May 2007, under the headline 'Pervert and his 59 Mates', *The Daily Telegraph* published the names of those who had provided written character statements in the prosecution of Dr Patrick Power. A similar publication appeared in *The Sunday Telegraph* the following day.

The Bar Association believes that these publications jeopardised the due administration of justice in this state. The Bar brought proceedings in the Local Court that may result in the publisher, Nationwide News, being charged with contempt of the Local Court. Those proceedings are unresolved at the time of this annual report. Some of the 59 character referees also notified their bringing of defamation proceedings against the publisher.

A major problem with the publications was that they falsely imputed that the authors of the character statements were supporters of criminal conduct. The publications were grossly misleading, vilified each one of the authors of these character statements and unless corrected would have the effect of deterring people from providing evidence in this or future cases for fear of similar public reprisal. The fifty nine Australian and overseas citizens from many different backgrounds referred to in these publications had been humiliated for performing the simple public duty of offering themselves as potential witnesses to assist the court. The Bar Association wrote to Nationwide News pointing out that these witness statements are an important ingredient in a fair trial of a criminal defendant. Within the law both sides in a criminal prosecution are entitled to have a fair opportunity to present evidence in their favour. Our system of justice cannot operate fairly if potential witnesses are deterred from giving evidence in future cases either for prosecution or defence because they may be publicly punished for doing so. The association's letter finished this way:

Protecting witnesses from unwarranted public attack is important for maintaining a fair justice system. All fifty nine of these people deserve the simple protection of an immediate and unreserved apology from *The Daily Telegraph* for this publication. I hope that it will be given.

Nationwide News published an apology on Sunday, 8 July 2007.

## Rhetoric Series

The Bar Association held its highly successful Rhetoric Series, which began in May. It was the first series offered in Australia, within ready memory, by a legal professional association principally using classical models of persuasion. The series was foreshadowed in my first Bar News president's column in December 2005.

The numbers attending surpassed our expectations and represented a record for any CPD series conducted by this association. Almost three hundred attended the first lecture by Dr Ruth Higgins on 28 May 2007, 'The Empty Eloquence of Fools - Plato's Gorgias and Aristotle's Rhetoric'. Approximately the same number attended the last lecture by Mr Graham Freudenberg AM, on 28 August 2007, '20th Century Political Rhetoric: Churchill, Menzies and Whitlam'. Most of the other five lectures were just as well attended. The series attracted audiences from schools, from university departments of classics and critical studies and from the broader profession.

Aristotle's *Art of Rhetoric*, written in about 330 BC, was one focus of the series. Aristotle's definition of rhetoric provides a special note of optimism for the pressed advocate. In his *Art*, Aristotle said that rhetoric, 'May be defined as the faculty of discerning the possible means of persuasion in each particular case'. The assumption in the definition is that there is always a means of persuasion. The art is to discern the means of persuasion and then to use them.

This series was a significant historical event in the life of the Bar. Thanks are due to all the chairs and the speakers who presented at the seminars. I also wish to thank Justin Gleeson SC and Dr Ruth Higgins, who both carefully worked an idea into a successful series. Mr Chris D'Aeth, Ms Stephanie Mancell and Ms Jo Musemeci of the Bar Association's Professional Development Department provided excellent organisational support to the series. All their work helped revive interest in an ancient subject from which we still have much to learn.

## The budget and independence of the DPP

Prior to the election, in its Criminal Justice Policy, the Bar Association protested at government plans to cut the Office of the Director of Public Prosecutions budget by approximately \$3.4 million, arguing that such a reduction was irrational when police and corrective services budgets were being protected and



The Hon Justice M D Kirby AC CMG and the Hon Michael McHugh AC QC at the conclusion of a lecture in the Rhetoric Series.

increased by as much as 10 per cent. The association also argued for real increases to legal aid budgets. After its re-election, the government announced cuts to the ODPP's budget and initiated a budgetary review. The association will examine the result of that review when it is made available and monitor any denial of adequate resources to the ODPP which would prevent it performing its important independent functions and will also watch levels of legal aid funding.

A few weeks later the government announced a proposal to introduce term appointments for the DPP and for crown prosecutors.

First, the Bar Association opposed any move to make proposed legislation on this subject retrospective. The association has always opposed any interference with the tenure of existing DPP and Crown appointments, as that may give the impression that the incumbents were being punished for independent expressions of opinion. That in turn would damage the office of the DPP. Early in the debate the government announced that it would not interfere with existing appointments. The Bar Association expressed support for retention of the current system of lifetime appointments with retirement ages modelled on those applied to the judiciary. The association is prepared to accept fixed term renewable statutory appointments for future DPPs and crown prosecutors but only if measures acceptable to the DPP and crown prosecutors were put in place to protect the DPP from the perception that the DPP's independence might be impaired during the renewal process.

The association's view was that any term appointment should be of the order of 10 years in order to attract the best candidates. The DPP and crowns should be consulted as to the appropriate term length. Any fixed term appointments for the senior staff immediately below the DPP should also be on the basis that, subject to performance, they have the right of reversion to a tenured 'line' position of prosecutor at the cessation of their term appointment. The Bar will continue to take a close interest in this issue.



AFR Picture by Nic Walker / Fairfaxphotos

## International practice

Throughout the year the Bar Association encouraged its members to pursue international practice opportunities and invited some eminent overseas lawyers to discuss the subject in the common room.

In September 2006, whilst here for the C7 Case, Jonathon Sumption QC kindly agreed to speak about his London-based international practice. In March 2007, Chief Justice Myron T Steele of the State of Delaware raised the possibility of barristers practising in the United States. He pointed out that the US Conference of Chief Justices passed a resolution in February 2007 to recognise qualifications from Australian universities as giving a direct entitlement to sit for Bar exams in most US states. This action by the chief justices complements the efforts of the Department of Foreign Affairs and Trade and the Law Council of Australia to help Australian legal practitioners to take advantage of the legal services provisions of the 2004 US-Australia Free Trade Agreement. The overseas jurisdictions with which our Bar already has the most contact are New Zealand, England and Wales, Hong Kong and New York. To take advantage of this local experience, international practice CPD seminars focussing on some of these jurisdictions have been

scheduled over the next few months. They will look at issues such as legal and practical obstacles to admission into such jurisdictions and the types of practice for barristers which are realistically achievable in those jurisdictions.

## Visit to New Zealand

As I foreshadowed during the year, I visited the New Zealand Bar Association Annual Conference, which was held in Christchurch on Saturday, 18 August 2007, to promote the idea of members of the New South Wales Bar practising more in New Zealand and to assist members of the New Zealand Bar Association to practise in New South Wales.

Surprisingly few New South Wales or New Zealand barristers have taken advantage of the Trans Tasman Mutual Recognition Act 1997 to practise across the Tasman, despite the very favourable terms of this legislation and its New Zealand counterpart. This is probably due to a lack of familiarity by barristers on both sides of the Tasman with the procedural and substantive law of the other jurisdiction and with chambers on the other side of the Tasman. My trip was one step towards reversing this situation and opening up Trans Tasman practice for our members. Our representation at this Conference was greatly appreciated.

I discussed at the conference how both Bars could go about improving Trans Tasman practice. First, New Zealand barristers can be invited to offer Continuing Professional Development seminars in Sydney about practice in New Zealand and New South Wales barristers could come to future NZ Bar conferences and other occasions to give continuing professional development seminars in New Zealand about New South Wales law. Jim Farmer QC, the President of the NZ Bar volunteered to come over before the end of this year to conduct one of these seminars in Sydney. Second, New South Wales barristers can obtain more door tenancies in New Zealand and more New Zealand barristers can find door tenancies in chambers here.

Whilst we may have ideas of practising in jurisdictions further afield than New Zealand we are never likely to have a more friendly local profession and a more favourable mutual recognition regime than that which currently exists across the Tasman.

## **The executive, Bar Council and our staff**

It has been a pleasure to lead the Bar councils of 2006 and 2007, both of which have represented barristers well. Debates have been frank but not brittle, creative yet practical and have combined compassion with humour. Meetings are always stimulating. They demonstrate the wisdom that emerges from debate between well-briefed people who are committed to the best interests of the Bar. Being elected to the Bar Council and its committees is equivalent to taking a pro bono brief of up to one day every working week. I thank all Bar councillors for their dedication.

Throughout the year I had wise counsel from the Bar's executive: Anna Katzmann SC, the senior vice president, Tom Bathurst QC, the junior vice president, Bob Toner SC, the treasurer (and then Bernie Coles QC from March 2007) and Rachel Pepper, the association's secretary. Their advice during meetings, and at other times, has helped the Bar steer the right course.

In July 2007 I handed over my

representative roles at the Law Council of Australia and the Australian Bar Association to the senior vice president and the junior vice president respectively. I did this to maintain the continuity of our representation on these two national bodies.

Throughout 2006-07 I attended at least one meeting of each of the larger committees (other than the Bar Council's Professional Conduct committees). These visits helped me better to appreciate their work, especially those that are chaired by non-Bar councillors. The committee members and chairs on the Bar Council effectively presented their committees' work to the council during the year.

Many members generously give their time to assist on these committees. This annual report displays the effectiveness and the diversity of what they do. They advance policy ideas for law reform, produce professional conduct reports, draft correspondence to be signed by the president, create amendments to legislation and submissions to government. They represent the Bar at functions, seminars and conferences. I and all members of the Bar are most grateful for the gift of their time.

It is difficult to describe the intense loyalty of the association's staff, and of Philip Selth in particular, to our Bar and to the administration of justice in this state. Over the years Philip Selth has developed excellent relationships with government, opposition and cross benchers in both state and federal parliament and with senior state and federal departmental officers. Those relationships have been built on Philip's and prior presidents' high standards in advancing sound policy ideas in the public interest. Once again this year we have all benefited from Philip's determination to achieve the best for the Bar.

The staff members provide selfless support to the Bar Council, its committees and all members. They are inspiring to see in action. They work long hours. They work weekends. They work with the same dedication that we barristers bring to our practising lives. We appreciate what they do. As president, it has

been a pleasure to work closely with Philip and all our staff. I thank them all on behalf of the Bar.

MJ Slattery QC  
President



# Executive director's report



## The National Practice Model Laws Project

This massive project, aimed at having similar legislation governing the legal profession across Australia, is nearing completion. Most states and territories have enacted the necessary legislation; the remaining few expect their legislation to be operative on or before the end of the 2007-2008 financial year.

The NSW government, and the Attorney General's Department, have continued to support this project and have been very receptive to most of the proposals for amendments put forward by the association. The amendments requested in the reporting year have not involved issues of policy (those having been thrashed out in past years), but rather to address procedural problems and the like that have come to notice as the *Legal Profession Act 2004* and the *Legal Profession Regulation 2005* have been implemented. The Act also needs to be amended so that the only avenue of appeal against a council's decision to refuse to issue a practising certificate is the Supreme Court.

The *Legal Profession Further Amendment Act 2006*, assented to in December 2006, progressively came into effect through to 1 July 2007. The *Legal Profession Amendment Regulation 2007* commenced on 1 July 2007. This legislation was primarily concerned with minor administrative matters or matters of a machinery nature to achieve consistency with the model legislation approved by the Standing Committee of Attorneys-General. A

number of the changes effected had been sought by the association.

## Model rules

Over the past few years the Bar Council has considered a few possible amendments to *The New South Wales Barristers' Rules*. Amending the Rules is a long and complex task because of the statutory consultation process that needs to be followed. However, with a national model practising regime there is clearly little point in each Bar having different rules, even if the basic thrust of the rules is the same. With this in mind, the Australian Bar Association has agreed to a review of each Bar's rules with the aim of coming up with a common set of rules for all the Bars. The NSW Rules will be reviewed as part of this process.

The NSW Bar Association has offered to co-ordinate this national review of the Bars' rules.

## Section 55D of the Judiciary Act 1903

Last year I noted that there was a serious flaw in the national practising certificate regime. This is section 55D of the *Judiciary Act 1903*, enacted when there was no ACT (and Norfolk Island) law dealing with legal practice. The effect of this provision is that it is at least arguable that a person whose name is on a Supreme Court or the High Court's roll of lawyers is entitled to practice in a federal court (including the High Court of Australia) without holding a practising certificate.

There has recently been a very constructive discussion about this problem with officers of the Attorney-General's Department. It is however most unlikely that the necessary amendment to the Judiciary Act will be considered by the parliament before the federal election later this year.

## Mutual recognition

There is a further problem with the new national practising certificate

regime that has still to be addressed. This is the Commonwealth's mutual recognition legislation enacted before the national regime. There are difficulties where an applicant seeks a NSW practising certificate under the Commonwealth legislation but they fall short of meeting the requirements any NSW applicant is required to meet.

In January 2006 the then Attorney General advised the association that the matter was 'clearly not entirely satisfactory' and that he had asked his department to add the issue to the agenda for further discussion at the national level, that is with the Standing Committee of Attorneys-General (SCAG). It is understood the matter is still being considered by SCAG officers.

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

In my 2005-2006 report I stated: 'Since November 2000 the Bar Association has endeavoured to persuade the Australian Taxation Office and the relevant Commonwealth ministers to seek parliamentary approval to an amendment to section 16 of the *Income Tax Assessment Act 1936* to allow the ATO to provide the association with publicly available information about the prosecution of those very few barristers who have flouted the taxation laws and so badly let down the profession – and the public more generally.' Regrettably, in the past twelve months nothing further has been heard from Commonwealth ministers or officers, despite assurances that the issue would receive 'appropriate prominence in the government's consideration of tax secrecy issues' and that the Treasury hoped to be able to consult with the Law Council on the matter in the second half of 2006.

What has happened is that in August 2006 the Treasury published the *Review of Taxation Secrecy and Disclosure Provisions: Discussion Paper* which outlined 'an approach

to standardising the various secrecy and disclosure provisions in the tax laws into a new framework in a single piece of legislation'. That discussion paper referred to publicly available information that need not be protected, for example 'the details of a conviction for tax offences handed down in open court' but went on to say that 'there is no policy reason why the Tax Office should be obliged to bear the costs associated with providing information that is already publicly available for the convenience of another organisation. As disclosures of this kind largely serve the purposes of the body requesting the information and not the Tax Office, the interested body should bear the costs associated with the provision of such information by the Tax Office'.

This approach is surprising. The Bar Association seeks assistance in identifying the very few barristers who have a taxation offence so that it can take the necessary action required by the *Legal Profession Act 2004*, a statutory duty that was imposed in part because of criticisms by Commonwealth ministers and the Australian Taxation Office that the profession was not doing enough to ensure compliance with the taxation laws. We are now being told that the provision of advice as to who has been publicly prosecuted is for our own convenience.

The Bar Association made a submission to the Treasury review in September 2006 reiterating its several previous submissions to the commissioner of taxation and the attorney-general. We have heard nothing since.

## The Law Council of Australia

The Bar Association is a constituent body of the Law Council of Australia (LCA). The president is a director of the Law Council. At the time last year's report was written it was not at all clear that the LCA had a strong future. It was unclear whether the NSW Law Society would continue as a member of the LCA. There was considerable debate about whether the Large Law Firm Group Limited (LLFG), a loose coalition of nine large firms that share a common interest in

significant national and international legal practice issues, should be allowed to become a member of the LCA. Views among the constituent bodies as to the merits of the LLFG becoming a member of the LCA with full voting rights differed markedly. The discussion about the future role of the Law Council and its membership was divisive and seriously impacted on the ability of the LCA to pursue major issues in a co-operative fashion. The Bars considered whether remaining in the LCA was in their best interests.

In March 2007 the directors of the Law Council resolved to accept the application by LLFG Limited for recognition as a constituent body of the Law Council of Australia. At the same meeting the directors accepted the application of the Tasmanian Independent Bar Limited as a constituent body. All the independent Bars are now members of the LCA.

A major issue was whether the LCA continued to operate as a federation, with a strong presence in Canberra, or whether (as some wish) the constituent bodies were reduced to state chapters of the LCA. Hopefully this divisive debate is in the past and all concerned now recognise that there is a requirement for both an enhanced LCA with appropriate resourcing and strong state and territory Bars and law societies. It will never be possible – nor would it be desirable – for the LCA to have the resources of the combined constituent bodies. What needs to happen is for the LCA to draw upon the goodwill, expertise and resources of its constituent bodies. Consultation and an appreciation by all concerned of the different but important roles of both the LCA and the constituent bodies will achieve far more than the turf disputes that surfaced in the recent past.

## The ill barrister

In the August 2007 issue of *Bar Brief* Anna Katzmman SC published an important article on impaired practitioners and proposing a diversionary scheme to enable barristers to practice safely without falling foul of the discipline regime. Work on developing a paper on this issue for the Bar Council's

consideration is in progress. The president in his report has also referred to mental health issues at the Bar.

As Ms Katzmman noted, practise at the Bar is unquestionably stressful. Too often, for various reasons, barristers struggle with stress in both their professional and personal lives without seeking professional assistance. The legal profession has one of the highest rates of depression of any profession.

Over the past twelve months the association has run seminars and discussion groups for heads of chambers and the Bar more generally about how best to assist colleagues to deal with mental health issues, in particular depression. Later this calendar year the Bar Council is meeting with the consultant psychiatrist Dr Jonathan Phillips to further discuss ways in which the Bar can assist colleagues. Seminars on dealing with depression and related illnesses are scheduled for later in the year and at each CPD mini conference that will be held in the first half of 2008. The association will be supporting *beyondblue's* Anxiety and Depression Awareness Month in October.

Considerable attention is being given to this issue by the Bar Council. This is not because there has been a sudden epidemic of the illness. Rather, in recent years, there has been a greater appreciation of the extent of the problem and a growing willingness to discuss it openly.

The Bar has shown a marked preparedness to address this issue. The assistance given by the Bar to colleagues is significant. However, at the time of drafting this report a regulatory body has floated the suggestions that legislation be enacted making it mandatory for a practitioner to report an impaired colleague to, presumably, the councils of the Bar Association and the Law Society. It has also been proposed that practitioners be required to make a declaration in relation to their health when applying for a practising certificate. If these proposals are seriously pursued, it will be necessary for the Bar Council to consider whether they would assist or impede the identification and

treatment of mental health problems in the profession.

## Thanks

This annual report records only a little of what the Bar Association does and has achieved over the past year. The *Bar Brief* issued each month and the now almost daily e-mail *In Brief* and @CPD contain a wealth of further information about the association's work.

But much of the association's work – and achievements – remains out of public sight.

Tempting at times as it is, it is in neither the association's interest, nor that of parties with whom it is working, to publicise the details of that work and co-operation. For example, the association is not going to be given draft legislation for comment if that bill appears next day in the press or if the association uses that information to publicly criticise the government before the Bill is introduced into the parliament. No parliamentarian is going to ask for a briefing by the association if he or she believes that private meeting will not remain private.

The need for confidentiality means that the details of a significant amount of work undertaken by the association must remain unsung. However, much of the association's work is of a different nature and the contributors can be publicly thanked. Many hundreds of members give invaluable support to the association and to the wider community through the association. Neither the Bar Association nor the Bar Council could function without the literally thousands of hours of voluntary assistance given by members. The members of committees and sections. Those who draft submissions to government and other bodies, often at very short notice, or who respond to requests for comment by the media. The duty barristers and those who provide assistance through the Legal Assistance Referral Scheme and the various court pro bono schemes. The contributors to CPD seminars and conferences. The members who take calls from me and the public affairs officer at night, weekends and holidays.

Clerks and barristers' staff, especially the personal staff of the president and members of the Bar Council Executive, and the staff of Counsel's Chambers, continue to be a valued source of support.

To all these persons I say thank you, both on my own behalf and on behalf of the association's staff.

I also wish to record my appreciation of the support given to me and the staff by the 2006 and 2007 Bar Council, and in particular by the president, Michael Slattery QC. The Bar will be aware of the amount of time Slattery QC has devoted to the association as president. But he has also devoted considerable time and interest to the association's staff. He knows them all. The president has been available to me seven days a week at almost any hour. He has continually sought advice from me and my staff and has taken account of that advice. I am very grateful for this courtesy and for his support and counsel over the period of his presidency.

## The Bar Association's staff

The association's staff do not regard their work as just being their job. They do consider themselves, as they are, part of the association. Many are members. They work long hours, when needed at night and weekends. It is by no means unusual for an e-mail from staff member to be received well outside working hours from their home where they are finishing work that would otherwise have been deferred until office hours next day. They set up the common room for CPD seminars, arrange the Bench & Bar Dinner and CPD mini conferences, provide cake for the Duty Barrister's room at the Downing Centre and visit the bereaved. They attend functions at universities and other bodies, not just law bodies, on behalf of the association. They cheerfully visit senior staff at home to discuss urgent business. They give up a long weekend to ensure practising certificates are issued promptly. The troubled visitor to the office, and at times vexatious or threatening visitor, always receives courteous attention, even if undeserved.

I am proud of the contribution to the association made by all the staff. I am very grateful for their personal support and for their support to the association and those who seek the association's assistance.

P A Selth OAM  
Executive Director

## Office bearers for 2007



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

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

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



**Bernie Coles QC**  
Treasurer



**Rachel Pepper**  
Secretary



**Philip Selth OAM**  
Executive director



**Anna Katzmann SC**  
Senior vice president



**Tom Bathurst QC**  
Junior vice president

### Bar councillors

For the year ending 30 June 2007

Larry King SC	Anne Healey
Peter Garling SC	Richard Lancaster
Robert Toner SC *	David Ash
Peter Zahra SC **	Paresh Khandhar
Justin Gleeson SC	Michael McHugh
Elizabeth Olsson SC ^	Naomi Sharp
Nye Perram SC ^^	Rachel Francois
Garry McGrath	Margaret Holz
Kate Traill	
Margaret Cunneen	

\* Toner SC was appointed as a District Court judge on 16.04.07

\*\* Zahra SC was appointed as a District Court judge on 30.01.07

^ Olsson SC replaced Toner SC on 21.03.07

^^ Perram SC replaced Zahra SC on 19.12.06



# Our people

As at 30 June 2007

## Office of the Executive Director

Executive Director	Philip Selth OAM BA (Hons) LLB
Executive Assistant	Jo Carlisle BA
Director Legal	Jennifer Pearce BEc LLB

## Administration Department

Administration Manager	June Anderson
Administrative Assistant	Patrina Malouf Dip. Bus.
Administrative Officer (Records)	Kim Ellis
Receptionist	Maree Fitzgerald BD JP
Administrative Officer	Fay Braddick
Systems Administrator	Matthew Vickers
IT Consultant	Darren Covell

## Bar Library

Librarian	Lisa Allen
Assistant Librarian	B App Sc(Info) M Inf Stud Jennifer Nott BA DIM

## Finance Department

Finance Manager	Basil Catsaros B Comm. CA
Deputy Finance Manager	Tess Santos B Sc (Bus Admin)
Certification Officer	Barrie Anthony JP

## Law Reform and Public Affairs

Director, Law Reform and Public Affairs	Alastair McConnachie LLB
Publications Manager	Chris Winslow BA(Hons) MIntS DIM
Project Officer, Secretariat and Research	Cindy Penrose B Comm LLB
Projects Officer	Kim Kemp LLB

## Legal Assistance Referral Scheme

Legal Assistance Manager	Heather Sare
Administrative Assistant	Wendy Incoll BA

## Professional Conduct Department

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

## Professional Development Department

Director, Professional Development	Chris D'Aeth LLB (Hons) MBA
Deputy Director, Professional Development	Jo Musumeci BA (Hons)
Professional Development and Events Officer	Katie Hall BM
Education Assistant	Irene Puntillo

## 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.

There are 2746 members of the New South Wales Bar Association.

## Membership

### Members who hold a NSW practising certificate (including members based interstate & overseas and life members who have a current NSW PC)

Male	1717
Female	344
Total	2061
Number of senior counsel (QC or SC)†	
Male	300
Female	16
Total	316
Number of 'junior' barristers‡	
Male	1417
Female	328
Total	1745

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

New South Wales	2048
ACT	3
Queensland	4
Victoria	2
Western Australia	1
Overseas	3

\*Practitioners advised that NSW is their principal place of practise.

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

Male	560
Female	125
Total	685

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

### Occupation of non practising members

Judge	166
Magistrate	40
Statutory/government officer	4
Judicial officers	14
Members of parliament	1
Academic (non practising)	13
Interstate barrister	168
Overseas barrister	33
Former barrister	125
Former judge	85
Clerk	21
Miscellaneous	15

# Practitioners

There are 2100 barristers with a New South Wales practising certificate.

## Practitioners holding NSW practising certificates (includes practitioners based interstate and overseas)

Male	1744
Female	356
Total	2100

## Number of practitioners who are senior counsel (QC or SC)

Male	303
Female	16
Total	319

## Number of junior barristers

Male	1441
Female	340
Total junior barristers	1781

## Location of holders of NSW practising certificates

	Juniors		Silks		Total
	Male	Female	Male	Female	
New South Wales	1431	339	300	16	2086
ACT	3	0	0	0	3
Queensland	3	0	1	0	4
Victoria	1	1	1	0	3
Western Australia	1	0	0	0	1
Overseas	2	0	1	0	3
Total	1441	340	303	16	2100

## Overseas practitioners by country of residence

	Juniors		Silks		Total
	Male	Female	Male	Female	
Hong Kong	0	0	1	0	1
New Zealand	2	0	0	0	2
Total	2	0	1	0	3

† Senior counsel (QC and SC) are commonly called 'silks'. SC's 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.

# Promoting the interests of practising barristers

## BarCare

BarCare is designed to guide barristers through emotional and stress related problems including family or marital problems, drug or alcohol dependency and practice pressures. BarCare offers members of the bar an opportunity to discuss with a specialist professional counsellor any personal problem that is interfering with work or family life.

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

	2005 - 2006	2006-2007
Number of members seen	13	7
Female	5	1
Male	8	6
Most common age brackets	45-54 years and 35-44 years	45-54 years; 34-44 years
Most common length of time in practice	11 years +	1 – 5 years
Most common locality of practice	Sydney CBD	Sydney CBD
Most common types of problems	overwork, marital, financial, alcohol	overwork, marital, general breakdown
Number of family members seen	4	nil
Number of members who continued with treatment after the initial consultation	7	4

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

BarCare has been promoted throughout the year at various continuing legal education seminars relating to mental health and conversely, general wellness in the profession.

## Barristers' Benevolent Fund

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 2006-2007 the Management Committee approved 13 grants (totaling \$109,523). No new loans were made. No loans were waived in 2006-2007.

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 \$7,000 and above

The Hon Justice RJ Buchanan QC

### Contributions \$6,000 to \$6,999

Francis Douglas QC

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

Bret Walker SC

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

Winston Terracini SC

Paul Byrne SC

John W Durack SC



Anne Healey  
Timothy McKenzie  
Michael Slattery QC

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

Paul Blackburn Hart SC  
Simon Kerr  
Sir Owen Dixon Chambers  
The Hon J E H Brownie QC  
Anthony Bannon SC  
Ian Barker QC  
Anthony Bartley SC  
Anthony Bellanto QC  
The Hon Justice D Cowdroy OAM  
Ian E Davidson  
Philip Doherty SC  
Anna Katzmann SC  
John Murphy  
Neil Murray  
Robert Newlinds SC  
Keith Rewell SC  
John Sheahan SC  
Terence Tobin QC  
John West QC

#### **Contributions \$500 to \$999**

David Ash  
Michael Heath  
Michael Green  
Larry King SC  
His Honour Judge J B Phelan  
Bernard Coles QC  
Brian Rayment QC  
Julian Sexton SC  
Peter Bodor QC  
Stephen G Campbell SC  
Malcolm Gracie  
Garry McIlwaine  
Anthony Reynolds  
G Barry Hall QC  
Douglas Timmins  
Christopher Branson QC  
Matthew Baird  
Thomas Bathurst QC  
Campbell Bridge SC  
Stephen Burley  
David Catterns QC  
John Cauchi  
Richard Cavanagh  
Jeremy Clarke  
Ian Cullen  
Matthew J Darke  
Sandra Duggan  
The Hon R J Ellicott QC  
Peter Frame  
Timothy Game SC  
John Garnsey QC  
Justin Gleeson SC  
Christopher Hoy  
David Jackson AM QC  
Terrence Lynch  
Mark Lynch  
Arthur Moses  
Ian Neil SC  
The Hon Barry O'Keefe AM QC

Terence Ower  
James Poulos QC  
Samuel Reuben  
Timothy Robertson SC  
Eugene Romaniuk  
Dennis Ronzani  
Stephen Rushton SC  
Frank Santisi  
Angela Seward  
Jeffery Sewell  
Paul Webb QC  
Michael Williams SC  
John Wilson SC

#### **Contributions \$100 to \$499**

Simon Davis  
Martin Gorrick  
Simon Harben SC  
Anthony McQuillen  
Andrew Pickles  
Rashelle Seiden  
Gregory Jones  
John McDonald  
Ian McGillicuddy  
Christopher Twomey  
Carol Webster  
Steven Berveling  
Geoffrey Graham  
Greg Melick SC  
Bruce Hodgkinson SC  
His Honour Judge S Norrish QC  
Philip Sutherland  
Peter Cummings  
William Fitzsimmons  
Robert Forster SC  
Jeremy Gormly SC  
Glenn Gould  
David Kell  
Stephen Longhurst  
The Hon Associate Justice J K McLaughlin  
Cameron Moore  
Nicholas Manousaridis  
Geoffrey Nicholson QC  
Peter O'Loughlin  
Elizabeth Olsson SC  
David Smallbone  
The Hon Justice RF Smart  
Amanda Tibbey  
Dominic Toomey  
Noeline Rudland  
James Sheller  
Andrew Gee  
Richard Bell  
Phillip Boulton SC  
Michael Bozic SC  
David Buchanan SC  
Ian Butcher  
John Chicken  
Gregory Curtin  
Laura Dive  
Richard Edmonds  
John Gooley  
Richard Grady  
John Heazlewood

Alister Henskens  
David Hooke  
George Ikners  
Jeffrey Kildea  
Len Levy SC  
Mark Hobart  
Phillip Mahony SC  
His Honour Judge M C Marien SC  
Peter McGrath  
Peter Neil SC  
His Honour Judge J C Nicholson SC  
Kevin O'Grady  
Terence Rowles  
Geoffrey Rundle  
Peter Russell  
Alison Stenmark SC  
John Tancred  
Gezinus Van Der Vlag  
Geoffrey Watson SC  
Dennis Wilson  
David Brogan  
Harry Woods  
Philip Bates  
The Hon Justice M Adams  
John Agius SC  
Her Honour Acting Judge  
C E Backhouse QC  
His Honour Judge J Bennett SC  
Anthony Bowen  
Mark Brabazon  
Gregory Burton SC  
Mark Cahill  
Paul Cattini  
Nicholas Confos  
Peter Cook  
Gerard Craddock  
Malcolm Craig QC  
David Davies SC  
Peter Dooley  
James Duncan  
John Dunford  
Lindsay Ellison SC  
John Eyeson-Annan  
Mary Falloon  
John Fernon SC  
Stephen Flett  
Garry Foster  
The Hon B E Hill QC  
Geraldine Hoebe  
Katrina Howard SC  
Thomas DF Hughes  
Emily Ito  
Geoffrey Johnson  
David Jordan  
Victor Kerr  
Michael King SC  
Allen Lakeman  
Robert Macfarlan QC  
Anthony McInerney  
Hugh Newton  
Paul Nolan  
Peter O'Connor  
Kevin Pierce  
Ian Pike AM  
Dominic Priestley

David Pritchard  
 The Hon Rodney N Purvis AM QC  
 Elizabeth Raper  
 Garry Rich  
 John Ryan  
 Jonathan Sumption QC  
 Her Honour Judge R C Tupman  
 William Walsh  
 Glenn Walsh  
 John Waters  
 Ian Hemmings  
 Peter Stitz  
 Benjamin Zipser  
 Anthony Rogers  
 Alan Hogan  
 Paul Willee RFD QC  
 Christopher Catt  
 Sean Docker  
 Francis Hicks  
 Mark Seymour  
 Richard Wilson  
 Robert Walker  
 Rhonda Bell  
 Ronald Driels  
 John P A Durack SC  
 Rachel Francois  
 Adrian Gruzman  
 Paul King  
 Paul Livingstone  
 George Lucarelli  
 Mark Ierace SC  
 Terese Messner  
 Malcolm Oakes SC  
 Jeffrey Phillips SC  
 The Hon T J Studdert QC  
 Robert Taylor  
 Richard Weinstein  
 Robert Beech-Jones SC  
 Peter Callaghan SC  
 David Cowan SC  
 Mark Dempsey SC  
 Robert Greenhill SC  
 Roger Hamilton SC  
 Hugh Marshall SC  
 Andrew Morrison RFD SC  
 Malcolm Ramage QC  
 John Whittle SC  
 The Hon P J Newman RFD QC  
 Robert O'Neill  
 Kim Roser  
 Michael Allen  
 Oswald Watt  
 The Hon P Urquhart QC  
 Alexander Todd  
 Philippe Doyle-Gray  
 John Bartos  
 Richard Beasley  
 His Honour H H Bell  
 David Bennett AO QC  
 The Hon Justice P Biscoe  
 His Honour Judge A D Bishop  
 The Hon J P Bryson QC  
 George Brzostowski SC  
 Simon Buchen  
 Andrew Bulley

Andrew Campbell  
 Grant Carolan  
 David Caspersenn  
 Keith Chapple SC  
 Michael Christie  
 David Cochran  
 The Hon R Conti QC  
 Andrea Cotter-Moroz  
 Michael Crawford-Fish  
 David Day  
 Hament Dhanji  
 Matthew Dicker  
 Thomas Dixon  
 Michael Eagle  
 Katherine Eastman  
 Michael Elkaim SC  
 Daniel Feller SC  
 James Flicie  
 Michael Gallagher  
 James Gibson  
 Mark Gilbert  
 Garry Gillett  
 Steven Golledge  
 Gavan Griffith AO QC  
 Mark Gunning  
 Peter Gwozdecky  
 Trevor Haines AO  
 Malcolm Hardwick QC  
 Anthony Hatzis  
 Brent Haverfield  
 Terrence Healey  
 The Hon G C Herkes  
 Ruth Higgins  
 The Hon Justice C Hoeben AM RFD  
 Dominique Hogan-Doran  
 Margaret Holz  
 Brendan Hull  
 Anthony Jamieson  
 Richard Jankowski  
 The Hon Justice P A Johnson  
 Sheila Kaur-Bains  
 The Hon Justice P M Kavanagh  
 James Kearney  
 Desmond Kennedy SC  
 John Keogh  
 Stuart Kettle  
 Nicholas Kidd  
 Peter Kintominas  
 The Hon Justice D Kirby  
 Taras Kolomyjec  
 Peter Kulevski  
 Gemunu Kumarasinhe  
 Ian Lawry  
 Christopher Leahy SC  
 Patrick Leary  
 The Hon D D Levine RFD QC  
 William Lloyd  
 James Loxton  
 Tamir Maltz  
 Christos Mantziaris  
 Robin Margo SC  
 Roderick Mater  
 Michael McAuley  
 Mark McDermott  
 Terence McGill

Gordon McGrath  
 Ross McKeand SC  
 His Honour Judge R P McLoughlin SC  
 Louise McManus  
 Gregory McNally  
 Robert Montgomery  
 The Hon J Moore  
 Judith Munday  
 David Murr SC  
 The Hon J A Nader RFD QC  
 Gregory Niven  
 Jon North  
 Gabrielle O'Connor  
 Christopher O'Donnell  
 Bryan Pape  
 Geoffrey Petty SC  
 Sylvia Piedade  
 Kathryn-Anne Poulos  
 Jonathon Priestley  
 Robert Quickenden  
 Geoffrey Radburn  
 John-Paul Redmond  
 James Renwick  
 David Rickard  
 David Roberts  
 Michael Robinson  
 Paul Rowe  
 Stephen Russell  
 Irene Ryan  
 James Sainty  
 Bernard Sharpe  
 The Hon C S C Sheller AO QC  
 Rodney Skiller  
 Peter Skinner  
 The Hon John P Slattery AO QC  
 Bruce Smith  
 Craig Stewart  
 Kenneth Stewart  
 The Hon Justice M Stone  
 Hugh Stowe  
 Peter Strasser  
 Garry Sundstrom  
 Russell Sweet  
 Julian Trebeck  
 Ralph Warren  
 Gregory Watkins  
 Robert Webb  
 Dick Whittington QC  
 Adrian Williams  
 The Hon Justice L Wright

#### **Contributions \$25 to \$99**

Ivan Griscti  
 Roland Bonnici  
 Rodney Brender  
 Clive Evatt  
 Serge Galitsky  
 Giovanni Galluzzo  
 Allan Goldsworthy  
 Andrew Kostopoulos  
 John Levingston  
 Philip Massey  
 Michael Rollinson  
 Michael Spartalis  
 Robert Tregenza

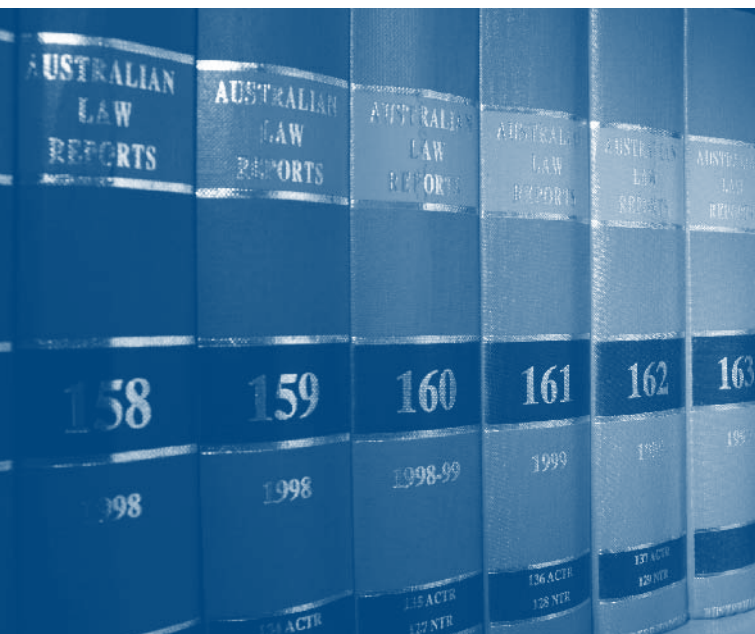
David Godwin  
 The Hon Justice D M Ryan  
 The Hon W D Thompson  
 Geoffrey Gemmell  
 Melissa Gillies  
 Andrew Naylor  
 Neil Newton  
 Jonathan de Vere Tyndall  
 Peter Doyle  
 The Hon W D Hosking QC  
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 John Jones  
 Lynette Judge  
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 Colin Magee  
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 Peter Mallon  
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 Aldo Monzo  
 Peter Mooney  
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 The Hon P R Moran  
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 The Hon James Staunton AO CBE QC  
 Ian Strathdee QC  
 The Hon R N Talbot  
 Wendy Thompson  
 Christopher Wood  
 Andrew Connolly  
 John Harris  
 John Mancy  
 Alexandra Sullivan  
 Andrew Jungwirth  
 Gregory Smith SC  
 The Hon Justice B M James

His Honour Judge J L O'Meally AM RFD  
 John Purdy  
 David Thorley  
 John Hennessy  
 John Travassarios  
 Patricia McDonald  
 John Ibbotson  
 Michael Bateman  
 Michael Carey  
 John McKenzie  
 Trevor Neill  
 James Viney  
 Warwick Ward  
 Michael Adamo  
 Nic Angelov  
 The Hon B J K Cohen QC  
 Michael Crowley  
 Leonard Karp

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

Darrell Barnett  
 Edgar Baskerville  
 Bernadette Britt  
 Liam Byrne  
 Lawrence Yan- Kwok Ma  
 James Whyte  
 The Hon M J Clarke QC  
 Peter Kennedy-Smith  
 The Hon Barry Mahoney QC  
 Jeremy Donohoe  
 Gary Doherty  
 Frances Grant  
 James Kearney  
 Charles Moschoudis  
 Quang Thanh Nguyen

## The Bar Library



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

Major goals of the library are to:

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

To this end, the library provides the following services:

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

In the 2006-2007 financial year the library continued to develop the collection and to make resources available to members in an effective manner. Acquisition of materials this year has been in formats that will assist members in the most efficient use of resources.

In the 2005-2006 financial year, the Bar Council made funds available from the Emerton Bequest to enable the library to purchase a new library management system and to renovate the library premises.

These projects were expected to be completed by the beginning of the 2007 law year, but were delayed in order

to synchronise with programmed renovation work in the basement area being undertaken by Counsel's Chambers. Completion date for the renovation is now expected to be at the beginning of the 2008 law term. The library has purchased FIRST, a library management system used extensively by NSW law libraries. The library is currently undertaking data conversion from the old system. We hope to make the catalogue available soon.

As part of this project, the library is converting the collection of unreported judgments to PDF. With permission of the courts, these will be available as part of the catalogue data.

This year the library has employed several law students on a casual basis. The first was Ebony Allen, who came to us as a result of the Indigenous Barristers' Strategy Working Party promotion of part-time job opportunities for Indigenous law students. The library has since employed two other law students, Elyse Methven and Grace Hur. Ebony has since taken up employment as a paralegal with the New South Wales Native Title Services Limited. We value their hard work and perspective.

## Equal Opportunity Committee

This year the Equal Opportunity Committee has continued the work of previous committees in a number of areas, as well as developing new initiatives.

### The Equitable Briefing Policy

The committee has been active in promoting the equitable briefing policy for female barristers, which was formally adopted by the Bar Council in June 2004.

This policy is in the form of the Law Council of Australia's model equal opportunity briefing policy for female barristers and advocates, which the Standing Committee of the Attorneys General (SCAG) adopted earlier in 2004.

### Sexual Harassment Policy

The sexual harassment policy was adopted by the Bar Council on 17 June 2004. Subsequently, the Model Sexual Harassment & Discrimination Policy Panel was established in 2006.

The following chambers have adopted the policy:

Arthur Phillip  
Seven Wentworth  
Sixth Floor St James Hall  
Martin Place  
Tenth Floor St James Hall  
William Dean  
9th Floor Windeyer  
Ada Evans  
Eighth Floor Garfield Barwick  
13 St James Hall  
Maurice Byers  
7th Floor Garfield Barwick  
13 Wentworth/Selborne  
12 Selborne/Wentworth  
11 Wentworth Blackstone  
3 St James Hall  
Sixth Floor Selborne/Wentworth



Hargrave Chambers  
 Sir James Martin McKinnon Chambers  
 Newcastle  
 Henry Parks  
 11th Floor St James Hall  
 Owen Dixon  
 15th Floor Wardell Chambers  
 10 Selborne/Wentworth Chambers  
 5th Floor Selborne Chambers  
 Queens Square Chambers  
 Ninth Floor Selborne Chambers

### University visits

The visits to the Bar Association by final and penultimate year female university students continue as a regular feature in the calendar year, and are currently organised by Julia Baird and Trish McDonald. Students from the University of Technology, Sydney and the University of Notre Dame visited the Bar in October 2006 and students from the University of Sydney and Macquarie University visited the Bar in May 2007. Students spent the morning with a number of women barristers, who took them to chambers and to various courts. The students reported back with enthusiasm, expressing their gratitude and interest in a career at the Bar. The committee would like to thank the judges and female barristers who contributed their valuable time and helped make the events informative and enjoyable.

### Mentoring scheme

In 2001 the Equal Opportunity Committee introduced a voluntary mentoring scheme for female barristers, which aims to assist in 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 Michelle Painter, Julia Baird, Sandra Duggan and Rhonda Bell. 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. A number of female barristers from the previous reader's program participated in the scheme.



Ross Schultz/Newspix

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 (either a silk or a senior junior) who practices either in the barrister's current area of practice, or an area of practice to which the barrister aspires.

The committee is grateful to all of the mentors who continue to give so generously their time to assist female barristers at the NSW Bar.

### Domestic care

In July 2004 the then federal sex discrimination commissioner, Pru Goward, launched the In-home Emergency Child Care Scheme, which was designed to assist barristers with young families in the running of their practice, and to remove a perceived barrier to women's entry to the Bar. The scheme was conceived by the former chair of the committee, Michael Slattery QC who, along with Jane Smyth, a specialist childcare consultant, engaged the services of Macarthur Management, a qualified childcare provider. Macarthur Management runs the scheme which has been extended to provide emergency and regular child care for clerks and chambers staff. The expanded scheme also assists barristers who have responsibility for sick or aged relatives by providing, for example, domestic support in the home.

### Successful Women's Speakers Programme

In 2006 the committee embarked on a programme of successful women speakers. In November, 2006 Justice Margaret Stone and Liz Jackson, reporter from the ABC's Four Corners programme, spoke at the Bar Association. The committee is committed to the continuation of the programme and is working with the Women Barristers Forum (a newly created section of the association) with respect to future speakers.

### Other business

David Price and Melissa Fisher have regularly conducted introductions to the work of the Equal Opportunity Committee, in particular the McArthur Child Care Scheme, to each reader's course.

The committee is currently considering the preparation of a draft policy relating to the approach of chambers to the temporary absences of members arising from pressing family circumstances with a view to providing chambers with a model policy which will be consistent with the applicable law and the principles underpinning discrimination law reform under which a barrister seeking to license chambers for the purpose of maternity leave, paternity leave or in relation to other family obligations should be treated at least equally to those who seek to license their rooms for other commercial reasons.

The Equal Opportunity Committee is grateful for the support given to it by the president and senior vice president of the Bar Association, and the executive director. In particular, the committee thanks Michael Slattery QC, Philip Selth, and Cindy Penrose.

## Indigenous Barristers' Strategy Working Party

The Indigenous Barristers' Strategy Working Party is a committee set up to implement the Indigenous Lawyer's Strategy at the NSW Bar. The membership of the Working Party is of barristers and representatives of the law schools of the University of New South Wales and the University of Technology. Implementation of the strategy continues to be a major focus of the working party.

Developing part-time employment opportunities for Indigenous law students and employment and mentoring opportunities for new Indigenous law graduates continues to be the primary focus of the Working Party.

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).

There are four trustees: the current president of the NSW Bar Association, Michael Slattery QC, Mullenjaiwakka, the most senior of the five Indigenous barristers at the NSW Bar, Danny Gilbert AM, partner at Gilbert + Tobin and Chris Ronalds AM SC.

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

The inaugural National Indigenous Legal Conference held in September 2006, was a major initiative of the working party and was a significant success due in part to the tireless efforts of the chair, Chris Ronalds AM SC, and Tony McAvoy with invaluable assistance from the staff of the NSW Bar Association, particularly Cindy Penrose and Travis Drummond.

The working party has been working with the Victorian and Queensland Bars and their members are implementing some similar strategies to those started by the NSW Bar. The working party is also working with the Australian Bar Association to assist the other states and territories to set up a trust fund and similar employment and mentoring strategies.

The students participating in the University of NSW Indigenous Pre-Law Program attended the Bar Association for a day during their course in December 2006 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 hosted by the Bar Association and is important in exposing new Indigenous law students to the career opportunities available at the Bar.

Indigenous law students were assisted in finding part-time

employment with ten barristers or groups of barristers during the year. Further employment opportunities are being sought from interested barristers.

## The National Indigenous Legal Conference

In Sydney on 22-23 September 2006 the Bar Association together with the Indigenous Barristers' Trust - The Mum Shirl Fund hosted the first national gathering of Indigenous lawyers and law students at the inaugural National Indigenous Legal Conference.

The opening session of the conference focussed on career options for Indigenous law students and graduates, followed by an informal dinner with participants and interested barristers and solicitors.

The opening address on Indigenous Australians and the Law was given by the Hon Sir Gerard Brennan AC KBE, patron of the Indigenous Barristers Trust. Mr Tom Calma, ATSI social justice commissioner, gave the keynote address on the 'Integration of Aboriginal Customary Law in the Australian Legal System'.

Maratja Dhamarrandji gave a fascinating description of the Yolungu's customary law, the way it is developed and handed on to each new generation and its continuation as a vibrant dynamic within their community. Indigenous speakers from around Australia addressed the way the courtroom operated and identified the mechanisms by which Indigenous people, especially those who speak English as a second or third language, are regularly disadvantaged by the conduct of proceedings and their lack of accessible information on the operation of the judicial system. The actual use of customary law in sentencing discretions and defences in different jurisdictions was analysed to distinguish between the media representations of such defences and the way they really operate in the courts. Other speakers addressed the various 'hybrid' legal systems which operate around the nation in the form of circle sentencing and Murri and Koori courts as ways of overcoming such disadvantage. Tony McAvoy spoke of the right to speak for and the obligations that arise in caring for country within a traditional law and a common law framework. Norman Laing, Larissa Beherendt and Megan Davis examined customary law and a bill of rights and governance structures.

The conference, partially funded by the Commonwealth Attorney General's Department, was attended by 125 Indigenous legal practitioners and 60 Indigenous law students from across the country as well as others interested in Indigenous customary law. In addition to the funding from the Australian Government, all Indigenous law students were sponsored to attend the conference as a result of generous donations from NSW judges and barristers and a number of the large Sydney law firms. The Second National Indigenous Legal Conference will be hosted by the Queensland Bar Association in Brisbane in September 2007.

# Arranging and promoting continuing professional development

Education, training and professional development programmes

## The role of the department

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

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

## Continuing Professional Development in 2006-2007

The Continuing Professional Development (CPD) programme was officially launched on 14-16 June 2002. Now, in the five years that have passed, the programme is well established as an essential element in every barrister's practice. When it was initially proposed and in the early stages of its introduction there were a number of members who – while not opposed to ongoing professional development – were

opposed to the mandatory nature of the scheme. The only way to meet this challenge was to provide a high quality programme of seminars and speakers that met the needs of members and inspired members to attend the seminars. This was the goal in 2002 and remains our goal in 2007/2008.

As in previous years the in-house programme of CPD seminars continues to be funded by a component of practising certificate fees. In 2006/2007 the in-house programme provided 130 hours of CPD seminars through the usual combination of evening seminars and mini-conferences. The number is down on previous years as the CPD year was only nine months, not the usual twelve.

Highlights of this year's programme included the Sir Maurice Byers Lecture, presented by the Hon Justice J D Heydon AC, and the Francis Forbes Lecture, presented by Rosemary Annable. Of particular note was the rhetoric series of seminars that commenced in May 2007. The series was a tour de force stemming from an idea of Michael Slattery QC and developed by Justin Gleeson SC and Ruth Higgins. The calibre of speakers was first class and attracted huge audiences in the Bar Common Room. There has been a great deal of interest in the series from across Australia and it is hoped that the papers may be collated into one publication at some later date.

**cpd Continuing Professional Development**



As foreshadowed in the 2006 Annual Report the CPD year was altered so that the Bar Association's professional development year is in line with the MCLE year for solicitors and most other jurisdictions in Australia. The 2006/2007 CPD year ended on 31 March 2007. The change had been well publicised and only a handful of members had any difficulty in obtaining their requisite number of points by this date.

Because of the altered CPD year the 2007 mini-conferences were held in February and March, earlier than in previous years. First introduced in 2003 the mini-conferences are now a well established feature in the CPD timetable and are enthusiastically supported by the regional members. In 2008 it is hoped that the mini-conferences can be expanded to include a dinner on the Saturday evening to further promote collegiality at the Bar. This already occurs at the Orange mini-conference and it is hoped it will be a welcome addition to the programme at the other conferences.

As in previous years the preparation for the mini-conferences will commence around the time of the publication of the annual report. Members who would like to be involved in the mini-conferences – or any aspect of the CPD programme – are encouraged to contact the Professional Development Department.

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

Once again the department is indebted to the numerous working parties that support the CPD programme and provide valuable input and advice into the seminars and conferences offered each year.

## Services for members

In 2007/2008 the Professional Development department aims to provide more services to members through the Bar Association web site. With five years of lectures and papers and a catalogue that grows each week the department intends to make papers available online in due course. Members will be advised of development in this area via the regular e-mail bulletin, In-Brief. The department always welcomes feedback from members about additional services that they would regard as beneficial.

## The Bar examinations

In July 2006 there were 92 Bar examination candidates. In February 2007 118 candidates sat one or more of the three Bar exams. This is a significant decrease on the 261 candidates that sat in the same period of 2005/2006.

The examination format remained the same as in previous years. The Practice and Procedure examinations were the second and third such examinations to be based on the Uniform Civil Procedure Rules.

The Bar examinations continue to use the services of many barristers who volunteer their time every six months. The Bar Association would like to thank the members of the Examination Working Party, convened by David Davies SC,

for their tireless efforts. The association would also like to thank all members involved in the setting of papers, marking, moderating and conducting viva examinations.

## The Bar Practice Course (BPC)

October 2006 marked the 32nd Bar Practice Course. Each course is different from the previous one, although now it is more a matter of evolution rather than revolution every six months. In 2006/2007 81 readers completed the two courses. This is down on the 94 readers from 2005/2006.

The course continues to be a four-week course. The overall structure of the course timetable has remained static in recent years while individual components of the course have been developed and refined. The successful advocacy workshops and extensions sessions were retained in 2006/2007 and will continue in 2007/2008.

The Bar Practice Course would not be possible without the very generous support of barristers and members of the judiciary who give so willingly of their time to develop the skills of the junior Bar. The Bar Council wishes to extend its sincere thanks to all those involved in the Bar Practice Course.



# Making recommendations and promoting the administration of justice

## Public Affairs

In scores of jokes, lawyers are often characterized as rapacious, self-interested and parasitical...but that depiction of lawyers is a stereotype, and in truth the majority of the profession's members are people of decency and integrity, people genuinely interested in real justice.

These words appeared in the *Daily Telegraph* editorial of 19 September 2006, the day of the launch of the 'Fair Go For Injured People' campaign.

The New South Wales election on 24 March 2007 provided a focal point for much of the media work undertaken by the Bar Association over the reporting period. The level of media activity over 2006-07 saw the Association take an unprecedented profile in public debate on a series of key legal issues.

First and foremost among these was 'A Fair Go For Injured People', a joint campaign by the New South Wales Bar Association, Law Society of New South Wales, the Law Council of Australia and the Australian Lawyers Alliance. The principal goal of the campaign was to increase community understanding of the inconsistent and inadequate nature of personal injury compensation laws, by focusing on the unfair position of injured people who have suffered under the legislation.

In a first for the association, a key component of the campaign involved paid advertising in the print media, on commercial radio and on regional television. The campaign utilised paid advertising in conjunction with media appearances by the spokespersons for the campaign (Michael Slattery QC and the senior vice-president of the Law Society, Hugh Macken), and a co-ordinated program of campaign events throughout New South Wales in the leadup to the March election, ranging from major launches in Sydney, Newcastle and Wollongong to a series of targeted public briefing sessions in marginal seats throughout the State.

Along with the substantial contribution of the president as the primary face of the campaign, which involved well over twenty appearances on radio and television interviews over the months leading up to the election, a number of other members of the Bar gave their time to deliver seminars in suburban and regional areas, in handing out brochures and other campaign materials or in providing background advice and other assistance.

A concerted lobbying campaign was also conducted. The campaign gained vocal support from bodies such as regional and specialist unions, as well as major independent candidates throughout the state and all minor parties. By the time the state opposition committed itself to a review of the personal injury laws on the eve of the election, the government was the only political party in the state that had not expressed some support for the principles and goals of the campaign.

The Bar Association also established and maintained the separate campaign website, which not only carried press releases and background briefing documents, but also featured detailed case studies, campaign photos, media footage and the television and radio advertisements.

Although the campaign could not win the support of the government, who in turn prevailed at the ballot box on 24 March 2007, the intensive media and advertising coverage of the campaign was unprecedented for this organisation.

But by bringing the stories of injured people to broad public attention, in maintaining a highly visible media presence throughout a hard fought election campaign in competition with mainstream issues such as health, transport, education and water, the campaign must be judged a success, and laid the groundwork for future changes to personal injury laws.

## Other media engagements

The state election campaign also saw the association launch for the first time a pre-election Criminal Justice Policy. The proposals contained in the policy originated as recommendations of the association's Criminal Law Conference, held in late 2006 (see separate report in this annual report).

On the morning of 8 March 2007, President Michael Slattery QC appeared on the Mike Carlton and Peter Fitzsimons Show. In the course of a discussion about the 'law and order auction' and the political debate concerning police numbers, he told listeners that: 'It's all frontline policing. But what they're ignoring is, that has got flow-on consequences for the whole operation of the legal system and, indeed, the prison system.'

The Bar Association's policy concentrated upon areas of the criminal justice system largely ignored by the major political parties in the pre-election environment. It highlighted issues such as prosecution and legal aid funding, court resources, post-release rehabilitation, the treatment of the mentally ill in the criminal justice system. This alternative set of law and order policies concentrated on long term measures which would have a lasting effect on reoffending rates and operation of the courts.

Two other initiatives included in the criminal justice policy, involving the DNA review panel and pay and conditions for jurors, were also highlighted separately by the association during the reporting year.

In July 2006 the president wrote to the premier advocating the immediate establishment of a DNA Review Panel. On the Alan Jones Show on 14 July 2006, Slattery QC said: 'The tragedy is that while this has been unacted on, for the last three years, there may well be people who are innocent who are in jail, and there are offenders potentially walking the streets unpunished.'

Shortly after the association's intervention, the government announced that it would introduce legislation to provide for a DNA Review Panel.

Throughout 2006-07, the association's promotion of adequate pay and conditions for jurors was a continued source of media interest.

The association argued that jurors' pay be set at average weekly earnings for trials over five days' duration and that jurors have a statutory right to reasonable amenities and conditions. These proposals originally came from a report of the New South Wales Law Reform Commission from 1986 which had failed to be implemented by successive state governments.

In the course of a wide-ranging discussion on the Virginia Trioli Programme on 29 November 2006, the president outlined some of the very real benefits that would result for the justice system from implementation of the proposal:

*It only requires a little bit of policy imagination to see – and the Law Reform Commission pointed this out 20 years ago – that it was virtually cost neutral because the money that you would save on summoning fewer jurors, because they weren't all going to be seeking exemptions could be spent on paying those other jurors in the longer trials. I mean you've got figures, which are extraordinary now, of on some panels; 30, 40, 50 per cent of the panel summoned are seeking exemptions. You've got to pay all of them. If you actually pay people more and people stay on the juries, there are tremendous efficiencies in summoning the numbers of jurors.*

### Proactive public affairs activities

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

### Law Week

Law Week is designed to promote greater understanding of the law, the legal system and the legal profession within the community and improves access to the legal profession, courts, police and legal and government service providers. The Bar Association is closely involved in the planning of Law Week. The executive director is a member of the Law Week board and the public affairs officer sits on the planning committee.

### Media awards

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

The award, worth \$5,000.00, is given to media professionals who are judged to have given their audience the best understanding of important legal principles, the legal profession or the operation of a particular facet of the justice system in Australia.

The 2007 Bar Association Media Award for excellence in

journalism related to law and justice has been awarded to Marcus Priest for his article 'Brand New Day?', which was published on 28 July 2006 in *The AFR Magazine*. The article describes the failure of native title legislation to deliver its promises.

The quality of the entries this year was extremely high, with a wide range of intelligent and well-informed debate and analysis of legal issues. The judging panel for the 2007 award was comprised of Angela Bowne SC, Tom Mollomby SC and Sandra Symons, senior lecturer in journalism at the University of Technology, Sydney.

The awards were announced at a ceremonial lunch on 23 March 2007, during the 35th Australian Legal Convention, held at the InterContinental Hotel, Sydney. In his welcoming speech, the president spoke of the Bar's growing engagement with the media, particularly during the state election campaign. Guest of honour at the award lunch was Stuart Littlemore QC: a former journalist and presenter of the ABC's *Media Watch* programme. Undeterred by the presence of leading current affairs reporters and producers, Mr Littlemore delivered an insightful speech regarding the media's transgressions of personal privacy.

### Bar News

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

## Family Law Committee

Those practising in the family law jurisdiction, particularly the Family Court of Australia and the Federal Magistrates Court, have experienced a year of substantial reform. This is due to significant changes to the way in which parenting proceedings are conducted pursuant to the *Family Law Amendment (Shared Parental Responsibilities) Act 2006*, which commenced operation on 1 July 2006.

The staged introduction of reforms has impacted, both in a procedural and substantive way, on the manner in which the court resolves parenting proceedings. At an early stage cases are assigned to a judge, who determines the matters that are in issue and what evidence the parties will be permitted to call. The hearing commences with the earliest appearance and parties give evidence, as required, along the way. Typically, views are obtained from appointed experts to assist the court at earlier stages of the proceeding. The rules of evidence have no application. The aim is to resolve issues along the way, leaving for a final hearing those matters which remain unresolved.

Both the court and members of the profession hold a range of views as to the success of the amendments. They have been a major reform for those who practice in the jurisdiction. The role of counsel could be properly described as a more limited one, particularly at the early stages of the process. There is still a role for counsel at the final hearing, which is likely to be significantly shorter.

The committee has just completed a substantive submission in response to the Family Law Council's discussion paper *The*

Answer from an Oracle: Arbitrating Family Law Property and Financial Matters. This discussion paper involves wide ranging issues on the process of arbitration in family law, its suitability for varied levels of financial matters and the suitability of outsourcing the court's role.

**Throughout the year the committee has provided representatives to:**

- The Family Court's Case Management Committee;
- The Selection Committee for Independent Children's Lawyers;
- The Selection Committee for the Determination of Persons to be included in the Children's Care and Protection Panel.

The committee has made ongoing representations as to judicial resources in the Family Court and the Federal Magistrates Court and maintains a vigilant concern about these matters.

## Criminal Law Committee

The centrepiece of the committee's work during the year was the criminal law in-house conference held on 1 September 2006 in the Bar Association Common Room. The focus was on criminal procedure, sentencing and substantive law reforms within the criminal justice system, with the purpose of advancing a package of reforms to the attention of both the New South Wales Government and the Opposition.

The conference was a rare opportunity for judges and barristers to make a direct contribution to better public policy in relation to the administration of criminal justice in New South Wales.

As a result of the conference, the Bar Association published its Criminal Justice Policy and advanced a number of proposals for debate in parliament and the wider community. It requested better funding of defence legal aid and the Office of the Director of Public Prosecutions. Also, the association advocated:

- adequate financial support to be provided for all our citizens who serve on juries and for jurors' pay to be set at average weekly earnings for trials over five days' duration;
- daily transcript services to be increased in the District Court;
- abolition of executive discretion over the release of forensic patients;
- allocation of more funds for post-release rehabilitation in order to reduce the recidivism rate; and
- establishing a DNA Reference Panel in NSW, as recommended by the Finlay Report in September 2003.

Since the release of the Criminal Justice Policy, some reform has taken place. For example, the DNA Innocence Panel has been established and more funds are being allocated to post-release rehabilitation.

The committee continues to respond to proposed changes to the criminal justice system. For example, the Criminal Law Revision Division of the Attorney-General's Department has proposed substantial changes to the law relating to

consent in sexual assault cases. The committee has prepared a lengthy submission in response.

## Human Rights Committee

In the current political climate, where civil and political rights are being increasingly eroded, the work of the Human Rights Committee is unrelenting.

The primary focus of the committee's work this year has been the issue of a charter of rights. The committee submitted an options paper to the Bar Council, which is now generally accessible on the Bar Association web site. The committee recommended a statutory charter along the lines of the Victorian Charter of Rights. The hallmark of the model is that it maintains the sovereignty of parliament, precluding the courts from striking down legislation for a human rights breach and limiting them in such cases to issuing declarations of inconsistency. The Bar Council considered an earlier version of the options paper in April and resolved that it was disposed to support the adoption of a statutory charter of human rights for NSW. The question is now open for comment from the Bar.

The committee organised two seminars in connection with its charter of rights proposals. The first was presented by the former High Court justice, the Hon Michael McHugh AC QC, and was entitled 'Does Australia need a Bill of Rights?' McHugh QC, a self-confessed former bill of rights sceptic, presented a compelling case for the adoption of a bill/charter of rights, leaving open the question of what model was appropriate. His paper is also available on the Bar Association web site.

The second seminar will be held in November. It will canvas the pros and cons of a charter of rights. It will feature a debate between Noel Hutley SC of the NSW Bar and Professor Hilary Charlesworth, professor of international law and human rights in the Faculty of Law at the ANU and director of the University's Centre for International Governance and Justice. Professor Charlesworth was the chair of the ACT Government's inquiry into an ACT bill of rights which preceded the introduction of the ACT Human Rights Act in 2004.

During the last twelve months the committee has also dealt with a number of other issues including:

- Recommending the abolition of executive discretion over forensic patients. The committee recommended that the responsibility of ordering the release of such patients should rest with the Mental Health Review Tribunal subject to an appeal to the Supreme Court. The committee's recommendations were adopted by the Bar Council, incorporated in the association's Crime and Justice Policy and a copy of the submission sent to the Mental Health Review Tribunal.
- Preparing a submission for the Ombudsman on his review of the *Terrorism (Police Powers) Act 2002* (NSW)
- Undertaking a review of control order and preventative detention legislation in anticipation of the second anniversary of the *Anti-Terrorism Act (No. 2) 2005* (Cth)
- Resolving to prepare an information paper for the principal benefit of a lay readership setting out the important provisions of the International Covenant on Civil and Political Rights and measuring the

current State and Commonwealth anti-terrorism legislation against them.

- Considering suitable mechanisms for addressing issues of legal capacity as they affect unrepresented litigants.

## Common Law Committee

In 2006-07 the committee was largely concerned with the association's ongoing campaign for improvements to personal injury laws in New South Wales. The committee was strengthened during the reporting year by the appointment of Peter Garling SC as chair, with Ross Letherbarrow SC as deputy chair.

The committee was involved in the 'Fair Go For Injured People' campaign against the state government's inconsistent and unfair tort law reforms. Some committee members gave their time to conduct public presentations on the campaign in marginal seats in regional New South Wales, while others provided a number of case studies for use in advertisements and on the campaign web site. The committee as a whole was also involved in planning and policy formulation for the campaign.

Since the March 2007 election, the committee has taken on an ongoing level of responsibility for the continued direction of the campaign in terms of planning, policy and lobbying.

### Other issues

Over the reporting year, the committee also gave detailed consideration to a number of other issues, and prepared policy papers for the consideration of Bar Council.

### Among the matters examined were:

- economic and legal policy arguments in favour of establishing a single primary decision-making body and a single body to hear appeals in police 'hurt on duty' appeals; and
- implications of the Court of Appeal's decision concerning the availability of civil juries in non-defamation civil cases – *Maroubra Rugby League Football Club Inc v Malo & Anor* [2007] NSWCA 39.

As in previous years, members or sub-groups of the committee continued to provide excellent service in preparing submissions to organisations such as the Motor Accidents Authority and the Lifetime Care and Support Authority in respect of proposed changes to guidelines and other administrative arrangements.

While all members of the committee were more than generous with their time and effort, particular thanks are due to Ross Letherbarrow SC for his involvement with the tort campaign working party, Steve Campbell SC and Andrew Morrison SC for their involvement in the tort campaign regional presentations, and to Andrew Stone for his work with the Motor Accidents Authority.

## Mediation Committee

### Objectives of the committee

After considerable discussion, the Mediation Committee adopted the following objectives for 2007. The Bar Council

approved the objectives at its meeting on 5 April 2007.

### (a) Provide services to the Bar Association related to mediation

- Provide the Bar Council with submissions related to mediation as required.
- Maintain lists of accredited barrister-mediators.
- Liaise with the Law Society's Alternative Dispute Resolution Committee.
- Liaise with the Law Council's Alternative Dispute Resolution Committee.

Maintain and make available critical documents e.g. Supreme Court protocol on appointment of mediators, standard contract clause referring disputes to mediation. Monitor and review court-annexed mediation, including statutory provisions and court rules relating to mediation.

### (b) Provide education to barristers related to mediation

- Provide CPD presentations related to mediation to barristers, focussing on educating barristers on preparing for and appearing at mediation.
- Provide materials on mediation to readers' courses.

### (c) Promote barristers as representatives at mediation and as mediators

- 1 *Promote barristers as representatives at mediation*  
The Mediation Committee regards this as its most important objective. Because there are at least two parties to a dispute that goes to mediation (often there are more than two), there are far more opportunities for barristers to represent parties at mediation than to be selected as the mediator. NSW barristers now frequently appear as representatives at mediation.

The Mediation Committee proposes to promote barristers as effective representatives at mediation. That objective is partly to be accomplished by providing CPD to barristers in mediation skills designed to overcome reservations that barristers may have about appearing at mediation, and which should make them more effective advocates at mediation. The committee recognises that the more difficult task will be to promote barristers to solicitors and clients as accomplished and cost-effective representatives at mediation.

- 2 *Establish the Bar as the natural source of mediators*  
In New South Wales, retired judges tend to be selected as mediators, at least in substantial disputes. In Queensland, where the Bar took an early leading role in developing mediation, senior counsel tend to be the mediators of choice.

The Mediation Committee proposes to promote barristers as mediators, with the (necessarily) long-term objective of the Bar being the natural source of mediators in New South Wales. To achieve this objective, it will be necessary to develop a cadre of barristers willing to mediate and skilled and experienced in doing so. It may also be necessary to

promote barristers as more suitable to mediate than persons steeped in an adjudicative role.

## **Work of the Mediation Committee**

### **1 Education of barristers in mediation**

The principal work of the Mediation Committee so far this year has involved developing a greatly expanded curriculum in 2007 - 2008 for continuing professional development of barristers about mediation. The seminars as a whole are designed to cover most aspects of mediation but each seminar is self-contained.

Seminar 1: Roles and responsibilities of lawyers in mediation

This very successful seminar was given by Peter Callaghan SC on 26 July 2007 and was chaired by Graham Barter.

Seminar 2: Mediation in specialised areas - Part 1

This seminar will deal with mediation in family law, de facto law and family provision discrimination. It will be co-ordinated by Richard Bell and presented in August 2007.

Seminar 3: Native title

This seminar will be co-ordinated by Susan Phillips and Professor Laurence Boulle of Bond University's School of Law is an invited speaker. It is planned to present the seminar in September 2007.

Seminar 4: Mediation in specialised areas - Part 2

The second specialised seminar will deal with mediation of retail lease disputes and mediation made mandatory by statute in other areas. It will be co-ordinated by Robert Angyal SC and presented in March 2008 at the Bar Association and also at the Sydney and/or Parramatta mini-conferences. Ms Candace Barron, deputy registrar of the Retail Tenancy Unit, is an invited speaker.

Seminar 5: Enforceability of agreements to mediate, confidentiality in mediation and the obligation to mediate in good faith.

This seminar will be co-ordinated by Andrew Colefax SC and will be presented early in 2008 and also at several of the regional conferences organised by the Bar Association.

Seminar 6: Mediation in personal injury cases (including multi-party disputes) and dust diseases claims

This seminar will be presented by Michael McGrowdie at the Orange mini-conference on 29-30 March 2008.

### **2 Promotion of barristers as mediators and as representatives at mediation**

The committee has begun work on this objective in close consultation with the president.

### **3 Other work of the Mediation Committee**

The Mediation Committee has made extensive submissions on behalf of the Bar Association on proposed national standards for the accreditation of mediators and for the regulation of the practice of mediation.



# Promoting access to justice

## Legal Assistance Referral Scheme

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

For the 2006-2007 financial year 236 applications (17 applications less than last year) for assistance were received and processed. Of these applications, 117 were eligible under the scheme's guidelines for referral to a barrister. The assessment of all applications involved the application of considerable time and resources, whether they were ultimately referred or not. The breakdown of those applications not referred to barristers is set out in the accompanying statistical report.

For the period in question, barristers contributed approximately 1200 hours through the scheme, with 34 of these matters still in the court system. An additional 200 hours work was contributed from matters commenced in the previous financial year.

Since the scheme's inception, barristers have contributed approximately 28,450 hours of work.

### **The following facts arising from an analysis of the scheme's activities over the last financial year are worth highlighting:**

- Nearly 70 per cent of the matters referred to barristers were considered to have legal merit/prospects of success;
- The number of matters referred to barristers increased by five per cent compared with 2005-06;
- No fee matters comprised the highest category of those matters handled on a continuing basis;
- Nearly 25 per cent of finalised matters referred to barristers had favourable outcomes for the applicant;
- 70 per cent of the applications to the scheme were refused legal aid as being outside the commission's guidelines;
- There was a 25 per cent increase in the number of applications received in the jurisdictions of the Supreme Court, District Court and Local Court;
- There was a 110 per cent increase in the number of applications received from the northern suburbs of the metropolitan area;
- There was a 50 per cent decrease in the number of applications received in the jurisdiction of the Federal Court, as opposed to the Federal Magistrates Court where referral numbers were consistent with last year. This could be attributed to the general fall in the number of migration matters filed in the Federal Court and/or a higher utilisation of the court's own legal assistance scheme;
- There was also a significant decrease in the number of applications received from Villawood Detention Centre. This could be attributed to the existence of the Federal

Court's Refugee Review Tribunal Legal Assistance Scheme.

### **Listed below are examples of some of the results achieved through the scheme:**

- The Law Society Pro Bono Scheme referred a man living in Western Australia to the scheme in the hope he could be represented in a forthcoming hearing in the Equity Division of the Supreme Court of New South Wales. He was challenging his late mother's will after having been excluded as a beneficiary. He was also facing significant costs for a medical condition and was living as a boarder. The main beneficiary of the estate also had significant medical problems and was not in a position to provide a roof over her head if the property, the only asset of the estate, was sold. A barrister agreed to appear. The matter was settled after a brief court appearance.
- A young Egyptian lawyer arrived in Australia and sought asylum, claiming to have been persecuted because of his activism on behalf of the Coptic Christian community in his local area in Egypt. The minister's delegate refused his application and that decision was affirmed by the Refugee Review Tribunal on review. The tribunal accepted that the young lawyer was seen as a 'trouble maker' in his local area and that local officials had detained and beaten him on at least one occasion to discourage his activities on behalf of the Coptic minority. However, the tribunal found that his problems were limited to his local area; that he could avoid persecution by moving to another part of Egypt and as such he was not a refugee within the terms of the UN Convention on Refugees and the Migration Act. The Federal Magistrates Court refused the lawyer's request for judicial review of the tribunal's decision. The scheme referred the matter to a barrister who appeared for the applicant on appeal to the Federal Court and successfully argued that the tribunal did not ask itself the right question because it failed to consider whether, if he returned to a different part of Egypt, the young lawyer would continue to act for the Coptic community and thus arouse the same anger from local officials in his new locality as he had in his old one. Stone J ordered that the matter return to the tribunal to be considered according to law. The scheme referred the matter to another member of the Bar, who is also a registered migration agent, who provided significant support in the tribunal rehearing. On the rehearing, the tribunal granted the applicant a temporary protection visa and he is now able to live and work in Australia until the situation significantly changes in Egypt.
- A referral was received from a community legal centre concerning a young university student who was appealing matters arising from a night of celebration for a friend's graduation. A barrister agreed to appear in the District Court, Downing Centre, resulting in no conviction being recorded.

- A Sydney-based barrister travelled to Wollongong Local Court to appear on behalf of a young man who had been charged with negligent driving occasioning grievous bodily harm. He had been towing a trailer on a dual carriageway when it began to 'fishtail'. The trailer was carrying a car and the force of the swinging trailer took the towing vehicle across the median line and into incoming traffic. A collision with a van caused serious injuries to two people in the oncoming vehicle as well as to the young man's own passenger. His ability to work was at stake as his job necessitated him having a licence. His evidence was that at the time the trailer began to fishtail he did not brake and in fact accelerated. Evidence was presented in court that this was the technique recommended by the Roads & Traffic Authority for dealing with swinging trailers. The magistrate was not persuaded the young man had been negligent and dismissed the charge.
- A member of the public came to the scheme seeking assistance when her elderly father, visiting from overseas, was charged with assault and indecent assault. A barrister agreed to assist and began to prepare for a hearing. However, in the course of contacting the prosecution it emerged there were difficulties in the prosecution case leading to the charges being withdrawn. One final appearance was required with the father and an interpreter in the Local Court, Downing Centre to consent to the withdrawal. The father subsequently returned to his residence overseas.
- A solicitor referred a client to the scheme in relation to Supreme Court Equity proceedings in which the client was being sued in proceedings commenced in 2004, together with his former employer and others, for declaratory relief and damages arising from alleged removal and pumping of used cooking oil. The client was an employee truck driver who acted according to his employer's direction. The plaintiff's claim alleged that the client had been engaged in knowing participation of the breach thereby attracting personal liability. A barrister agreed to assist and provided a written advice as to an assessment of the plaintiff's pleadings against the client. The client had ceased to be employed in early 2006 and accordingly had no financial interest in the proceedings. The matter was settled by filing Short Minutes of Order.
- A member of the Bar referred a woman to the scheme for assistance in relation to defending a civil action in the Local Court, Downing Centre. The woman, of Chinese nationality and resident in Australia for 20 years, but with a poor command of English and limited means, had taken her car to a mechanic in early 2004 to obtain a pink slip for registration purposes. She was under significant financial pressure at this time. When she returned to collect her car, she was informed that over \$700 worth of brake repairs had been performed by the mechanic without her consent. The car was thereafter held by the mechanic for over two and a half years, with 'storage fees' allegedly amounting to over \$20,000. The vehicle was at all times subject to a hire purchase agreement with the client having to continue payments without the use of her vehicle. The repairer commenced court proceedings to recover an amount

exceeding \$5,000 allegedly owed for repairs together with ongoing 'storage fees' of \$30 per day. The scheme referred the matter to a barrister who agreed to assist. A solicitor also agreed to assist through the Law Society's Pro Bono Scheme. After multiple court appearances over many months, the client recovered possession of her car when it was placed on a public street. She maintained her defence of the repairer's claim and her claim for damages in respect of the withholding of the car for a period of approximately two and a half years. After several aborted attempts at hearing the matter was concluded when it was determined that the repairer's company had been de-registered. The magistrate dismissed the company's claim and the client's claim and made orders in favour of the client as to costs. The costs order in the client's favour secure some measure against the repairer reviving the claim.

### **Volunteers encouraged**

In 2006-07, the executive director and the manager of the scheme spoke to readers about the scheme at bi-annual Bar Practice courses, with a pleasing response in each instance. The president and the executive director, by circular and personal representation, have also encouraged members to participate in all schemes administered by the association and in the various court appointed pro bono schemes.

### **Barristers' Referral Service**

The Barristers' Referral Service is aimed at addressing the increasing number of requests to the association for assistance in obtaining the services of a barrister. Enquiries have been directed to the association's website under 'Find a Barrister', which has been visited 500,000 times over the past twelve months. This category of assistance is invaluable for many applicants who have not qualified for assistance through LARS on financial grounds. If the enquirer does not have access to the internet, staff fax or post to them a list of barristers in the relevant area of practice.

### **Duty Barrister schemes**

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

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

A computer has now been installed at the Duty Barrister Room.

Duty barristers see an average of four clients per day, which equates to approximately 2,000 clients per year.

### **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.

#### **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. Together with the Law Society Pro Bono Solicitor, the manager of the scheme on two occasions this year met with customer service officers at LawAccess to outline the scheme's guidelines and give feedback as to the outcomes of the referrals which have been made. The executive director is a Board Member of LawAccess. The association's director of law reform & public affairs is also a member of the LawAccess NSW Strategy Committee. The manager has acted for the executive director at meetings of the trustees of the Pro Bono Disbursement Fund when he is interstate. She also attends the Law & Justice Foundation's quarterly NSW Legal Referral Forum.

The Bar Association is a member of the NSW Legal Assistance Forum (NLAF). The scheme's manager attends board meetings, to be accompanied next year by the director of law reform & public affairs. She continues to be a member of the Coalition of Aboriginal Legal Services' working party and the pro bono working party. She is also a member of the Mental Health working party.

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

The manager and staff of the scheme attended a seminar at Legal Aid on 'Demystifying Mental Illness.' Ongoing training for staff has included attendance at PIAC's 'Law for Non-Lawyers' course, the abovementioned Legal Aid seminar and 'Dealing with Difficult People', a course conducted by Sydney University's adult education program.

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

The Bar Association 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.

The seemingly general increase in the numbers of unrepresented litigants, due in the main to the lack of legal

aid funding, has contributed significantly to the workload (and stress) of LARS and other Bar Association staff who manage walk-in applicants.

# Promoting access to justice

## Legal Assistance Referral Scheme statistics

2005 - 2006    2006-2007

High Court		
Application for special leave	7	6
Original jurisdiction	3	1
<b>Total</b>	<b>10</b>	<b>7</b>

Federal Court		
Full bench appeals	5	4
Immigration	26	11
Administrative	4	2
Discrimination	1	1
Intellectual property	3	-
Trade practices	4	2
Native title	2	-
Bankruptcy	7	2
<b>Total</b>	<b>52</b>	<b>22</b>

Federal Magistrates Service		
Discrimination	1	-
Family law - access	1	-
Family law - child support	-	-
Family law - residency	-	-
Immigration	14	11
Bankruptcy	1	2
<b>Total</b>	<b>17</b>	<b>13</b>

Supreme Court		
Court of Appeal	4	11
Court of Criminal Appeal	7	5
Common Law	16	18
Administrative	-	1
Equity	23	23
Criminal	2	5
Commercial	-	1
Family Provisions	2	2
Defamation	-	3
Professional Negligence	1	-
<b>Total</b>	<b>55</b>	<b>69</b>

2005 - 2006    2006-2007

Family Court of Australia		
Full bench appeals	2	-
Access	3	9
Residency	7	4
Spousal maintenance	-	1
Property settlement	8	10
Other (costs hearing)	2	1
<b>Total</b>	<b>22</b>	<b>25</b>

District Court		
Criminal	10	23
Civil	10	15
Care proceedings	1	1
Defamation	-	-
Professional negligence	-	-
<b>Total</b>	<b>21</b>	<b>39</b>

Land & Environment Court		
	7	3

NSW Industrial Relations Commission		
	6	5

Local Court		
Criminal	16	21
Civil	9	10
Family matters - access	-	1
Family matters - child support	-	1
<b>Total</b>	<b>25</b>	<b>33</b>

Children's Court		
	2	1

Coroners Court		
	1	1

## 2005 - 2006 2006-2007

Tribunals		
Administrative Appeals Tribunal	5	6
Administrative Decisions Tribunal	12	4
Consumer Trader & Tenancy Tribunal	4	2
Victims Compensation Tribunal	-	1
Anti-Discrimination Board	-	1
<b>Total</b>	<b>21</b>	<b>14</b>

Referral Source		
Member of public	45	34
Solicitor	43	42
Law Society Pro Bono Scheme	36	35
Community legal centre	34	31
Legal Aid	22	25
Judge	18	19
Law Access	16	17
Welfare/ community groups/ social worker/ other	13	18
Member of the Bar	8	11
Member of parliament	4	1
PILCH	-	1
Director of Public Prosecution	-	1
Pro bono director – large firms	-	1
Web site	Approx 3,300 hits	Approx 6,000 hits

Client Location		
Sydney Metropolitan Area		
West	80	77
North	20	47
South	37	26
East	14	10
Inner City	27	24
Central Coast	5	9
Country	27	25
Interstate	6	4
Villawood Detention Centre	22	6
Prison	13	8
<b>Total</b>	<b>251</b>	<b>236</b>

## 2005 - 2006 2006-2007

Type of work done		
Merit assessment	115	117
Advice (over and above initial merit assessment)	62	67
Conferences	53	41
Appearances	45	48
Matters settled	no data	21
Appearances at hearing	38	29
Other (including second opinion & preparation of submissions)	19	10

Rejection / no action		
Outside guidelines	43	55
Too late notification	3	7
No further information received/no further contact from client	36	25
Requires a solicitor	24	19
Eligible for legal aid	5	3
Referred to a community legal centre	4	1
Briefed barrister privately	3	4
Briefed solicitor privately	7	3
Matter discontinued	3	2
<b>Total</b>	<b>128</b>	<b>119</b>

Turnaround time		
Same day	18	15
Less than a week	22	22
1 – 2 weeks	26	27
2 weeks plus	49	53

Basis brief accepted		
No fee – merit assessment	115	117
No fee – continuing involvement	59	64
Reduced fee	31	29
Speculative / costs recovery	25	24

Refused legal aid		
Merit	17	20
Financial	39	58
Outside guidelines	197	158

Matters considered by a barrister to have legal merit/prospects of success		
Yes	78	81
No	37	34



# 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 serious offences, tax offences and acts of bankruptcy (show cause events) required to be disclosed to the council under the *Legal Profession Act 2004*, and in respect of other notifiable events required to be disclosed to the council 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 the Act.

1 October 2007 will be the second anniversary of the commencement of operation of the LPA 2004 and the 2005 Regulation. The 'new' legislation has addressed a number of problems that existed in the previous legislation, many of which had been highlighted through the council's experience in exercising its statutory obligations in previous years. Not surprisingly, in applying some provisions in the new legislation, some difficulties have emerged that require remedy by way of further amendment to the legislation. The department has continued to provide support to the executive director and the council in the formulation of proposals for amendments to the legislation.

The council has a statutory obligation to deal with all complaints regarding barristers referred to it for investigation and all show cause events and other matters notified by barristers or of which the council becomes aware. This statutory role is monitored by the commissioner, an independent statutory overseer of the council's statutory duties, and ultimately by the attorney general. The council and the commissioner work cooperatively in the referral, investigation and review of disciplinary matters.

The failure by some barristers to act in accordance with their professional responsibilities has brought barristers under particularly close scrutiny by the government, the profession and the community in recent years. It is in members' interest to work with the department in the investigation of any complaint or professional conduct 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. 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. 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.

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

Section 14(1) of the LPA 2004 provides that a person must not engage in legal practice unless the person is an Australian legal practitioner. An Australian legal practitioner is an Australian lawyer, that is, a person

admitted to the legal profession, who holds a current local practising certificate. 'Engage in legal practice' includes any of the activities referred to in Rule 74 of the *New South Wales Barristers' Rules* and 'practice' is not limited to advocacy. In order to avoid inadvertently breaching s14(1), it is important that barristers ensure applications for renewal of practising certificates are lodged in a timely fashion and that professional indemnity insurance cover is secured as a practising certificate will not issue for the next practising certificate year until insurance is secured.

During the course of the past year, the department has investigated a number of instances where lawyers, who are admitted to the legal profession but who do not hold current practising certificates, have engaged in legal practice in contravention of s14(1) of the LPA 2004, as well as a number of instances where lay persons, who are not admitted and do not hold current practising certificates, have represented they are entitled to engage in legal practice in contravention of s15 of the LPA 2004.

In December 2006, the council commenced proceedings against Mark Andre John Perry for engaging in legal practice and representing he was entitled to do so when he did not hold a current practising certificate. On 30 April 2007, the Court of Appeal made declarations that Perry is guilty of professional misconduct and not a fit and proper person to remain on the roll of local lawyers and ordered that Perry's name be removed from the roll: Council of *The New South Wales Bar Association v Perry* [2007] NSWCA 111. The court also made an order pursuant to s720 of the LPA 2004 restraining Perry from contravening s14(1).

The court found that in practising and holding himself out as a barrister and engaging in legal practice without holding a practising certificate, Perry's conduct was wilful and without reasonable excuse and that he acted intentionally. Perry knew of the obligation to obtain annual practising certificates, having done so previously, and having been reminded of his obligations in this regard in letters to him from the Bar Association. Mason P noted that the requirement to hold a current practising certificate serves important functions and that the statutory regime created by the Act exists for the protection of the public.

### Work of the department

In the year ended 30 June 2007, 45 conduct complaints were referred by the commissioner to the council for investigation and four complaints were made by the council. Of the 15 notifications made to the council pursuant to the notification requirements under the LPA 2004 and the 2005 Regulation, 10 related to tax offences, acts of bankruptcy and indictable or serious offences in respect of which the council is required to make a determination as to an applicant's or barrister's fitness and propriety to hold a practising certificate. The categories of conduct complaints and notifications and other statistical information are set out in the tables at the end of this report.

In the 12 months to 30 June 2007, four professional conduct committees met throughout the year to investigate

complaints about conduct and notification matters, including matters carried forward from previous years. The work of the committees is reported upon later in this report.

In addition to facilitating the investigation of and reporting to the Bar Council on conduct complaints and notifications, the department has been closely involved in prosecuting 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. A number of these matters did not reach hearing in the 12 months to 30 June 2007, and of those that did, decisions were not delivered in the reporting period. 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 two years appear at the end of this report.

The department also monitors compliance by barristers with financial management and/or medical reporting conditions attached to their practising certificates. As at 30 June 2007, 17 barristers held practising certificates subject to financial reporting conditions requiring the provision to the council of quarterly reports from approved accountants in whose hands barristers have placed control of their financial affairs, and/or reports from medical practitioners.

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

Under s577 of the *Legal Profession Act 2004*, the legal services commissioner must keep a register of disciplinary action taken against Australian legal practitioners which is to be made available for public inspection on the internet. Disciplinary action includes any decision to suspend, cancel or refuse to grant or renew a practising certificate, the removal of the name of a practitioner from an Australian roll, any orders made by a tribunal or court following a finding of unsatisfactory professional conduct or professional misconduct, and the reprimanding or making of a compensation order against a practitioner. The commissioner is required to identify the name of the person against whom disciplinary action was taken and to provide particulars of the action taken.

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

#### **Ethical guidance for members**

The council neither provides 'ethical rulings' nor advice to members. Rather, it assists members seeking guidance on ethical matters by referring the inquiring member to a silk on one of the professional conduct committees. Discussion with senior counsel is available to assist members in reaching a conclusion. Ultimately however the decision and responsibility must be that of the individual barrister. The department's staff is able to provide the names and telephone numbers of senior members of professional conduct committees who are able to give guidance on ethical matters. The names of senior counsel on committees

are also available from the association's web site. As soon as practicable after speaking with senior counsel, a barrister wishing to have a record of his or her discussion with senior counsel sends a letter to the senior counsel recording the facts and guidance given. A copy of the letter may also be sent to the director, professional conduct. An article entitled 'Urgent ethical guidance for members', published in the May 2007 edition of *Bar Brief* (No.140), is available on the association's web site.

#### **Responding to complaints**

Members who are the subject of a complaint are urged to obtain independent advice before responding to any complaint or correspondence advised 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) can 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 are granted for replies to complaints if such a need is established but the council expects barristers to give priority to responding to conduct complaints.

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

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

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

#### **Community and academic members**

Each of the investigating professional conduct committees has been privileged to have as participants both academic and community representative members. Three new community members were appointed at the start of 2007, and one in May 2007, to replace community members whose terms of appointment expired and to meet the number of community members required on each professional conduct committee under the LPA 2004. One new academic member was appointed at the start of 2007 and another in July 2007. On Professional Conduct Committee #1, John Freeman and Geraldine Walsh continued to serve as community members.

Denise Aldous joined the committee as a community member at the beginning of 2007. Dorne Boniface from the University of New South Wales continued as the academic representative and Professor Peter McGovern, University of Notre Dame, joined the committee as an additional academic representative in July 2007.

Maxine Evers of the Faculty of Law at the University of Technology served as the academic representative on Professional Conduct Committee #2 from July to December 2006. Michelle Sanson, also of the Faculty of Law at the University of Technology, returned as the academic representative on the committee at the start of 2007. Bronwyn Preston and Mary Werick continued to serve as community members. Geoff Geraghty joined the committee as a community member at the start of 2007.

Susan Hayes joined Professional Conduct Committee #3 as a community member at the start of 2007 and Sandra Fleischmann OAM joined the committee as a community member in May 2007. Peter Cassuben and Ian Fitzgerald continued to serve as community members. Maxine Evers of the Faculty of Law at the University of Technology joined as the academic representative on Professional Conduct Committee #3 at the start of 2007, having served for six months as the academic representative on Professional Conduct Committee #2.

Andrew Buck of Macquarie University, Division of Law, continued as the academic member on Professional Conduct Committee #4. John Girdwood, Lyndsay Connors and Judith Butlin continued as the community members.

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

### **Barrister members**

The council again express its 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 2007, a total of 15 notifications were made. Ten notifications related to tax offences, acts of bankruptcy and indictable or serious offences requiring the council to make a determination under s68(3) of the LPA 2004. Such determinations must be made by the council within three months of the date on which notification is given to the council. An extension of one month can be sought from the legal services commissioner.

#### **Conduct complaints**

Of the 49 new complaints, 47 were referred to the professional conduct committees for investigation from 1 July 2006 to 30 June 2007 and two were referred back to the commissioner. During the year, the committees investigated and reported to the council in respect of 15 of the new conduct complaints, in addition to completing investigations and reporting on a further 35 complaints carried forward from the previous year. Of the total of 50 complaints dealt with by the council during the year, 37 complaints were dismissed pursuant to s155(4) LPA 1987 or s539(1) (a) LPA 2004 on the basis that there was no reasonable likelihood that the Administrative Decisions Tribunal would make a finding of unsatisfactory professional conduct or professional misconduct. Four complaints were withdrawn. Four complaints were referred to the tribunal for hearing and determination. As at 30 June 2007, of the 37 dismissed complaints, five were the subject of an application for review by the legal services commissioner. Two of these decisions have been upheld by the commissioner. The other three remain under review. Since 30 June 2007, a further three applications have been made for review by the commissioner. As at 31 August 2007, all three remain under review.

During the year, one consumer dispute was referred to mediation and one matter was referred to mediation under s336 of LPA 2004. The council made no compensation orders under s540(2)(c) of the Act.

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

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

Professional Conduct Committee #2 reports to the council on applications made to the LPAB for admission or re-admission as lawyers and applications for early declarations under s26 LPA 2004. The committee, having considered the application, makes a recommendation to the council to oppose or not oppose the application. The LPAB is advised of the council's resolution and considers this prior to making its decision. In 2007, the committee reported to the council on three applications for re-admission and four s26 early declaration applications.

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

As in past years, 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 *New South Wales Barristers' Rules* are on the association's web site. The absence of a solicitor to file and serve documents necessitates more vigilance on the part of the barrister to ensure that the client or some other person files and serves court documents.

Direct access matters require 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. Barristers undertaking direct access work need to confirm in writing all telephone conversations with the client and all matters which are discussed in conference. Discussions with opponents need 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 dealing with direct access cases need to be familiar with the requirements under the LPA 2004 regarding costs disclosure to clients in direct access matters. Barristers should also be aware of clause 106A of the 2005 Regulation and its application to monies received in advance of the provision of legal services in direct access matters.

- **Communication with clients**

As always, clear communication and provision of quality service in all matters (whether instructed by a solicitor or acting directly) is likely to lead to fewer misunderstandings and, ultimately, to fewer complaints. Areas of concern shown in complaints are 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.

### **Fees recovery assistance**

During the year the association received 21 requests to assist barristers in the recovery from solicitors of unpaid fees. A total of \$21,821 was recovered on behalf of members in the financial year ended 30 June 2007. The association was able to recover fees in 11 of the 19 matters finalised. Two requests for assistance made in the year to 30 June 2007 remain open.

The basis upon which the association can assist in members' fee recovery is set out in an article entitled Fee Recovery Assistance which was published in the February/March 2007 edition of *Bar Brief* (No. 138) and which is available on the association's web site. Where members were first instructed in a matter on or after 1 October 2005 (when the LPA 2004 commenced operation), the provisions of Part 3.2 of the LPA 2004 apply. Where members were first instructed in a matter before 1 October 2005, the provisions of Part 11 of the LPA 1987 apply. Familiarity with the new costs disclosure provisions in the LPA 2004 is essential. The disclosure obligations under the LPA 2004 are more onerous than under the LPA 1987 and infringement of the LPA 2004 provisions may amount to professional misconduct or unsatisfactory professional conduct.

The association has a panel of solicitors to which members can be referred should the association's efforts be unsuccessful in recovering fees from solicitors. The panel undertakes fee recovery work for barristers at reduced rates. Enquiries about the rates charged and all enquiries about fee recovery should be made to Ms Jocelyn Sparks, deputy director, professional conduct.

Greg McNally as the fees convenor is consulted about difficult matters. The association is, as always, indebted to

McNally for his continued willingness to assist in this area.

# Questions as to professional conduct

## 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 2006 & 30 June 2007**

New South Wales Court of Appeal / Supreme Court		
Financial year 2007		Orders
19.06.07	Sahade, Marcel	Bar Council's appeal against ADT decision & Sahade's cross-appeal dismissed.
30.04.07	Perry, Mark Andre	Perry held guilty of professional misconduct for engaging in legal practice & representing himself as a barrister when he was not the holder of a current practising certificate. Perry held not to be a fit and proper person to hold a practising certificate. Order that his name be removed from the roll.
06.12.06	Meakes, Timothy	Appeal by Bar Council allowed. Orders of ADT made on 08.03.06 set aside. Meakes held guilty of professional misconduct & unsatisfactory professional conduct. Public reprimand ordered.
Financial year 2006		Orders
26.04.06	Morrissey, Joseph D	Morrissey's application for admission as a lawyer to Supreme Court of NSW rejected. 3.05.06: Morrissey declared not a fit and proper person for admission.
28.02.06	Davison, William R	Declaration Davison practised as a barrister without holding a practising certificate in breach of LPA. Injunction restraining Davison from acting as barrister. 19.07.06 Declaration Davison guilty of professional misconduct.

Table 2

**Results of disciplinary action taken by the Bar Council in the Administrative Decisions Tribunal determined in the years ended 30 June 2006 & 30 June 2007**

New South Wales Administrative Decisions Tribunal			
Financial year 2007		Findings	Penalty
Nil			
Financial year 2006		Findings	Penalty
08.03.06	Meakes, Timothy	2 x upc	Reprimand. Appeal by the Bar Council to Court of Appeal.
03.02.06	Osei, Kofi A	pm & upc	No penalty orders yet made. Application by Osei to re-open case.
05.04.06	Hart, John P	pm & 4 x upc	Reprimand. Fine \$4,000.
07.11.05	Davison, William R	pm	Removal name from roll. Appeal by Davison to Court of Appeal. Davison's appeal dismissed on 29.08.07.
08.02.06	Sahade, Marcel V	pm	Reprimand & fined \$10,000. (Appeal by the Bar Council & cross appeal by Sahade dismissed – see Table 1 above)
09.01.06	Santisi, Frank	upc	Reprimand & Santisi to undertake modules 'Engagement, Management and Maximising Costs Recovery' and 'Risk Awareness' conducted by LawCover.



Table 3

**Notifications of offences and acts of bankruptcy made to the Bar Council between 1 July 2006 & 30 June 2007**

	2006 - 2007	2005 - 2006
	By barristers & applicants for pc	By barristers & applicants for pc
Tax offences	6 <sup>^</sup>	8*
Acts of bankruptcy	2 <sup>∞</sup>	5 <sup>#</sup>
Indictable/serious offences	2 <sup>≈</sup>	3
Prescribed concentration of alcohol	1	10 <sup>a</sup>
Traffic offences	1	3
Fare evasion	0	1
Other	3 <sup>◇</sup>	2 <sup>*</sup>
<b>Total</b>	<b>15</b>	<b>32</b>

<sup>^</sup> Of the six notifications of tax offences, four were made by barristers and two were made by applicants for a practising certificate. Two barristers notified the council of one tax offence each, one barrister notified the council of five tax offences and one barrister notified eight tax offences. One applicant notified the council of one tax offence. The other applicant notified the council of twenty tax offences. These have been treated as one notification of tax offences in each case.

<sup>∞</sup> The two notifications of acts of bankruptcy were made by barristers each of whom notified two acts of bankruptcy, namely the service of a creditor's petition and the making of a sequestration order. In one case, the creditor's petition was subsequently dismissed and the sequestration order set aside.

<sup>≈</sup> One barrister notified two serious offences, the other notified one offence.

<sup>◇</sup> The three notifications of other offences were made by applicants for a practising certificate.

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

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

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

<sup>\*</sup> Both notifications of other offences were made by applicants for a practising certificate.

Table 4

**Notifications of offences and acts of bankruptcy made to the Bar Council between 1 July 2006 & 30 June 2007**

Complaint type	2006 - 2007	2005 - 2006
Acting contrary to/failure to carry out instructions	2	2
Acting without instructions	3	2
Breach of s152 <i>Legal Profession Act 1987</i>	0	2
Breach costs disclosure provisions Part 11 <i>Legal Profession Act 1987</i> & failure to account	3	4
Breach of Barristers' Rule 35 (Clyne case)	0	4
Breach of Barristers' Rule (Other)	6	10
Breach of confidentiality	0	3
Communication	2	0
Conflict of interest	4	1
Conspiracy to pervert course of justice	0	1
Delay/failure to provide chamber work	2	1
Failure to adduce evidence available	0	2
Failure to advise properly or at all	1	1
Failure to appear	1	1
Failure to explain terms of settlement (properly or at all)	0	3
Incompetence in court	1	3
Incompetence in & out of court	4	1
Incompetence out of court/in legal practice	1	1
Misleading conduct/dishonesty	6	11
Obstruct/delay proceedings	1	0
Other unethical conduct	7	3
Over zealous cross-examination (harranging a witness)	0	1
Overcharging and/or over-servicing	1	2
Personal conduct	1	2

Practising without a practising certificate	2	0
Pressure to change plea/plead guilty/to settle	1	0
Rudeness/discourtesy	0	1
<b>Total</b>	<b>49</b>	<b>62</b>

Table 5  
**Complaints received between 1 July 2006 & 30 June 2007 by complainant type**

	2006 - 2007	2005 - 2006
Bar Council	4	7
Barrister	2	1
Client/former client	19	17
Instructing solicitor	3	6
Legal services commissioner	1	0
Government department/statutory body	1	1
Opposing client	7	11
Opposing solicitor	4	12
Witness	1	3
Police	1	0
Other	6	4
<b>Total</b>	<b>49</b>	<b>62</b>

Table 6  
**Total number of complaints remaining under investigation as at 30 June 2007**

	2006 - 2007	2005 - 2006
Less than six months	19	27
Between six and less than nine months	9	8
Between nine and less than twelve months	4	9
Between twelve and eighteen months	7	1
Between eighteen and twenty four months	6	3
Over twenty four	5	4
<b>Total</b>	<b>50</b>	<b>52</b>

Table 7  
**Results of investigations of complaints under Part 10 of the *Legal Profession Act 1987* and Chapter 4 of the *Legal Profession Act 2004* commenced and completed between 1 July 2006 & 30 June 2007**

Result of investigation	2006 - 2007	2005 - 2006
Complaint under investigation	32	44
Withdrawn – s140(1) LPA 1987/s512(1) LPA 2004	2	3
Dismiss – s139(1)(a) LPA 1987	0	1
Dismiss – s155(4) LPA 1987/s539(1)(a) LPA 2004	10*	8
Dismiss – s155(3)(b) LPA 1987	0	1
Dismiss (summary) – s511(1)(b) LPA 2004	1	0

\* In the reporting period 2006-2007, one application for review by the legal services commissioner was made in respect of a decision made by the Bar Council in 2006-2007 to dismiss a complaint pursuant to s539(1)(a) *Legal Profession Act 2004*. As at 31 August 2007, this remains under review. Since 30 June 2007, two applications for review have been made in respect of decisions made by the Bar Council in 2006-2007. As at 31 August 2007, these also remain under review.

Refer to tribunal (pm) - s155(2) LPA 1987	0	1
Refer to tribunal (upc/pm) - s155(2) LPA 1987/s537(2) LPA 2004	1	1
Reprimand - s155(3)(a) LPA 1987	0	0
Caution - s540(2)(a) LPA 2004	1	1
Referred to LSC/L	2	2
<b>Total</b>	<b>49</b>	<b>62</b>

Table 8

**Results of investigations of complaints under Part 10 of the *Legal Profession Act 1987* and Chapter 4 of the *Legal Profession Act 2004* carried forward or commenced and completed between 1 July 2006 & 30 June 2007**

Result of investigation	2006 - 2007	2005 - 2006
Complaint under Investigation	50	52
Withdrawn - s140(1) LPA 1987/s512(1) LPA 2004	4	4
Dismiss - s139(1)(a) LPA 1987/s511(1)(a) LPA 2004	1	2
Dismiss - s155(4) LPA 1987/s539(1)(a) LPA 2004	34*	39 <sup>∞</sup>
Dismiss - s155(3)(b) LPA 1987	0	1
Dismiss - s155A LPA 1987	1	1
Dismiss (summary) - s511(1)(b) LPA 2004	1	0
Refer to tribunal (pm) - s155(2) LPA 1987	0	1
Refer to tribunal (upc) - s155(2) LPA 1987	1	0
Refer to tribunal (upc/pm) - s155(2) LPA 1987	3	5
Reprimand - s155(3)(a) LPA 1987/s540(2)(b) LPA 2004	3	2
Caution - s540(2)(a) LPA 2004	2	1
Referred to legal services commissioner	2	0
<b>Total</b>	<b>102</b>	<b>108</b>

Table

**Results of investigations of complaints under Part 10 of the *Legal Profession Act 1987* and Chapter 4 of the *Legal Profession Act 2004* carried forward or commenced and completed between 1 July 2006 & 30 June 2007**

Proceedings instituted in the tribunal by the Bar Council	2006 - 2007	2005 - 2006
Conspiracy to pervert course of justice	0	1
Breach of s152 of LPA 1987	0	1
Breach of Barristers' Rule 36	0	1
Incompetence in court	1	0
Misleading conduct/dishonesty	2	1
Other unethical conduct	0	0
Overcharging	1	0
Professional misconduct arising from tax offences/bankruptcy	0	0
<b>Total</b>	<b>4</b>	<b>4</b>

\* In the reporting period 2006-2007, five decisions made by the Bar Council in 2006-2007 to dismiss a complaint pursuant to s155(4) of the *Legal Profession Act 1987* or s539(1)(a) of the *Legal Profession Act 2004* were the subject of an application for review by the legal services commissioner. Two of these decisions were upheld by the LSC in the reporting period. As at 31 August 2007, the other three decisions remain under review. In the reporting period 2006-2007, one application for review by the LSC was also made in respect of a decision made by the Bar Council in 2005-2006 to dismiss a complaint. That decision was upheld by the LSC. Since 30 June 2007, three applications for review by the LSC have been made in respect of decisions made by the Bar Council in 2006-2007. As at 31 August 2007, these remain under review.

<sup>∞</sup> In the period 2005-2006, 12 decisions made by the Bar Council in 2005/2006 to dismiss a complaint pursuant to s155(4) of the *Legal Profession Act 1987* or s539(1)(a) of the *Legal Profession Act 2004* were the subject of an application for review by the legal services commissioner. As at 30 June 2006, seven of these decisions were upheld by the LSC. In the reporting period 2006-2007, a further four of these decisions were upheld by the LSC. As at 31 August 2007, one remains under review.

# Appointments

## Committees: assisting Bar Council

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 our 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. Some committees include members of the community in their ranks. The following lists display committee membership as at 30 June 2007. Appointees who may have resigned during the reporting year are not included.

### The Bar News Committee

Andrew Bell SC (editor)  
Keith Chapple SC  
Gregory Nell SC  
John Mancy  
Arthur Moses  
Chris O'Donnell  
Carol Webster  
Richard Beasley  
David Ash  
Michael Kearney  
Louise Clegg  
Julie Soars  
Kylie Day  
Geoff Hull (clerk)

**Bar Association staff member**  
Chris Winslow

### The Criminal Law Committee

Stephen Odgers SC (chair)  
Anthony Bellanto QC  
Tim Game SC  
Phillip Boulten SC  
John Stratton SC  
Carolyn Davenport SC  
Daniel Howard SC  
Richard Button SC  
Elizabeth Wilkins SC  
Patrick Barrett  
Susan Kluss  
Mark Austin  
Margaret Cunneen  
Frank Veltro  
Sally Dowling  
Donna Spears  
Maria Cinque  
Gaby Bashir  
Matthew Johnston  
Paul Kerr

**Bar Association staff member**  
Cindy Penrose

### Common Law Committee

Peter Garling (chair)  
Ross Letherbarrow SC (deputy chair)  
Andrew Morrison SC  
Larry King SC  
John Harris SC  
Stephen Campbell SC  
Simon Harben SC  
Richard McHugh SC  
Michael Adamo  
Elizabeth Beilby  
Graham Grant  
Julia Loneragan  
Lorna McFee  
Kylie Nomchong  
Andrew Stone

**Bar Association staff member**  
Alastair McConnachie

### Costs & Fees Committee

Tom Bathurst QC (chair)  
Bernie Coles QC  
Dr Chris Birch SC  
Mark Brabazon  
Rachel Pepper  
Philippe Doyle Gray

**Bar Association staff member**  
Jennifer Pearce

### Equal Opportunity Committee

Liz Olsson SC (chair)  
Angela Bowne SC  
Simon Kalfas SC  
Julia Baird  
Kate Eastman  
Rhonda Bell  
Melissa Fisher  
Norman Laing  
Trish McDonald  
Michelle Painter

David Price  
Jocelynn Scutt  
Richard Weinstein

**Bar Association staff member**  
Cindy Penrose

### Family Law Committee

Grahame Richardson SC (chair)  
Robert Lethbridge SC  
Margaret Cleary  
Warwick Tregilgas  
Peter Cook  
Paul Sansom  
Richard Schonell  
Neill Macpherson  
Emily Pender

**Bar Association staff member**  
June Anderson

### Human Rights Committee

Anna Katzmann SC (chair)  
Elizabeth Wilkins SC (deputy chair)  
Ian Barker QC  
Nicholas Cowdery QC  
Richard Button SC  
Richard Lancaster  
Simeon Beckett  
Kate Eastman  
Angelina Gomez  
Ben Kasep  
Sera Mirzabegian  
Alissa Moen  
Sarah Pritchard  
Mandy Tibbey  
Andrew Byrnes UNSW

**Bar Association staff member**  
Cindy Penrose

### 2007 Indigenous Barristers' Strategy Working Party

Chris Ronalds AM SC (chair)  
David Frearson SC  
Andrew Haesler SC  
Mullenjaiwakka  
Peter Miller  
Tony McAvoy  
Norman Laing  
Larissa Behrendt  
Professor David Barker (UTS)  
Associate Professor Jill Hunter (UNSW)

**Bar Association staff member**  
Cindy Penrose

### International Advocacy and Arbitration Committee

Tom Bathurst QC (chair)  
Michael Slattery QC  
Justin Gleeson SC  
Andrew Bell SC

#### Bar Association staff member

Jennifer Pearce

### Legal Aid Committee

Tim Game SC (chair)  
Geoff Lindsay SC  
Philip Boulten SC  
Linda McSpedden  
Stephen Hanley  
Susan Kluss  
Mark Buscombe  
Luke Brasch  
Rachel Francois  
Nicole Carroll

#### Bar Association staff member

Cindy Penrose

### Mediation Committee

Robert Angyal SC (chair)  
Peter Callaghan SC  
Bruce Hodgkinson SC  
Angela Bowne SC  
Chris Ronalds AM SC  
Andrew Colefax SC  
Robert Dubler SC  
Nye Perram SC  
Michael McGrowdie  
Graham Barter  
Richard Bell  
Samuel Reuben  
Mary Walker  
Susan Phillips  
Miles Condon  
Andrew Bulley  
Hakan Sonmez

#### Bar Association staff member

Kim Kemp

### New Barristers' Committee

Margaret Holz (chair)  
Naomi Sharp  
Andrew Justice  
Rachel Francois  
John-Paul Redmond  
Madeleine Avenell  
Teni Anne Berberian  
Craig Biscoe  
Kylie Day  
Esther Lawson  
Jennifer Single

### Practice Management Committee

Tom Bathurst QC (chair)  
Justin Gleeson SC  
Robert Dick  
Michael McHugh  
Nick Tiffen (clerk)

#### Bar Association staff member

Jennifer Pearce

### Professional Conduct Committee #1

Nye Perram SC (chair)  
Stephen Robb QC  
John Sheahan SC  
Richard McHugh SC  
Margaret Cunneen  
Michael Loewenstein  
Anne Healey  
Mark Best  
Ian Tonking  
Hugh Stowe  
Alister Abadee  
Philippe Doyle Gray  
Edward Muston  
Cynthia Cochrane

#### Committee secretary

Jocelyn Sparks

### Professional Conduct Committee #2

Liz Olsson SC (chair)  
Ian Temby AO QC  
Peter Bodor QC  
Peter Hamill SC  
Virginia Lydiard  
Jay Anderson  
Michael Jenkins  
Richard Weinstein  
Sandra Duggan  
Dr James Renwick  
Gail Furness  
David Ash  
Vahan Bedrossian  
Philip Carr

#### Committee secretary

Helen Barrett

### Professional Conduct Committee #3

Justin Gleeson SC (chair)  
David Higgs SC  
David Davies SC  
Robert Beech-Jones SC  
Lorna McFee  
Barry Cross  
Ian Davidson

David Jordan  
Graham Turnbull  
James Lockhart  
Michael McHugh  
Penny Sibtain  
Paul Kerr

#### Committee secretary

Stephanie Mancell

### Professional Conduct Committee #4

Bernie Coles QC (chair)  
Larry King SC  
David J Russell SC  
Andrew Colefax SC  
Brendan Hull  
Julian Van Aalst  
Peter Tomasetti  
Geoffrey Rich  
Igor Mescher  
Patrick Griffin  
Carol Webster  
Sigrid Higgins  
David McLure  
Margaret Holz

#### Committee secretary

Helen Barrett

### Senior Counsel Selection Committee 2007

Michael Slattery QC, president,  
Anna Katzmann SC, senior vice president  
Stephen Robb QC  
Lou Lamprati SC  
James Stevenson SC

### Taxation Committee

Holger Sorensen (chair)  
Christopher Branson QC  
Anthony Slater QC  
Igor Mescher  
Mark Richmond  
Narelle Butler  
Christopher Catt  
Rachel Francois

#### Bar Association staff member

Kim Kemp



## Appointments to the bench

### Supreme Court of New South Wales

The Hon Justice D J Hammerschlag  
The Hon Justice E L Fullerton  
The Hon Justice I Harrison

### District Court

His Honour Judge W P Kearns SC  
His Honour Judge P Conlon SC  
His Honour Judge P R Zahra SC  
His Honour Judge Richard Cogswell SC  
Her Honour Judge L Flannery SC  
His Honour Judge R Toner SC

### Local Court

Magistrate John Favretto

### Federal Court

The Hon Justice R Buchanan

### Family Court

The Hon Justice J Ryan



## Federal appointments

### Australian Bar Association

**Vice president**  
Tom Bathurst QC

### Law Council of Australia

**Director**  
Anna Katzmann SC

**Alternate director**  
Philip A Selth OAM

**Access to Justice Committee**  
Christopher Whitelaw

**Advisory Committee on Indigenous Legal Issues**  
Chris Ronalds AM SC  
Dr Sarah Pritchard  
Anthony McAvoy

**Alternative Dispute Resolution Committee**  
Mary Walker (chair)

**Australian Young Lawyers Committee**  
Margaret Holz

**Equalising Opportunities in the Law Committee**  
Julia Lonergan

**LCA/SCAG National Legal Profession Officers' Working Group**  
Philip Selth OAM (alternative to Peter Carne)

**Military Justice System Working Group**  
Dr James Renwick

**Model Equal Opportunity Briefing Policy Working Group**  
Angela Bowne SC

**National Criminal Law Committee**  
Tim Game SC (Co-chair)  
Bret Walker SC  
Stephen Odgers SC  
Phillip Boulten SC

**National Practice Working Group**  
Jennifer Pearce

**National Profession Practice Reference Group**  
Michael Slattery QC

**National Practice Advisory Group**  
Philip Selth OAM  
Jennifer Pearce

**Personal Injuries & Compensation Committee**  
Ross Letherbarrow SC

### Australian Advocacy Institute

Her Honour Judge Ann Ainslie-Wallace

## Court committees and working parties

### Commonwealth courts and tribunals

**Federal Court of Australia Court User Committee**  
Malcolm Oakes SC  
Richard Cobden SC  
Rhonda Henderson

**Family Court Case Management Committee**  
Grahame Richardson SC

### State courts and tribunals

**Uniform Rules Committee**  
Geoff Lindsay SC

**Court of Appeal Users Group**  
John Maconachie QC  
David Davies SC  
Justin Gleeson SC

**Court of Criminal Appeal Crime User Group**  
Stephen Odgers SC

**Supreme Court Rule Committee**  
Geoff Lindsay SC  
Elizabeth Olsson SC (deputy)

**Supreme Court Commercial List Users Committee**  
Robert Macfarlan QC  
Tom Bathurst QC  
Glenn Miller QC  
Stephen Robb QC  
John Kelly SC  
Geoff Lindsay SC  
Noel Hutley SC

Michael Rudge SC  
Rodney Smith SC  
Todd Alexis SC  
Elizabeth Olsson SC  
Lachlan Gyles  
Mark Ashhurst  
Elizabeth Collins

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

Peter Deakin QC  
Tony Hewitt SC  
Lorna McFee

#### **Supreme Court Corporations List User's Group**

Malcolm Oakes SC  
Robert Newlinds SC  
James Thomson  
James Johnson

#### **Supreme Court Equity Liaison Group**

Robert Forster SC  
Robert Newlinds SC  
Robert Harper SC  
Jane Needham SC  
Mark Ashhurst  
Miles Condon

#### **Supreme Court Probate User's Group**

Michael Willmott SC

#### **Supreme Court ADR Steering Committee**

Mary Walker

#### **Land & Environment Court Users Group**

Jeffrey Kildea

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

Jeffrey Kildea

#### **Industrial Relations Commission Rules Committee**

Ian Neil SC  
Arthur Moses

#### **Industrial Relations Commission Users Group**

Peter Kite SC  
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**

Wendy Strathdee  
Brian Ferrari (Deputy)

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

Andrew Kostopoulos

#### **St James Local Court Users Forum**

Elizabeth Beilby

#### **Local Court Rule Committee/ Local Court (Civil Claims) Rule Committee**

Elizabeth Beilby

#### **Workers' Compensation Commission Users Group**

Michael Jenkins

## **Court liaison members 2007**

### **Federal courts and tribunals**

#### **High Court**

David Jackson AM QC

#### **Federal Court**

Malcolm Oakes SC

#### **Family Court**

Grahame Richardson SC

#### **Federal Magistrates Court**

Kate Morgan

#### **Refugee Review Tribunal**

Nick Poynder

### **State courts and tribunals**

#### **NSW Court of Appeal**

Donald Grieve QC

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

Richard J Burbidge QC

#### **Supreme Court of NSW - Equity Division**

Robert G Forster SC

#### **Supreme Court of NSW - Possessions List**

James Stevenson SC

#### **Supreme Court of NSW - Criminal Matters**

Tim Game SC

#### **Supreme Court of NSW - Admiralty List**

Sandy Street SC

#### **Land and Environment Court**

Malcolm G Craig QC

#### **Industrial Relations Commission of NSW**

Max Kimber SC

#### **Local Court**

Kate Traill

## Statutory appointments

### Administrative Appeals Tribunals

Peter Taylor SC

### Administrative Decisions Tribunals

#### Legal Services Division

Robert Macfarlan QC  
(term expires: 31.10.08)  
Sharron Norton SC  
(term expires: 31.10.08)  
Lionel Robberds QC  
(term expires: 31.10.08)  
Wendy Robinson QC  
(term expires: 31.10.08)  
Alison Stenmark SC  
(term expires: 31.10.09)

#### Equal Opportunity Division

Larissa Behrendt  
(term expires: 31.10.08)  
Graham Ireland  
(term expires: 31.10.08)  
Simon Rice OAM  
(term expires: 31.10.08)  
Zita Antonios (Term Expires: 31.10.08)  
Associate Professor Lucy Taksa  
(term expires: 31.10.08)

### Council of Law Reporting

Bret Walker SC (editor)  
Christine Adamson SC (chairperson)  
(term expires: 31.07.09)  
Timothy Castle (deputy chairperson)  
(term expires: 31.07.09)

Noel Hutley SC  
(term expires: 31.07.09)  
Ian Jackman SC  
(term expires: 31.07.09)  
Geoff Lindsay SC  
(term expires: 31.07.09)

### Motor Accidents Authority

#### Claims Assessment and Resolution Service

CARS assessors appointed from the Bar for a three year term due to expire on 30.06.09 are;  
Robert Tonner  
Robert Quickenden  
John Turnbull  
William Fitzsimmons  
John Tancred  
Helen Wall  
John Watts  
Margaret Holz

### Legal Aid Commission

*Board members*  
Geoff Lindsay SC  
Alternate: Phillip Boulten SC  
*Legal Aid Review Committees 2007/08*  
*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 Review Committee No.1*

Gregory Moore  
1st alternate: Richard Schonell  
2nd alternate: John Berry  
*Public Interest Human Rights Committee*  
Member: Sarah Pritchard  
Alternate: Nick Poynder

### Law and Justice Foundation

Bret Walker SC  
(term expires: 06.09.07)

### Law Week Board

Philip Selth OAM

### Patent and Trade Marks Attorneys Disciplinary Tribunal

Sigrid Higgins (term expires: 30.03.09)

### Professional Standards Council

Brian Rayment QC (chair)

### The Nurses and Midwives Tribunals

Irving Wallach (deputy chairperson)

## Representatives on educational bodies

### Legal Profession Admission Board

Peter Taylor SC  
Jeremy Gormly SC  
Garry McGrath (term expires: 25.09.07)

### Legal Profession Admission Board, Legal Qualifications Committee

John Fernon SC (term expires: 30.06.08)  
Janet Oakley (term expires: 30.06.08)  
Philippe Doyle Gray  
(term expires: 30.06.08)

### Legal Profession Admission Board, Law Examinations Committee

Michael Christie (term expires: 30.06.08)

### University of Sydney, Faculty of Law

Peter Garling SC

### University of Sydney Law School Advisory Board

Jennifer Stuckey-Clarke

### University of NSW, Faculty of Law

Margaret Holz

### University of Technology, Sydney, Faculty Board

Geoff Lindsay SC

### University of Sydney, Law Extension Committee

Peter Hamill SC  
Anthony O'Brien

### University of Western Sydney

Robert O'Neill

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

Bruce Collins QC

# The New South Wales Bar Association

## financial statements

ABN 18 526 414 014

Financial report for the year ended 30 June 2007



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This financial report covers The New South Wales Bar Association as an individual entity. The financial report is presented in Australian currency. The financial report was authorised for issue by the directors on the 6 September 2007. The company has the power to amend and reissue the financial report.

## Directors' report

The directors present their report together with the financial report of The New South Wales Bar Association (the company) for the year ended 30 June 2007 and the auditors' report thereon.

### Directors

The directors of the company at any time during or since the financial year are:

Director	Period as director
D Ash	3 November 2006 to present
T Bathurst QC	8 November 2001 to present
B A Coles QC	7 November 2000 to present
M Cunneen	3 November 2006 to present
P Doyle Gray	10 November 2005 to 3 November 2006
R Francois	3 November 2006 to present
P Garling SC	3 November 2006 to present
P Greenwood SC	11 November 2003 to 3 November 2006
J Gleeson SC	3 November 2006 to present
J Gormly SC	10 November 2005 to 3 November 2006
A Healey	3 November 2006 to present
M Holz	10 November 2005 to present
A J Katzmann SC	25 November 1993 to present
P Khandhar	10 November 2005 to present
L King SC	8 November 2001 to present
R Lancaster	3 November 2006 to present
V Lydiard	14 November 2002 to 3 November 2006
G McGrath	3 November 2006 to present
M McHugh	8 November 2001 to present
J Needham SC	8 November 2004 to 3 November 2006
E Olsson SC	21 March 2007 to present
R Pepper	11 November 2003 to present
A Pearman	13 November 2003 to 3 November 2006
N Perram SC	10 November 2005 to 3 November 2006 & 14 December 2006 to present
N Sharp	3 November 2006 to present
M J Slattery QC	25 November 1999 to present
R Sofroniou	10 November 2004 to 3 November 2006
R S Toner SC	14 November 2002 to 21 March 2007
S Torrington	8 November 2001 to 3 November 2006
K M Traill	3 December 1997 to present
C Wood	10 November 2005 to 3 November 2006
P Zahra SC	3 November 2006 to 14 December 2006

All directors are practising barristers.

### Principal activities

The principal activities of the company during the course of the financial year were to conduct the affairs of The New South Wales Bar Association and to operate The New South Wales Bar Association Library.

There were no significant changes in the nature of these activities during the financial year.

### Company particulars

The New South Wales Bar Association, incorporated and domiciled in Australia, is an unlisted public company limited by guarantee. The address of the registered office and principal place of business is:

**174 Phillip Street  
SYDNEY NSW 2000**

### Review and results of operations

The company continued to engage in its principal activity during the financial year.

The net surplus of the company for the year ended 30 June 2007 was \$59,960 (2006: \$909,951). This result represents a \$849,991 decrease in net surplus from the prior year. Your directors were very mindful of keeping costs down for our members and practising barristers. It is for this reason that there were no increases in either practising certificate or membership fees for 2007. Costs however did increase. The association is mindful that in order to attract and keep competent staff, its remuneration levels have to reflect market rates. In addition, a significant investment has been made in a new certification database, to better serve our constituents. There were also increases in other areas e.g. professional standards capitation. The 2006 result also benefited from a one off write back of a provision, no longer required, of \$175,000.

### Dividends

No dividends were paid during the year and no recommendation is made as to dividends as dividends are forbidden by the Constitution.

### State of affairs

No significant changes in the state of affairs of the company occurred during the financial year.

### Events subsequent to balance date

There has not arisen in the interval between the end of the financial year and the date of this report any item, transaction or event of a material and unusual nature likely, in the opinion of the directors of the company to



significantly affect the operations of the company, the results of those operations, or the state of affairs of the company in future financial years.

## Likely developments

In running its operations the company's aim is that the costs of doing so do not exceed the revenue available.

## Meetings of directors

Name	Meetings attended	Meeting held
Slaterry QC, Michael John (president)	17	17
Katzmann SC, Anna Judith (senior vice president)	14	17
Bathurst QC, Tom (junior vice president)	11	17
Toner SC, Robert Stephen (treasurer (to 21.3.2006))	6	10
Pepper, Rachel (secretary)	14	17
Coles QC, Bernard Anthony John (treasurer (from 21.3.2006))	14	17
King SC, Larry	13	17
Greenwood SC, Philip	3	5
Gormly SC, Jeremy Patrick	2	5
Needham SC, Jane	3	5
Lydiard, Virginia Joan	4	5
Torrington, Stuart	1	5
Traill, Kate	11	17
Sofroniou, Rena	2	5
Perram, Nye SC	13	15
Pearman, Angela	2	5
Khandhar, Paresh Nevin	15	17
McHugh, Michael	14	17
Wood, Christopher Dennis	3	5
Doyle Gray, Philippe	3	5
Holz, Margaret	14	17
Garling, Peter SC	10	12
Zahra, Peter SC	1	2
Gleeson, Justin SC	10	12
McGrath, Garry	11	12
Cunneen Margaret	11	12
Healey, Anne	11	12
Lancaster, Richard	11	12
Ash, David	11	12
Sharp, Naomi	9	12
Francois, Rachel	11	12
Olsson, Elizabeth SC	6	7

From 1 July 2006 to 30 June 2007 there were 17 meetings.

## Insurance premiums

During the financial year the company has paid premiums in respect of directors' and officers' liability insurance contracts for the year ended 30 June 2007 and since the financial year, the company has paid or agreed to pay on behalf of the company, premiums in respect of such insurance contracts for the year ending 30 June 2008. Such insurance contracts insure against certain liability (subject to specific exclusions) persons who are or have been directors or executive officers of the company.

The directors have not included details of the nature of the liabilities covered or the amount of the premium paid in respect of the directors' and officers' liability insurance contracts, as such disclosure is prohibited under the terms of the contracts.

## Environmental regulation

The company is not subject to any significant environmental regulations under Australian law.

## Proceedings on behalf of the company

No person has applied for leave of court to bring proceedings on behalf of the company or to intervene in any proceedings to which the company is a party for the purposes of taking responsibility on behalf of the company for all or part of those proceedings.

No proceedings have been brought or intervened in on behalf of the company with leave of the court under section 237 of the *Corporations Act 2001*.

# Auditor's independence declaration

A copy of the auditor's independence declaration as required under section 307C of the *Corporations Act 2001* given to the directors by the lead auditor for the audit undertaken by HLB Mann Judd is included below.

The report is made in accordance with resolution of directors made pursuant to section 298(2) of the *Corporations Act 2001*.

**M J Slattery QC**  
President

**B A Coles QC**  
Treasurer

**Sydney** 11 September 2007

## Auditor's Independence Declaration

To the directors of The New South Wales Bar Association:  
As lead auditor for the audit of The New South Wales Bar Association for the year ended 30 June 2007, I declare that, to the best of my knowledge and belief, there have been:

(a) no contraventions of the auditor independence requirements of the *Corporations Act 2001* in relation to the audit; and

(b) no contraventions of any applicable code of professional conduct in relation to the audit.

**P B Meade**  
Partner

HLB MANN JUDD  
(NSW Partnership)  
Chartered Accountants

**Sydney** 10 September 2007

# Income statement

For the year ended 30 June 2006

	NOTE	2007	2006
		\$	\$
Revenues from continuing operations	3	6,797,823	7,301,543
Cost of goods sold		-	(75,336)
Employee benefits expenses		(2,989,157)	(2,630,537)
Legal and professional fees		(1,296,692)	(1,620,471)
Subscriptions		(495,020)	(425,545)
Communications and information technology expenses		(417,064)	(299,508)
Depreciation and amortisation expenses	4	(162,068)	(136,281)
Occupancy expenses		(350,498)	(332,181)
Advertising and marketing expenses		(166,053)	(138,547)
Financial expenses		(125,594)	(137,306)
Other expenses from ordinary activities		(653,326)	(595,880)
Surplus before income tax expense		142,351	909,951
Income tax expense	5	82,391	-
<b>Net surplus</b>		<b>59,960</b>	<b>909,951</b>

The above income statement should be read in conjunction with the accompanying notes

# Balance sheet

As at 30 June 2007

	NOTE	2007	2006
		\$	\$
<b>ASSETS</b>			
<b>Current assets</b>			
Cash and cash equivalents	17(a)	9,364,454	8,901,165
Trade and other receivables	7	212,677	334,624
Inventories		5,262	6,410
Other assets	8	181,124	143,024
<b>Total current assets</b>		<b>9,763,517</b>	<b>9,385,223</b>
<b>Non-current assets</b>			
Other financial assets	6	239,428	194,804
Deferred tax assets		6,542	-
Plant and equipment	9	632,138	704,967
<b>Total non-current assets</b>		<b>878,108</b>	<b>899,771</b>
<b>TOTAL ASSETS</b>		<b>10,641,625</b>	<b>10,284,994</b>
<b>LIABILITIES</b>			
<b>Current liabilities</b>			
Current tax liabilities		51,259	-
Trade and other payables	10	433,395	440,878
Employee benefits	11	305,292	305,575
Fees received in advance	12	4,082,997	3,931,806
<b>Total current liabilities</b>		<b>4,872,943</b>	<b>4,678,259</b>
<b>Non-current liabilities</b>			
Employee benefits	11	144,093	108,976
Deferred tax liabilities	5	69,145	32,084
<b>Total non-current liabilities</b>		<b>213,238</b>	<b>141,060</b>
<b>TOTAL LIABILITIES</b>		<b>5,086,181</b>	<b>4,819,319</b>
<b>NET ASSETS</b>		<b>5,555,444</b>	<b>5,465,675</b>
<b>ACCUMULATED FUNDS</b>			
Accumulated surplus		5,450,772	5,390,812
Reserves		104,672	74,863
<b>TOTAL ACCUMULATED FUNDS</b>		<b>5,555,444</b>	<b>5,465,675</b>

The above balance sheet should be read in conjunction with the accompanying notes

# Statement of recognised income and expense

For the year ended 30 June 2007

	Note	Accumulated surplus	Reserves	Total accumulated funds
<b>At 1 July 2005</b>		4,480,861	-	4,480,861
Surplus for the year		909,951	-	909,951
Increment in fair value reserve net of tax	13	-	74,863	74,863
<b>Total recognised income for the year</b>		909,951	74,863	984,814
<b>At 30 June 2006</b>		5,390,812	74,863	5,465,675
Surplus for the year		59,960	-	59,960
Increment in fair value reserve net of tax	13	-	29,809	29,809
<b>Total recognised income for the year</b>		59,960	29,809	89,769
<b>At 30 June 2007</b>		5,450,772	104,672	5,555,444

The above statement of recognised income and expense should be read in conjunction with the accompanying notes



# Cash flow statement

For the year ended 30 June 2007

	NOTE	2007	2006
		\$	\$
<b>Cash flows from operating activities</b>			
Receipts from operating activities		6,378,532	7,459,970
Payments to suppliers and employees		(6,233,529)	(7,122,406)
Dividends received		6,307	7,443
Interest received		427,485	356,702
Income tax paid		(13,388)	-
Borrowing costs		-	(198)
<b>Net cash from operating activities</b>	17(b)	565,407	701,511
<b>Cash flows from investing activities</b>			
Payments for plant and equipment		(89,239)	(270,764)
Proceeds from sale of plant and equipment		150	-
Payment for marketable securities		(13,029)	(1,874)
<b>Net cash used in investing activities</b>		(102,118)	(272,638)
<b>Cash flows from financing activities</b>			
Loan repayment		-	(9,470)
<b>Net cash used in financing activities</b>		-	(9,470)
<b>Net increase in cash and cash equivalents</b>		463,289	419,403
Cash and cash equivalents at the beginning of the financial year		8,901,165	8,481,762
<b>Cash and cash equivalents at the end of the year</b>	17(a)	9,364,454	8,901,165

The above cash flow statement should be read in conjunction with the accompanying notes.

# Notes to the financial statements

For the financial year ended 30 June 2007

## 1. Summary of significant accounting policies

The principal accounting policies adopted in the preparation of the financial report are set out below. These policies have been consistently applied to all the years presented, unless otherwise stated.

### (a) Basis of preparation

This general purpose financial report has been prepared in accordance with Australian Equivalents to Accounting Standards other authoritative pronouncements of the Australian Accounting Standards Board, and the *Corporations Act 2001*.

#### *Compliance with IFRS*

Australian Accounting Standards include Australian equivalents to International Financial Reporting Standards. Compliance with AIFRS ensures that the financial statements and notes of The New South Wales Bar Association comply with International Financial Reporting Standards (IFRS).

#### *Historical cost convention*

These financial statements have been prepared under the historical cost convention, as modified by the revaluation of available-for-sale financial assets.

#### *Critical accounting estimates*

The preparation of financial statements in conformity with AIFRS requires the use of certain critical accounting estimates. It also requires management to exercise its judgment in the process of applying the company's accounting policies. There are no estimates and judgments that have a significant risk of causing material adjustments to the carrying amounts of assets and liabilities within the next financial year.

### (b) Revenue recognition

Revenue is measured at the fair value of the consideration received or receivable.

#### (i) Subscriptions and practising certificate fees

Subscriptions and practising certificate fees comprise annual fees for membership and practising certificates. Subscriptions and practising certificate fees are recognised on a pro rata basis through the course of the year.

#### (ii) Sales of goods

Sale of goods comprises revenue earned from the provision of products to parties outside the company. Revenue derived from the sale of goods is recognised when the products are provided.

#### (iii) Administration charge

Administration charges comprise revenue earned from the provision of administrative services. They are recognised when the fee in respect of services is receivable.

#### (iv) Dividends received

Revenue from dividends is recognised when the

dividend is receivable.

#### (v) Interest income

Interest income is recognised as it accrues.

#### (vi) Grants

Grants comprise monies received during the year in respect of the professional conduct department and legal assistance department. Income is recognised when the grant is receivable.

#### (vii) Other income

Income from other sources is recognised when the fee in respect of other products or services provided is receivable.

### (c) Income tax

The company has adopted the balance sheet method of tax effect accounting.

In addition, under the mutuality provisions of the Income Tax Assessment Act, income and expenses wholly applicable to members of the company are not brought to account for the purposes of calculating income for tax purposes.

### (d) Leases

Leases in which a significant portion of the risks and rewards of ownership are retained by the lessor are classified as operating leases. Payments made under operating leases (net of any incentives received from the lessor) are charged to the income statement on a straight-line basis over the period of the lease.

### (e) Impairment of assets

All assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. An impairment loss is recognised for the amount by which the asset's carrying amount exceeds its recoverable amount. The recoverable amount is the higher of an asset's fair value less costs to sell and value in use. For the purposes of assessing impairment, assets are grouped at the lowest levels for which there are separately identifiable cash inflows from other assets (cash generating units). Non financial assets other than goodwill that suffered an impairment loss are reviewed for possible reversal of the impairment at each reporting date.

### (f) Cash and cash equivalents

For cash flow statement presentation purposes, cash and cash equivalents includes cash on hand, deposits held at call with financial institutions and other short-term, highly liquid investments with original maturities of three months or less that are readily convertible to known amounts of cash and which are subject to an insignificant risk of changes in value.

### (g) Trade and other receivables

Trade receivables are recognised initially at fair value and subsequently measured at amortised cost, less provision for doubtful debts. Trade receivables are due

for settlement no more than 60 days from the date of recognition.

Collectibility of trade receivables is reviewed on an ongoing basis. Debts which are known to be uncollectible are written off. A provision for doubtful receivables is established when there is objective evidence that the company will not be able to collect all amounts due according to the original terms of receivables.

#### (h) Inventories

Inventories are stated at the lower of cost and net realisable value. Costs are assigned to individual items of inventory on the basis of weighted average costs. Net realisable value is the estimated selling price in the ordinary course of business less the estimated costs necessary to make the sale.

#### (i) Investments and other financial assets

##### Classification

The company classifies its investments in the following categories: loans and receivables and available-for-sale financial assets.

##### (i) Loans and receivables

Loans and receivables are non-derivative financial assets with fixed or determinable payment that are not quoted in an active market. They are included in current assets, except for those with maturities greater than 12 months after the balance sheet date which are classified as non-current assets. Loans and receivables are included in trade and other receivables in the balance sheet (note 7).

##### (ii) Available-for-sale financial assets

Available-for-sale financial assets, comprising principally marketable equity securities, are non-derivatives that are either designated in this category or not classified in any of the other categories. They are included in non-current assets unless management intends to dispose of the investment within 12 months of the Balance Sheet date.

##### Fair value

The fair values of quoted investments are based on current bid prices.

##### Impairment

The company assesses at each balance date whether there is objective evidence that a financial asset or group of financial assets is impaired. In the case of equity securities classified as available-for-sale, a significant or prolonged decline in the fair value of a security below its cost is considered in determining whether the security is impaired. If any such evidence exists for available-for-sale financial assets, the cumulative loss – measured as the difference between the acquisition cost and the current fair value, less any impairment loss on that financial asset previously recognised in profit and loss is removed from the fair value reserve and recognised in the income statement. Impairment losses recognised in the income statement on equity instruments are not reversed through the income statement.

#### (j) Fair value estimates

The fair value of financial assets must be estimated for recognition and measurement or for disclosure purposes.

The fair value of financial instruments traded in active markets is based on quoted market prices at the balance sheet date. The quoted market price used for financial assets held by the company is the current bid price; the appropriate quoted market price for financial liabilities is the current ask price.

The fair value of financial instruments that are not traded in an active market is determined using valuation techniques. The company uses a variety of methods and makes assumptions that are based on market conditions existing at each balance date.

The nominal value less estimated credit adjustments of trade receivables and payables are assumed to approximate their fair values.

#### (k) Plant and equipment

All plant and equipment is stated at historical cost less depreciation. Historical cost includes expenditure that is directly attributable to the acquisition of the items.

Subsequent costs are included in the asset's carrying amount or recognised as a separate asset, as appropriate, only when it is probable that future economic benefits associated with the item will flow to the company and the cost of the item can be measured reliably. All other repairs and maintenance are charged to the income statement during the financial period in which they are incurred.

Depreciation on other assets is calculated using the straight line method to allocate their cost or revalued amounts, net of their residual values, over their estimated useful lives, as follows:

Library .....	<b>20 years</b>
Refurbishment .....	<b>3 to 4 years</b>
Furniture, computers, office machines and equipment .....	<b>3 to 5 years</b>
Glasses, bar and kitchen equipment .....	<b>5 years</b>

The assets' residual values and useful lives are reviewed, and adjusted if appropriate, at each balance sheet date.

An asset's carrying amount is written down immediately to its recoverable amount if the asset's carrying amount is greater than its estimated recoverable amount (note 1 (e)).

Gains and losses on disposals are determined by comparing proceeds with carrying amount. These are included in the income statement.

#### (l) Trade and other payables

These amounts represent liabilities for goods and services provided to the company prior to the end of financial year which are unpaid. The amounts are unsecured and are usually paid within 30 days of recognition.

**(m) Employee benefits****(i) Wages and salaries and annual leave**

Liabilities for wages and salaries, including non-monetary benefits and annual leave expected to be settled within 12 months of the reporting date are recognised as payables in respect of employee's services up to the reporting date and are measured at the amounts expected to be paid when the liabilities are settled.

**(ii) Long service leave**

The liability for long service leave is recognised in the provision for employee benefits and measured as the present value of expected future payments to be made in respect of services provided by employees up to the reporting date. Consideration is given to the expected future wage and salary levels, experience of employee departures and periods of service.

**(iii) Retirement benefit obligations**

The company contributes to accumulation superannuation plans. Contributions are charged against income as they are made.

**(n) Subscriptions and practising certificate fees**

Subscriptions and practising certificate fees are received in advance for services to be provided for the financial year subsequent to balance date.

**(o) Goods and services tax (GST)**

Revenues, expenses and assets are recognised net of the amount of associated GST, unless the GST incurred is not recoverable from the Australian Taxation Office (ATO). In this case it is recognised as part of the cost of acquisition of the asset or as part of an item of the expense.

Receivables and payables are stated inclusive of the amount of GST receivable or payable. The net amount of GST recoverable from, or payable to, the ATO is included in receivables or payables in the balance sheet.

Cash flows are included in the cash flow statement on a gross basis. The GST components of cash flows arising from investing and financing activities which are recoverable from, or payable to, the ATO are presented as operating cash flows.

**(p) Comparative figures**

Where required by Accounting Standards, comparative figures have been adjusted to conform with changes in presentation for the current financial year.

**(q) Emerton Endowment Fund (the fund)**

The company acts as trustee for the fund. In its role as trustee of the fund it incurs a liability for which a right of indemnity exists from the fund's assets. Accordingly no asset or liability relating to the fund is recognised in the financial statements of the company. Financial details relating to the activities of the fund during the year are disclosed in note 21.

**(r) New accounting standard and interpretations**

Certain new accounting standards and interpretations have been published that are not mandatory for 30 June 2007 reporting periods. The company's assessment of the impact of these new standards and interpretations is set out below.

AAB57 Financial Instruments: Disclosures and AASB 2005-10 Amendments to Australian Accounting Standards [AASB 132, AASB 101, AASB 114, AASB 117, AASB133, AASB 139, AASB1, AASB 1023 & AASB 1038]

AASB 7 and AASB 2005-10 are applicable to annual reporting periods beginning on or after 1 January 2007. The company has not adopted the standards early. Application of the standards will not affect any of the amounts recognised in the financial statements, but will impact the type of information disclosed in relation to the company's financial instruments.

**2. Financial risk management**

The company's activities expose it to a variety of financial risks: market risk (including fair value interest rate risk and price risk), credit risk, liquidity risk and cash flow and fair value interest rate risk. The company's overall risk management programme focuses on the unpredictability of the financial markets and seeks to minimise potential adverse effects on the financial performance of the company.

**(a) Market risk**

Fair value interest rate risk Refer to (d) below.

**(b) Credit risk**

The company has no significant concentrations of credit risk. The company has policies in place to ensure that sales of products and services are made to customers with an appropriate credit history.

**(c) Liquidity risk**

Prudent liquidity risk management implies maintaining sufficient cash and marketable securities, the availability of funding through an adequate amount of committed credit facilities.

**(d) Cash flow and fair value interest rate risk**

The company has interest bearing assets, therefore the company's income and operating cash flows are subject to changes in market interest rates.

3. Revenue from continuing operations	2007	2006
	\$	\$
<b>Operating revenue</b>		
Sale of goods	-	96,489
Subscriptions and practicing certificate fees	3,922,409	3,829,666
Reading programme	325,460	395,000
	4,247,869	4,321,155
<b>Other Income</b>		
Interest and dividends	460,950	391,470
Seminars	57,209	27,492
Administration charge	114,550	116,050
External funding	1,737,696	2,108,603
Net gains on disposal of plant and equipment	150	-
Other	179,399	336,773
<b>Revenue from continuing operations</b>	<b>6,797,823</b>	<b>7,301,543</b>

4. Expenses	2007	2006
	\$	\$
<b>Surplus before income tax includes the following specific expenses:</b>		
<b>Depreciation</b>		
Library	23,454	23,452
Furniture, computers, office machines & equipment glass	119,994	91,155
Bar and kitchen equipment	2,115	1,729
	145,563	116,336
<b>Amortisation</b>		
Refurbishment	16,505	19,945
<b>Provision for employee benefits (movement)</b>	<b>34,834</b>	<b>24,106</b>
<b>Finance cost</b>	<b>-</b>	<b>198</b>



5. Income tax expense	2007	2006
	\$	\$
<b>(a) Income tax expense</b>		
Current tax	64,647	-
Deferred tax	2,474	-
Adjustment of current tax of prior periods	15,270	-
<b>Aggregate income tax expense</b>	<b>82,391</b>	<b>-</b>
<b>Deferred income tax (revenue) expense included in income</b>		
Increase in deferred tax assets	(1,092)	-
Increase in deferred tax liabilities	3,566	-
	<b>2,474</b>	<b>-</b>
<b>(b) Numerical reconciliation of income tax expense to prima facie tax payable</b>		
Net surplus from continuing operations	142,351	909,951
Tax at the Australian tax rate of 30% (2006:30%)	42,705	272,985
Increase/(decrease) in income tax expense due to:		
Net mutual expense (income)	30,891	(249,380)
Imputation credits	(3,460)	(3,190)
Tax effect of amounts which are not deductible (taxable)	820	(6,404)
Adjustments for current tax of prior periods	15,270	-
Previously unrecognised tax losses now recouped to reduce current tax expense	(3,835)	(14,011)
<b>Income tax expense</b>	<b>82,391</b>	<b>-</b>
<b>(c) Deferred tax liability</b>	<b>69,145</b>	<b>32,084</b>
The balance comprises temporary differences attributable to shares in Australian listed companies:		
Movements:		
Opening balance 1 July 2006	32,084	-
Charged to the income statement	24,286	-
Recognised in fair value reserve	12,775	32,084
<b>Closing balance 30 June 2007</b>	<b>69,145</b>	<b>32,084</b>

6. Other financial assets	2007	2006
	\$	\$
<b>Non-Current</b>		
Investments in associates	4	4
Available for sale – at fair value shares in Australian listed companies	239,424	194,800
	<hr/> 239,428	<hr/> 194,804

**(a) Transition to AASB 132 and AASB 139**

The company has taken the exemption available under AASB 1 First-time Adoption of Australian Equivalents to International Financial Reporting Standards to apply AASB 132 Financial Instruments: Disclosure and Presentation and AASB 139 Financial Instruments: Recognition and Measurement from 1 July 2005. For further information please refer to our annual report for the year ended 30 June 2006.

**(b) Investments in associates**

The company holds two \$2 shares in The Barrister's Sickness and Accident Fund Pty Ltd. The sole purpose of the company is to act as trustee for the Barrister's Sickness and Accident Fund.

7. Trade and other receivables	2007	2006
	\$	\$
Trade receivables	87,187	38,472
GST receivable	19,052	4,863
Other receivables	106,438	291,289
	<hr/> 212,677	<hr/> 334,624

8. Other assets	2007	2006
Prepayments	100,358	73,959
Accrued interest	80,766	69,065
	<hr/> 181,124	<hr/> 143,024

## 9. Plant and equipment

	Library	Refurbishments	Furniture, computers, office machines and equipment	Glass, bar and kitchen equipment	Total
	\$	\$	\$	\$	\$
<b>Year ended 30 June 2007</b>					
At 1 July 2006, net of accumulated depreciation	351,781	35,001	311,422	6,763	704,967
Additions	-	3,250	85,989	-	89,239
Depreciation/amortisation charge for the year	(23,454)	(16,505)	(119,994)	(2,115)	(162,068)
<b>At 30 June 2007, Net of accumulated depreciation</b>	<b>328,327</b>	<b>21,746</b>	<b>277,417</b>	<b>4,648</b>	<b>632,138</b>
<b>At 1 July 2006</b>					
Cost	469,043	1,310,819	1,001,500	16,085	2,797,447
Accumulated depreciation and impairment	(117,262)	(1,275,818)	(690,078)	(9,322)	(2,092,480)
<b>Net carrying amount</b>	<b>351,781</b>	<b>35,001</b>	<b>311,422</b>	<b>6,763</b>	<b>704,967</b>
<b>At 30 June 2007</b>					
Cost	469,043	1,314,069	1,083,958	16,085	2,883,155
Accumulated depreciation and impairment	(140,716)	(1,292,323)	(806,541)	(11,437)	(2,251,017)
<b>Net carrying amount</b>	<b>328,327</b>	<b>21,746</b>	<b>277,417</b>	<b>4,648</b>	<b>632,138</b>

## 10. Trade and other payables

	2007	2006
	\$	\$
Trade and other payables	433,395	440,878

## 11. Employee benefits

	2007	2006
The aggregate employee entitlement liability recognised and included in the financial statements as follows:		
Current	305,292	305,575
Non current	144,093	108,976
	<u>449,385</u>	<u>414,551</u>

## 12. Fees received in advance

	2007	2006
Current		
Subscriptions and practicing certificate fees received in advance	4,082,997	3,931,806

13. Reserves	2007	2006
	\$	\$
Fair value reserve		
	104,672	74,863

**Nature and purpose of reserves****Fair value reserve**

Changes in the fair value and exchange differences arising on translation of investments, such as equities, classified as available-for-sale financial assets, are taken to the fair value reserve. Amounts are recognised in the income statement when the associated entities are sold or impaired.

**Movement during the year****Fair value reserve**

Balance as at 1 July 2006	74,863	-
Effect of change in accounting policy	-	57,764
Unrealised gain on investments (net of tax)	29,809	17,099
	<u>104,672</u>	<u>74,863</u>

14. Commitments	2007	2006
-----------------	------	------

**(a) Capital Commitments****Expenditure for certification database**

Within one year	119,000	-
Later than one year but not later than 5 years	-	-
Later than 5 years	-	-
	<u>119,000</u>	<u>-</u>

The association has outsourced the development of a new certification database. Commitments are estimated based on estimated hours, less hours completed and paid to date exclusive of GST.

**(b) Lease commitments****Operating lease commitments payable**

Within one year	259,385	221,600
Later than one year but not later than 5 years	187,147	392,633
Later than 5 years	-	-
	<u>446,532</u>	<u>614,233</u>

The association leases from Counsel's Chambers, the premises from which it operates, on a three year lease, increasing annually by the CPI with an option to extend a further three years. The lease expires in March 2009.

The association also leases equipment for the photocopy service. This lease is due to expire in September 2007.

## 15. Related party disclosures

### (a) Directors

The names of persons who were directors of the company at any time during the financial year are as follows:

A J Katzmann SC	M Holz	R Lancaster	J Gormly SC
K M Traill	P Khandhar	D Ash	R Sofroniou
M J Slattery QC	P Garling SC	N Sharp	J Needham SC
B A Coles QC	N Perram SC	R Francois	V Lydiard
M McHugh	J Gleeson SC	E Olsson SC	P Greenwood SC
L King SC	G McGrath	R S Toner SC	A Pearman
T Bathurst QC	M Cunneen	P Doyle Gray	S Torrington
R Pepper	A Healy	C Wood	P Zahra SC

### (b) Key management

Key management personnel compensation for the years ended 30 June 2007 and 30 June 2006 is set out below. The key management personnel are the directors of the company, and those executives with authority and responsibility for planning, directing and controlling the activities of the company.

The key management personnel identified for the years ended 30 June 2007 and 30 June 2006 are as follows :

Philip Selth,	Chris D'Aeth	Lisa Allen	Basil Catsaros
June Anderson	Jennifer Pearce	Alastair McConnachie	Anne Sinclair

No compensation was paid or payable to directors of the company during the financial year.

#### The compensation paid or payable to key management personnel during the financial year comprised of:

	2007	2006
	\$	\$
Short-term employee benefits	1,166,995	1,058,667
Long-term employee benefits	15,087	36,338
	<u>1,182,082</u>	<u>1,095,005</u>

### (c) Other transactions

Transactions between related parties are on normal commercial terms and conditions no more favourable than those available to other parties unless otherwise stated.

- i. The company paid rent totalling \$219,476 for office space to Counsel's Chambers Limited being a company of which some directors of the association are also members. This payment is at two-thirds of the normal market rate.
- iii. Pursuant to a Bar Council resolution, a portion of the president's secretarial expenses were borne by the company for part of the year.

## 16. Remuneration of auditors

	2007	2006
	\$	\$
During the year the following fees were paid or payable for service provided by the auditor of the company:		
Audit of the financial report	20,000	17,250
Other services	12,500	17,565
	<u>32,500</u>	<u>34,815</u>



17. Notes to the cash flow statement	2007	2006
	\$	\$
<b>(a) Reconciliation of cash</b>		
For the purposes of the cash flow statement, cash includes cash on hand and in banks and investments in money market instruments, net of outstanding bank overdrafts. Cash at the end of the financial period as shown in the cash flow statement is reconciled to the related items in the statement of financial position as follows:		
Cash at bank	3,673,817	1,084,655
Term deposits	5,689,687	7,815,560
Petty cash	950	950
	<hr/> 9,364,454	<hr/> 8,901,165
Cash at bank and in hand are bearing floating interest rates between 0.01% and 6.47%.		
<b>(b) Reconciliation of net cash provided by operating activities to net surplus</b>		
Net surplus	59,960	909,951
Amortisation	16,505	19,945
Depreciation	145,563	116,336
Profit on disposal of plant and equipment	(150)	-
Net cash provided by operating activities before changes in assets and liabilities:	<hr/> 221,878	<hr/> 1,046,232
<b>Changes in net assets and liabilities:</b>		
(Increase)/decrease in assets:		
Trade and other receivables	136,136	37,275
Inventories	1,148	11,887
Prepayments	(26,399)	34,775
Accrued Interest	(11,701)	(27,325)
Net GST receivable	(14,189)	(25,718)
Other financial assets	(1,786)	-
Increase/(decrease) in liabilities:		
Subscriptions and practicing certificate fees received in advance	151,191	107,824
Provisions – employee benefits	34,834	(125,619)
Provision for income tax payable	51,259	-
Deferred tax assets	(6,542)	-
Deferred tax liabilities	37,061	-
Sundry creditors	(7,483)	(357,820)
<b>Net cash from operating activities</b>	<hr/> <b>565,407</b>	<hr/> <b>701,511</b>

## 18. Financial instruments

### Interest rate risk

The following table details the company's exposure to interest rate risk as at 30 June 2007.

2007	Note	Weighted average interest rate	Floating interest rate	Fixed interest maturing in		Non-interest bearing	Total
				1 year or less	Over 1 to 5 years		
			\$	\$	\$	\$	\$
<b>Financial assets</b>							
Cash and cash equivalents	17	5.58%	3,673,817	5,689,687	-	950	9,364,454
Trade and other receivables	7	-	-	-	-	212,677	212,677
Other financial assets	6	-	-	-	-	239,428	239,428
			3,673,817	5,689,687		453,055	9,816,559
<b>Financial liabilities</b>							
Trade and other payables	10	-	-	-	-	433,395	433,395
			-	-	-	433,395	433,395

The following table details the company's exposure to interest rate risk as at 30 June 2006.

2006	Note	Weighted average interest rate	Floating interest rate	Fixed interest maturing in		non-Interest bearing	Total
				1 year or less	Over 1 to 5 years		
			\$	\$	\$	\$	\$
<b>Financial assets</b>							
Cash and cash equivalents	17	4.50%	1,084,655	7,815,560	-	950	8,901,165
Trade and other receivables	7	-	-	-	-	334,624	334,624
Other financial assets	6	-	-	-	-	194,804	194,804
			1,084,655	7,815,560	-	530,378	9,430,593
<b>Financial liabilities</b>							
Trade and other payables	10	-	-	-	-	440,878	440,878
			-	-	-	440,878	440,878

## 19. Members' guarantee

The company is limited by guarantee. If the company is wound up, the Constitution states that each member is required to contribute to meet all outstanding obligations of the company and any such amounts as may be required, but not exceeding \$4.

## 20. Superannuation

The company contributes to several defined contribution employee superannuation funds. The company contributes to the funds in accordance with its statutory obligations.

## 21. Emerton Endowment Fund

The Emerton Endowment Fund (the fund) is controlled by The New South Wales Bar Association as trustee for that fund. The company has a liability of \$409,305 (2006: \$419,980) in respect of the operation of the fund and is entitled to be indemnified out of the assets as shown in the balance sheet below. The liability and the resulting asset, being the right of indemnity from the fund's assets, are not recognised and are not required to be recognised in the financial statements of The New South Wales Bar Association. The accounting policies as stated in the notes to the financial statements also apply to this entity.

**(a) As at 30 June 2007 Emerton Endowment Fund had net assets as follows:**

**Balance sheet as at 30 June 2007**

	<b>2007</b>	<b>2006</b>
	<b>\$</b>	<b>\$</b>
<b>Current assets</b>		
Cash and cash equivalents	294,430	217,991
Receivables	7,133	85
	<hr/> 301,563	<hr/> 218,076
<b>Non-current assets</b>		
Other financial assets	107,742	201,904
	<hr/>	<hr/>
<b>Net assets</b>	409,305	419,980
<b>Accumulated funds</b>	409,305	419,980

**(b) The net activity of the trust fund during the year ended 30 June 2007 \$6,298. This is represented by the following:**

**Income statement for the year ended 30 June 2007**

	<b>2007</b>	<b>2006</b>
	<b>\$</b>	<b>\$</b>
<b>Revenue from continuing operations</b>		
Interest income	8,540	5,358
Dividends received	8,842	10,588
Profit of sale of investment	59,185	71,786
<b>Donations</b>	<hr/> (70,269)	<hr/> (10,560)
Surplus before income tax expense	6,298	77,172
Income tax expense	-	-
<b>Net surplus</b>	6,298	77,172

**(c) The movement in reserves for the trust fund is as follows, which is attributable to change in fair value of available-for-sale financial assets held by the fund during the financial year:**

<b>Fair value reserve</b>	<b>2007</b>	<b>2006</b>
	<b>\$</b>	<b>\$</b>
Balance as at 1 July 2006	95,361	-
Unrealised gain (loss) on investments (net of tax)	(16,974)	95,361
	<hr/> 78,387	<hr/> 95,361

## Directors' declaration

### In the opinion of the directors of The New South Wales Bar Association:

- (a) the financial statements and notes set out on pages 52 to 67, are in accordance with the *Corporations Act 2001*, including:
  - (i) giving a true and fair view of the financial position of the company as at 30 June 2007 and of its performance, as represented by the results of its operations and its cash flows, for the year ended on that date; and
  - (ii) complying with Accounting Standards and the *Corporations Regulations 2001*; and
- (b) there are reasonable grounds to believe that the company will be able to pay its debts as and when they become due and payable.

Signed in accordance with a resolution of directors:

**M J Slattery QC**  
President

**B A Coles QC**  
Treasurer

**Sydney** 11 September 2007

## Independent auditors' report

### To the members of The New South Wales Bar Association Limited:

We have audited the accompanying financial report of The New South Wales Bar Association Limited, which comprises the balance sheet as at 30 June 2007, and the income statement, statement of recognised income and expense and cash flow statement for the year ended on that date, a summary of significant accounting policies, other explanatory notes and the directors' declaration, as set out on pages 52 to 67.

### Directors' responsibility for the financial report

The directors of the company are responsible for the preparation and fair presentation of the financial report in accordance with Australian Accounting Standards (including the Australian Accounting Interpretations) and the *Corporations Act 2001*. This responsibility includes establishing and maintaining internal controls relevant to the preparation and fair presentation of the financial report that is free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

In Note 1(a) Basis of preparation, the directors also state, in accordance with Accounting Standard AASB 101: Presentation of Financial Statements, that compliance with the Australian Equivalents to International Financial Reporting Standards ensures that the financial report, comprising the financial statements and notes, complies with International Financial Reporting Standards.

### Auditors' responsibility

Our responsibility is to express an opinion on the financial report based on our audit. We conducted our audit in

accordance with Australian Auditing Standards. These auditing standards require that we comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance whether the financial report is free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial report. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial report, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial report in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the directors, as well as evaluating the overall presentation of the financial report.

Our audit did not involve an analysis of the prudence of business decisions made by directors or management.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### Independence

In conducting our audit, we have complied with the independence requirements of the *Corporations Act 2001*. We confirm that the independence declaration required by the *Corporations Act 2001*, provided to the directors of The New South Wales Bar Association on 10 September 2007, would be in the same terms if provided to the directors as at the date of this auditor's report.

### Auditor's Opinion

#### In our opinion:

- (a) the financial report of The New South Wales Bar Association is in accordance with the *Corporations Act 2001*, including:
  - (i) giving a true and fair view of the company's financial position as at 30 June 2007 and of its performance for the year ended on that date; and
  - (ii) complying with Australian Accounting Standards (including the Australian Accounting Interpretations) and the *Corporations Regulations 2001*; and
- (b) the financial report also complies with International Financial Reporting Standards as disclosed in Note 1(a) Basis of Preparation.

### P B Meade Partner

HLB MANN JUDD (NSW Partnership) Chartered Accountants

**Sydney** 11 September 2007

# Barristers' Benevolent Association of New South Wales

Annual report 30 June 2007

**ABN 18 466 736 745**



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This financial report covers Barristers' Benevolent Association of NSW as an individual entity. Its registered office and principal place of business is 174 Philip St, Sydney NSW 2000.



# Income statement

For the financial year ended 30 June 2007

	NOTE	2007	2006
		\$	\$
Revenue from continuing operations	3	471,516	338,161
Changes in fair value of financial assets designated at fair value through profit and loss		182,032	169,399
Audit and accounting		(6,950)	(6,030)
Gifts		(109,523)	(83,000)
Bar care costs		-	(27,657)
Legal fees		-	(2,953)
Loss on sale of investments		(6,758)	-
Bank charges		(50)	-
Stationery		(675)	-
Surplus before income tax		529,592	387,920
Income tax expense		-	-
<b>Net surplus</b>		<b>529,592</b>	<b>387,920</b>

The above income statement should be read in conjunction with the accompanying notes.

# Balance sheet

As at 30 June 2007

	NOTE	2007	2006
		\$	\$
<b>Current assets</b>			
Cash and cash equivalents	10(a)	1,803,087	343,036
Trade and other receivables	4	92,335	148,743
<b>Total current assets</b>		1,895,422	491,779
<b>Non-current assets</b>			
Other financial assets	5	1,565,440	2,442,053
<b>Total non-current assets</b>		1,565,440	2,442,053
<b>TOTAL ASSETS</b>		3,460,862	2,933,832
<b>Current liabilities</b>			
Trade and other payables	6	7,000	9,562
<b>Total current liabilities</b>		7,000	9,562
<b>TOTAL LIABILITIES</b>		7,000	9,562
<b>NET ASSETS</b>		3,453,862	2,924,270
<b>ACCUMULATED FUNDS</b>			
Accumulated surplus		1,021,980	492,388
Reserves	7	2,431,882	2,431,882
		3,453,862	2,924,270

The above balance sheet should be read in conjunction with the accompanying notes.

# Statement of changes in recognised income and expense

For the year ended 30 June 2007

	Note	Accumulated funds	Capital reserves	Total members funds
<b>At 1 July 2005</b>		300,828	2,235,522	2,536,350
Transfer from accumulated surplus	7	(196,360)	196,360	
Recognised income and expense		387,920		387,920
<b>At 30 June 2006</b>		492,388	2,431,882	2,924,270
Recognised income and expense		529,592	-	529,592
<b>At 30 June 2007</b>		1,021,980	2,431,882	3,453,862

The above statement of changes in recognised income and expense should be read in conjunction with the accompanying notes.

# Cash flow statement

For the year ended 30 June 2007

	NOTE	2007	2006
		\$	\$
<b>Cash flows from operating activities</b>			
Receipts from members, sponsorship and general activities		246,274	293,552
Payments to suppliers		(119,761)	(115,559)
Interest received		29,396	19,165
<b>Net cash from operating activities</b>	10(b)	155,909	197,158
<b>Cash flows from investing activities</b>			
Proceeds from sale of investments		1,412,524	-
Payments for investments		(148,382)	(195,916)
<b>Net cash from (used in) investing activities</b>		1,264,142	(195,916)
<b>Cash flows from financing activities</b>			
Advances repaid during year		40,000	30,634
Loans advanced during the year		-	(8,000)
<b>Net cash from financing activities</b>		40,000	22,634
<b>Net increase in cash and cash equivalents</b>		1,460,051	23,876
Cash and cash equivalents at the beginning of the financial year		343,036	319,160
<b>Cash and cash equivalents at the end of the year</b>	10(a)	1,803,087	343,036

The above cash flow statement should be read in conjunction with the accompanying notes.

# Notes to the financial statements

For the financial year ended 30 June 2007

## 1. Summary of significant accounting policies

The principal accounting policies adopted in the preparation of the financial report are set out below. These policies have been constantly applied to all the years presented, unless otherwise stated.

### (a) Basis of preparation

This general purpose financial report has been prepared in accordance with Australian equivalents to Accounting Standards and authoritative pronouncements of the Australian Accounting Standards Board.

#### *Compliance with IFRS*

Australian Accounting Standards include Australian equivalents to International Financial Reporting Standards. Compliance with AIFRS ensures that the financial statements and notes of the Barristers' Benevolent Association of NSW comply with the International Financial Reporting Standards (IFRS).

#### *Historical cost conversion*

These financial statements have been prepared under the historical cost convention, as modified by the revaluation of available for sale financial assets.

#### *Critical accounting estimates*

The preparation of financial statements in conformity with AIFRS requires the use of certain critical accounting estimates. It also requires management to exercise its judgment in the process of applying the association's accounting policies. There are no estimates and judgments that have a significant risk if causing material adjustments to the carrying amounts of assets and liabilities within the next financial year.

### (b) Revenue recognition

Revenue is measured at the fair value of the consideration received or receivable.

#### (i) Contributions

Revenue from contribution is recognised when the contribution is received.

#### (ii) Dividend and distribution income

Revenue from distributions and dividend is recognised when these are receivable.

#### (iii) Interest income

Interest income is recognised as it accrues.

#### (iv) Other income

Income from other sources is recognised when the income is receivable.

#### (v) Changes in fair value of investments

Net gains or losses in investments designated at fair value through profit or loss are calculated as the difference between the fair value at year end and the fair value at the previous valuation point. This includes both realised and unrealised gains and losses, but does not include interest or dividend.

### (c) Income tax

The association is exempt from income tax.

### (d) Cash and cash equivalents

For cash flow statement presentation purposes, cash and cash equivalents includes cash on hand, deposits held at call with financial institutions and other short-term, highly liquid investments with original maturities of three months or less that are readily convertible to known amounts of cash and which are subject to an insignificant risk of changes in value.

### (e) Trade and other receivables

Trade receivables are recognised initially at fair value and subsequently measured at amortised cost, less provision for doubtful debts. Trade receivables are due for settlement no more than 60 days from the date of recognition.

Collectibility of trade receivables is reviewed on an ongoing basis. Debts which are known to be uncollectible are written off. A provision for doubtful debts is raised where there is objective evidence that the association will not be able to collect all amounts due according to the original terms of the receivables.

### (f) Other financial assets

#### **Classification**

The association classifies its financial assets as designated at fair value through profit or loss.

All investments are initially recognised at fair value, being the fair value of the consideration paid excluding transaction costs. After initial recognition, the financial assets designated as at fair value through profit or loss are revalued to fair value at each reporting date.

Gains or losses on investments designated at fair value through profit or loss are recognised in the income statement

#### **Impairment**

The association assesses at each balance date whether there is objective evidence that a financial asset or group of financial assets is impaired.

### (g) Fair value estimates

The fair value of financial assets must be estimated for recognition and measurement or for disclosure purposes.

The fair value of financial instruments traded in active markets is based on quoted market prices at balance date. The quoted market price used for financial assets held by the Association is the current bid price; the appropriate quoted market price for financial liabilities is the current ask price.

### (h) Trade and other payables

These amounts represent liabilities for goods and services provided to the association prior to the end

of financial year which are unpaid. The amounts are unsecured and are usually paid within 30 days of recognition.

**(i) Goods and services tax (GST)**

Revenue, expenses and assets are recognised net of the amount of associated GST, unless the GST incurred is not recoverable from the Australian Taxation Office (ATO). In this case it is recognised as part of the cost of acquisition of the asset or as part of the expense.

Receivables and payables are stated inclusive of the amount of GST receivable or payable. The net amount of GST recovered from or payable to the ATO is included in receivables or payables in the balance sheet.

Cash flows are presented on a gross basis. The GST components of cash flows arising from investing or financing activities which are recoverable from, or payable to, the ATO are classified as operating cash flows.

**(j) Comparative figures**

Where required by Accounting Standards, comparative figures have been adjusted to conform with changes in presentation for the current financial year.

**(k) New accounting standard and interpretations**

Certain new accounting standards and interpretations have been published that are not mandatory for 30 June 2007 reporting periods. The association's assessment of the impact of these new standards and interpretations is set out below.

AASB7 Financial Instruments: Disclosures and AASB 2005-10 Amendments to Australian Accounting Standards [AASB 132, AASB 101, AASB 114, AASB 117, AASB 133, AASB 139, AASB1, AASB 1023 & AASB 1038]

AASB 7 and AASB 2005-10 are applicable to annual reporting periods beginning on or after 1 January 2007. The association has not adopted the standards early. Application of the standards will not affect any of the amounts recognised in the financial statements, but will impact the type of information disclosed in relation to the association's financial instruments.

**(c) Liquidity risk**

Prudent liquidity risk management implies maintaining sufficient cash and marketable securities, the availability of funding through an adequate amount of committed credit facilities.

**(d) Cash flow and fair value interest rate risk**

The association has interest bearing assets, therefore the association's income and operating cash flows are subject to changes in market interest rates.

## 2. Financial risk management

The association's activities expose it to a variety of financial risks: market risk (including fair value interest rate risk and price risk), credit risk, liquidity risk and cash flow and fair value interest rate risk. The association's overall risk management programme focuses on the unpredictability of the financial markets and seeks to minimise potential adverse effects on the financial performance of the association.

**(a) Market risk**

Fair value interest rate risk refer to (d) below.

**(b) Credit risk**

The association has no significant concentrations of credit risk.

3. Revenue from continuing operations	2007	2006
	\$	\$
Contributions	136,579	122,636
Distribution/ dividend income	303,277	196,360
Interest income	29,396	19,165
BarCare - reimbursement of costs previously incurred	2,264	-
<b>Revenue from continuing operations</b>	<b>471,516</b>	<b>338,161</b>

4. Trade and other receivables	2007	2006
<b>Current</b>		
NSW Bar Association	66,587	102,787
Dividends receivable	20,242	-
Interest free loans	5,000	45,000
GST receivable	506	956
	<b>92,335</b>	<b>148,743</b>

5. Other financial assets	2007	2006
<b>Non-Current</b>		
Designated at fair value through profit or loss shares in		
Australian listed companies	111,500	-
Australian managed funds	1,453,940	2,442,053
	<b>1,565,440</b>	<b>2,442,053</b>

#### Transition to AASB 132 and AASB 139

The Association has taken the exemption available under AASB 1 First-time Adoption of Australian Equivalents to International Financial Reporting Standards to apply AASB 132 Financial Instruments: Disclosure and Presentation and AASB 139 Financial Instruments: Recognition and Measurement from 1 July 2005. For further information please refer to our annual report for the year ended 30 June 2006.

6. Trade and other payables	2007	2006
Trade and other payables	7,000	9,562



7. Reserves	2007	2006
	\$	\$
Capital reserve	2,431,882	2,431,882
<b>Nature and purpose of reserves</b>		
Changes in the fair value of investments have been transferred from accumulated surplus to reserves in prior years. This no longer is the practice of the association. This account also includes capital profits made in the prior years.		
<b>Movement during the year:</b>		
Reserves	2,431,882	2,235,522
Balance as at 1 July 2006		
Transfer from accumulated surplus	-	196,360
	<b>2,431,882</b>	<b>2,431,882</b>

## 8. Related party disclosures

### (a) Trustees

The names of persons who were trustees of the association at any time during the financial year are as follows:

A J Katzmann SC	M Holz	R Lancaster	J Gormly SC
K M Traill	P Khandhar	D Ash	R Sofroniou
M J Slattery QC	P Garling SC	N Sharp	J Needham SC
B A Coles QC	N Perram SC	R Francois	V Lydiard
M McHugh	J Gleeson SC	E Olsson SC	P Greenwood SC
L King SC	G McGrath	R S Toner SC	A Pearman
T Bathurst QC	M Cunneen	P Doyle Gray	S Torrington
R Pepper	A Healy	C Wood	P Zahra SC

The trustees are also the directors of the New South Wales Bar Association.

### (b) Key management

The key management personnel are the trustees of the association.

No compensation was paid, or payable to the trustees of the association during the financial year.

### (c) Other transactions

The association conducts its business from the premises of NSW Bar Association.

9. Remuneration of auditors	2007	2006
	\$	\$
<b>During the year the following fees were paid or payable for services provided by the auditor of the association:</b>		
Audit of the financial report	7,000	6,030

10. Notes to the cash flow statement	2007	2006
	\$	\$
<b>(a) Reconciliation of cash</b>		
For the purposes of the cash flow statement, cash includes cash on hand and in banks and investments in money market instruments, net of outstanding bank overdrafts. Cash at the end of the financial period as shown in the cash flow statement is reconciled to the related items in the balance sheet as follows:		
Cash at bank cash	394,800	51,620
on deposit	1,408,287	291,416
	<u>1,803,087</u>	<u>343,036</u>
<b>(b) Reconciliation of net cash provided by operating activities to net surplus</b>		
<b>Net surplus</b>	529,592	387,920
Fair value adjustment to non-current assets	(182,032)	(169,399)
Distributions from managed funds reinvested	(252,255)	-
Loss on sale of investments	6,758	-
	<u>102,063</u>	<u>218,521</u>
(Increase)/decrease in trade and other receivables	56,408	(25,926)
Increase/(decrease) in trade and other payables	(2,562)	4,563
<b>Net cash from operating activities</b>	<b>155,909</b>	<b>197,158</b>

## 11. Financial instruments

### Interest rate risk

The following table details the trust's exposure to interest rate risk as at 30 June 2007.

2007	Note	Weighted average interest rate	Floating interest rate	Fixed interest maturing in		Non-interest bearing	Total
				1 year or less	Over 1 to 5 years		
			\$	\$	\$	\$	\$
<b>Financial assets</b>							
Cash and cash equivalents	10(a)	5.53%	394,800	1,408,287	-	-	1,803,087
Trade and other receivables	4	-	-	-	-	92,335	92,335
Other financial assets	5	-	-	-	-	1,565,440	1,565,440
			394,800	1,408,287	-	1,657,775	3,460,862
<b>Financial liabilities</b>							
Trade and other payables	6	-	-	-	-	7,000	7,000
			-	-	-	7,000	7,000

The following table details the association's exposure to interest rate risk as at 30 June 2006.

2006	Note	Weighted average interest rate	Floating interest rate	Fixed interest maturing in		Non-interest bearing	Total
				1 year or less	Over 1 to 5 years		
			\$	\$	\$	\$	\$
<b>Financial assets</b>							
Cash and cash equivalents	10(a)	5.65%	51,620	291,416	-	-	343,036
Trade and other receivables	4	-	-	-	-	148,743	148,743
Other financial assets	5	-	-	-	-	2,442,053	2,442,053
			51,620	291,416	-	2,590,796	2,933,832
<b>Financial liabilities</b>							
Trade and other payables	6	-	-	-	-	9,562	9,562
			-	-	-	9,562	9,562

# Statement from the Committee of Management

For the year ended 30 June 2007

In the opinion of the trustees the financial statements set out on pages 70 to 78 are drawn up so as to present fairly the results of the association for the year ended 30 June 2007 and the state of affairs of the association as at that date.

**Sydney** 11 September 2007

## Independent auditors' report

### To the members of Barristers' Benevolent Association of NSW:

We have audited the accompanying financial report of Barristers' Benevolent Association, which comprises the balance sheet as at 30 June 2007, and the income statement, statement of recognised income and expense and cash flow statement for the year then ended, a summary of significant accounting policies and other explanatory notes as set out on pages 70 to 78.

### The responsibility of trustees for the financial report

The trustees are responsible for the preparation and fair presentation of the financial report in accordance with Australian Accounting Standards (including the Australian Accounting Interpretations). This responsibility includes establishing and maintaining internal controls relevant to the preparation and fair presentation of the financial report that is free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

In Note 1 the trustees also state, in accordance with Accounting Standard AASB 101: Presentation of Financial Statements, that compliance with the Australian equivalents to International Financial Reporting Standards ensures that the financial report, comprising the financial statements and notes, complies with International Financial Reporting Standards.

### Auditors' responsibility

Our responsibility is to express an opinion on the financial report based on our audit. We conducted our audit in accordance with Australian Auditing Standards. These Auditing Standards require that we comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance whether the financial report is free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial report. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial report, whether

due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial report in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the trustees, as well as evaluating the overall presentation of the financial report.

Our audit did not include an analysis of the prudence of business decisions made by the trustees or management.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### Independence

In conducting our audit, we have complied with the independence requirements of the Australian professional accounting bodies.

### Auditor's opinion

#### In our opinion:

- (a) the financial report presents fairly, in all material respects, the financial position of the association as at 30 June 2007 and of its financial performance and its cash flows for the year then ended in accordance with Australian Accounting Standards (including the Australian Accounting Interpretations); and
- (b) the financial report also complies with International Financial Reporting Standards as disclosed in Note 1.

**P B Meade**

**Partner**

HLB MANN JUDD (NSW Partnership) Chartered Accountants

**Sydney** 11 September 2007

# Indigenous Barristers' Trust The Mum Shirl Fund

Financial report for the year ended 30 June 2007

ABN 53 124 431 831



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This financial report covers the Indigenous Barristers' Trust - The Mum Shirl Fund as an individual entity. Its registered office and principal place of business is 174 Philip Street, Sydney NSW 2000.

# Income statement

For the financial year ended 30 June 2007

	NOTE	2007	2006
		\$	\$
Revenue from continuing operations	3	133,838	65,306
Bank charges		(38)	(11)
Audit and accounting		(3,000)	-
Conference expenses		(54,837)	-
Gifts		(3,000)	-
Surplus before income tax expense		72,963	65,295
Income tax expense		-	-
<b>Net surplus</b>		<b>72,963</b>	<b>65,295</b>

The above income statement should be read in conjunction with the accompanying notes.

# Balance sheet

As at 30 June 2007

	NOTE	2007	2006
		\$	\$
<b>Current assets</b>			
Cash and cash equivalents	7	293,979	225,206
Trade and other receivables	4	7,020	1,155
<b>Total current assets</b>		<b>300,999</b>	<b>226,361</b>
<b>TOTAL ASSETS</b>		<b>300,999</b>	<b>226,361</b>
<b>Current liabilities</b>			
Trade and other payables		3,000	1,325
<b>Total current liabilities</b>		<b>3,000</b>	<b>1,325</b>
<b>TOTAL LIABILITIES</b>		<b>3,000</b>	<b>1,325</b>
<b>NET ASSETS</b>		<b>297,999</b>	<b>225,036</b>
<b>ACCUMULATED FUNDS</b>			
Accumulated surplus		297,999	225,036

The above balance sheet should be read in conjunction with the accompanying notes.



## Statement of recognised income and expense

For the financial year ended 30 June 2007

	2007	2006
	\$	\$
As at 1 July 2006	225,036	159,741
Recognised income and expenses	72,963	65,295
As at 30 June 2007	297,999	225,036

The above statement of recognised income and expense should be read in conjunction with the accompanying notes.

## Cash flow statement

For the financial year ended 30 June 2007

	NOTE	2007	2006
		\$	\$
<b>Cash flows from operating activities</b>			
Receipts from operating activities		127,973	65,488
Payments to suppliers		(59,200)	-
<b>Net cash from operating activities</b>	7(b)	68,773	65,488
<b>Net increase in cash and cash equivalents</b>		68,773	65,488
Cash and cash equivalents at the beginning of the financial year		225,206	159,718
<b>Cash and cash equivalents at the end of the year</b>	7(a)	293,979	225,206

The above cash flow statement should be read in conjunction with the accompanying notes.

# Notes to the financial statements

For the financial year ended 30 June 2007

## 1. Summary of significant accounting policies

The principal accounting policies adopted in the preparation of the financial report are set out below. These policies have been consistently applied to all the years presented, unless otherwise stated.

### (a) Basis of preparation

This general purpose financial report has been prepared in accordance with Australian equivalents to Accounting Standards and authoritative pronouncements of the Australian Accounting Standards Board.

#### *Compliance with IFRS*

Australian Accounting Standards include Australian equivalents to International Financial Reporting Standards. Compliance with AIFRS ensures that the financial statements and notes of the Indigenous Barrister's Trust – The Mum Shirl Fund comply with the International Financial Reporting Standards (IFRS).

#### *Historical cost conversion*

These financial statements have been prepared under the historical cost convention, as modified by the revaluation of available for sale financial assets (at fair value).

#### *Critical accounting estimates*

The preparation of financial statements in conformity with AIFRS requires the use of certain critical accounting estimates. It also requires management to exercise its judgement in the process of applying the trust's accounting policies. There are no estimates and judgments that have a significant risk if causing material adjustments to the carrying amounts of assets and liabilities within the next financial year.

### (b) Revenue recognition

Revenue is measured at the fair value of the consideration received or receivable.

#### (i) Contributions

Revenue from contributions is recognised when the contribution is received.

#### (ii) Interest income

Interest income is recognised as it accrues.

#### (iii) Other income

Income from other sources is recognised when the income is receivable.

### (c) Income tax

The trust is exempt from income tax.

### (d) Cash and cash equivalents

For cash flow statement presentation purposes, cash and cash equivalents includes cash on hand, deposits held at call with financial institutions and other short-term, highly liquid investments with original maturities of three months or less that are readily convertible to

known amounts of cash and which are subject to an insignificant risk of changes in value.

### (e) Trade and other receivables

Trade receivables are recognised initially at fair value and subsequently measured at amortised cost, less provision for doubtful debts. Trade receivables are due for settlement no more than 60 days from the date of recognition.

Collectibility of trade receivables is reviewed on an ongoing basis. Debts which are known to be uncollectible are written off. A provision for doubtful debts is raised where there is objective evidence that the trust will not be able to collect all amounts due according to the original terms of receivables.

### (f) Fair value estimates

The fair value of financial assets must be estimated for recognition and measurement or for disclosure purposes. The fair value of financial instruments that are not traded in an active market is determined using valuation techniques. The trust uses a variety of methods and makes assumptions that are based on market conditions existing at balance date.

The nominal value less estimated credit adjustments of trade receivables and payables are assumed to approximate their fair values.

### (g) Trade and other payables

These amounts represent liabilities for goods and services provided to the trust prior to the end of financial year which are unpaid. The amounts are unsecured and are usually paid within 30 days of recognition.

### (h) Goods and services tax (GST)

Revenue, expenses and assets are recognised net of the amount of associated GST, unless the GST incurred is not recoverable from the Australian Taxation Office (ATO). In this case it is recognised as part of the cost of acquisition of the asset or as part of the expense.

Receivables and payables are stated inclusive of the amount of GST receivable or payable. The net amount of GST recovered from or payable to the ATO is included in receivables or payables in the balance sheet.

Cash flows are presented on a gross basis. The GST components of cash flows arising from investing or financing activities which are recoverable from or payable to the taxation authority are presented as operating cash flows.

### (i) Comparative figures

Where required by Accounting Standards, comparative figures have been adjusted to conform with changes in presentation for the current financial year.

## 2. Financial risk management

The trust's activities expose it to a variety of financial risks; market risk (including fair value interest rate risk and price risk), credit risk, liquidity risk and cash flow and fair value interest rate risk. The trust's overall risk management programme focuses on the unpredictability of the financial markets and seeks to minimise potential adverse effects on the financial performance of the trust.

### (a) Market risk

Fair value interest rate risk refer to (d) below.

### (b) Credit risk

The trust has not significant concentrations of credit risk. The trust has policies in place to ensure that sales of products and services are made to customers with an appropriate credit history.

### (c) Liquidity risk

Prudent liquidity risk management implies maintaining sufficient cash and marketable securities, the availability of funding through an adequate amount of committed credit facilities.

### (d) Cash flow and fair value interest rate risk

The trust has interest bearing assets therefore the trust's income and operating cash flows are subject to changes in market interest rates.

3. Revenue from continuing operations	2007	2006
	\$	\$
<b>Operating revenue</b>		
Contributions received	33,235	51,369
Interest	13,426	13,937
Conference registration	36,521	-
Conference sponsorship	50,656	-
	<hr/> 133,838	<hr/> 65,306

4. Trade and other receivables	2007	2006
<b>Current</b>		
NSW Bar Association	1,250	250
GST receivable	93	-
Accrued interest	5,677	905
	<hr/> 7,020	<hr/> 1,155

## 5. Related party disclosures

### (a) Trustees

The names of persons who were trustees of the trust at any time during the financial year are as follows:

Chris Ronalds AM SC	Danny Gilbert
Michael Slattery QC	Mullenjaiwakka

### (b) Key management

The key management personnel are the trustees of the trust.

No compensation was paid or payable to trustees of the trust during the financial year or the previous year.

6. Remuneration of auditors	2007	2006
	\$	\$

**During the year the following fees were paid or payable for services provided by the auditor of the trust:**

Audit of the financial report	3,000	1,750
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7. Notes to cash flow statement	2007	2006
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**(a) Reconciliation of cash**

For the purposes of the cash flow statement, cash includes cash on hand and in banks and investments in money market instruments, net of outstanding bank overdrafts. Cash at the end of the financial period as shown in the cash flow statement is reconciled to the related items in the balance sheet as follows:

Cash at bank	35,761	101,893
Term deposits	258,218	123,313
	<hr/> 293,979	<hr/> 225,206

Cash at bank and in hand are bearing floating interest rates between 1.25% and 6.53%

**(b) Reconciliation of net cash provided by operating activities to net surplus**

Net surplus	72,963	65,295
Changes in assets and liabilities:		
(Increase) in trade and other receivables	(5,865)	(1,132)
Increase in trade and other payables	1,675	1,325
	<hr/> 68,773	<hr/> 65,488
<b>Net cash from operating activities</b>	<b>68,773</b>	<b>65,488</b>

## 8. Financial instruments

### Interest rate risk

The following table details the trust's exposure to interest rate risk as at 30 June 2007.

2007	Note	Weighted average interest rate	Floating interest rate	Fixed interest maturing in		Non-interest bearing	Total
				1 year or less	Over 1 to 5 years		
			\$	\$	\$	\$	\$
<b>Financial assets</b>							
Cash and cash equivalents	7	5.84%	35,761	258,218	-	-	293,979
Trade and other receivables	4	-	-	-	-	7,020	7,020
			35,761	258,218		7,020	300,999
<b>Financial liabilities</b>							
Trade and other payables		-	-	-	-	3,000	3,000
			-	-	-	3,000	3,000

The following table details the trust's exposure to interest rate risk as at 30 June 2006

2006	Note	Weighted average interest rate	Floating interest rate	Fixed interest maturing in		Non-interest bearing	Total
				1 year or less	Over 1 to 5 years		
			\$	\$	\$	\$	\$
<b>Financial assets</b>							
Cash and cash equivalents	7	4.09%	101,893	123,313	-	-	225,206
Trade and other receivables	4	-	-	-	-	1,155	1,155
			101,893	123,313	-	1,155	226,361
<b>Financial liabilities</b>							
Trade and other payables		-	-	-	-	1,325	1,325
			-	-	-	1,325	1,325

## Trustees' declaration

**In the opinion of the trustees of Indigenous Barristers' Trust – The Mum Shirl Fund, the financial statements and notes as set out on pages 81 to 86:**

- (a) have been drawn up in accordance with Accounting Standards and other mandatory professional reporting requirements in Australia; and
- (b) present fairly the trust's financial position as at 30 June 2007 and their performance, as represented by the results of their operations, changes in recognised income and expenses and cash flows, for the year ended on that date.
- (c) there are reasonable grounds to believe that the trust will be able to pay its debts as and when they become due and payable.

Signed in accordance with a resolution of directors:

**M J Slattery QC**  
President

**B A Coles QC**  
Treasurer

**Sydney** 11 September 2007

## Indigenous Barristers' Trust

The Mum Shirl Fund

## Independent auditors' report

**To the members of Indigenous Barristers' Trust - The Mum Shirl Fund:**

We have audited the accompanying financial report of Indigenous Barristers' Trust - The Mum Shirl Fund, which comprises the balance sheet as at 30 June 2007, and the income statement, statement of recognised income and expense and cash flow statement for the year then ended, a summary of significant accounting policies and other explanatory notes as set out on pages 81 to 86.

### The responsibility of trustees for the financial report

The Trustees are responsible for the preparation and fair presentation of the financial report in accordance with Australian Accounting Standards (including the Australian Accounting Interpretations). This responsibility includes establishing and maintaining internal controls relevant to the preparation and fair presentation of the financial report that is free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

In Note 1 the trustees also state, in accordance with Accounting Standard AASB 101: Presentation of Financial Statements, that compliance with the Australian equivalents to International Financial Reporting Standards ensures that the financial report, comprising the financial statements and notes, complies with International Financial Reporting Standards.

### Auditor's responsibility

Our responsibility is to express an opinion on the financial report based on our audit. We conducted our audit in accordance with Australian Auditing Standards. These Auditing Standards require that we comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance whether the financial report is free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial report. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial report, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial report in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the trustees, as well as evaluating the overall presentation of the financial report.

Our audit did not include an analysis of the prudence of business decisions made by the trustees or management.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### Independence

In conducting our audit, we have complied with the independence requirements of the Australian professional accounting bodies.

### Auditor's Opinion

#### In our opinion:

- (a) the financial report presents fairly, in all material respects, the financial position of the trust as at 30 June 2007 and of its financial performance and its cash flows for the year then ended in accordance with Australian Accounting Standards (including the Australian Accounting Interpretations); and
- (b) the financial report also complies with International Financial Reporting Standards as disclosed in Note 1.

**P B Meade**

**Partner**

HLB MANN JUDD (NSW Partnership) Chartered Accountants

**Sydney** 12 September 2007



