



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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Annual General Meeting
The Annual General Meeting will be held
at 1.00pm on 14 November 2008
in the Bar Association Common Room.

Cover photo:
Rob Holmer/ Fairfax photos

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President's report

Anna Katzmann SC



President Anna Katzmann SC

Combating depression

In August last year I wrote in *Bar Brief* of the need to find better ways to deal with the situation we often see on the Bar Council of barristers who get into strife, not because they are unethical or incompetent but because they are suffering from depression or some other psychiatric disorder which they have overlooked or which they have not had treated.

In late November Professor Geoff Gallop, the former premier of Western Australia, delivered an address in the Bar Common Room. His battle with depression is well known. His experiences and his courage in speaking publicly about them provide a valuable lesson for all of us who struggle to meet the demands of practising at the bar in the twenty-first

century. After that speech I received an e-mail from a colleague. He wrote:

It is very important for the bar to foster understanding of mental illness in its members. Too often, discrimination occurs through ignorance or people are unfairly pigeon-holed because of negative impressions created by a condition over which a person has little control. When one considers the stresses we are under, it is hardly surprising that so many 'go under' so to speak. Too many favour the 'get over it' approach to mental illness or, worse still, the 'sweep it under the carpet' marginalisation approach.

The Bar Association has devoted a lot of time and effort this year to raising awareness about depression and related mental disorders at the bar and focussing on ways to prevent it and manage it. We formed a partnership with beyondblue, the national depression initiative, and a trainer from that organisation spoke at each of the six CPD regional conferences. In addition, beyondblue has provided training to heads of chambers and clerks and their workplace trainers are available for hire to individual chambers. Beyondblue developed a training DVD which showcases the experiences of two prominent senior counsel who struggled with depression and, through treatment and preventative strategies, overcame the worst of it. Their example has given heart and inspiration to others to confront their own problems and seek treatment.

I thank all members who participated in the survey of depression in the legal profession conducted by Professor Ian Hickie, executive

director of the Brain and Mind Research Institute and professor of psychiatry at the University of Sydney. The participation rate was high. Professor Hickie's findings will be announced at the forthcoming annual Tristan Jepson Memorial Lecture to be held on 18 September and which I have been invited to chair.

As the executive director has written in his report, one of the most important initiatives this year was the appointment of Penny Johnston as director, care and assistance. Members are encouraged to seek her out, whether for themselves or for their colleagues. Sometimes you can make a real difference to someone's life just by showing you care.

Because prevention is always better than cure, part of our strategy has been to encourage lifestyle changes. We offered a CPD on nutrition and have now instituted regular yoga classes. The association's project officer, secretariat and research, is currently in discussions with a number of health clubs and gymnasiums with the object of securing benefits to Bar Association members.

Changes to the law relating to sexual assault

At the end of last year the New South Wales Government introduced far-reaching amendments to the Crimes Act affecting the law of consent in sexual assault offences. One of the matters of serious concern is that the prosecution will no longer have to prove that an accused did not honestly believe that the complainant was consenting. The Bar Association and the Law Society publicly opposed the amendments and lobbied hard to persuade members of parliament that they were ill-advised. Although our arguments were favourably received in some quarters and the changes to the law obviously troubled a number of MPs and members of the public, we were unable to persuade the government to change its mind. Still, a government amendment incorporated into the legislation a review after four years.

I particularly want to thank Stephen Odgers SC for his assistance in relation to this and the other issues concerning the criminal law that frequently arise.

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President's report

Rule changes

After a spirited and, at times, public debate about their merit, the *New South Wales Barristers' Rules* have been amended to impose limits on cross-examination of victims of sexual assault. The executive director has set out in his report the background to, and progress of, the rule changes. I thank all who participated in the debate. At the very least, the level of the debate demonstrates how seriously we take our ethical responsibilities.

Protection of human rights

In a significant change of policy and after consultation with the NSW Bar, the Bar Council voted to support a statutory Charter of Human Rights for NSW and a federal charter to similar effect. The paper prepared by the Human Rights Committee that informed the position the council took on this issue was recently praised by Professor Luzius Wildhaber, until last year president of the European Court of Human Rights, during his presentation of the annual John Lehane Memorial Lecture.

The significant change of policy no doubt reflects a sense of deep unease about the ever-increasing number of legislative intrusions on the rights and freedoms most of us formerly took for granted.

In *Potter v Minahan* (1908) 7 CLR 277 O'Connor J (at 304) the High Court accepted the rule of construction stated in *Maxwell on Statutes* that it is 'improbable that the legislature would overthrow fundamental principles, infringe rights, or depart from the general system of law, without expressing its intention with irresistible clearness'. However, as McHugh J said in *Malika Holdings Pty Ltd v Stretton* (2001) 204 CLR 290 at [29]:

hallowed though the rule of construction



referred to in *Potter v Minahan* may be, its utility in the present age is open to doubt in respect of laws that 'infringe rights, or depart from the general system of law'. In those areas, the rule is fast becoming, if it is not already, an interpretative fiction. Such is the reach of the regulatory state that it is now difficult to assume that the legislature would not infringe rights or interfere with the general system of law.

Six months after *Malika* was decided two planes struck the twin towers of the World Trade Centre in New York. Since then, we have witnessed what Ian Barker QC described as an avalanche of new laws that 'infringe rights and depart from the general system of law'. Sweeping powers to interrogate and detain people have been introduced, including powers to order preventative detention and detention without notice, let alone a hearing. On 5 September, together

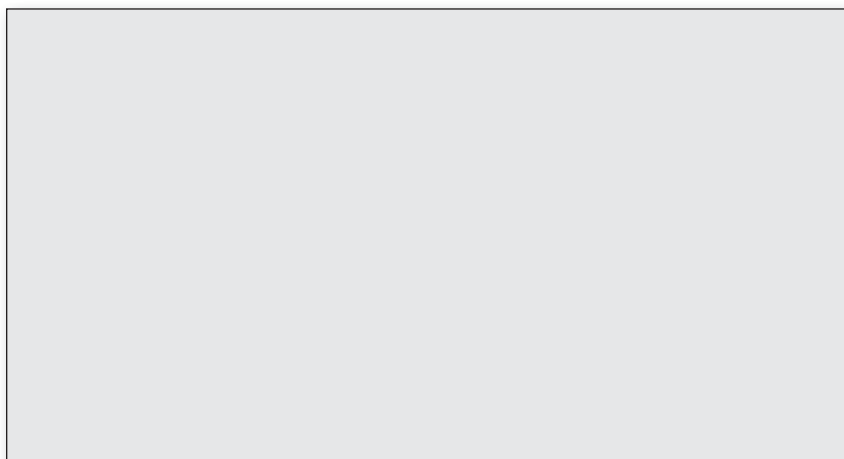
with the Law Council of Australia, the Bar Association will host a major conference on reform of the federal criminal law in Sydney, the recommendations from which will be conveyed to the federal government. We can only hope that the new government will review at least some of the more draconian pieces of legislation introduced by the former government. As always, the association offers the expert assistance of its members to all members of parliament who are willing to listen.

In NSW the reach of the regulatory state was well illustrated when the government introduced extraordinary legislation to regulate behaviour during the APEC conference, and before and during the recent visit of Pope Benedict XVI. I described certain features of the World Youth Day Regulation as both unnecessary and repugnant. It was unnecessary because there were sufficient laws already to manage offensive or unruly behaviour. It was repugnant because a criminal offence was created by regulation, which meant that the government was able to avoid the same level of scrutiny that would be given to an Act of parliament.

There was quite a furore over the World Youth Day Regulation and the Bar Association's criticisms received widespread media

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coverage both locally and overseas. Clearly the government had gone too far. The Federal Court struck down the offending part of the Regulation, stating that it had the potential to have a 'chilling' effect on the exercise of the right of free speech. Some might hail the result as an indicator that we do not need a statute protecting our civil rights. However, I wonder whether the government would have gone as far as to introduce such a Regulation if a Charter of Rights had been in place. Without legislation that defines our civil rights and makes governments more accountable to the people when they seek to limit or remove them, I do not doubt there will be more legislation of this kind.



Equitable briefing

And speaking of human rights, closer to home we have been working hard to promote the equitable briefing policy to ensure that those who have not signed up to it do so, and that those who have do more than pay lip service to it. I have had discussions with both state and federal attorneys-general and with officers of a large commercial enterprise ostensibly committed to equitable principles, and advances are being made. Both state and federal attorneys have indicated their personal support for the policy and the steps taken to date by the New South Wales Government demonstrate that the personal commitment is having practical outcomes. Government agencies are now required to consider female barristers in every case where they brief, and also to ensure an equitable distribution of work to both male and female barristers.

As the executive director has set out in his report, following an initiative of the previous president, Michael Slattery QC, we have also had some productive discussions with the federal attorney about direct briefing of the bar by government departments and agencies.

Defending the DPP

Earlier this year the state attorney general publicly released a report of the New South Wales Audit Office entitled *Efficiency of the Office of the Director of Public Prosecutions*. Whilst the drive for efficient delivery of public

services is laudable, as the chief justice has said about assessing court performance, 'not everything that counts can be counted'.

The report recognises that many factors that affect efficiency are beyond the control of the ODPP. Whatever measures are put in place to improve efficiency in the ODPP, I urged the government to be careful not to damage the independence of the office or impair the delivery of high quality legal services to the community in the process. The ODPP is not comparable with a private legal firm, although the report sought to draw such comparisons. The director of public prosecutions, his staff and the crown prosecutors act on behalf of all of us. Unlike private solicitors, they cannot pick and choose the cases they want to run. Unlike private legal firms, they cannot refuse work

on the ground that it might be uneconomical or unprofitable to do it.

Mediation

In January this year national accreditation standards were introduced for mediators. In May the Bar Council declared the association to be a recognised mediator accreditation body under the new standards. From now on only those barristers who are accredited under the national standards will have their names put forward for inclusion on the court panels. At its meeting on 14 August the council also approved the re-badging of the old National Disputes Centre as 'The New South Wales Bar Dispute Resolution Centre'. This should assist in the promotion of the bar as a preferred resource for qualified mediators.

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President's report

Library renovations and upgrade

In February the major renovations were completed to the Bar Library. The refurbishment was long overdue. All who have seen it would agree that the space is now a far more user-friendly and congenial place to work, both for staff and barristers. Indeed, it is almost unrecognisable as the library of old. The upgrade of library services has also involved a major enhancement of its information technology to allow external access to the catalogue and facilitate requests for reference material. For the significant numbers of barristers now practising outside the Phillip Street precinct, these services are invaluable. In addition, the other improvements, such as wireless Internet access and the incorporation of a small meeting room, are real benefits for members. Members should note that they can book the room for conferences or to watch DVDs of Bar Association seminars.

I thank Lisa Allen and all the library staff for their swift attention to our always pressing requests.

More gratitude

Without the assistance of numerous individuals my job and the work of the Bar Council would be impossible. I am enormously grateful to those members of the Bar who give their valuable time serving on the various committees, whether policy committees or PCCs. Although it may often seem like a thankless task, your efforts are greatly appreciated.

We all owe a considerable debt of gratitude to Philip Selth, the executive director, and all the staff of the association who work tirelessly for us and on our behalf, many well beyond their contractual obligations. Jo Carlisle, the



The renovated Bar Library features improved work areas, increased storage, laptop wireless connectivity and the quiet of photocopier-free study areas.



executive assistant, left us in August for a position closer to her home and I was sorry to see her go. She provided invaluable assistance to me and the executive director, the Bar Council and the Silk Selection Committee.

I want, too, to thank the Bar Council and the Executive of the association for their assistance and support during the year and, above all, the senior vice-president, Tom Bathurst QC, for his wise counsel, commonsense and loyalty.

Finally, in his piece in last year's annual report Michael Slattery referred to the good working

relationship we enjoy with the Law Society. I am pleased to say that that relationship has continued during the presidency of Hugh Macken and is to our mutual benefit.

For the significant numbers of barristers now practising outside the Philip Street precinct, [the library's] services are invaluable.

Executive director's report

Philip Selth OAM



Executive Director Philip Selth OAM

Care and assistance at the NSW Bar

One of the Bar Council's most important initiatives during 2007–2008 was the appointment by the trustees of the Barristers' Benevolent Fund of Ms Penny Johnston as the Bar Association's director, care and assistance.

The position, funded solely from the Benevolent Fund, has been established to assist members experiencing difficulties such as health, drug, alcohol and financial problems and to provide a resource for barristers wishing to seek help either for themselves or for their colleagues. The director works directly with members and assists them to make contact with relevant specialist services, such as beyondblue, the national independent not-for-profit organisation which

is working to address issues associated with depression, anxiety and related substance misuse disorders in Australia. During the past year staff of beyondblue addressed the six Continuing Professional Development regional conferences as well as meetings of heads of chambers and of clerks.

The director, care and assistance assumes some of the responsibility previously given to me in working with those seeking assistance from the Benevolent Fund and those who the Bar Council believes may require some form of pastoral care but who have not yet sought such assistance. A detailed report by Ms Johnston is published elsewhere in this report. The president's report also illustrates the importance of this appointment and what has flowed and will flow from it.

Ms Johnston has a bachelor of arts degree majoring in psychology and has previously worked, amongst other positions, as deputy registrar of the New South Wales Medical Board and as national risk manager for MDA National. Whilst working for the Medical Board, Ms Johnston assisted in the pilot and development of the rehabilitation program for impaired medical practitioners (i.e. practitioners with physical or mental conditions which could detrimentally affect their capacity to practise medicine) so as to enable, where possible, doctors to continue in practice and, at the same time, to protect the public. In that role she dealt with the medical profession at all levels and undertook confidential and sensitive discussions with individual doctors about conduct complaints and impairment questions.

Ms Johnston works independently from her home office and the nature of the support she provides is strictly confidential. Neither the Bar Council, nor I as executive director, are privy to the personal dealings Ms Johnston has with members and their families unless they give their approval to certain limited information being provided to others. This independence from the Bar Council and the association is crucial in order to encourage members to come forward and seek confidential assistance with the resolution of issues of a personal nature.

The director, care and assistance can be contacted at pjohnston@barcare.org or ph: (02) 9331 3872.

New South Wales Barristers' Rules

In September 2007 the attorney general wrote to the then president, Michael Slattery QC, expressing his concern about the issue of the improper questioning of sexual assault complainants. He observed that the behaviour of counsel towards certain sexual assault victim witnesses, particularly children, had attracted much negative comment in recent years. The attorney was keen to ensure that there was no improper questioning of sexual assault victim witnesses in sexual assault proceedings. To that end, he suggested possible changes to the *New South Wales Barristers' Rules* which reflected recent legislative changes and an increased emphasis on the protection of victims of sexual assault in the trial process.

The Bar Council acknowledged the trauma that can be experienced by vulnerable witnesses in the course of the trial process and supported appropriate legislative and regulatory changes which addressed the interests of vulnerable witnesses without detracting from the rights of an accused to a fair trial.

Finding the balance between the interest of vulnerable witnesses and the accused was difficult.

In February 2008 the Bar Council approved proposed amendments to the Rules which, in accordance with the procedures laid down in the *Legal Profession Act 2004*, were published in newspapers and *In Brief* for comment. In response to requests from a number of barristers, a general meeting of the bar was

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Executive director's report

held on 7 April to discuss the proposed Rules.

The majority of submissions received came from the bar, although there were some from members of the public supporting the proposed changes. The bar's views differed; there was both strong support for the proposed new Rules and equally strong opposition to the proposals from counsel who felt that they would compromise the rights of defendants to a fair trial. There was also the view that the court was best placed to determine during the trial (rather than some time later and in the context of a formal complaint against a barrister) whether a question or a line of questioning was inappropriate.

On 22 May the Bar Council approved new Rules, which appear to have met with general approval. Rule 35A is directed solely to the cross-examination of complainants who make allegations of sexual assault, whether the proceedings are criminal or civil. Rule 35B qualifies the operation of the Rule and picks up the substance of s275A (3) of the *Criminal Procedure Act 1986* which the yet to be commenced s41(3) of the *Evidence Act 1995* will replace.

The new Rules came into effect on 1 July 2008. A series of Continuing Professional Development seminars for counsel who are briefed in sexual assault matters has been developed with the valuable assistance of the Criminal Law Committee.

Whilst the new Rules do not implement all the changes initially contemplated by the attorney general, he commended the association for taking these positive steps. The attorney general has asked that a twelve-month review of the new Rules be conducted in order to assess their impact and the need for further reform, if any.

National Legal Profession Rules

In my 2006-2007 report I noted that the Australian Bar Association had agreed to a review of each bar's Rules with the aim of developing a common set of Rules for all bars. The NSW Bar Association is to co-ordinate this national review of the bars' Rules.

It is an important but time consuming exercise, particularly given that while there is an ABA set of 'Model Rules', each bar has adopted its

own set of Rules. The formal status of each set of Rules differs; for example in some states the Rules are made under the relevant legal profession legislation.

The Law Council of Australia has a working party reviewing the LCA's Model Rules, the advocacy provisions of which, like those of the ABA, are based on the *New South Wales Barristers' Rules* (they all having as their major author Bret Walker SC). There is an agreement with the LCA that its working party will concentrate on establishing Australia-wide solicitors' Rules while the ABA endeavours to do the same for barristers' Rules. There are, of course, areas of overlap which will need to be resolved between all concerned. The ABA's new Rules will be formally put to the LCA so that it may consider adopting them. The Bar Association has an observer on the LCA working party.

The National Practice Model Laws Project

As at 30 June 2008 all but South Australia has enacted model legal profession legislation to establish similar legislation governing the legal profession across Australia.

The overall approach taken in the development of the Model Bill and regulations has been described as a 'national standards' approach rather than a 'one size fits all' approach. The

focus has not been on achieving absolute uniformity in rules and regulatory structures but rather that the different regulatory structures in the states and territories apply nationally consistent standards.

There now remains a very substantial exercise to 'tidy up' the legislation in each state and territory to remove inconsistencies across jurisdictions stemming from local policy, and administrative arrangements that remain impediments to national practice. There are also matters that were put to one side for further consideration once the model legislation was in place.

The Standing Committee of Attorneys-General has made it clear that it wishes to work with the Law Council of Australia, representing all of the profession, on the legislation, rather than each jurisdiction 'doing its own thing'. While there may be an urgent matter that requires unilateral legislation by an individual state or territory, the aim is for a national perspective, incorporating harmonisation proposals.

The Law Council has established a National Profession Harmonisation Committee to work with the SCAG secretariat on proposals for improvements to the uniform scheme. I am a member of that committee.

The Harmonisation Committee is working with other LCA committees that affect uniform practice, for example, its Model

Rules committee (referred to above) and the national CPD taskforce. The taskforce worked on the Continuing Professional Development standards that now ensure practitioners moving from one jurisdiction to another don't encounter difficulties in taking out a practising certificate in their new jurisdiction as a result of differences in the CPD regimes between the old and new home jurisdiction.

The Harmonisation Committee is concentrating its attention on three issues that particularly concern the solicitors' side of the profession; there are relatively few issues affecting barristers that require attention. The three issues are the still differing trust account regimes; the different forms of practising certificate issued to solicitors; and the overly complex costs regimes. This latter issue, in particular the disclosure requirements, does concern the bar. The committee has also identified as a priority the advertising of legal services. This is an area where the Bar Association has approached the NSW attorney general directly to try and overcome the present legislative prohibition on barristers being able to inform the public (and CPD audiences and the like) that they practise in the area of personal injury.

Section 55D of the Judiciary Act 1903

In my annual report for 2005 – 2006, I noted that there was a serious flaw in the national practising certificate regime. This is s55D 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 practise in a federal court (including the High Court of Australia) without holding a practising certificate.

Although the Judiciary Act was amended in the first half of the 2008 calendar year, s55D was not one of the sections amended. However, at a meeting held in early August this year the attorney general advised that he was considering the need for the amendment.

The Bar Association's dealings with the Australian Taxation Office

Since November 2000 the Bar Association has been endeavouring to persuade the Australian Taxation Office and relevant Commonwealth ministers to seek parliamentary approval to an amendment to section 16 of the *Income Tax Assessment Act 1936*. The aim is to allow the ATO to provide the association with publicly available information about action it has taken against those few barristers who have abused the taxation laws and disappointed the profession and, more generally, the wider community.

In August 2006 the Treasury commenced a review of the secrecy and disclosure provisions in the taxation legislation, about which the association made a submission. The Bar Association has not heard from the ATO or Treasury since that submission was lodged in September 2006.

In August 2008 the attorney general undertook to take up with his Cabinet

colleagues the need to clarify those secrecy provisions which prevent the ATO making available to a third party publicly available material, such as the date of a prosecution in open court. Although the attorney general did not say so, such an amendment would be in accordance with the present government's stated policy of removing hindrances to business and personal activity by minimising red tape, reducing costs and simplifying and modernising our laws.

The Law Council of Australia

The Bar Association is a constituent body of the Law Council of Australia. The president is a director of the Law Council.

In recent years there has been a question as to whether the LCA had a viable future – and if it did, whether it would be a strong, centralist body or a federation of the state and territory bars and law societies, drawing on the goodwill, expertise and resources of those bodies.

Fortunately, this uncertainty has passed. The Law Council's directors, and the recently appointed secretary-general of the Law Council, Bill Grant OAM, the former chief executive officer of the NSW Legal Aid Commission, have pursued the co-operative federalist approach to the benefit of both the LCA and the various constituent bodies.

Procurement of federal government legal work

In July 2007 the then president, Michael Slattery QC, wrote to Dr Brendan Nelson, then minister for defence, about the Australian Government's Defence and Industry Policy Statement 2007. Section 6 of the policy acknowledged that small and medium enterprises 'can play a critical role in Australia's defence industrial base by driving innovation, improving productivity and bolstering competition'.

The purpose of Slattery QC's letter was to demonstrate that Section 6 of the policy has an application to the provision of legal services by barristers, sole legal practitioners who operate their own small businesses.

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Executive director's report

The then president made the point that application of s6 to legal services is likely to reduce the cost of providing some legal services to the Commonwealth by recognising the cost competitiveness of the efficient small businesses run by barristers; and will support small enterprises which form an important part of the legal profession – the bar.

The referral nature of barristers' practices has meant that barristers have been unable to tender for the provision of legal services to Defence. This is undertaken by major law firms. It was not suggested that this would or should change. However, the policy could be applied, both through the department's solicitors' panel and directly with the bar to most types of general advisory work and work in the conduct of legal proceedings.

The minister responded by saying that the Bar Council's proposal had merit and would be considered by the Department of Defence in relation to the procurement of external legal services.

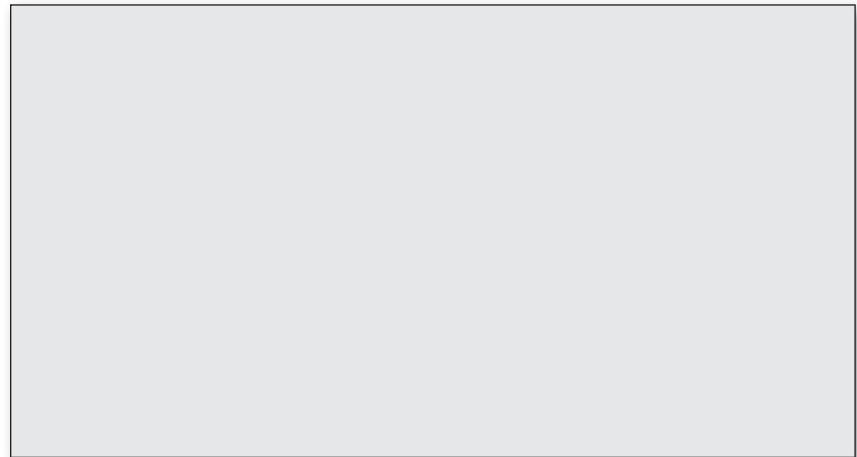
There followed a series of meetings with officers of the Department of Defence and the federal Attorney general's Department to address practical issues arising from the proposal.

On the change of government in late 2007 this issue was again raised with the government, in particular with the attorney general, who had announced a drive to rein in federal government legal costs. At the same time the current president, Anna Katzmann SC, raised with the attorney general the need for the government to actively follow an equitable briefing policy to ensure that women barristers were considered on their merits for a brief.

Recent discussions between the attorney general and the president showed that the attorney general is very conscious of the merits of both these initiatives.

Thanks

This annual report provides an account of only a small part of the work undertaken by and for the Bar Association. The daily *In Brief* and frequent @CPD, as well as the web site, are other sources of valuable information for members on the association's activities.



The need to maintain the confidentiality and trust of many in the association's dealings with the state and federal attorneys-general, their departments and parliamentary committees when discussing proposed new legislation means that a significant part of the association's work goes unheralded. However, much of the contribution made by members of the bar and friends of the bar to the business of the association can be publicly acknowledged, and I attempt to do so here. Those who assist can be counted in the hundreds; members of committees, sections, representatives on court liaison bodies; those who draft submissions and provide comments on legislation; those who present CPD seminars; the legal assistance volunteers and duty barristers. The barristers who have been telephoned by me and association staff before dawn or late at night as a result of a pressing media inquiry - a few of which turn out to be nowhere near as urgent as initially claimed. The clerks and staff of barristers whose assistance we have called upon during the year. All deserve the association's thanks, and mine in particular.

I also wish to record my appreciation of the assistance given to me and the Bar Association's staff by the two presidents who have held office during 2007-2008: Michael Slattery QC and Anna Katzmann SC. Both voluntarily put in many hundreds of hours towards the

betterment of the Bar Association, its members and the bar as a whole. Both have assiduously sought and considered advice from me and my staff. Both have been very supportive of the staff and have taken the trouble to get to know the staff and the nature of their work, not just that which sees the light of day in a Bar Council submission or correspondence submitted for signature. I am very grateful for their support and counsel.

The Bar Association's staff

The Bar Association's staff do not attend the association's office just to do a daily drag and then clock off. They consider themselves, as they are, an integral part of the Bar Association. Many are members of the association. They work long hours, including at night and on weekends, to provide the best service they can to the association's members and others who in some way have sought the association's assistance. While at times treated unfairly by a troubled correspondent, caller or vexatious visitor to the office, they strive to provide a courteous, efficient service. I remain, as I said in my 2006 – 2007 report, proud of the contribution to the association made by all the staff. I am grateful for their personal support and for the support they give to the association and those who seek the association's assistance.

Highlights

2007

July

Tutors and Readers Dinner
Bar exams

August

Charter of Rights forum #1
Under Sixes Dinner

September

Charter of Rights forum #2
Seminar on international practice
Successful Women Speakers Programme

October

Senior counsel appointments
Bar Practice Course 02/07
Climate change seminar
Bar Council elections

November

Annual general meeting

December

Great Bar Boat Race

2008

January

Solicitors v Bar Golf Day
Indigenous Pre-Law Day
Second ABA Residential Advocacy Course
New silks ceremony, High Court

February

Renovated Bar Library re-opens
Bar exams
CPD mini-conferences begin

March

Law Week 2008
Women law students visit the bar

April

Sir Maurice Byers Address
Yoga classes start
Open Day for university students

May

Bench and Bar Dinner
Bar Practice Course 02/08

June

Fundraiser for Afghan women lawyers

Our aims

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

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

Our history

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

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

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

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

In 2008 there were 16 standing committees. A considerable number of barristers are appointed as members of court liaison committees, government working parties and statutory authorities, providing their skills and expertise for the public benefit.

Office bearers

As at 30 June 2008.



President Anna Katzmann SC

Anna Katzmann SC was elected president of the Bar Association in November 2007. She has served as a member of Bar Council since 1994. Ms Katzmann began practising as a barrister in July 1980 and was appointed senior counsel in 1997. In 2002 the Women Lawyers' Association of NSW presented her with the 'Woman Lawyer of Achievement' award. Offices held include: 1995-2007, council member of the Australian Academy of Forensic Sciences; and 1997-2000, part-time commissioner, Legal Aid Commission of NSW.



Senior Vice-President Tom Bathurst QC.



Junior Vice-President Bernie Coles QC



Treasurer Alexander Street SC



Secretary Rachel Pepper



Executive Director Philip Selth OAM.

Bar councillors 2008

Peter Garling SC

Phillip Boulten SC

Jane Needham SC

Andrew Haesler SC

Margaret Cunneen SC

Stuart Torrington

Garry McGrath

Kate Traill

Chrissa Loukas

Anne Healey

David Ash

Paresh Khandhar

Michael McHugh

Sandy Dawson

Margaret Holz

Ruth Higgins

Our people

As at 30 June 2008.

Office of the Executive Director		Legal Assistance Referral Scheme	
Executive Director	Philip Selth OAM BA (Hons) LLB	Legal Assistance Manager	Heather Sare
Executive Assistant	Jo Carlisle BA	Legal Assistance Administrative Assistant	Wendy Incoll BA
Director, Legal	Jennifer Pearce BEc LLB		
Administration Department		Professional Conduct Department	
Administration Manager	June Anderson	Director, Professional Conduct	Anne Sinclair BA MLM
Administrative Assistant	Patrina Malouf Dip Bus	Deputy Director, Professional Conduct	Helen Barrett LLB
Administrative Officer (records)	Kim Ellis	Deputy Director, Professional Conduct	Stephanie Mancell BA (Hons) LLB
Receptionist	Maree Fitzgerald BDesign JP	Deputy Director, Professional Conduct	Sarah Colquhoun LLB
Administrative Officer	Fay Braddick	Assistant to the Director, Professional Conduct	Lorraine Haycock
Systems Administrator	Matthew Vickers	Administrative Assistant	Meagan Phillips
IT Consultant	Darren Covell	Administrative Assistant	Lisa Waterworth
Bar Library		Professional Development Department	
Librarian	Lisa Allen B App Sc (Info) M Inf Stud	Director, Professional Development	Chris D'Aeth LLB (Hons) MBA
Assistant librarian	Jennifer Nott BA DIM	Deputy Director, Professional Development	Jo Musumeci BA (Hons)
Technical services librarian	Leonie Anderson B App Sc (Info)	Professional Development and Events Officer	Katie Hall BM
		Education Assistant	Irene Puntillo
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		
Projects Officer, Secretariat and Research	Cindy Penrose B Comm LLB		
Projects Officer	Kim Kemp LLB		

Statistics

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

Membership

As at 30 June 2008 there were **2795** members of the New South Wales Bar Association.

Members who hold a NSW practising certificate

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

Male	1733
Female	365
Total	2098

Number of senior counsel (QC or SC)*

Male	312
Female	17
Total	329

Number of 'junior' barristers**

Male	1421
Female	348
Total	1769

Practising address of members who hold a NSW Practising certificate

New South Wales	2083
Australian Capital Territory*	4
Queensland*	4
Victoria*	3
Overseas*	4

Honorary life members and non-practising barristers

(including members interstate and overseas)

Male	568
Female	129
Total	697

(Includes 24 honorary life members who don't have a current NSW PC)

Occupation of non-practising members

Judge	161
Magistrate	35
Statutory / government officer	6
Judicial officers	13
Academic (non-practising)	19
Interstate barrister	175
Overseas barrister	33
Former barrister	129
Former judge	87
Clerk	20
Miscellaneous	19

Practitioners

As at 30 June 2008 there were 2114 barristers with a NSW practising certificate.

Practitioners holding NSW practising certificates

(including practitioners based interstate and overseas)*

Male	1744
Female	370
Total	2114

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

Male	314
Female	17
Total senior counsel	331

Number of junior barristers**

Male	1430
Female	353
Total junior barristers	1783

Location of holders of NSW practising certificates

	Juniors		Silks		Total
	Male	Female	Male	Female	
New South Wales	1419	351	312	17	2099
ACT	4	0	0	0	4
Queensland	2	1	1	0	4
Victoria	3	0	0	0	3
Overseas	2	1	1	0	4

Overseas practitioners by country of residence

	Juniors		Silks		Total
	Male	Female	Male	Female	
United Kingdom	1	1	1	0	3
New Zealand	1	0	0	0	1

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

++ The term 'junior' barrister means all barristers except those who have been appointed senior counsel. 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.

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

Promoting the interests of practising barristers

BarCare



The Bar Council identified the need to extend the existing BarCare resources to provide an early intervention service. The position of director, care and assistance was established in early 2008. My work for the bar commenced in early March. Historically, the Bar Association only becomes aware that a member is having difficulties when a complaint is made. This can be the beginning of the inevitable pathway to a disciplinary hearing. This new position is designed to avoid an exacerbation of the problems by supporting members through difficult times.

The existing panel of health care specialists has been expanded and includes psychologists, psychiatrists, drug and alcohol specialists and financial advisors. I act as the first point of contact for barristers seeking advice in relation to their personal circumstances. Colleagues and family members are also encouraged to contact BarCare if they have concerns about a member. All contact with BarCare is strictly confidential and no personal information is provided to the association without the express permission of the person involved. There is a dedicated telephone line and an e-mail address to contact me directly. Data is collected in an anonymous fashion describing the type of services provided. The Benevolent Fund will carry the cost of an initial consultation with one of the panel specialists.

In the brief time that this new service has been operating there has been a steady demand. Some matters are handled entirely by telephone contact. Referrals have been arranged for specialist treatment. BarCare is fortunate that through its panel of specialist services urgent appointments at short notice can be facilitated. In other circumstances an appointment can be made to discuss the nature of the problem and to determine whether specialist help is needed. These meetings are informal and often will be a matter of meeting for a cup of coffee.

My experience to date has demonstrated that working at the Bar is a stressful occupation. The number of self-referrals is heartening, showing that barristers are aware of the need to seek help. It is also

obvious that there is a strong collegiate bond between the members of the bar. Colleagues concerned about the welfare of a peer have made approximately half of the calls to BarCare.

There has been a steady stream of calls and a diverse range of problems from simply needing a confidential chat to arranging a referral to a health care specialist. Problems such as depression, general health, marital difficulties and bereavement have been just a few of the calls received. Another aspect of BarCare is the capacity to provide financial assistance through a grant or a loan. Where a need has been identified I prepare a submission stating the circumstances but not the individual's name. The identity is disclosed only when a decision has been made and a cheque is drawn. There have been a number of instances this year where the fund has been able to reduce a member's financial stress.

The appointment of my position has provided the opportunity for members and member's families to individual guidance in times of stress. The response to date has shown that there is a need for this model support.

Penny Johnston

Director, Care & Assistance

BarCare statistics for 1 July 2007 to 30 June 2008

Number of members seen:	11 (up from 7 last year)
Female:	3
Male:	8
Most common age brackets:	45-54 years; 34-44 years
Most common length of time in practice:	11 years+
Most common localities of practice:	CBD; Sydney Metropolitan

Most common types of problems:	marital, overwork, alcohol & financial
Number of family members seen:	3
Number of members who continued with treatment after initial consultation:	8

The 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.

For the year ended 30 June 2008 the fund advanced one loan of \$5,000. Grants (totalling \$110,062) were made to nine parties.

Promoting the interests of practising barristers

Indigenous Barristers' Strategy Working Party

The Indigenous Barristers' Strategy Working Party was set up to implement the Indigenous Lawyers' Strategy at the NSW Bar. The membership of the working party is comprised of barristers and representatives of the law schools of the University of New South Wales and the University of Technology. Implementation of the strategy is 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 a significant focus for the working party.

A trust fund, the Indigenous Barristers' Trust – The Mum Shirl 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, Anna Katzmann SC, Michael Slattery QC, Mullenjaiwakka, the most senior of the four Indigenous barristers at the NSW Bar, and Chris Ronalds AM SC. Daniel Gilbert AM from Gilbert + Tobin Lawyers resigned as a trustee at the end of 2007 and the trustees record their immense gratitude for his wise advice and assistance from the start of the trust.

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 second National Indigenous Legal Conference held in Brisbane in September 2007 built on the success of the inaugural Sydney conference. Members who attended found it a stimulating and interesting forum and an opportunity to share experiences and discussions with Indigenous lawyers and law students from around Australia.

The working party has been liaising with the Victorian and Queensland bars and their members with regards to implementing similar strategies within respective states to those started by the New South Wales 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 2007 and were taken to chambers and introduced to the work of a barrister. They visited courts and spoke with judges who shared their experiences as both barristers and judges. This visit is an annual event and is important in exposing Indigenous law students at the beginning of their studies to the career opportunities available at the Bar.

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

The working party organised two theatre events. In August 2007, 30 barristers and their guests attended a performance of *The Story of the Miracles at Cookie's Table* by Wesley Enoch and starring Leah Purcell,

both leading Indigenous artists, at the SBW Stables Theatre. In March 2008, 50 barristers, judges and their guests attended a performance of *The 7 Stages of Grieving* at Wharf 2. Directed by Leah Purcell and starring Lisa Flanagan, the play took audiences on an emotional journey through love, frustration, humour and loss from an Aboriginal perspective. These events provide an opportunity for social contact between barristers interested in Indigenous legal matters and provide a cultural backdrop to discussions and debate.

Equal Opportunity Committee

The past year has been another busy one for the Equal Opportunity Committee. The Equitable Briefing Policy was promoted via direct approaches to major corporate and institutional clients, as well as solicitors in public and private practice. The process began when the committee held a successful meeting with the Commonwealth Bank.

The EO Committee continued the practice of previous years by holding an open day for university students, in addition to a 'Career at the Bar Open Day'. Each event was well attended. The Bar Association hosted more than 130 students from 10 universities and the visits by students from the universities of Western Sydney and Wollongong were similarly well attended and received.

The committee continued its mentoring scheme for women in their second year of practice at the bar and augmented it with social functions. The success of these functions has convinced the committee that they are a very useful adjunct to the mentoring scheme. The committee proposes to continue the same in the coming year.

In conjunction with the Women Barristers Forum, the committee organised a Successful Women Speakers Seminar in September 2007 (see also: the report by the Women Barristers Forum).

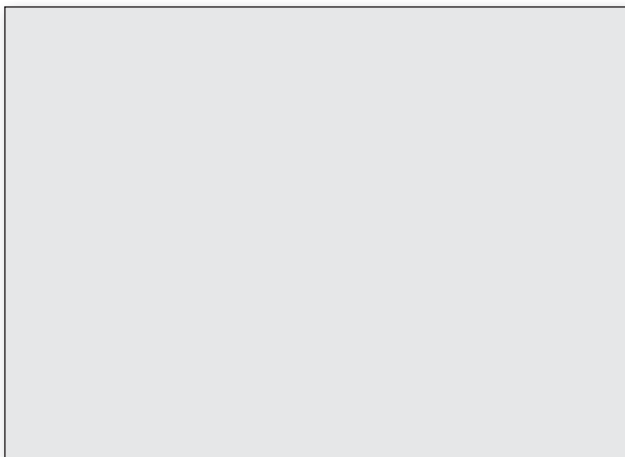
The committee convened a seminar designed to address practical solutions for legal professionals with family responsibilities, specifically concerning childcare and aged care. For some time the committee has worked with a childcare provider to give emergency childcare support to barristers. More recently, the association formed a relationship with an aged care provider, which supports professionals who have care commitments to elderly members of their families.

The committee had a leading role in the development of flexible work policies, which were endorsed by the immediate past-president, Michael Slattery QC, in his penultimate Bar Council meeting. These policies seek to encourage a suitable work and family balance, as well as highlight the importance of maintaining personal relationships and a diverse range of activities in addition to professional commitments.

The EOC was pleased to be able to assist in the resolution of the problem concerning access to the disabled WC facilities in the Supreme Court.

Finally, the committee has recently obtained the Bar Council's approval to survey the practices of senior junior members of the bar who have been practising for 7-20 years in order to compare different aspects of female and male barristers' practices. It is hoped that the data will identify areas in which barristers may not be receiving equitable treatment, and which may cause them to leave the bar prematurely. This may, in turn, help to promote the Equitable Briefing Policy and assist in devising professional development programmes.

Women Barristers Forum



On 28 July 2007 the Women Barristers Forum met and voted to become a section of the New South Wales Bar Association. All functions of the WBF are now accessed through the Bar Association and the purposes for which the WBF was established remain and will provide a focus for its activities in the future. The meeting also provided an opportunity for women at the bar to express their views on issues affecting them and the development of their practices. The specific issues raised are with the Executive of the WBF for further development and action.

In 2007-2008, the Women Barristers Forum continued its efforts in promoting awareness of the many talents of women at the New South Wales Bar. The following networking functions and seminars were held:

- On 6 August 2007 a Women in Law Dinner was co-hosted with the Women's College at the University of Sydney. It was attended by 265 members of the legal profession, the judiciary, and academia.
- On 18 September 2007 a Successful Women Speakers Seminar was held with the Equal Opportunity Committee of the Bar Association. A panel of speakers comprising Professor Elizabeth Elliott, Dr Deborah Dearing and Bernadette Kerrigan discussed their experiences in their chosen careers.

Other functions included a seminar on voice coaching for women at the bar and information sessions promoting the WBF database and web site.

A Women Barristers Forum annual general meeting was held on 4 December 2007 for the election of new office bearers and motions for the amendment of the constitution to transform the WBF into a section of the New South Wales Bar Association.

The Women Barristers Forum prides itself on being an inclusive and open organisation for women barristers and is proud of its achievements. The WBF hopes for continuing consultation with members of the profession on all issues affecting women at the New South Wales Bar.

The history of the WBF

The genesis of the Women Barristers Forum (WBF) was a function held at The Westin, Sydney on 6 March 2002. This function was organised by eleven women barristers to network and promote camaraderie amongst women at the bar and to forge links with solicitors and the judiciary. That function was highly successful with over 200 members of the profession attending.

WBF developed rapidly. At the request of many women barristers, a forum was held on 25 October 2003 to discuss issues affecting women at the New South Wales Bar.

Another forum was convened on 19 June 2004 at which the WBF was established, with its aims being to:

- promote awareness, discussion and resolution of issues which particularly affect women barristers;
- identify, highlight and eradicate discrimination against women in law and in the legal system;
- advance equality for women at the bar and in the legal profession generally;
- provide a professional and social network for women barristers;
- support and encourage women at the bar;
- promote the interests and skills of women barristers; and
- support diversity and flexibility at the bar.

A momentum developed, with judges, barristers, solicitors, academics and law students attending events. One highlight was the Women in Law Dinner entitled, 'Change by Generation', co-hosted with the University of Sydney's Women's College on 25 August 2005. In addition, solicitors' firms have hosted many networking evenings to provide an opportunity for women barristers to meet other members of the profession and to promote their equitable briefing policies.

In promoting the Model Equal Opportunity Briefing Policy for Female Barristers and Advocates adopted by the Bar Association, the WBF consulted solicitors and other users of barristers' services over a period of two years to ascertain the best vehicle for promoting women barristers. Access to relevant information about the practices of women barristers was the immediate requirement. From June 2005, the primary focus of WBF was the development of a web site and a database of women barristers.

On 22 November 2006 the Inaugural Annual General Meeting of WBF was held, the Executive elected, and the web site launched. In 2007 the site was integrated into the Bar Association's web site. It will be pivotal in providing information to the public about women barristers and their diverse accomplishments; communicating news and events; and recording the history of the WBF. Feedback from members of the profession and other users of the WBF web site and database is encouraging.

Arranging & promoting continuing professional development

The Professional Development Department

The year in review presented many challenges to the Professional Development Department. The effects of rising prices have rippled through all sectors of the economy and could not be ignored by the Bar Association. Where possible, the department cushioned the effect of these pressures through sponsorship and cost savings, whilst remaining mindful of our responsibilities to our members. Our dominant purpose has remained the same: to continue to provide relevant, practical and intellectual content to members to improve their practice. This has been interpreted widely and the Professional Development Department takes a holistic view of a member's practice. Faced with such a wide ambit, it is important for the department to continue its process of critically appraising existing methods and embracing new ones to ensure that all services and courses remain of the highest standard.

Bar exams

For the July 2007 Bar examinations 98 candidates submitted a registration form to sit for one or more of the examinations. The three examinations are: Practice and Procedure; Evidence; and Ethics. In the end only 81 candidates sat the examinations – down 12 per cent on the number of candidates just twelve months earlier. There was a similar trend in February 2008 with 70 candidates attempting one or more of the examinations, down from 95 candidates in February 2007. A total of 39 members of the association assisted in the preparation and marking of papers in July 2007, and 46 for the February 2008 examinations.

It is not clear what is driving this trend towards fewer exam candidates or whether it will continue. It may reflect a broader issue or perception in the legal community and one that the bar may need to analyse and address in the future.

Bar Practice Course

The smaller number of exam candidates had a flow-on effect to the number of readers undertaking the October 2007 and May 2008 Bar Practice courses. The two courses had 38 and 39 readers respectively. Encouragingly, the number of women choosing the bar as a profession continues to grow and both courses had a percentage of women significantly higher than the ratio of the general bar population. Nearly

Encouragingly, the number of women choosing the bar as a profession continues to grow and both courses had a percentage of women significantly higher than the ratio of the general bar population.



Bar Practice Course 01/08

one third of the October course (32 per cent) was female, 39 per cent in the May course. The bar continues to source its readers from the ranks of solicitors with 70-75 per cent of readers practising as a solicitor before being called to the bar. The average age of a reader remains steady at about 35.

One of the many highlights was Justice Kirby's comments at the conclusion of the May course. His Honour's positive observations about the New South Wales Bar were well received by all the readers. The intention of the final session was to instil a sense of pride, coupled with humility, a recognition of the opportunity before them and an understanding of their role as vital members of the system of justice and rule of law.

All readers, at the conclusion of the BPC, return to the association each month to attend further 'extension sessions' which offer an opportunity to look at new and emerging jurisdictions or revisit existing or common areas of practice for a reader. Furthermore, all readers undertake two advocacy workshops: one after three months and a second after nine months. The purpose of the workshops is to develop advocacy skills introduced in the BPC and to reinforce concepts of case analysis, case theory and presenting evidence.

International Influences

In January 2008 the association was fortunate to be involved in two international exchanges. The first was the Advocacy Teachers' Conference, organised by the Australian Advocacy Institute. The second was the Australian Bar Association Residential Advocacy Course. Both provided a melting pot of ideas – in the theoretical concepts at the conference, and in more practical respects at the course.

A total of 56 delegates attended the Advocacy Teachers' Conference with delegates from the majority of common law jurisdictions and over 30 delegates from Australia. The conference allowed emerging areas – such as the assessment of teachers – to be addressed. The medley of experiences and personalities led to exciting and often lively debates. Many of the issues raised at the conference had no simple resolution

but will offer ongoing challenges to this department and international advocacy teaching bodies for some time to come.

The Australian Bar Association's Residential Advocacy Course, held in Sydney, was the second such course, building on the success of the first, held in Perth in 2007. Once again the Bar Association worked closely with the ABA and course directors to facilitate the successful running of the course. The quality of the national and international coaches that provide their time so generously underpins the course. Planning for the third course, again to be held in Sydney, in January 2009, is well underway.

Continuing Professional Development

In 2007/08 the department offered 60 seminars plus a further six conferences. The conferences were, once again, an excellent opportunity for regional members to get together and obtain their CPD points, often in a congenial and relaxed atmosphere. The primary focus of the conferences remains the professional development of members, however the ancillary benefits cannot be underestimated. This year additional social events were added, where appropriate, building on the successful model that has operated at the Orange conference for a number of years.

Other events and social functions

On 4 April the association hosted an open day for university students considering the Bar as a career. The inaugural event was well supported by all the universities with representatives from nine of the ten NSW law faculties. In total there were over 160 students in attendance in the Bar Common Room. Reports from those who attended were overwhelmingly positive which augurs well for the future of the Bar. The panel of speakers was of the highest calibre and the department intends to repeat the event each year.

In December members of the bar with a nautical bent took to the



Bench and Bar Dinner, Sydney Hilton Hotel, Tuesday, 9 May 2008. Photo: Murray Harris Photography

seas once more in the Great Bar Boat Race. The 28 boats enjoyed the blustery conditions on the harbour and participants celebrated in traditional fashion on Store Beach.

The Bench and Bar Dinner took place at Sydney's Hilton Hotel on 9 May 2008 and was attended by 655 members of the association and distinguished guests. The guest of honour was the Hon Justice Susan Kiefel. Mr Junior was Brad Hughes. Ms Senior was Jane Needham SC. The evening was a great success.

During the year in review 15 bobbies were held for the Hon Justice Lucy McCallum and his Honour Judge Paul Lakatos SC. Functions were also held for members of the association's committees, the judiciary and parliamentarians to acknowledge their contribution to the association and the wider community.

Thanks

The department is extremely grateful to all members who gave so generously of their time in 2007-08 to assist with Bar exams, Bar Practice courses, CPD seminars and conferences. The department draws heavily on the bar's goodwill and without your assistance we would not be able to offer the quality of programmes that were available in 2007-08.

In particular the department is appreciative of the assistance of many of the association's committees who offer guidance and suggestions – and speakers – for the CPD programme.



Dinner at the Orange CPD Mini-Conference.

Making recommendations and promoting the administration of justice

Law Reform and Public Affairs

We all know that sometimes people are unjustly accused. Sometimes people are the victims of unfair and wrong allegations, and that's why we have a criminal justice system that's designed to ensure that only the guilty are convicted. And our primary concern about this... proposed legislation, is that it will turn people whom the general community wouldn't regard as being criminals, just stupid, careless perhaps, but without criminal intent, into criminals.

With these words, a few days into her term as president, Anna Katzmann SC put the association's case against aspects of the Crimes Amendment (Consent – Sexual Offences) Bill 2007 on the John Laws Programme on 9 November 2007.

The incoming president, and the chair of the Criminal Law Committee, Stephen Odgers SC, made numerous media appearances arguing the need for amendment to the Bill in light of its removal of the defence of honest and reasonable mistake of fact in relation to questions of consent in sexual assault prosecutions. Although the Bill was not amended in the course of its passage through the New South Wales Parliament, the bar's arguments against elements of the Bill were a focal point of parliamentary debate on the legislation.

The media and lobbying campaign undertaken by the Bar Association on that Bill was only one aspect of what was again another busy year in public affairs.

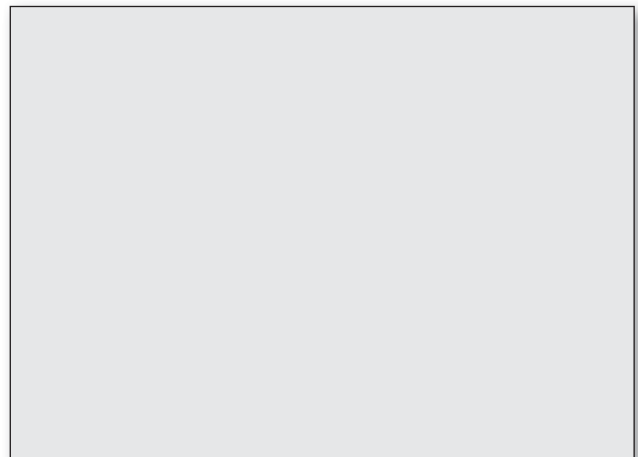
With the conclusion after the 2007 state election of the intensive media and lobbying strategies associated with the 'Fair Go For Injured People' campaign, the association continued to identify and take suitable opportunities to enter public debate on other key legal issues.

Throughout the preceding reporting year, and well into 2007-08, the association ran a media campaign promoting better pay and conditions for jurors, particularly in long criminal trials. The association adopted a multi-faceted strategy in an attempt to bring about better conditions for jurors, with both the previous president, Michael Slattery QC, and Anna Katzmann SC publicly advocating such improvements; while at the same time, the association raised the need for change in meetings with and submissions to government, including the broad New South Wales Law Reform Commission reference into jury service.

The Law Reform Commission's Report 117, partly as a result of the Bar Association's efforts, did contain recommendations for increases in jury pay, other expenses and improvements in conditions. The report also recommended amending the Jury Act 1977 to widen the pool of potential jurors, a policy position that had also been strongly advocated by the association.

In the president's appearance on 2SM's Leon Delaney Programme on 9 January 2008, she outlined the association's rationale for widening of the jury pool:

Serving on a jury is an important privilege of citizenship and a public duty. As many people as possible should be permitted to exercise it... For juries to be representative of a community, it's equally important that as many people as possible be eligible to serve on it. And the large number of exempt categories of persons imposes an unfair burden on the rest of the community.



The greatest level of media attention in the reporting year involved the bar's consideration of changes to the Barristers' Rules concerning cross-examination in sexual assault cases. In September 2007 the attorney general wrote to the former president Michael Slattery QC asking that the association consider changes to the New South Wales Barristers' Rules in line with recent amendments to the Evidence and Criminal Procedure Acts which prohibited harassment of vulnerable witnesses in cross-examination.

Draft Rules were approved for consultation by the Bar Council which attempted to seek a balance between the interests of the accused and those of vulnerable witnesses, which were then released to the bar generally for comment. The resulting robust debate among the bar received a great deal of attention, both in the print and electronic media.

The mainstream print ran a series of high-profile stories on the process which, although somewhat one-sided, did implicitly acknowledge the importance of the Bar Association's profile in public debate on crucial legal issues.

Both the former and current presidents made a number of media appearances in order to explain the competing rights and considerations which had led to the debate.

The obligation of the barrister is to ask questions in a responsible manner...this is all about the responsible use of privilege in the court room. A decent and competent barrister can ask questions in a way which is not belittling, insulting or otherwise inappropriate. You see there will be more latitude, one would expect, in criminal proceedings where the liberty of the subject is at stake, than in civil proceedings...But how a barrister exercises his or her judgement sets the limit of what is professional conduct.....a barrister who is acting professionally won't fall foul of these rules. (Anna Katzmann SC, Alan Jones Show, 6 March 2008).

Once the bar's consultation process was completed and the Rules finalised in a way which reflected the competing considerations involved, media comment on the matter all but disappeared.

The association brought a number of other issues to public prominence during the reporting year. The Bar Council's decision to support a statutory Charter of Rights in NSW resulted in an opinion piece from the president which in turn sparked a series of opinion pieces in different papers on the subject. The debate continues at the time of writing.

Other issues of direct interest to the bar which were aired included the promotion of equitable briefing practices and the desirability of direct briefing arrangements in the context of government legal tenders.

As in previous years, the association maintained a high profile in relation to criminal law and policy issues which came to prominence from time to time, and in this regard thanks should be extended to Phillip Boulten SC and Stephen Odgers SC who both made themselves available to deal with media inquiries.

The association continues to identify opportunities to come forward on wider issues of principle involving the rule of law, the independence of our courts, the rights of accused. On such issues which may not always be popularly supported by governments and media commentators, the bar will always have an important public role in explaining and supporting legal principles which underpin the nature of our system of government.

In response to a New South Wales Government proposal late last year to allow police to enforce certain criminal offences with infringement notices, former president Michael Slattery QC made this argument:

But what they're going to do here is to bring outside the court system, intentional dishonesty, or intentional anti-social behaviour. Now that's something that I think the community might be rightly concerned about, and what we're saying is that the court system fills a very important function as an independent arbiter of that sort of conduct, either to record a conviction, issue a penalty, or looking at the circumstances to issue a bond, or whatever the result is, and this will now be left up to the discretion of a police officer, which is essentially unreviewable. It breaks down the difference between the court system, and in effect, the Executive. (ABC Radio Newcastle 24 October 2007)

Common Law Committee

In the aftermath of the 2007 state election, the committee took on an ongoing level of responsibility for the continued direction of personal injury reform. The reporting year saw the committee deal with a great volume of material.

In recognition of the lack of response from the New South Wales Government to the 'Fair Go For Injured People' campaign prior to the election, the committee has been focusing upon discrete, incremental reforms to personal injury laws, which would make a realistic difference for injured people.

In the course of the reporting year, Ross Letherbarrow SC took over as chair of the committee and a number of new members were brought in to augment its work. Without the need to concentrate upon a state-wide, co-ordinated pre-election campaign, the committee has undertaken a number of projects, either referred by the president or Bar Council, or identified by the committee itself.

Over the reporting year, the committee gave detailed consideration to a wide range of issues, with a view to preparing policy papers for the consideration of the Bar Council, and, ultimately, the government.

Among the matters examined were:

- the implications of the Supreme Court decision in *Corbett v Toll Stevedoring* for costs in s151Z Workers Compensation Act matters, resulting in the preparation of a reform paper for the consideration of Bar Council;
- the application of the current restrictions upon legal advertising contained in the *Legal Profession Act 2004* and *Legal Profession Regulation 2005*;
- the inequities involved in the application to minors of the provisions of the *Civil Liability Act 2002* involving intoxication, as highlighted in the decision of the Court of Appeal in *Russell v Edwards*. A submission was provided to the attorney general on suggested reform;
- providing a submission on the possible extension of cost limitations in small Local Court matters across that court's full jurisdiction;
- the Bar Association's submission to the Ninth Review of the Exercise of the Functions of the Motor Accidents Authority and the Motor Accidents Council and the First Review of the Exercise of the Functions of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council conducted by the Law and Justice Committee of the New South Wales Legislative Council;
- a submission to the Uniform Rules Committee concerning unnecessary requests for particulars; and
- submissions to the Law Council of Australia in relation to national reviews involving harmonisation of limitation periods and harmonised workers compensation laws.

As in previous years, members of the committee continued to prepare submissions to organisations such as the Motor Accidents Authority and the Lifetime Care and Support Authority in respect of draft changes to guidelines and other administrative arrangements. Particular thanks are due to Andrew Stone in this regard.

All members of the committee were generous with their time and effort in what was a particularly productive year for the committee. From time to time the committee relied on specialised assistance from practitioners outside the committee, and their contribution is also gratefully acknowledged.

Making recommendations and promoting the administration of justice

Alternative Dispute Resolution Committee

The Alternative Dispute Resolution Committee was formed in January 2008, extending the mandate of the former Mediation Committee. The extension of this mandate is particularly important because of *New South Wales Barristers' Rule 17A*, which requires barristers to ensure that their client or instructing solicitors are informed about alternatives to fully contested adjudication of cases that are reasonably available, and it reflects the increased use by courts, businesses and others of alternative dispute resolution techniques.

The committee has met monthly and considered a wide range of issues relating to alternative dispute resolution. Its initial task was to determine the areas of dispute resolution it wished to cover, which are:

- mediation
- arbitration
- early neutral evaluation
- expert determination
- adjudication
- various forms of negotiation

National Mediation Accreditation Standards

An important matter that the committee considered early in the year was whether the Bar Association should become a recognised mediator accreditation body under the Australian National Mediator Accreditation System Standards, which came into effect on 1 January 2008. The standards were devised by the National Alternative Dispute Resolution Advisory Council (NADRAC), an independent body advising the Australian attorney general on ways of resolving disputes without the need for judicial decisions, and introducing a major change to the way mediators operate in Australia.

The standards specify requirements for mediators seeking approval together with minimum qualifications and training (approval standards). Mediators must comply with practice standards and seek re-approval in accordance with the approval standards every two years. The scheme also provides for bodies such as legal profession associations and mediator training organisations to become recognised mediator accreditation bodies (RMABs) if they meet certain criteria. The scheme is voluntary but the committee's investigations revealed that a number of organisations relevant to barristers' work had adopted or were in the process of adopting the standards and that some were declaring themselves to be RMABs.

The committee concluded that

- it was extremely important that NSW barristers have the appropriate levels of skill and experience in mediation to enable them to be accredited under the standards;
- the standards would have an impact upon how courts and others selected mediators;
- the Bar Association fulfilled the criteria for becoming an RMAB; and
- it was in the interests of barristers that the Bar Association adopt the standards and become an RMAB.



Detailed recommendations were made to the Bar Council to this effect. The standards provide for accreditation as 'experience qualified' mediators and new mediators. Application forms for accreditation in each category (including applications for selection for the District Court mediators' panel) were drafted by the committee and provided to the Bar Council with the recommendations.

On 22 May 2008, the Bar Council declared the Bar Association to be an RMAB and adopted the standards. In accordance with the committee's recommendations, only those barristers who are accredited under the national standards will be considered in future for their names to be put forward for appointment on the District Court and Supreme Court mediators' panels (barristers must also have at least the 10 points experience as mediators that has been required in the past for inclusion on the panels).

The committee held a well-attended information seminar to inform barristers about the National Standards and accreditation on 19 June 2008. The standards, the application forms and further information have been posted on the ADR page of the association's web site. Applications for accreditation will be considered annually in conjunction with applications for selection for the District and Supreme Court panels of mediators which are considered in alternate years. Accreditation is for a period of two years. A number of applications for accreditation had been received by 30 June 2008.

To be accredited as an 'experience qualified' mediator, barristers must have achieved 20 hours of ADR-related CPD in the two years prior to accreditation. This CPD requirement will apply to all barristers who seek re-accreditation after two years irrespective of the basis of their original accreditation. The committee has organised an all day workshop on 16 August 2008 to assist barristers to achieve 6.5 points towards this requirement (these 6.5 points can also be applied to the Bar Association's CPD scheme) and will hold similar workshops in subsequent years. The committee is delighted that over 100 barristers are attending the 16 August workshop and believes that it will provide

an invaluable opportunity for barristers practising in ADR, either as providers or representatives, to meet and help form a stronger ADR community within the bar.

The committee is working towards introducing a mentoring scheme for barrister mediators and barristers to gain experience through co-mediation and observation opportunities. Mentors and mentees will be able to claim up to 10 hours (10 CPD points) towards accreditation.

The committee oversees the accreditation process and will continue to work on the implementation of the standards and to monitor further developments in relation to the standards.

The New South Wales Bar Dispute Resolution Centre?

The inaugural meeting of the committee was held in the refurbished National Disputes Centre operated by Counsel's Chambers Ltd and located in Selborne Chambers. The Victorian Bar and the Queensland Bar Association have for some time operated their own alternative dispute centres and the committee formed the view that the Bar Association should have its own dispute resolution centre in order to provide NSW barristers with a strong identity and presence in the alternative dispute resolution industry (both as ADR providers and as representatives of parties in ADR processes) and also with promotional opportunities in this regard.

The committee commenced negotiations with Counsel's Chambers with a view to renaming the National Disputes Centre in order to identify it with NSW barristers. The negotiations have resulted in a recommendation to the Bar Council in August 2008 that the association enter into an agreement with Counsel's Chambers that the National Disputes Centre operates under the name, 'The New South Wales Bar Dispute Resolution Centre'.

If the Bar Council accepts the committee's recommendation, the committee believes that this will be an exciting and important development for the NSW Bar.

Seminars and educating barristers

It is a significant part of the committee's role to organise seminars for educating barristers about ADR, keep them informed about developments, and ensure that they play a positive role in ADR generally. The following seminars were held or organised in the first half of 2008:

In February, Graeme Neate, president of the National Native Title Tribunal, gave a presentation focussing on aspects of mediation which require the accommodations of different cultures.

In April, a seminar entitled 'Mediation from a Client's Perspective: How, When and Why', was held with a panel of committee members and Michael Green, senior corporate counsel, Aon Australia/Pacific and John Meggitt, general manager legal, Baulderstone Hornibrook. Guests at this seminar included representatives of a number of organisations which routinely use mediation.

In June, an information seminar was held on the new national standards.

In July, committee members presented a Bar readers' extension session (on 7 July 2008) as an introduction to all types of ADR. A second extension session will be held on 1 September to cover mediation in depth.

In June, a series of four arbitration seminars to enable barristers to satisfy the criteria for appointment to the Local and District courts lists of arbitrators commenced, organised primarily by Ian Bailey SC.

As noted above, an all day workshop will be held in August.

The committee is exploring ways of involving barristers in ADR processes and is encouraging them to identify ADR in their list of practice areas shown on the Bar Association's online 'find a barrister' search facility. The committee has also asked the association to change the 'find a barrister' search facility to permit two practice areas to be sought at once so that users may find a barrister who practises in ADR and a particular area of law. All the seminars held were very well attended, demonstrating the increasing interest of barristers in this area.

South East Asia Sub-Committee

A South East Asia Sub-Committee was set up at the committee's inaugural meeting. Members of that sub-committee are liaising with South East Asian organisations operating in Sydney and/or in South East Asia to discuss alternative dispute resolution opportunities both in Australia and in South East Asia. To date, members of the subcommittee have liaised with lawyers and others in Malaysia, Indonesia, Hong Kong and Singapore.

Barristers' Resolution Service

A sub-committee has been set up to revive the Barristers' Resolution Service, which was launched in 1999 to provide access to practitioners accredited by the Bar Association to act as arbitrators, experts, referees, case appraisers, evaluators, conciliators and mediators at any time in a dispute whether or not litigation has commenced.

The future

The committee's first six months have been very busy and productive, assisted by its very energetic and efficient projects officer, Kim Kemp. The work of the committee outlined above will continue and will also embrace many more issues that challenge or will challenge the Bar in the next years as the focus of governments, courts and litigants on non-judicial means of resolving disputes increases.

Making recommendations and promoting the administration of justice

The Criminal Law Committee



The committee has remained active in responding to proposed changes in the area of criminal justice, at both the state and federal level.

The committee drafted the Bar Association's submissions to Attorney general John Hatzistergos in respect of a number of bills and to the New South Wales Law Reform Commission, including:

- the *Criminal Case Conferencing Trial Bill 2008* and the *Children (Detention Centres) Amendment Bill 2008*;
- Report 117, July Selection: particularly Chapter 11, on the subject of discharging jurors and irregularities in empanelment; and
- NSW Law Reform Commission inquiry into the law relating to complicity: in particular, submissions were made that the law in respect of 'extended common purpose' should be reformed and the law relating to 'withdrawal' should be clarified.

The committee also prepared a submission to the NSW Sentencing Council regarding reductions in penalties at sentence. The committee opposed the abolition of periodic sentencing, submitting that such a move will result in more offenders receiving a full-time custodial sentence, which is not in the interests of offenders, their dependents and other family members. Nor is it in the community's best interest, given the greater cost of full-time imprisonment and the poorer prospects of rehabilitation.

A proactive committee

The committee has assisted in a number of important projects, such as a series of seminars on sexual assault prosecutions and the drafting of *New South Wales Barristers' Rule 35A* on improper questioning.

The committee has also been actively involved in the planning of the Federal Criminal Law Conference, to be held on 5 September 2008, under the auspices of the Law Council of Australia and the New South Wales Bar Association. The object of the conference will be to develop possible reforms to substantive criminal law and criminal procedure at the federal level. The conference will be similar in format to the successful Criminal Justice Reform Conference 2006, which focussed on state criminal law.

The Family Law Committee

Members of the family law bar continue to practise in a state of flux, due to the formidable caseload of the Family Court and the number of substantive and procedural reforms taking place. One issue of particular concern to the committee is the dwindling number of judicial appointments to the Family Court, which have not kept pace with retirements and elevations from trial to appellate judge. Meanwhile, the Federal Magistrate's Court continues to grow, seemingly without any impact upon the caseload and delays on the Sydney and Parramatta registries of the Family Court.

At the time of reporting, each Family Court judge in the Sydney Registry was docketed with approximately 80 matters. For judges in Parramatta the figure was approximately 124 each. This is in stark contrast to the Brisbane Registry, where the docket size is in the order of 30 matters per judge. Justice Stephen O'Ryan, for example, was elevated to the Appeal Division. Whilst the committee congratulated his Honour on his appointment, an unfortunate consequence is one less trial judge, which will only exacerbate the caseload.

This year has seen the introduction of a docket system for case management. Whilst this system does offer benefits, it also reduces the time for judicial determination in substantive hearings and it will not have any appreciable effect on the docket size without the appointment of more judges.

It is understood that 12 weeks of judicial time will be re-allocated from the Brisbane Registry of the Family Court to the Sydney Registry. This is to be welcomed, but is only a stop-gap measure and will not resolve the chronic lack of resources.

These developments need to be considered against the backdrop of the *Family Law Amendment (de facto financial matters and other measures) Bill 2008*. State powers in respect of financial claims between de facto coupled partners (including same-sex relationships) have been referred to the Commonwealth. The former government had delayed the introduction of the Bill, which was recently tabled. The effect of the Bill is to leave little distinction between the regime of relief available to married and unmarried couples. Significantly this jurisdiction, which was previously exercised in New South Wales by the Equity Division of the Supreme Court and by the District Court, will now be exercised by the Family Court and the Federal Magistrate's Court.

The additional caseload for those courts is not yet known, but it will surely be substantial. Clearly, there is a need for more judicial officers in both courts, which are teetering under the existing workload.

During the course of the year the committee has made submissions in relation to reform and has otherwise 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 Australian Government is reviewing the structure and existence of the Family Court and the Federal Magistrate's Court, and there is potential for significant reforms to both courts.

There are interesting times ahead.

The Human Rights Committee

Once again, the main focus of the committee's work throughout the past year has been the issue of a Charter of Rights.

Charter of Rights

As part of the process for the membership to consider the possible role and function of a state Charter of Rights, Bar Council resolved in April 2007 that the Human Rights Committee would conduct a consultation with members and report back to the council. As part of that process, written submissions were invited and several were received.

Following on from the first seminar in connection with the Charter of Rights proposals by the former High Court justice, presented by the Hon Michael McHugh AC QC, as 'Does Australia Need a Bill of Rights?', in November 2007, a debate was held at the bar between Professor Hilary Charlesworth, professor of international law and human rights in the Faculty of Law at ANU and Noel Hutley SC of the New South Wales Bar with respect to the pros and cons of a Charter of Rights. This event was well attended and there was a vigorous exchange of ideas from the audience as well as the speakers.

The result of this consultation process was incorporated into a report from the committee which was considered by Bar Council in March 2008.

The Bar Council resolved to recommend the adoption of a Charter of Rights for NSW with the following features:

- maintenance of the sovereignty of the New South Wales Parliament;
- enactment by statute;
- protection of the following rights (taken from the Victorian Charter adapted in accordance with NSW law): equality before the law, right to life, protection from torture or cruel, inhuman and degrading treatment, freedom from forced work (slavery, servitude or compulsory labour), freedom of movement, protection of privacy and reputation, freedom of thought, conscience, religion, belief, expression, peaceful assembly and freedom of association, protection of families and children, right to take part in public life, cultural and property rights, right to liberty and security of the person, right to humane treatment when deprived of liberty, right to a fair hearing, rights in criminal proceedings, right not to be tried or punished more than once, rights in relation to retrospectivity of criminal laws ('human rights');
- public authorities and those exercising a public power be required to act in accordance with human rights unless required by statute to act otherwise;
- requiring a member introducing a Bill to deliver a reasoned statement to parliament as to whether the Bill is compatible with human rights or not; and
- incorporating a review mechanism no later than five years after commencement to ascertain whether rights in the charter should be reviewed, whether human rights might more adequately be enforced and whether a right to damages should be added to the charter.

The committee continues to monitor developments around a state or federal charter. Members have attended a variety of seminars and other functions promoting the concept of a charter within the general community. The committee proposes to maintain discussion of the issue through hosting speakers on the issue and providing speakers for community events.

At the time of writing, the Bar Council has yet to formally consider a federal Charter of Rights, though it has clearly stated its position on the protection of human rights in NSW. No doubt it would support discussions for a charter at the federal level and contribute to the public debate on the question.

Racial vilification

The committee was asked by the president to prepare a paper for the consideration of Bar Council on options for legislative reform in the area of racial vilification.

The committee considered proposals raised by the New South Wales Jewish Board of Deputies, the draft Anti-Discrimination Board provisions, the NSW Law Reform Commission's Report 92: Review of the Anti-Discrimination Act 1977 (1999), international human rights instruments touching on this question (such as article 20 cl2 of the ICCPR) and other relevant material. The paper is currently before Bar Council for consideration.

Review of counter terrorism legislation

The committee, with approval from the Law Council of Australia, has in the past year concentrated on undertaking a review of Commonwealth and NSW counter-terrorism legislation, specifically identifying where the legislation does not comply with the relevant human rights instruments.

Freedom of Information Act

In April, the NSW ombudsman announced his intention to review the *Freedom of Information Act 1982* and report to parliament. FOI legislation is of particular interest to the Human Rights Committee. The committee has contacted the ombudsman offering assistance in relation to consultation with members of the bar with regards to their views of the current Act and views of appropriate amendments.

Privacy

The committee reviewed and presented a submission with respect to the New South Wales Law Reform Commission's consultation paper on the invasion of privacy. The committee supported, in principle, the proposal for a statutory cause of action for invasion of privacy and looks forward to commenting further upon a more detailed proposal addressing the structure and terms of the proposed legislation.

Other issues

The committee maintains an overview of other relevant issues and reviews matters before parliamentary committees and other review agencies for any human rights connotations.

Promoting access to justice

Legal Assistance Referral Scheme (LARS)

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 2007-2008 financial year, 215 formal applications for assistance (21 applications fewer than last year) were received and processed. Of these applications, 102 were eligible under the scheme's guidelines for referral to a barrister. The assessment of all applications involves the expenditure 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 1000 hours through the scheme, with 39 matters still in the court system. An additional approx. 2,000 hours of work was contributed in relation to continuing matters commenced in the previous financial year.

Since the scheme's inception in 1994 barristers have contributed approximately 30,500 hours of work.

The following facts arising from the statistical analysis are worth highlighting:

- no fee matters comprised the highest category of those matters handled on a continuing basis;
- 55 per cent of matters referred to barristers were considered to have legal merit/prospects of success;
- 85 per cent of the applications to the scheme were refused legal aid as being outside the commission's guidelines;
- an increase of approx. 83 per cent in matters received from Villawood Detention Centre;
- an approximate 8.9 per cent across the board decrease in all jurisdictions, with the exception of:
 1. a 39 per cent increase in applications to the Federal Magistrates Court, more particularly in the bankruptcy and immigration jurisdictions;
 2. a 70 per cent increase in Local Court civil matters;
 3. a 400 per cent increase in coronial inquests.

Volunteers encouraged

In 2007-2008, 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 web site under 'Find a Barrister', which has been visited 484,000 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 operates at the Local and District Courts at the Downing Centre.

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

Two duty barristers see an average of four clients each per day, which equates to approximately 2,000 clients in total 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.

The manager of LARS also assists with the administration of the Federal Court Refugee Review Tribunal Legal Assistance Scheme.

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 made by LawAccess to the scheme. The executive director is a board member of LawAccess. The association's director, law reform & public affairs, who now oversees the operation of LARS, 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, or her assistant, 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 together with the director, 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.

There is also a meeting every two months between representatives of LARS, the Law Society Pro Bono Scheme and Public Interest Law Clearing House.

The manager attended two sessions at Legal Aid: one with other pro bono service providers – to outline the guidelines of the scheme to Legal Aid officers; the other to be informed about the detail of Legal Aid guidelines. This resulted in a beneficial connection with key Legal Aid employees in relation to determining whether Legal Aid is available in various more complex applications made to the scheme.

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. Staff have received some training in dealing with difficult clients and there are plans to extend such training in the coming year.

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.

Case studies

Case study one

A community legal centre referred a young man who had been charged for allegedly interfering with a police officer in the execution of his or her duties. He had been to dinner and had been drinking with some friends at a bar on Oxford Street, Sydney. He saw that a man had been pushed onto the grass area of the square and lay trying to defend himself from two men who were hitting him in the face and body. The young man recognised one of the attackers as someone he had met at a nearby skate park.

The young man went over to stop the fight but was told by a friend who grabbed him, 'don't get involved, it is not worth it.' The young man stopped and saw the police arrive and break up the fight.

He then saw the police arrest the victim. He walked over to the police and questioned why they had arrested that man when he in fact was the victim and not the perpetrator. He told the police officer that they had arrested the wrong man and that he had seen the man arrested get hit a number of times. The police officer told the young man to move away. As he moved away, the police officer arrested him and detained him at Redfern Police Station. He was granted bail.

The matter came before a magistrate at the Downing Centre Local Court. The scheme was able to refer the matter to a barrister who appeared on the young man's behalf. On that occasion the police prosecutor informed the barrister that the police were probably going to discontinue the prosecution. Despite this the matter was given a hearing date.

However, at the hearing the police prosecutors informed the court that they were discontinuing the proceedings, and the charge was



dismissed.

Case study two

A solicitor referred a man living in rural NSW who had purchased a property which, as a result of the realignment of a highway that ran through the property and a subsequent conveyancing error, saw the vendors transfer a 27 hectare parcel of land which, the court found, the parties had never intended to be part of the sale. Nobody discovered the mistake until after completion. The man, as purchaser, was being sued for rectification of the contract and re-transfer of the 27 hectare parcel. However, as he had obtained finance for the purchase on the basis that he was buying 278 (not 251) hectares (as the contract expressly stated) he had encountered difficulties with his financier bank. His solicitor and barrister had also ceased to act for him.

The scheme was able to arrange another barrister to appear at the

Promoting access to justice

Legal Assistance Referral Scheme (LARS)

hearing in Equity. Ultimately the judge ordered that the 27 hectare parcel of land be re-transferred to the vendors. However, his Honour also found that the vendors had breached their warranty in the contract that 278 hectares was being sold and ordered that they pay the purchaser a sum of money. The client was able to use this sum to resolve his difficulties with the bank. Each party was ordered to pay their own costs.

Case study three

The Law Society Pro Bono Scheme referred a young farmer from the People's Republic of China whose application for a protection visa had been rejected by the Department of Immigration & Community and also the Refugee Review Tribunal and was due to come before the full Federal Court on appeal. The appellant came from a long generation of farmers whose land had been repossessed by the PRC Government without due compensation. The appellant organised anti-government demonstrations in respect of the dispossession and was subsequently gaoled, beaten and placed on the Public Security Bureau's wanted list. Both the department and the RRT made adverse credibility findings against the appellant, primarily on the basis that they were not satisfied of the appellant's identity.

The scheme referred the matter to a barrister and following the first day of an appeal to the Federal Court, the respondents conceded that the RRT's decision was affected by jurisdictional error. This concession was made because the s424A letter sent to the appellant did not adequately ensure that the appellant understood the relevance of departmental movement records because the discrepancy between those records and the appellant's account of events could be used by the tribunal to draw an adverse conclusion about the appellant's general credibility. By consent, the court ordered that the matter be remitted to the RRT to be determined again according to law.

Case study four

A south coast legal centre referred an Aboriginal woman whose daughter had apparently been murdered. Her body was found in bushland in the Southern Highlands in October 2003. She had been working in the sex industry in Port Kembla and had been missing for

many months. The inquest into the daughter's death was set down for five days at Albion Park. The mother had expressed a concern regarding the role of a rehabilitation centre in her daughter's death. In particular she informed the community legal centre that an employee, since deceased, was suspected of involvement. Given that the establishment was intended to steer young people away from a life of violence, homelessness and addiction, such as that experienced by her daughter, it was imperative the inquest consider the culpability, if any, that employees or associates of the centre may have had in the death of this disadvantaged and vulnerable young woman.

The scheme referred the matter to a Wollongong-based barrister who travelled each day, together with her reader, to Albion Park. The scheme's involvement ensured that the mother was fully appraised of the workings of the coronial system in her daughter's case. The coroner found that the person of interest was responsible for the deceased's death.

Case study five

The Law Society Pro Bono Scheme referred a woman employed by a large hotel chain in Newcastle. She was working as a room attendant on a casual basis with a regular roster, subject to permanent WorkCover conditions due to migraine headaches and a back injury, which were sustained at work. After her return to work regime had concluded she started to be treated differently by her employer on the basis of her disability – the injuries were ongoing. She alleged that because of her disability she was not being rostered for the usual number of shifts. The employer denied the allegations, notwithstanding that two years had passed where she had not been rostered at all. There were no performance issues.

The applicant brought a claim to the Human Rights and Equal Opportunity Commission in Newcastle under the Disability Discrimination Act; a conciliation was held in Newcastle. The scheme referred the matter to a barrister who travelled to Newcastle to appear at the conciliation. After three weeks of negotiations, the employer agreed to pay a monetary sum to the applicant, provide an apology and review the rostering system.

Legal Aid Committee

The focus of the committee's work throughout the past year was, together with the Legal Aid Commission of NSW, the convening of a legal aid conference that considered the present and future relationship between the commission and the profession.

The conference, held on 29 October in the Bar Association Common Room, was well attended and provided a unique opportunity for barristers to make a direct contribution to improving legal aid public policy in NSW. The then president, Michael Slattery QC, introduced the session, with Geoff Lindsay SC acting as chair. Speakers included Bill Grant, director, Legal Aid NSW, Brian Sandland, director, criminal law, Legal Aid NSW, Anita Anderson, director, grants, Legal Aid NSW, Tim Game SC, Phillip Boulten SC and Nicole Carroll.

The committee also prepared a submission on the Legal Aid Commission's Review of Fee Structure For Counsel discussion paper. The review of the legal aid fee structure it is hoped will ensure that barristers receive more appropriate remuneration for all the legal aid work. The committee appreciated the invitation by Legal Aid NSW to comment on the discussion paper and acknowledges the spirit of co-operation demonstrated by their review.

The committee continues to concentrate on the maintenance of a good working relationship with the New South Wales Legal Aid Commission. The Bar Association appreciates membership on many of the commission's panels, including Mental Health Advocacy, Serious Crime, General Crime, Veteran's Law and Civil Law.

Promoting access to justice

Legal Assistance Referral Scheme statistics

	2006-2007	2007-2008
High Court		
Application for special leave	6	4
Original jurisdiction	1	-
Total	7	4
Federal Court		
Full bench appeals	4	3
Immigration	11	6
Administrative	2	-
Discrimination	1	1
Intellectual property	-	-
Trade practices	2	1
Native title	-	-
Bankruptcy	2	4
Total	22	15
Federal Magistrates Service		
Discrimination	1	-
Family law -Access	4	1
Family law -Child support	-	-
Family law -Residency	-	2
Immigration	11	17
Bankruptcy	2	5
Total	18	25
Supreme Court		
Court of Appeal	11	2
Court of Criminal Appeal	5	8
Common Law	18	15
Administrative	1	-
Equity	23	20
Criminal	5	1
Corporations List	-	1
Commercial	1	1
Family Provisions	2	4
Defamation	3	1
Professional Negligence	-	4
Total	69	57

	2006-2007	2007-2008
Family Court of Australia		
Full bench appeals	-	1
Access	9	7
Residency	4	6
Child support	-	1
Spousal maintenance	1	-
Property settlement	10	1
Costs hearing	1	2
Total	25	18
District Court		
Criminal	23	6
Civil	15	16
Care proceedings	1	4
Defamation	-	-
Victims compensation	-	1
Professional negligence	-	3
Total	39	30
Land and Environment Court	3	3
Australian Industrial Relations Commission	-	2
NSW Industrial Relations Commission	5	4
Local Court		
Criminal	21	19
Civil	10	17
Family matters - access	1	-
Family matters - property settlement	-	1
Family matters - child support	1	-
Total	33	37
Children's Court	1	1
Coroner's Court	1	4
Tribunals		
Administrative Appeals Tribunal	6	2
Administrative Decisions Tribunal	4	9
Consumer Trader Tenancy Tribunal	2	2
Victims Compensation Tribunal	1	-
Anti-Discrimination Board	1	2
Total	14	15

Promoting access to justice

Legal Assistance Referral Scheme statistics

	2006-07	2007-08
Referral source		
Community legal centre	31	33
Instructing solicitor	42	33
Law Society Pro Bono Scheme	35	31
Member of the public	34	30
Legal Aid	25	22
LawAccess	17	21
Judge / magistrate / registrar	19	17
Member of the bar	11	14
Member of parliament	1	5
PILCH	1	3
Pro bono director of a large firm	1	2
DPP	1	2
Welfare / community group	18	2
Web site hits	6000	9000

Client location		
Sydney Metropolitan Area		
West	77	56
North	47	41
South	26	33
East	10	12
Inner City	24	14
Central Coast	9	8
Country	25	15
Prison	8	18
Villawood Detention Centre	6	11
Interstate	4	7
Total	236	215

Types of work done		
Merit assessment	117	102
Advice (over and above initial merit assessment)	67	63
Conferences	41	38
Appearances	48	31
Matters settled	21	12
Appearances at hearing	29	27
Other (inc. second opinion & preparation of submission)	10	18

Rejection / No action		
Outside guidelines	55	38
Too late notification	7	2
No further information received / no further contact from applicant	25	33
Requires a solicitor	19	23
Eligible for legal aid	3	8
Subject to Federal Court RRT LAS	no data	5
Subject to Federal Court Pro Bono Scheme	no data	2
Referred to community legal centre	1	1
Briefed barrister to appear privately	4	1
Briefed solicitor to appear privately	3	-
Matter discontinued	2	-
Total	119	113

Turnaround		
Same day	15	10
Less than a week	22	16
1-2 weeks	27	28
2 weeks plus	53	48
Total	117	102

Basis brief accepted		
No fee - merit assessment	117	102
No fee - continuing involvement	64	65
Reduced fee - continuing involvement	29	21
Speculative / costs recovery - continuing involvement	24	16

Refused legal aid on basis of		
Merit	20	11
Financial	58	22
Outside guidelines	158	182

Matters considered by a barrister to have legal merit / prospects of success		
Yes	81	56
No	34	46

Questions as to professional conduct

The Professional Conduct Department

The role and work of the department

Complaints and notifications

The department facilitates the investigation of and reporting to the Bar Council on conduct complaints against barristers referred to the council by the legal services commissioner or made by the council itself. The department performs the same 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 Act and the *Legal Profession Regulation 2005*.

The deputy directors of the department serve as secretary to four professional conduct committees which meet throughout the year to investigate conduct complaints and notification matters arising during the year and carried forward from previous years. The work of the committees is reported upon later in this report, and information about the number and type of complaints and notification matters investigated and dealt with during the year appears in the tables at the end of this report.

Statutory role of the Bar Council

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. The council has a statutory obligation to deal with all complaints regarding barristers referred to it for investigation, as well as all show cause events and other matters notified by barristers or of which the council becomes aware which may adversely affect a barrister's fitness to hold a practising certificate or to remain on the roll of persons admitted as lawyers. 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 co-operatively in the referral, investigation and review of disciplinary matters.

Maintaining integrity of the profession

It is in members' interests 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 and reputation of the profession and the 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 enquiries from the public about the bar and the conduct of barristers.

Proceedings & protection of the public

A primary purpose of the *Legal Profession Act 2004* is to provide for the regulation of legal practice in New South Wales in the 'interests of the administration of justice and for the protection of clients ... and the public generally': s3. These twin concerns inform the decisions made by the courts and the tribunal in all disciplinary proceedings brought by the council.

The department is closely involved in working with external solicitors instructed by the council in proceedings brought by the council against barristers and lawyers in the Administrative Decisions Tribunal, the Supreme Court and Court of Appeal. Tables setting out the results of disciplinary proceedings in respect of which judgements have been delivered in the last two years appear at the end of this report. Links to these decisions can be found on the association's web site.

On 17 June 2008, in the most recent judgement delivered by the Court of Appeal in the reporting year, the court ordered that the name of Patrick Power be removed from the roll. On 21 May 2008, the Administrative Decisions Tribunal in its most recent judgement delivered during the reporting year, ordered that the name of John Punch be removed from the roll. The judgements consider the question of the duty of candour owed by legal practitioners to the court and, in the Court of Appeal proceedings, the privilege against self incrimination. In both cases, adverse inferences were drawn following a failure by each of Power and Punch in their respective proceedings to give evidence.

A brief case note on the judgement in the Punch matter appears at the end of this report.

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 *Legal Profession Act 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 Bar Association's web site.

Conditions on practising certificates

In dealing with a complaint or show cause event, the Bar Council may attach conditions to practising certificates. The department monitors compliance by barristers with conditions attached to practising certificates and as at 30 June 2008, 20 barristers held practising certificates subject to financial and/or reporting conditions. Compliance with these conditions requires provision to the council of quarterly reports from approved accountants in whose hands barristers have placed control of their financial affairs and/or the provision of reports from medical practitioners.

Questions as to professional conduct

The Professional Conduct Department

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 counsel on 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. A barrister wishing to have a record of his or her discussion with senior counsel should, as soon as practicable after speaking with senior counsel, send a letter to 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*, last published on 18 February 2008 in *In Brief*, is available on the association's web site.

Lay and academic members

Each of the investigating professional conduct committees has been privileged to have as participants both academic and lay members. Two new lay members were appointed at the start of 2008 to replace lay members whose terms of appointment expired at the end of 2007. One new academic member was appointed in May 2008.

On Professional Conduct Committee #1, Denise Aldous, John Freeman and Geraldine Walsh continued to serve as lay members and Dorne Boniface from the University of New South Wales continued as the academic member. Professor Peter McGovern of the University of Notre Dame joined the committee as an additional academic member in July 2007 and served until the end of that year.

Michelle Sanson, then of the Faculty of Law at the University of Technology, served as the academic member on the Professional Conduct Committee #2. Geoff Geraghty AM, Bronwyn Preston and Mary Werick continued to serve as lay members.

Rosemary Allsopp joined Professional Conduct Committee #3 as a lay member at the start of 2008. Peter Cassuben and Sandra Fleischmann OAM continued to serve as lay members. Maxine Evers of the Faculty of Law at the University of Technology served as the academic member.

John Girdwood served as a lay member on Professional Conduct Committee #4 from July 2007 until the end of that year. Lyndsay Connors and Judith Butlin continued to serve as the lay members. Andrew Buck of Macquarie University, Division of Law, continued as the academic member.

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

Barrister members

The Bar 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 highly valued by the council.

The work of the professional conduct committees

As provided for under the *Legal Profession Act 2004*, the council delegated to four professional conduct committees its investigative (but not its decision making) powers under the Act to investigate complaints, show cause events and other matters involving professional conduct issues.

Applications to the Legal Profession Admission Board

Professional Conduct Committee #2 alone reports to the Bar Council on applications made to the Legal Profession Admission Board for admission or re-admission as lawyers and applications for early declarations under s26 *Legal Profession Act 2004*. Under s26, a person may apply to the Admission Board for a declaration that matters disclosed by the person will not, without more, adversely affect an assessment by the board as to whether the person is a fit and proper person to be admitted. The committee, having considered the application, makes a recommendation to the council to oppose or not oppose the application. The Admission Board is advised of the council's resolution and considers this prior to making its decision. During the year, PCC#2 reported to the council on one application for re-admission and three s26 early declaration applications.

Notification matters

In the financial year to 30 June 2008, six of the 15 notifications concerned tax offences and acts of bankruptcy. As these are show cause events under the Act, the council was required to make a determination in respect of them under s68(3) of the *Legal Profession Act 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 52 new complaints, 41 were referred by the commissioner to the council for investigation and 11 were made by the council. In respect of two complaints made out of time, there was no jurisdiction to investigate these as the commissioner in one matter, and the council in the other, resolved not to make a determination under s506 of the Act to deal with the complaints out of time. During the year, the committees investigated and reported to the council in respect of nine of the new conduct complaints, in addition to completing investigations and reporting on a further 38 complaints carried forward from previous

years. Of the total of 47 complaints dealt with by the council during the year, 33 complaints were dismissed, seven complaints were withdrawn and seven complaints were referred to the tribunal for hearing and determination.

Information regarding the number and type of complaints referred to, investigated and dealt with by the council during the year, as well as proceedings commenced in the tribunal and the results of proceedings completed during the year, is set out in the tables at the end of this report. This information is provided in compliance with s700 of the *Legal Profession Act 2004*.

Performance criteria

Section 597 of the *Legal Profession Act 2004* requires the Bar Council and the legal services commissioner to jointly develop performance criteria relating to the handling of complaints under Chapter 4 of the Act and to provide an assessment on their performance against the criteria in their annual reports.

Pursuant to a similar (although not identical) provision in the *Legal Profession Act 1987*, the council and the commissioner previously developed performance criteria for the handling of complaints by the council. These criteria have continued to apply since the commencement of operation of the new Act and tables have been published each year in the association's annual report recording the information relating to the criteria developed with the commissioner. In light of the council's experience under the new Act, at the time of publication, the council is reviewing the criteria with the commissioner. Statistical information concerning the handling of complaints by the council appears in the tables at the end of this report.

Two criteria by which the council assesses the effectiveness of its complaints handling process are the results of reviews conducted by the commissioner of decisions made by the council, and the results of proceedings instituted by the council in the Administrative Decisions Tribunal.

Requests for review by the commissioner

As at 30 June 2008, of the 33 complaints dismissed by the Bar Council during the year, eight were the subject of an application for review by the legal services commissioner. Five of these decisions have been upheld by the commissioner. The remaining three, in which the request for review was made by the council itself as well as the complainant, remain under partial review. Early in the reporting year, three applications for review were made in relation to decisions made by the council to dismiss complaints in the year ending 30 June 2007. All three decisions have been upheld by the commissioner.

Accordingly, in the eight reviews completed by the commissioner (of the 11 requests for review made during the year), the commissioner has upheld the decision of the council. The results of these reviews show that the investigative processes followed by the council are effective.

Results of proceedings instituted by the Bar Council in the Administrative Decisions Tribunal

Six decisions were delivered by the tribunal during the year. In five of these, the tribunal made the findings against the barrister sought by the council.

Responding to complaints

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

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

Members served with notices pursuant to s660 of the *Legal Profession Act 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 *Legal Profession Act 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 of s660 notices under the *Legal Profession Act 2004*) are available on the Bar Association's web site.

Further, under s672(5) of the *Legal Profession Act 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.

Issues arising from conduct complaints

Direct access matters

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

Questions as to professional conduct

The Professional Conduct Department

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. Barristers must also comply with the requirements under the *Legal Profession Act 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 on account of legal costs 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.

Fees recovery assistance

During the year the Bar Association received 17 requests to assist barristers in the recovery from solicitors of unpaid fees totalling \$88,517. As at 30 June 2008, \$84,681 was recovered on behalf of members. The association was able to recover fees in 15 of the 17 matters finalised. One request for assistance made during the year remains 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 last published in *In Brief* on 20 May 2008 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 *Legal Profession Act 2004* commenced operation), the provisions of Part 3.2 of the *Legal Profession Act 2004* apply. Where members were first instructed in a matter before 1 October 2005, the provisions of Part 11 of the *Legal Profession Act 1987* apply. Familiarity with the costs disclosure provisions is essential.

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 assistance should be directed to the department.

Case note

***New South Wales Bar Association v Punch* [2008] NSWADT 78 - 12 March 2008 (Judgement on findings)**

***New South Wales Bar Association v Punch* (No. 3) [2008] NSWADT 146 - 21 May 2008 (Judgement on penalty)**

In its judgement in *New South Wales Bar Association v Punch* [2008] NSWADT 78, the tribunal found that John Patrick Punch had led alibi evidence from an accused (his client) and four supporting witnesses knowing that evidence to be untrue.

The Bar Council submitted that Punch knew his client had been present when an assault and robbery occurred at a house in Roselands because, in a conversation Punch had with his client and a co-accused in the cells of Bankstown Police Station, following service of the brief of evidence,

the client told Punch he had been present. Unbeknown to Punch, police investigating a different crime had obtained an order under the *Listening Devices Act 1984* (NSW), permitting a listening device to be placed in the cell in which Punch's client and his co-accused were placed.

The tribunal ruled that the *Listening Devices Act 1984* (NSW) did not prohibit the use of the evidence of the conversation in the proceedings before it: *New South Wales Bar Association v Punch* [2006] NSWADT 191. That decision was upheld in the Court of Appeal: *Punch v New South Wales Bar Association* [2007] NSWCA 93.

The tribunal drew the inference, from the terms of the conversation in the cells and the circumstances in which it took place, that Punch held the belief that his client was present at the Roselands property when the assault and robbery took place.

The tribunal adopted the opinions expressed by the Court of Appeal in *New South Wales Bar Association v Meakes* [2006] NSWCA 324. Punch was present throughout the hearing of the disciplinary proceedings and chose not to go into the witness box to give sworn evidence. The tribunal drew an inference that Punch's sworn testimony would not have assisted his case in resisting a finding of professional misconduct and that the state of Punch's knowledge did not change between the conversation in the police cells and the date of trial, an inference that Punch's counsel had argued should be drawn.

In its judgement on penalty (*New South Wales Bar Association v Punch* (No. 3) [2008] NSWADT 146), the tribunal held that misconduct of such gravity inevitably leads to a finding of professional misconduct, and noted at [19] of its judgement:

The respondent has not placed before the tribunal any evidence as to the circumstances, which motivated him to lead the evidence in 1995. He has not acknowledged that he acted improperly. He has not shown any contrition. He has not led any evidence of rehabilitation. Evidence on each of these matters would to a greater or lesser extent, be relevant to the question of the respondent's fitness to practise at the present time (cf *A Solicitor v The Law Society of New South Wales* (2003) 216 CLR 253 at [37]).

When considering whether to remove Punch's name from the roll, the tribunal found at [20] that:

The respondent's misconduct in 1995 shows that at that time he lacked the qualities of character and trustworthiness which are necessary attributes of a person entrusted with the responsibilities of a legal practitioner (cf *In re A Practitioner* [1984] 36 SASR 590 at 593 per King CJ).

and noted there is no evidence before the tribunal that there had been a change of character or trustworthiness.

Having regard to the need for the protection of the public, the public confidence in the integrity of the disciplinary process itself and the reputation of the profession, the tribunal held that its orders that Punch's practising certificate be cancelled and Punch's name be removed from the roll take effect immediately.

Professional conduct statistics

Results of disciplinary cases in the New South Wales Supreme Court & Court of Appeal

Financial Year	Proceedings	Orders
2008		
17.06.08	Power, Patrick John Piers	Guilty of professional misconduct. Not a fit and proper person to remain on the roll. Order that name be removed from the roll.
29.08.07	Davison, William Roy	Davison's appeal against ADT order that his name be removed from the roll dismissed.
2007		
19.06.07	Sahade, Marcel V	Bar Council's appeal against ADT decision & Sahade's cross-appeal dismissed.
30.04.07	Perry, Mark Andre	Guilty of professional misconduct. Not a fit and proper person to remain on the roll. Order that name be removed from the roll. Order restraining Perry from practising as a barrister in contravention of s14(1) LPA 2004.
06.12.06	Meakes, Timothy	Appeal by Bar Council allowed. Orders of ADT of 08.03.06 set aside. Guilty of professional misconduct & unsatisfactory professional conduct. Public reprimand.

Notifications made to the Bar Council during the year of offences & acts of bankruptcy required to be notified under the Legal Profession Act 2004

	Notifications by barristers	Notifications by applicants for pc
Tax offences	2*	2^
Acts of bankruptcy	2≈	-
Serious offences	2~	-
Prescribed concentration of alcohol	3	2
Traffic offences	1	-
Other	-	1
Sub-totals	10	5
Total number of notifications made		15

* One barrister notified two tax offences, the other barrister notified three tax offences.

≈ One barrister notified two acts of bankruptcy being the service of a creditor's petition & the making of a sequestration order. The other barrister notified one act of bankruptcy.

~ Two barristers, pursuant to s55 LPA 2004, notified being charged with three offences each. In respect of one barrister, all three charges have been dismissed. In respect of the other barrister, proceedings are not yet concluded.

^ One applicant notified two tax offences, the other notified three tax offences.

Professional conduct statistics

Number & type of complaints *made* to the Bar Council during the year

Figures comprise complaints referred by the LSC to the Bar Council for investigation and complaints made by the Bar Council.

Type of complaint	Number
Acting contrary to/failure to carry out instructions	4
Acting without instructions	1
Breach costs disclosure provisions/failure to account	2
Breach of <i>Barristers' Rule 35</i>	1
Breach of <i>Barristers' Rule 80</i>	2
Breach of <i>Barristers' Rule</i> (Other)	3*
Breach of confidentiality	1
Breach of <i>LPA 2004</i> provisions	1
Conflict of interest	6
Delay/failure to provide chamber work	1
Failure to adduce available evidence	1
Failure to advise properly or at all	1
Incompetence in court	3
Incompetence in & out of court	4
Misleading conduct/dishonesty	5
Other unethical conduct	8
Overcharging and/or over servicing	3
Personal conduct	1
Practising without a practising certificate	3*
Rudeness/discourtesy	1
Sub-total	52
Less complaints made but no s506 determination/no jurisdiction	2
Total number of complaints	50

*Two complaints, one from each type, were made out of time. No determination under s506 *LPA 2004* made. No jurisdiction to investigate the complaints.

Source of complaints made to the Bar Council during the year

Complainant	Number
Bar Council	11*
Barrister	3
Client/Former Client	19
Instructing Solicitor	3
Legal Services Commissioner	2^
Opposing Client	10*
Opposing Solicitor	1
Other	3
Sub-total	52
Less complaints made but no s506 determination/no jurisdiction	2
Total number of complaints	50

* Two complaints, one from each source were made out of time. No determination under s506 *LPA 2004* made. No jurisdiction to investigate the complaints.

^ The LSC was the complainant. This is distinct from complaints made by others referred by the LSC to the Bar Council for investigation.

Number of consumer disputes referred to mediation during the year & the results of mediation

Number	Outcome
Nil	

Number & type of complaints *investigated* during the year by the Bar Council

Note: All complaints were investigated by the Bar Council. None were investigated by an independent investigator under s532 LPA 2004. Figures include complaints remaining under investigation as at 30.06.08, all complaints in respect of which the Bar Council made a decision & complaints that were withdrawn during the year.

Complaint type	Complaints investigated that were made during the year	Complaints investigated that were made in previous years
Acting contrary to/failure to carry out instructions	4	2
Acting without instructions	1	4
Breach costs disclosure provisions & failure to account	2	2
Breach of <i>Barristers' Rule</i> 35	1	1
Breach of <i>Barristers' Rule</i> 80	2	-
Breach of <i>Barristers' Rule</i> (Other)	2*	4
Breach of confidentiality	1	-
Breach of <i>LPA 2004</i> provisions	1	-
Breach of undertaking	-	3
Conflict of interest	6	3
Delay/failure to provide chamber work	1	3
Failure to adduce available evidence	1	-
Failure to advise properly or at all	1	-
Failure to appear	-	1
Failure to communicate	-	1
Incompetence in court	3	2
Incompetence in & out of court	4	7
Misleading conduct/dishonesty	5	4
Other unethical conduct	8	8
Overcharging and/or over servicing	3	4
Personal conduct	1	1
Practising without a practising certificate	2*	2
Rudeness/discourtesy	1	-
Sub-totals	50	52
Less complaints made but no s506 determination/no jurisdiction	2	
Total number of complaints investigated:		100

Complaints where no s506 determination made: 2

* Two complaints, one from each type, were made out of time. No determination under s506 LPA 2004 made. No jurisdiction to investigate the complaints.

Professional conduct statistics

Number & type of complaints dismissed during the year by the Bar Council

Complaint type	Complaints made during the year	Complaints made in previous years
Acting contrary to/failure to carry out instructions	1	2
Breach of <i>Barristers' Rule</i> 35	-	1
Breach of <i>Barristers' Rule</i> (other)	-	2
Breach of undertaking	-	2
Conflict of interest	3	1
Failure to adduce available evidence	1	-
Incompetence in court	1	2
Incompetence in & out of court	-	3
Misleading conduct/dishonesty	2	2
Other unethical conduct	-	6
Overcharging and/or over servicing	-	2
Practising without a practising certificate	-	2
Sub-totals	8	25
Total number of complaints dismissed:		33

Number & type of complaints in respect of which an Australian lawyer was reprimanded or cautioned during the year by the Bar Council

Complaint Type	Complaints made during the year	Complaints made in previous years
Nil	0	0

Number & type of complaints withdrawn during the year

Complaint Type	Complaints made during the year	Complaints made in previous years
Breach costs disclosure provisions & failure to account	-	1
Conflict of interest	-	1
Delay/failure to provide chamber work	1	2
Incompetence in & out of court	-	1
Other unethical conduct	-	1
Sub-totals	1	6
Total number of complaints withdrawn:		7

Number & type of complaints referred by the Bar Council to the Administrative Decisions Tribunal during the year

Complaint type	Complaints made during the year	Complaints made in previous years
Acting without instructions	-	2
Conflict of interest	-	1
Incompetence in & out of court	-	1
Misleading conduct/dishonesty	-	2
Personal conduct	-	1
Sub-totals	0	7
Total number of complaints referred to ADT:		7

Number & type of complaints in respect of which proceedings were instituted in the Administrative Decisions Tribunal during the year by the Bar Council

Complaint type	Proceedings instituted in ADT
Acting without instructions	1
Conflict of interest	1
Incompetence in and/or out of court	1
Overcharging and/or over servicing	1
Personal conduct	1
Total number of proceedings instituted in the ADT	5

Number of matters referred to mediation under section 336 or Division 5 of Part 4.3 during the year & the outcome of those matters

Number	Outcome
Nil	

Number of compensation orders made under section 540(2)(c)

Number
Nil

Professional conduct statistics

Summary of the results of proceedings in the Administrative Decisions Tribunal completed during the year

Note: This includes proceedings in respect of which findings were delivered but penalty orders not made during the year

Proceedings	Findings	Penalty
Howen	22.05.08 Professional misconduct x 2 Unsatisfactory professional conduct x 2	As at 30.06.08 Awaiting penalty orders.
Caffrey	18.03.08 Unsatisfactory professional conduct	As at 30.06.08 Awaiting penalty orders.
Punch	12.03.08 Professional misconduct	22.05.08 Name removed from the roll. Practising certificate cancelled.
Cairns	21.01.08 Unsatisfactory professional conduct	21.01.08 Public reprimand. Complainant's claim for compensation referred to LSC for s573(1)(b) determination.
Howen	5.09.07 Application alleging unsatisfactory professional conduct dismissed	22.05.08 One third of Howen's costs to be paid by the Public Purpose Fund.
Raphael	5.09.07 Unsatisfactory professional conduct	8.01.08 Public reprimand.

Number of complaints not finally dealt with at the end of the year

Age of complaints not finally dealt with at the end of the year

Note: All complaints are at the stage where they remain under investigation

Age of complaints not finally dealt with at the end of the year	Number	Percentage of total number	Complaints made in year ending 30 June
Up to six months	22	40%	2008
Between seven & twelve months	19	34%	2008
Between thirteen & eighteen months	7	13%	2007
Between nineteen & twenty four months	3	5%	2007
Up to three years	2	4%	2006
Up to four years	1	2%	2005
Up to five years	1	2%	2004
Total	55		

Time intervals involved in the complaint process, including the time between receipt of a complaint and the decision of the Bar Council under Part 4.5 in respect of the complaint

Note: Figures relate to complaints in respect of which a decision was made by the Bar Council during the year

Time intervals between receipt of complaint and decision of the Bar Council	Number	Percentage of total number
Up to six months	9	19%
Between seven & twelve months	13	28%
Between thirteen & eighteen months	15	32%
Between nineteen & twenty four months	5	11%
Up to three years	4	8%
Up to four years	1	2%
Total	47	

Committees of the Bar Association

The following lists display committee membership during the 2007-2008 financial year. The ‘*’ symbol denotes committees that ceased operation at the end of calendar year 2007.

Alternative Dispute Resolution Committee

Angela Bowne SC (chair)
John West QC
Peter Callaghan SC
Leonard Levy SC
Campbell Bridge SC
Bruce Hodgkinson SC
Ian Bailey SC
Graham Barter
Richard Bell
Mary Walker
Ian Davidson
Susan Phillips
Andrew Bulley

Bar Association staff member

Kim Kemp

Bar News Committee

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

Bar Association staff member

Chris Winslow

Criminal Law Committee

Stephen Odgers SC (chair)
Anthony Bellanto QC
Tim Game SC
Phillip Boulten SC

John Stratton SC
Carolyn Davenport SC
Daniel Howard SC
Richard Button SC
Elizabeth Wilkins SC
Margaret Cunneen SC
Patrick Barrett
Susan Kluss
Mark Austin
Greg Farmer
Robert Bromwich
Frank Veltro
Sally Dowling
Donna Spears
Maria Cinque
Matthew Johnston
Gaby Bashir
Paul Kerr
Joanne Gallagher
Sarah Huggett
Richard Wilson
Warwick Hunt

Bar Association staff member

Cindy Penrose

Common Law Committee

Ross Letherbarrow SC (chair)
Peter Garling SC (chair)
Andrew Morrison SC
Larry King SC
John Harris SC
Stephen Campbell SC
David Russell SC
Simon Harben SC
Richard McHugh SC
Michael Adamo
Peter Frame
Robert Harrington
Lorna McFee
Richard Royle
David Hooke
Steven Woods
Kylie Nomchong

Andrew Stone
Paresh Khandhar
Elizabeth Beilby
Graham Grant
Julia Lonergan

Bar Association staff member

Alastair McConnachie

Costs and Fees Committee

Tom Bathurst QC (Chair)
Bernie Coles QC
Dr Chris Birch SC
Mark Brabazon
Rachel Pepper
Philippe Doyle Gray
Belinda Lyus (clerk)

Bar Association staff member

Jennifer Pearce

Equal Opportunity Committee

Liz Olsson SC (chair)
Angela Bowne SC
Simon Kalfas SC
Kate Eastman
Rhonda Bell
Melissa Fisher
Norman Laing
Geoffrey Johnson
David Robertson
Julia Baird
Richard Weinstein
Phillipa Gormly
Trish McDonald
Michelle Painter
Patrick Griffin
Jocelynne Scutt
Rhonda Bell
David Price
Nicolette Bearup

Bar Association staff member

Cindy Penrose

Family Law Committee

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

Bar Association staff member

June Anderson

Human Rights Committee

Chris Ronalds SC (chair)
Anna Katzmann SC (chair)
Elizabeth Wilkins SC (deputy chair)
Ian Barker QC
Nicholas Cowdery QC
Richard Button SC
Paul Winch
Alissa Moen
Richard Lancaster
Simeon Beckett
Kate Eastman
Angelina Gomez
David Knoll
Sarah Pritchard
Naomi Sharp
Mandy Tibbey
Ben Kasep
Sera Mirzabegian
Ruth Higgins
Craig Lenehan
Prof. Andrew Byrnes

Bar Association staff member

Cindy Penrose

Indigenous Barristers Strategy Working Party

Chris Ronalds SC (chair)

David Frearson SC
Andrew Haesler SC
Mullenjaiwakka
Peter Miller
Tony McAvoy
Norman Laing
Lincoln Crowley
Professor David Barker
Professor Larissa Behrendt
Associate Professor Jill Hunter

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
Phillip Boulten SC
Linda McSpedden
Stephen Hanley
Susan Kluss
Angus Grant
Mark Buscombe
Luke Brasch
Rachel Francois
Nicole Carroll
Joseph Dalzell AM
Charles Cassimatis

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)
Kylie Day (chair)
Naomi Sharp
Andrew Justice
Rachel Francois
Adam Casselden
John-Paul Redmond
Madeleine Avenell
Teni Anne Berberian
Craig Biscoe
Nicolette Bearup
Kara Shead
Esther Lawson
Jennifer Single
Angelina Gomez
Gillian Mahony
Ruth Higgins
Spiro Tzouganatos
Warwick Hunt
Sandy Dawson
Elizabeth Raper

Bar Association staff member

Katie Hall

Committees of the Bar Association

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 SC
Ian Tonking SC
Michael Loewenstein
Greg Farmer
David Hooke
Anne Healey
Mark Best
Hugh Stowe
Alister Abadee
Philippe Doyle Gray
Naomi Sharp
Sandy Dawson
Edward Muston
Madeleine Avenell
Cynthia Cochrane

Academic member

Dorne Boniface
Professor Peter McGovern

Lay members

Denise Aldous
John Freeman
Geraldine Walsh

Secretary

Jocelyn Sparks
Sarah Colquhoun

Professional Conduct Committee 2

Peter Garling SC (Chair)

Ian Temby AO QC
Peter Bodor QC
Liz Olsson SC
Peter Hamill SC
James Stevenson SC
Gregory Nell SC
Virginia Lydiard
Jay Anderson
Michael Jenkins
Richard Weinstein
Sandra Duggan
Dr James Renwick
David Ash
Vahan Bedrossian
Philip Carr
Edward Cox
Rachel Francois
Paul Kerr
Ruth Higgins

Academic member

Dr Michelle Sanson
Professor Hilary Astor

Lay members

Geoff Geraghty AM
Bronwyn Preston
Mary Werick

Secretary

Helen Barrett

Professional Conduct Committee 3

Phillip Boulton SC (chair)
Justin Gleeson SC (chair)
David Higgs SC
David Davies SC
Robert Beech-Jones SC
Graham Turnbull SC
Lorna McPhee
Barry Cross
Ian Davidson
David Jordan
James Lockhart
Michael McHugh

Richard Lancaster
Penny Sibtain
Paul Kerr
Natalie Adams
Angela Seward
Margaret Holz
Philip Carr

Academic member

Maxine Evers

Lay members

Peter Cassuben
Rosemary Allsopp
Sandra Fleischmann OAM

Secretary

Jocelyn Sparks
Stephanie Mancell

Professional Conduct Committee 4

Bernie Coles QC (chair)
Larry King SC
David J Russell SC
David Williams SC
Andrew Colefax SC
Peter Hamill SC
Mark Hobart SC
Peter Tomasetti SC
Brendan Hull
Julian Van Aalst
Garry McGrath
Geoffrey Rich
Igor Mescher
Anne Healey
Mark Best
Carol Webster
Patrick Griffin
Kylie Nomchong
Sigrid Higgins
David McLure
Margaret Holz

Academic member

Dr Andrew Buck

Committees & sections of the Bar Association

Lay members

Judy Butlin
Lyndsay Connors
John Girdwood
Simon Hayes

Secretary

Helen Barrett

Senior Counsel Selection Committee

Michael Slattery QC
Anna Katzmann SC
Stephen Robb QC
Lou Lampretti 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

Sections

Administrative Law Section

Convenor: Alan Robertson SC

Constitutional Law Section

Convenor: Stephen Gageler SC

Women Barristers Forum

President:	Christine Adamson SC Mary Walker
Vice-presidents:	Linda McSpedden Sarah Pritchard Stephanie Fendekian Sue Kluss
Treasurer:	Kerrie Leotta
Assistant treasurer:	Mandy Tibbey Maria Gerace
Secretary:	Julie Soars Erika Techera
Assistant secretary:	Nicolette Bearup

Appointments to the bench

For the year ended 30 June 2008

Supreme Court of New South Wales

The Hon Justice James Allsop
The Hon Justice Lucy McCallum
The Hon Justice Nigel Rein

District Court of New South Wales

His Hon Judge Leonard Levy SC
His Hon Judge Michael Elkaim SC
His Hon Judge Michael King SC

Federal Court of Australia

The Hon Justice Geoffrey Flick

Bar Association representatives on educational bodies

For the year ended 30 June 2008

Legal Profession Admission Board

Peter Taylor SC
Jeremy Gormly SC
Garry McGrath

Legal Qualifications Committee

John Fernon SC
Janet Oakley
Philippe Doyle Gray

Law Examinations Committee

Michael Christie

University of Sydney

Faculty of Law

Peter Garling SC

Law School Advisory Board

Jennifer Stuckey-Clarke
University of NSW, Faculty of Law

Margaret Holz

Law Extension Committee

Peter Hamill SC
Anthony O'Brien

University of Technology, Sydney - Faculty Board

Geoff Lindsay SC

University of Western Sydney

External Law Advisory Committee

Robert O'Neill

University of Wollongong

Faculty of Law, Visiting Committee

Bruce Collins QC

Court liaison members

For the year ended 30 June 2008

State courts and tribunals

New South Wales Court of Appeal

Donald Grieve QC

Supreme Court of New South Wales

Common Law Division

Richard J Burbidge QC

Equity Division

Robert G Forster SC

Possessions List

James Stevenson SC

Admiralty List

Sandy Street SC

Land and Environment Court

Malcolm G Craig QC

Industrial Relations Commission of New South Wales

Maxwell Kimber SC

Local Court of New South Wales

Kate Traill

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

Court committees and working parties

For the year ended 30 June 2008

State courts and tribunals

Uniform Rules Committee

Geoff Lindsay SC

Criminal Trial Efficiencies Working Group

Stephen Odgers SC

Court of Appeal Users Group

John Maconachie QC

David Davies SC

Justin Gleeson SC

Court of Criminal Appeal Users Group

Stephen Odgers SC

Supreme Court of New South Wales

Rules Committee

Geoff Lindsay SC

Liz Olsson SC (Deputy)

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

Liz Olsson SC

Lachlan Gyles

Mark Ashhurst

Elizabeth Collins

Common Law Division Civil Users Committee

Peter Deakin QC

Tony Hewitt SC

Lorna McFee

Corporations List Users Group

Malcolm Oakes SC

Robert Newlinds SC

James Thomson

James Johnson

Equity Liaison Group

Robert Forster SC

Robert Newlinds SC

Robert Harper SC

Jane Needham SC

Mark Ashhurst

Miles Condon

Probate Users Group

Michael Willmott SC

ADR Steering Committee

Mary Walker

Land and Environment Court

Users Group

Jeffrey Kildea

Industrial Relations Commission

Rules Committee

Ian Neil SC

Arthur Moses

Users Group

Maxwell Kimber SC

Trish McDonald

Court committees and working parties (continued)

District Court

Rule Committee

Paresh Khandhar

Civil Business Committee

Peter Deakin QC

Larry King SC

Criminal Listings Review Committee

Kate Traill

Dust Diseases Tribunal

Rules Committee

Wendy Strathdee

Brian Ferrari (deputy)

Workers Compensation Commission

Users Group

Michael Jenkins (until March '08)

Gregory Beauchamp (from March '08)

Federal 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

Appointments to national legal professional bodies

For the year ended 30 June 2008

Law Council of Australia

Director

Anna Katzmann SC

Alternate Director

Philip Selth OAM

Access to Justice Committee

Christopher Whitelaw

AustLII Working Group

Jennifer Pearce

Indigenous Legal Issues Committee

Chris Ronalds SC

Dr Sarah Pritchard

Anthony McAvoy

Alternative Dispute Resolution Committee

Mary Walker (chair)

Anti-Money Laundering Working Group

Tim Game SC

Young Lawyers Committee

Esther Lawson

Client Legal Privilege Advisory Committee

Cameron Moore

Dr Ruth Higgins

Equalising Opportunities in the Law Committee

Trish McDonald

Harmonisation of Occupational Health and Safety Laws Working Party

Mark Cahill

Ingmar Taylor

Judicial Appointments Working Group

Philip Selth OAM

LCA/SCAG National Legal Profession Officers' Working Group

Philip Selth OAM (alternate member)

Model Conduct Rules Working Group

Jennifer Pearce

Military Justice Working Group

Dr James Renwick

Model Equal Opportunity Briefing Policy Working Group

Trish McDonald (alt Julie Baird)

Dominique Hogan-Doran

National Criminal Law Committee

Tim Game SC (co-chair)

Bret Walker SC

Stephen Odgers SC

Phillip Boulten SC

National Profession Harmonisation Committee

Philip Selth OAM

Personal Injuries & Compensation Committee

Ross Letherbarrow SC

Australian Bar Association

President

Tom Bathurst QC

Australian Advocacy Institute Board

Her Honour Judge Ann Ainslie-Wallace

Statutory appointments

For the year ended 30 June 2008

Administrative Appeals Tribunal

Peter Taylor SC

Administrative Decisions Tribunal

General Division

Deputy presidents

Peter Callaghan SC

Jane Needham SC

Liz Olsson SC

Judicial members

Gail Furness

Sigrid Higgins

Robert Wilson

Guardianship & Protected Estates List

Julian Millar

Legal Services Division

Peter Callaghan SC (deputy president)

Paul Blackett SC

Gail Furness

Robert Macfarlan QC

Sharron Norton SC

Lionel Robberds QC

Wendy Robinson QC)

Alison Stenmark SC

Robertson Wright SC

Equal Opportunity Division

Jane Needham SC (deputy president)

Larissa Behrendt

Gail Furness

Richard Perrignon

Sarah Pritchard

Retail Leases Division

Peter Callaghan SC

Liz Olsson SC

Sigrid Higgins

Revenue Division

Jane Needham SC (divisional head)

Michelle Hirschhorn

Richard Perrignon

Council for Law Reporting

Bret Walker SC (editor)

Christine Adamson SC (chairperson)

Timothy Castle (deputy chairperson)

Noel Hutley SC

Ian Jackman SC

Geoff Lindsay SC

Peter Brereton

Motor Accidents Authority

Motor Accidents Council

Andrew Stone

Claims Assessment and Resolution Service

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 Boulton SC

Legal Aid Review Committees 2007/08

Committee No.1

John McCarthy QC

1st alternate: Paul Menzies QC

2nd alternate: Paul Blackett SC

Committee No.2

Winston Terracini SC

1st alternate: Anne Healey

2nd alternate: Mark Buscombe

Family Law Legal Aid Review Committee No.1

Gregory Moore

1st alternate: Richard Schonell

2nd alternate: John Berry

Public Interest Human Rights Committee

Sarah Pritchard

Alternate: Nick Poynder

Law and Justice Foundation Board

Bret Walker SC

Nye Perram SC

Law Week Board

Philip Selth OAM

Patent and Trade Marks Attorneys Disciplinary Tribunal

Sigrid Higgins

Professional Standards Council

Brian Rayment QC (chair)

Public Interest Law Clearing House (PILCH)

Garry McGrath (vice president)

Geoff Lindsay SC (director)

New South Wales Bar Association

Financial report for the year ended 30 June 2008

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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 11 September 2008. The Bar Association 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 association') for the year ended 30 June 2008 and the auditors' report thereon.

Directors

The following persons were directors of the association during the whole of the financial year up to the date of this report:

D Ash	P Garling SC	P Khandhar	K M Trail
T Bathurst QC	A Healey	G McGrath	
B A Coles QC	M Holz	M McHugh	
M Cunneen SC	A J Katzmann SC	R Pepper	

The following persons were directors from the beginning of the financial year to 2 November 2007

R Francois	R Lancaster	N Sharp
L King SC	M J Slattery QC	E Olsson SC

The following persons were directors from 2 November 2007 up to the date of this report

P Boulten SC	R Higgins	J Needham SC	S Torrington
A Dawson	C Loukas		

A Haesler SC and A Street SC were appointed as directors on 25 June 2008 and 15 April 2008 respectively and continue in office at the date of this report.

J Gleeson SC was a director from the beginning of the financial year until his resignation on 11 April 2008.

L McCallum SC was appointed as a director on 2 November 2007 and resigned on 13 December 2007. N Perram SC was appointed on 13 December 2007 and resigned on 25 June 2008.

All directors are practising barristers.

Principal activities

The principal activities of the association 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.

Dividends

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

Review and results of operations

The Bar Association continued to engage in its principal activity during the financial year. The net surplus of the association for the year ended 30 June 2008 was \$330,447 (2007: \$59,960). This result represents a \$270,487 increase in net surplus from the prior year. The increase was as a result of a one-off grant from a bequest made specifically to be used for library purposes, and was used towards the renovation and upgrade of the library.

Significant changes in the state of affairs

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

Matters subsequent to the end of the financial year

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

Directors' report

unusual nature likely, in the opinion of the directors of the association to significantly affect the operations of the association, the results of those operations, or the state of affairs of the association in future financial years.

Association 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.

Likely developments and expected results of operations

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

Environmental regulation

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

Meetings of directors

Name	Meetings attended	Meetings held
Michael Slattery QC (president to 2/11/07)	8	8
Anna Katzmann SC (president from 8/11/07) (senior vice-president to 2/11/07)	21	22
Tom Bathurst QC (junior VP to 2/11/07) (senior vice-president from 8/11/07)	17	22
Bernard Coles QC (treasurer to 2/11/07) (junior vice-president from 8/11/07)	19	22
Justin Gleeson SC (treasurer from 8/11/07 to 14/4/08)	12	16
Alexander Street SC (treasurer from 14/4/08)	5	6
Rachel Pepper (secretary)	12	22
Larry King SC	6	8
Peter Garling SC	13	22
Liz Olsson SC	7	8
Phillip Boulten SC	10	14
Jane Needham SC	11	14
Lucy McCallum SC	2	2
Nye Perram SC	14	20
Andrew Haesler SC	-	-
Margaret Cunneen SC	15	22
Richard Lancaster	6	8
Stuart Torrington	7	14
Garry McGrath	19	22
Naomi Sharp	5	8
Rachel Francois	6	8
Kate Traill	15	22
Chrissa Loukas	10	14
Anne Healey	20	22
David Ash	17	22
Paresh Khandhar	17	22
Michael McHugh	17	22
Sandy Dawson	8	14
Margaret Holz	19	22
Ruth Higgins	10	14

From 1 July 2007 to 30 June 2008 there were 22 meetings. All directors are barristers.

Directors' report

Meetings of the Finance, Investment & Audit Committee

Name	Meetings attended	Meetings held
Tom Bathurst QC	1	2
Bernard Coles QC	2	2
Justin Gleeson SC	1	1
Alexander Street SC	1	1
Anne Healey	2	2
Michael McHugh	2	2

Insurance of officers

During the financial year the association has paid premiums in respect of directors' and officers' liability insurance contracts for the year ended 30 June 2008 and since the financial year, the association has paid or agreed to pay on behalf of the association, premiums in respect of such insurance contracts for the year ending 30 June 2009. Such insurance contracts insure against certain liability (subject to specific exclusions) persons who are or have been directors or executive officers of the association.

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.

Proceedings on behalf of the association

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

No proceedings have been brought or intervened in on behalf of the association with leave of the court under section 237 of the *Corporation 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 on page 51.

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

A Katzmann SC

President

A Street SC

Treasurer

Sydney, 11 September 2008

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 2008, 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

11 September 2008

Income statement

For the year ended 30 June 2008

	Note	2008 \$	2007 \$
Revenues from continuing operations	3	7,822,514	6,797,823
Employee benefits expenses		(3,319,066)	(2,989,157)
Legal and professional fees		(1,597,065)	(1,296,692)
Subscriptions		(508,137)	(495,020)
Communications and information technology expenses		(272,498)	(417,064)
Depreciation and amortisation expenses	4	(230,796)	(162,068)
Occupancy expenses		(373,135)	(350,498)
Advertising and marketing expenses		(194,811)	(166,053)
Financial expenses		(140,072)	(125,594)
Other expenses from ordinary activities		(650,568)	(653,326)
Surplus before income tax expense		536,366	142,351
Income tax expense	5	205,919	82,391
Net surplus		330,447	59,960

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

Balance sheet

For the year ended 30 June 2008

	Note	2008 \$	2007 \$
ASSETS			
CURRENT ASSETS			
Cash and cash equivalents	18(a)	9,929,236	9,364,454
Other receivables	7	256,113	212,677
Inventories		3,508	5,262
Current tax assets		49,048	-
Other assets	8	150,405	181,124
TOTAL CURRENT ASSETS		10,388,310	9,763,517
NON-CURRENT ASSETS			
Other financial assets	6	197,474	239,428
Deferred tax assets		6,099	6,542
Intangibles	9	210,193	
Plant and equipment	10	1,209,055	632,138
TOTAL NON-CURRENT ASSETS		1,622,821	878,108
TOTAL ASSETS		12,011,131	10,641,625
LIABILITIES			
CURRENT LIABILITIES			
Current tax liabilities		-	51,259
Trade and other payables	11	674,376	433,395
Employee benefits	12	471,381	305,292
Fees received in advance	13	4,868,048	4,082,997
TOTAL CURRENT LIABILITIES		6,013,805	4,872,943
NON-CURRENT LIABILITIES			
Employee benefits	12	79,211	144,093
Deferred tax liabilities	5	56,755	69,145
TOTAL NON-CURRENT LIABILITIES		135,966	213,238
TOTAL LIABILITIES		6,149,771	5,086,181
NET ASSETS		5,861,360	5,555,444
ACCUMULATED FUNDS			
Accumulated surplus		5,781,219	5,450,772
Reserves	14	80,141	104,672
TOTAL ACCUMULATED FUNDS		5,861,360	5,555,444

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 2008

	Note	Accumulated surplus	Reserves	Total accumulated funds
At 30 June 2006		5,390,812	74,863	5,465,675
Surplus for the year		59,960	-	59,960
Changes in the fair value of available-for-sale financial assets, net of tax	14	-	29,809	29,809
Total recognised income and expense for the year		59,960	29,809	89,769
At 30 June 2007		5,450,772	104,672	5,555,444
Surplus for the year		330,447	-	330,447
Changes in the fair value of available-for-sale financial assets, net of tax	14	-	(24,531)	(24,531)
Total recognised income and expense for the year		330,447	(24,531)	305,916
At 30 June 2008		5,781,219	80,141	5,861,360

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 2008

	Note	2008 \$	2007 \$
Cash flows from operating activities			
Receipts from operating activities		7,132,756	6,378,532
Payments to suppliers and employees		(5,989,299)	(6,233,529)
Dividends received		115,903	6,307
Interest received		514,880	427,485
Income tax paid		(217,866)	(13,388)
Net cash inflow from operating activities	18(b)	1,556,374	565,407
Cash flows from investing activities			
Payments for plant and equipment		(808,389)	(89,239)
Proceeds from sale of plant and equipment		-	150
Payments for intangibles		(210,193)	-
Payment for available-for-sale financial assets		-	(13,029)
Proceeds from sale of available-for-sale financial assets		26,990	-
Net cash outflow from investing activities		(991,592)	(102,118)
Net increase in cash and cash equivalents		564,782	463,289
Cash and cash equivalents at the beginning of the financial year		9,364,454	8,901,165
Cash and cash equivalents at the end of the year	18(a)	9,929,236	9,364,454

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

Notes to the financial statements

For the year ended 30 June 2008

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 Accounting Standards and other authoritative pronouncements of the Australian Accounting Standards Board (including Australian Accounting Interpretations), 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

This financial statement has been prepared under the historical cost convention, as modified by the revaluation of available-for-sale financial assets.

Critical accounting estimates and judgements

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 association's accounting policies. There are no estimates and judgements 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. Revenue is recognised for the major activities as follows:

(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) 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.

(iii) Dividends received

Revenue from dividends is recognised when the right to receive the payment is established.

(iv) Interest income

Interest income is recognised on a time proportion basis using the effective interest method.

(v) 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.

(vi) Other income

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

(vii) Donations

Revenue from donations is recognised upon receipt.

Notes to the financial statements

For the year ended 30 June 2008

(c) Income tax

The Bar Association 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 association are not brought to account for the purposes of calculating income for tax purposes.

Deferred income tax is provided in full, using the balance sheet method, on temporary differences arising between the tax bases of assets and liabilities and their carrying amounts in the financial statements. Deferred income tax is determined using tax rates (and laws) that have been enacted or subsequently enacted by the reporting date and are expected to apply when the related deferred tax assets are realised or the deferred tax liability is settled.

Deferred tax assets are recognised for temporary difference and unused tax losses only if it is probable that future taxable amounts will be available to utilise those temporary differences and tax losses.

(d) Leases

Leases in which a significant portion of the risks and rewards of ownership are not transferred to the association as lessee 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

Assets are tested 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 six 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) Other receivables

Other receivables are recognised initially at fair value and subsequently measured at amortised cost using the effective interest method, less provision for impairment. Other receivables are usually settled within 60 days from the date of recognition.

Collectibility of other receivables is reviewed on an ongoing basis. Debts which are known to be uncollectible are written off by reducing the carrying amount directly. An allowance account (provision for impairment of other receivables) is used when there is objective evidence that the association 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 Bar Association classifies its investments in the following categories: loans and receivables and available-for-sale financial assets.

Notes to the financial statements

For the year ended 30 June 2008

(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 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 reporting date. Investments are designated as available-for sale if they do not have fixed maturities or fixed or determinable payments and management intends to hold them for the medium to long term.

Fair value

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

Recognition and derecognition

Investments are initially recognised at fair value plus transactions costs. When securities classified as available-for-sale are sold, the accumulated fair value adjustments recognised in equity are included in the income statement as gains and losses from investment securities.

Subsequent measurement

Loans and receivables and held-to-maturity investments are carried at amortised cost using the effective interest method.

Available-for-sale financial assets are subsequently carried at fair value. Changes in the fair value of available-for-sale financial assets are recognised in equity.

Impairment

The Bar Association 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) 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 association 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 - 20 years
- refurbishment - 3 to 4 years
- furniture, computers, office machines and equipment - 3 to 5 years
- glasses, bar and kitchen equipment - 5 years

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.

Notes to the financial statements

For the year ended 30 June 2008

(k) Intangibles

Intangibles consist of expenditure, paid to external consultants, on software used to record the association's certification database. The development of the database will be completed and implemented during the next financial year.

(l) 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.

(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 employees' 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 Bar Association 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 presented 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 Bar Association 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 association. Financial details relating to the activities of the fund during the year are disclosed in note 19.

(r) New accounting standard and interpretations

Certain new accounting standards and interpretations have been published that are not mandatory for 30 June 2008 reporting periods. The Bar Association's assessment of the impact of these new standards and interpretations is set out below.

Revised AABS 101 *Presentation of Financial Statements* and AASB 2007-8 *Amendments to Australian Accounting Standards arising from AASB 101*

Notes to the financial statements

For the year ended 30 June 2008

A revised AASB 101 was issued in September 2007 and is applicable for annual reporting periods beginning on or after 1 January 2009. It requires the presentation of a statement of comprehensive income and makes changes to the statement of changes in equity, but will not affect any of the amounts recognised in the financial statements. If an entity had made a prior period adjustment or has reclassified items in the financial statements, it will need to disclose a third balance sheet, this one being as at the beginning of the comparative period. The Bar Association intends to apply the revised standard from 1 July 2009.

2. FINANCIAL RISK MANAGEMENT

The Bar Association's activities expose it to a variety of financial risks: market risk (including fair value interest rate risk and price risk), credit risk and liquidity risk. The Bar Association's overall risk management focusses on maintaining sufficient cash and maximising returns on the financial assets held under the policies approved by the board of directors.

Risks associated with the use of the financial instruments are measured using a method that reflects the expected impact on the results and the accumulated funds from the reasonable possible changes in the relevant risk variables below.

There is no formal established mandate or strategy to manage the above risks as the association's policy is to hold at least half of its assets in cash and cash equivalents so that there is little risk of change in value. Management is of the view that by ensuring that all cash and cash equivalents are held with financial institutions with at least an 'AA' rating, the risks are being managed.

There are no changes in the strategies used to manage the financial risks from the previous period.

(a) Market risk

Market risk is the risk that the fair value of future cash flows of financial instruments will fluctuate due to changes in market variables such as interest rates, foreign exchange and equity prices. Market risk is managed and monitored by ensuring all investment activities are undertaken in accordance with the policies approved by the board of directors.

(i) Price risk

The Bar Association is exposed to equity securities price risk. This arises from investments held by the association for which future prices are uncertain. These investments are classified on the balance sheet as available-for-sale financial assets. All securities investments present a risk of loss of capital.

This risk is managed through diversification and selection of securities.

The Bar Association's equity securities represent 1.64 per cent of total assets (2007: 2.25 per cent) hence price risk is not significant for the association and no sensitivity analysis has been shown.

(ii) Cash flow and fair value interest rate risk

The Bar Association's main interest rate risk arises from cash and cash equivalents; therefore the association's income and operating cash flows are subject to changes in market interest rates.

The Bar Association has cash deposits and other interest bearing deposits which have floating rates. At 30 June 2008, if interest rates had changed by 100 basis points all other variables held constant, surplus for the year would have been \$85,275 (2007: \$93,635) higher/lower as a result of higher/lower interest income.

(b) Credit risk

Credit risk represents the risk that the counterparty to a financial instrument will fail to discharge an obligation and cause the association to incur a financial loss. Credit risk is not considered to be significant to the association as the association does not hold any investments in debt securities and it does not have any significant loans/receivables at both reporting dates.

Credit quality

Main exposure of credit risk is on cash and term deposits. The credit quality of the financial assets is managed by the association by using the Standard & Poor's rating categories, in accordance with the policies of the board. The Bar Association has investments with Rabobank Australia Limited which has an 'AAA' rating and NAB which has an 'AA' rating.

Notes to the financial statements

For the year ended 30 June 2008

(c) Liquidity risk

Liquidity risk is the risk that the association will encounter difficulty in meeting obligations associated with financial liabilities. This risk is managed through investment in short term deposits and equity securities in Australian listed companies, which under normal market conditions are readily convertible to cash. In addition the association maintains sufficient cash and cash equivalents to meet normal operating requirements. It is for this reason management is of the view that the association is not exposed to any liquidity risk, as our minimum cash holdings over a 12 month period are not expected to fall below \$5.5m.

Maturity analysis for financial liabilities

Financial liabilities for the association comprise trade and other payables. Trade and other payables have no conditional maturities but are settled typically within 30 days, hence maturity analysis has not been disclosed.

Total trade and other payables at reporting date were \$674,376 (2007: \$433,395).

(d) Fair value estimation

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 association is the current bid price; the appropriate quoted market price for financial liabilities is the current ask price.

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

Notes to the financial statements

For the year ended 30 June 2008

	2008	2007
	\$	\$

3. REVENUE FROM CONTINUING OPERATIONS

Operating revenue

Subscriptions and practising certificate fees	4,099,640	3,922,409
Reading programme	302,260	325,460
	4,401,900	4,247,869

Other Revenue

Interest and dividends	519,449	460,950
Donations – Emerton Endowment Fund	375,096	-
Seminars	83,873	57,209
Administration charge	82,617	114,550
External funding	2,189,722	1,737,696
Net gains on disposal of plant and equipment	-	150
Other	169,857	179,399

Revenue from continuing operations

7,822,514 **6,797,823**

4. EXPENSES

Surplus before income tax includes the following specific expenses:

Depreciation

Library	23,452	23,454
Furniture, computers, office machines & equipment	145,839	119,994
Glass, bar and kitchen equipment	1,644	2,115
	170,935	145,563

Amortisation

Refurbishment	59,861	16,505
Provision for employee benefits (movement)	101,207	34,834

5. INCOME TAX EXPENSE

(a) Income tax expense

Current tax	73,929	64,647
Deferred tax	(2,816)	2,474
Adjustment of current tax of prior periods	134,806	15,270
	205,919	82,391

Aggregate income tax expense

Deferred income tax (revenue) expense included in income tax expense comprises:

Increase in deferred tax assets	(939)	(1,092)
(Decrease)/Increase in deferred tax liabilities	(1,877)	3,566
	(2,816)	2,474

Notes to the financial statements

For the year ended 30 June 2008

	2008	2007
	\$	\$

5. INCOME TAX EXPENSE (CONT'D)

(b) Numerical reconciliation of income tax expense to prima facie tax payable

Net surplus from continuing operations	536,366	142,351
Tax at the Australian tax rate of 30 per cent (2007: 30 per cent)	160,909	42,705
Increase/(decrease) in income tax expense due to:		
- Net mutual expense (income)	(83,677)	30,891
- Imputation credits	(3,738)	(3,460)
Tax effect of amounts which are not deductible (taxable)	(2,381)	820
Adjustments for current tax of prior periods	134,806	15,270
Previously unrecognised tax losses now recouped to reduce current tax expense	-	(3,835)
Income tax expense	205,919	82,391
(c) Deferred tax liability	56,755	69,145

The balance comprises temporary differences attributable to shares in Australian listed companies:

Movements:

Opening balance 1 July 2007	69,145	32,084
Charged to the income statement	(1,877)	24,286
Recognised in fair value reserve	(10,513)	12,775
Closing balance 30 June 2008	56,755	69,145

6. OTHER FINANCIAL ASSETS

Non-current

Investments in associates	4	4
Available for sale – at fair value shares in Australian listed companies	197,470	239,424
	197,474	239,428

(a) Risk exposure

The Bar Associations exposure to risk for other financial assets is discussed in note 2.

a. Investments in associates

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

b. Investment in Counsel Chambers Limited

The Bar Association also holds seven deferred ordinary shares ('the shares') in Counsel's Chambers Limited ('CCL'). The shares were acquired circa 1962 and have a cost of \$14, which has not been recorded in the association's records for many years. The shares entitle the association to: one vote per share at general meetings of CCL; the receipt of dividends as declared; and any surplus assets in the event of a winding up of CCL. The Bar Association does not have any record of dividends having been paid by CCL. In addition, it does not have the ability to significantly influence the voting at general meetings of CCL. As there is no active market in the shares and other valuation techniques do not permit the calculation of a range of reasonable fair value estimates, the association is precluded from measuring or recognising such values in its financial report.

Notes to the financial statements

For the year ended 30 June 2008

	2008	2007
	\$	\$

7. OTHER RECEIVABLES

Receivables	4,090	87,187
GST receivable	11,052	19,052
Other	240,971	106,438
	256,113	212,677

(a) Risk exposure

The association's exposure to risk for other receivables is discussed in note 2.

8. OTHER ASSETS

Prepayments	75,710	100,358
Accrued interest	74,695	80,766
	150,405	181,124

(a) Risk exposure

The association's exposure to risk for other assets is discussed in note 2.

9. INTANGIBLES

Cost	210,193	-
Net book amount	210,193	-
Opening book amount	-	-
Additions	210,193	-
Net book amount	210,193	-

Notes to the financial statements

For the year ended 30 June 2008

10. PLANT AND EQUIPMENT

	Library \$	Refurbishments \$	Furniture, computers, office machines & equipment \$	Glass, bar & kitchen equipment \$	Total \$
Year ended 30 June 2008					
At 1 July 2007, net of accumulated depreciation	328,327	21,746	277,417	4,648	632,138
Additions	-	668,352	140,037	-	808,389
Disposals	-	-	676	-	676
Depreciation/amortisation charge for the year	23,452	59,861	145,839	1,644	230,796
At 30 June 2008, net of accumulated depreciation	304,875	630,237	270,939	3,004	1,209,055
	Library \$	Refurbishments \$	Furniture, computers, office machines & equipment \$	Glass, bar & kitchen equipment \$	Total \$
At 1 July 2007					
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)
Net carrying amount	328,327	21,746	277,417	4,648	632,138
At 30 June 2008					
Cost	469,043	1,982,421	1,223,060	16,085	3,690,609
Accumulated depreciation and impairment	(164,168)	(1,352,184)	(952,121)	(13,081)	(2,481,554)
Net carrying amount	304,875	630,237	270,939	3,004	1,209,055

2008

\$

2007

\$

11. TRADE AND OTHER PAYABLES

Trade and other payables

674,376

433,395

(a) Risk exposure

The Bar Association's exposure to risk for trade and other payables is discussed in note 2.

Notes to the financial statements

For the year ended 30 June 2008

	2008	2007
	\$	\$

12. EMPLOYEE BENEFITS

The aggregate employee entitlement liability recognised and included in the financial statements as follows:

Current	471,381	305,292
Non Current	79,211	144,093
	550,592	449,385

13. FEES RECEIVED IN ADVANCE

Current

Subscriptions and practising certificate fees received in advance

4,868,048	4,082,997
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(a) Risk exposure

The Bar Association's exposure to risk for fees received in advance is discussed in note 2.

14. RESERVES

Fair value reserve	80,141	104,672
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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 2007	104,672	74,863
Unrealised gain/(loss) on investments (net of tax)	(24,531)	29,809
	80,141	104,672

15. COMMITMENTS

(a) Capital commitments

Expenditure for certification database

Within one year	61,000	119,000
Later than one year but not later than five years	-	-
Later than five years	-	-
	61,000	119,000

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

Notes to the financial statements

For the year ended 30 June 2008

	2008	2007
	\$	\$

15. COMMITMENTS (CONT'D)

(b) Lease commitments

Operating lease commitments payable

Within one year	187,147	259,385
Later than one year but not later than five years	-	187,147
	187,147	446,532

The Bar 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.

16. RELATED PARTY DISCLOSURES

(a) Directors

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

D Ash	J Gleeson SC	L King SC	R Pepper
B A Coles QC	A Haesler SC	R Lancaster	N Perram SC
T Bathurst QC	A Healey	C Loukas	N Sharp
P Boulton SC	R Higgins	L McCallum SC	A Street SC
M Cunneen SC	M Holz	G McGrath	S Torrington
A Dawson	A J Katzmann SC	M McHugh	K M Traill
R Francois	M J Slattery QC	J Needham SC	
P Garling SC	P Khandhar	E Olsson SC	

(b) Key management

Key management personnel compensation for the years ended 30 June 2008 and 30 June 2007 is set out below. The key management personnel are the directors of the association, and those executives with authority and responsibility for planning, directing and controlling the activities of the association.

The key management personnel identified for the years ended 30 June 2008 and 30 June 2007 are as follows :

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

Notes to the financial statements

For the year ended 30 June 2008

16. RELATED PARTY DISCLOSURES CONT'D

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

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

	2008	2007
	\$	\$
Short-term employee benefits	1,194,570	1,166,995
Long-term employee benefits	23,030	15,087
	1,217,600	1,182,082

(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 Bar Association paid rent (including associated air-conditioning, electricity and other outgoings) totalling \$322,228 (2007: \$292,050) 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.

17. REMUNERATION OF AUDITORS

	2008	2007
	\$	\$
During the year the following fees were paid or payable for service provided by the auditor of the association:		
Audit of the financial report	36,565	20,000
Other services	7,650	12,500
	44,215	32,500

18. NOTES TO THE CASH FLOW STATEMENT

(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	1,556,400	3,673,817
Term deposits	8,371,786	5,689,687
Petty cash	1,050	950
	9,929,236	9,364,454

Notes to the financial statements

For the year ended 30 June 2008

	2008	2007
	\$	\$

18. NOTES TO THE CASH FLOW STATEMENT (CONT'D)

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

Net surplus	330,447	59,960
Amortisation	59,861	16,505
Depreciation	170,935	145,563
(Profit)/Loss on disposal of plant and equipment	676	(150)
Net cash provided by operating activities before changes in assets and liabilities:	561,919	221,878
Changes in net assets and liabilities:		
(Increase)/decrease in assets:		
- Trade and other receivables	(51,436)	136,136
- Inventories	1,754	1,148
- Prepayments	24,648	(26,399)
- Deferred tax assets	443	(6,542)
- Accrued Interest	6,071	(11,701)
- Net GST receivable	8,000	(14,189)
- Other financial assets	(9,567)	(1,786)
- Current tax asset	(49,048)	-
Increase/(decrease) in liabilities:		
- Subscriptions and practising certificate fees received in advance	785,051	151,191
- Provisions – employee benefits	101,207	34,834
- Provision for income tax payable	(51,259)	51,259
- Deferred tax liabilities	(12,390)	37,061
- Sundry creditors	240,981	(7,483)
Net cash from operating activities	1,556,374	565,407

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. Total members at balance date were 2,699.

SUPERANNUATION

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

Notes to the financial statements

For the year ended 30 June 2008

19. EMERTON ENDOWMENT FUND

The Emerton Endowment Fund ('the fund') is controlled by The New South Wales Bar Association as trustee for that fund. The Bar Association has a liability of \$37,611 (2007: \$409,305) 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 2008 Emerton Endowment Fund had net assets as follows:

	2008	2007
	\$	\$
CURRENT ASSETS		
Cash and cash equivalents	276	294,430
Receivables	37,335	7,133
	37,611	301,563
NON-CURRENT ASSETS		
Other financial assets	-	107,742
NET ASSETS	37,611	409,305
ACCUMULATED FUNDS	37,611	409,305

(b) The net activity of the trust fund during the year ended 30 June 2008 is \$293,306. This is represented by the following:

INCOME STATEMENT

FOR THE YEAR ENDED 30 JUNE 2008

	2008	2007
	\$	\$
Revenue from continuing operations	6,928	8,540
Interest income dividends received	2,005	8,842
Profit of sale of investment	72,856	59,185
Donations – New South Wales Bar Association	(375,095)	(70,269)
Deficit before income tax expense	(293,306)	6,298
Income tax expense	-	-
Net deficit	(293,306)	6,298

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

	2008	2007
	\$	\$
<i>Fair value reserve</i>		
Balance as at 1 July 2007	78,387	95,361
Unrealised gain (loss) on investments (net of tax)	(78,387)	(16,974)
	-	78,387

Notes to the financial statements

For the year ended 30 June 2008

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 69, are in accordance with the *Corporations Act 2001*, including:

(i) giving a true and fair view of the financial position of the association as at 30 June 2008 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 association will be able to pay its debts as and when they become due and payable.

Signed in accordance with a resolution of directors:

A Katzmann SC

President

A Street SC

Treasurer

Sydney

11 September 2008

Independent auditor's report

To the members of The New South Wales Bar Association:

We have audited the association's financial report of The New South Wales Bar Association, which comprises the balance sheet as at 30 June 2008, and the income statement, statement of changes in 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 70.

Directors' responsibility for the financial report

The directors of the association 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, 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.

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 judgement, 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 11 September 2008, would be in the same terms if provided to the directors as at the time 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 association's financial position as at 30 June 2008 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.

P B Meade Partner

HLB MANN JUDD

(NSW Partnership)

Chartered Accountants

Sydney 12 September 2008

Barristers' Benevolent Association

Financial report for the year ended 30 June 2008

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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 Phillip St, Sydney NSW 2000.



Income statement

For the financial year ended 30 June 2008

	Note	2008 \$	2007 \$
Revenue from continuing operations	3	428,471	471,516
Changes in fair value of investments designated at fair value through profit and loss		(440,637)	182,032
Auditor's remuneration		(8,000)	(6,950)
Gifts		(110,062)	(109,523)
BarCare costs		(3,359)	-
Legal and professional fees		(16,902)	-
Loss on sale of investments		-	(6,758)
Bank charges		-	(50)
Stationery		-	(675)
Investment fees		(2,000)	-
Employee benefits expense		(6,912)	-
Promotion costs		(2,457)	-
Surplus/(loss) before income tax		(161,858)	529,592
Income tax expense		-	-
Net surplus/(loss)		(161,858)	529,592

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

Balance sheet

For the financial year ended 30 June 2008

	Note	2008 \$	2007 \$
CURRENT ASSETS			
Cash and cash equivalents	10(a)	1,629,050	1,803,087
Other receivables	4	106,497	92,335
TOTAL CURRENT ASSETS		1,735,547	1,895,422
NON-CURRENT ASSETS			
Other financial assets	5	1,566,647	1,565,440
TOTAL NON-CURRENT ASSETS		1,566,647	1,565,440
TOTAL ASSETS		3,302,194	3,460,862
CURRENT LIABILITIES			
Trade and other payables	6	10,190	7,000
TOTAL CURRENT LIABILITIES		10,190	7,000
TOTAL LIABILITIES		10,190	7,000
NET ASSETS		3,292,004	3,453,862
ACCUMULATED FUNDS			
Accumulated surplus		860,122	1,021,980
Reserves	7	2,431,882	2,431,882
TOTAL ACCUMULATED FUNDS		3,292,004	3,453,862

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 2008

	Notes	Accumulated funds	Capital reserves	Total members' funds
At 30 June 2006		492,388	2,431,882	2,924,270
Recognised income and expense		529,592	-	529,592
At 30 June 2007		1,021,980	2,431,882	3,453,862
Recognised income and expense		(161,858)	-	(161,858)
At 30 June 2008		860,122	2,431,882	3,292,004

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

Cash flow statement

For the financial year ended 30 June 2008

	Note	2008 \$	2007 \$
CASH FLOWS FROM OPERATING ACTIVITIES			
Receipts from members, sponsorship and general activities		321,170	246,274
Payments to suppliers		(312,801)	(119,761)
Interest received		93,139	29,396
Net cash inflow from operating activities	10(b)	101,508	155,909
CASH FLOWS FROM INVESTING ACTIVITIES			
Proceeds from sale of investments		220,000	1,412,524
Payments for investments		(495,545)	(148,382)
Net cash inflow/(outflow) from investing activities		(275,545)	1,264,142
CASH FLOWS FROM FINANCING ACTIVITIES			
Advances repaid during year		-	40,000
Net cash inflow from financing activities		-	40,000
Net increase in cash and cash equivalents		(174,037)	1,460,051
Cash and cash equivalents at the beginning of the year		1,803,087	343,036
Cash and cash equivalents at the end of the year	10(a)	1,629,050	1,803,087

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 2008

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 Accounting Standards and other authoritative pronouncements of the Australian Accounting Standards Board (including Australian Accounting Interpretations).

Compliance with IFRS

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

Historical cost convention

These financial statements have been prepared under the historical cost convention.

Critical accounting estimates and judgements

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 association's accounting policies. There are no estimates and judgements 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. Revenue is recognised as follows:

(i) Contributions

Revenue from contribution is recognised when the contribution is received.

(ii) Dividend and distribution income

Distributions and dividend are recognised as revenue when the right to receive payment is established.

(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 dividends.

(c) Income tax

The Barristers' Benevolent 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 six months or less that are readily convertible to known amounts of cash and which are subject to an insignificant risk of changes in value.

Notes to the financial statements

For the financial year ended 30 June 2008

(e) Other receivables

Other receivables are recognised initially at fair value and subsequently measured at amortised cost using the effective interest method, less provision for impairment. Other receivables are usually settled within 60 days from the date of recognition.

Collectibility of other receivables is reviewed on an ongoing basis. Debts which are known to be uncollectible are written off by reducing the carrying amount directly. An allowance account (provision for impairment of other receivables) is used when there is objective evidence that the association will not be able to collect all amounts due according to the original terms of receivables.

(f) Other financial assets

Classification

The association classifies its financial assets as designated at fair value through profit or loss. These investments have been designated as at fair value through profit or loss as doing so results in more relevant information. The performance of these investments is evaluated on a fair value basis in accordance with the risk management and investment strategies of the association as disclosed in note 2.

Recognition and derecognition

Financial assets at fair value through profit or loss are initially recognised at fair value and transaction costs are expensed in the income statement. Financial assets are derecognised when the rights to receive cash flows from the financial assets have expired or have been transferred and the association has transferred substantially all the risk and rewards of ownership.

Subsequent measurement

Financial assets at fair value through profit or loss are subsequently carried fair value. Gains or losses arising from changes in fair value are presented in the income statement in the period in which they arise. Dividend income is recognised in the income statement as part of revenue from continuing operations when the association's right to receive the payment is established.

Fair value

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

Impairment

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

(g) 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.

(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 an item 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 presented as operating cash flows.

(i) New accounting standards and interpretations

Certain new accounting standards and interpretations have been published that are not mandatory for 30 June 2008 reporting periods. The Trust's assessment of the impact of these new standards and interpretations is set out below.

- (i) Revised AABS 101 *Presentation of Financial Statements* and AASB 2007-8 *Amendments to Australian Accounting Standards arising from AASB 101*

A revised AASB 101 was issued in September 2007 and is applicable for annual reporting periods beginning on or after 1 January 2009. It requires

Notes to the financial statements

For the financial year ended 30 June 2008

the presentation of a statement of comprehensive income and makes changes to the statement of changes in equity, but will not affect any of the amounts recognised in the financial statements. If an entity had made a prior period adjustment or has reclassified items in the financial statements, it will need to disclose a third balance sheet, this one being as at the beginning of the comparative period. The Barristers' Benevolent Association intends to apply the revised standard form 1 July 2009.

2. FINANCIAL RISK MANAGEMENT

The Barristers' Benevolent Association's activities expose it to a variety of financial risks: market risk (including fair value interest rate risk and price risk), credit risk and liquidity risk. The association's overall risk management focusses on maintaining sufficient cash and maximising returns on the financial assets held under the policies approved by the Committee of Management.

Risks associated with the use of the financial instruments are measured using a method that reflects the expected impact on the results and the accumulated funds from the reasonable possible changes in the relevant risk variables below.

There is no formal established mandate or strategy to manage the above risks as the association's policy is to hold at least half of its assets in cash and cash equivalents so that there is little risk of change in value. Management is of the view that by ensuring that all cash and cash equivalents are held with financial institutions with at least an 'AA' rating, the risks are being managed.

Information about the total fair value of financial instruments exposed to risk, as well as compliance to the above-mentioned policy, is monitored by the Finance, Investment & Audit Committee. This information is prepared and reported to relevant parties within the association on a regular basis as deemed appropriate, including the finance manager, the Finance, Investment & Audit Committee and the Committee of Management.

There are no changes in the strategies used to manage the financial risks from the previous period.

(a) Market risk

Market risk is the risk that the fair value of future cash flows of financial instruments will fluctuate due to changes in market variables such as interest rates, foreign exchange and equity prices. Market risk is managed and monitored by ensuring all investment activities are undertaken in accordance with the policies approved by the Committee of Management.

(i) Price risk

The Barristers' Benevolent Association is exposed to equity securities price risk. This arises from investments held by the association for which future prices are uncertain. These investments are classified on the balance sheet as available-for-sale financial assets. All securities investments present a risk of loss of capital.

Approximately 30 per cent of the financial assets, excluding cash and cash equivalents, are shares in Australian listed companies and the remaining 70 per cent are in Australian managed funds. This risk is managed through diversification and selection of securities.

The effect on the total accumulated funds and the surplus due to reasonably possible changes in market factors, as represented by movements in equity indices, with all other variables held constant is indicated in the table below part (iii), below.

(ii) Cash flow and fair value interest rate risk

The Barristers' Benevolent Association's main interest rate risk arises from cash and cash equivalents; therefore the association's income and operating cash flows are subject to changes in market interest rates.

The Barristers' Benevolent Association has cash deposits and other interest bearing deposits which have floating rates. At 30 June 2008, if interest rates had changed by 100 basis points with all other variables held constant, surplus for the year would have been \$16,287 higher/lower as a result of higher/lower interest income.

(iii) Summarised sensitivity analysis

The following table summarises the sensitivity of the association's surplus and total accumulated funds to price risk and interest rate risk for financial assets and liabilities held at balance date. The reasonably possible movements in the risk variables have been determined based on management's best estimate, having regard to a number of factors, including historical levels of changes in interest rates and with the relevant benchmark and market volatility. However, actual movements in the risk variables may be greater or less than anticipated due to a number of factors, including unusually large market shocks resulting from changes in the performance of the economies, markets and securities in which the association invests. As a result, historic variations in risk variables are not a definitive indicator of future variations in the risk variables.

Notes to the financial statements

For the financial year ended 30 June 2008

	Price risk	Interest rate risk		
	Impact on operating profit / total accumulated funds			
	-10 %	+10 %	-100 bps	+100 bps
	\$	\$	\$	\$
30 June 2008	(\$156,664)	156,664	(16,287)	16,287
30 June 2007	(156,544)	156,544	(18,030)	18,030

(b) Credit risk

Credit risk represents the risk that the counterparty to a financial instrument will fail to discharge an obligation and cause the association to incur a financial loss. Credit risk is not considered to be significant to the association as the association does not hold any investments in debt securities and it does not have any significant loans/receivables at both reporting dates.

Credit quality

Main exposure of credit risk is on cash and term deposits. The credit quality of the financial assets is managed by the association by using the Standard & Poor's rating categories, in accordance with the policies of the Management Committee. The association has investments with National Australia Bank which has an 'AA' rating.

(c) Liquidity risk

Liquidity risk is the risk that the association will encounter difficulty in meeting obligations associated with financial liabilities. This risk is managed through investment in short term deposits and equity securities in Australian listed companies, which under normal market conditions are readily convertible to cash. In addition the association maintains sufficient cash and cash equivalents to meet normal operating requirements. It is for this reason management is of the view that the association is not exposed to any liquidity risk, as its minimum cash holdings over a 12 month period are not expected to fall below \$1.5m.

Maturity analysis for financial liabilities

Financial liabilities for the association comprise trade and other payables. Trade and other payables have no conditional maturities but are settled typically within 30 days, hence maturity analysis has not been disclosed. Total trade and other payables at reporting date was \$10,190 (2007:\$7,000).

(d) 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 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.

	2008	2007
	\$	\$

3. REVENUE FROM CONTINUING OPERATIONS

Contributions	129,511	136,579
Distribution/ dividend income	205,821	303,277
Interest income	93,139	29,396
BarCare - reimbursement of costs previously incurred	-	2,264
Revenue from continuing operations	428,471	471,516

Notes to the financial statements

For the financial year ended 30 June 2008

	2008	2007
	\$	\$

4. OTHER RECEIVABLES

Current

NSW Bar Association	100,019	66,587
Dividends receivable	-	20,242
Interest free loans	5,000	5,000
GST receivable	1,478	506
	106,497	92,335

(a) Risk exposure

The association's exposure to risk for trade and other receivables is discussed in note 2.

5. OTHER FINANCIAL ASSETS

Non-current

Designated at fair value through profit or loss

- Shares in Australian listed companies	522,393	111,500
- Australian managed funds	1,044,254	1,453,940
	1,566,647	1,565,440

a) Risk exposure

The association's exposure to risk for other assets is discussed in note 2.

	2008	2007
	\$	\$

6. TRADE AND OTHER PAYABLES

Trade and other payables	10,190	7,000
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a) Risk exposure

The association's exposure to risk for trade and other payables is discussed in note 2.

7. RESERVES

Capital Reserve	2,431,882	2,431,882
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Nature and purpose of reserves

Capital reserve

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.

Movement during the year:

Reserves		
Balance as at 1 July 2007	2,431,882	2,431,882
Transfer from accumulated surplus	-	-
	2,431,882	2,431,882

Notes to the financial statements

For the financial year ended 30 June 2008

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:

D Ash	J Gleeson SC	R Lancaster	N Perram SC
T Bathurst QC	A Haesler SC	C Loukas	N Sharp
P Boulton SC	A Healey	L McCallum SC	M J Slattery QC
B A Coles QC	R Higgins	G McGrath	A Street SC
M Cunneen SC	M Holz	M McHugh	S Torrington
S Dawson	A J Katzmann SC	J Needham SC	K M Trill
R Francois	P Khandhar	E Olsson SC	
P Garling SC	L King SC	R Pepper	

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 the NSW Bar Association.

	2008	2007
	\$	\$

9. REMUNERATION OF AUDITORS

During the year the following fees were paid or payable for services provided by the auditor of the association: Audit of the financial report

8,000	7,000
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10. NOTES TO THE CASH FLOW STATEMENT

(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:

	2008	2007
	\$	\$
Cash at bank	330	394,800
Cash on deposit	1,628,720	1,408,287
	1,629,050	1,803,087

Notes to the financial statements

For the financial year ended 30 June 2008

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

Net surplus/(Loss)	(161,858)	529,592
Fair value adjustment to non-current assets	440,637	(182,032)
Distributions from managed funds reinvested	(166,299)	(252,255)
Loss on sale of investments	-	6,758
Net cash provided by operating activities before changes in assets and liabilities	112,480	102,063
(Increase)/decrease in trade and other receivables	(14,162)	56,408
Increase/(decrease) in trade and other payables	3,190	(2,562)
Net cash from operating activities	101,508	155,909

Statement from the Committee of Management

For the year ended 30 June 2008

In the opinion of the Committee of Management in the capacity of the trustees of the association, the financial statements set out on pages 74 to 83 are drawn up so as to present fairly the results of the association for the year ended 30 June 2008 and the state of affairs of the association as at that date.

Sydney

11 September 2008

Independent auditor's report

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

We have audited the accompanying financial report of the Barristers' Benevolent Association (association), which comprises the balance sheet as at 30 June 2008, and the income statement, statement of changes in recognised income and expense, and cash flow statement for the year ended on that date, a summary of significant accounting policies and other explanatory notes as set out on pages 74 to 83.

Trustees' responsibility 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 judgement, 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 trustee 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 2008, and its 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.

HLB MANN JUDD (NSW Partnership) Chartered Accountants

Philip B Meade
Sydney Partner

12 September 2008

Contributions to the Barristers' Benevolent Fund

Contributions \$4,000 and above

B W Walker SC

Contributions \$3,000 to \$3,999

C J Leggat SC

W Terracini SC

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

A Healey

M Inglis

A Katzmann SC

C Steirn SC

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

D P M Ash

I M Barker QC

A J Bartley SC

A J Bellanto QC

B W Collins QC

I E Davidson

P J Doherty SC

J W Durack SC

M Green

S A Kerr

J Murphy

C R C Newlinds SC

B C Oslington QC

Dr K Rewell SC

T F Robertson SC

The Hon George Sharpe

M J Slattery QC

T K Tobin QC

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Contributions \$500 to \$999

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The Hon J E Brownie QC

S Burley SC

D Campbell SC

S G Campbell SC

R Cavanagh

J M Chicken

J R Clarke

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I Cullen

M J Darke

S Davis

P J Deakin QC

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S Duggan

J R Dupree

The Hon R J Ellicott QC

G Farmer

W M Fitzsimmons

P J Frame

J J Garnsey QC

M R Gracie

F P Hicks

D Hirsch

C P Hoy

D F Jackson AM QC

L King SC

P M Kite SC

S J Longhurst

T Lynch

J E Maconachie QC

His Hon Judge M C Marien SC

H J Marshall SC

G McIlwaine

A R Moses

R J Moyle

N Murray

The Hon J A Nader RFD QC

D Nock SC

J Poulos QC

A Reynolds

S Rushton SC

R L Seiden

A M Seward

J E Sexton SC

J C Sheahan SC

A H Slater QC

A Stenmark SC

M G Stubbs

D Talintyre

P Webb QC

J B Whittle SC

D M Wilson

J R Wilson SC

C Wood

Contributions \$100 to \$499

The Hon Justice M Adams

J V Agius SC

Her Honour Judge A M Ainslie-Wallace

M G Allen

K W Andrews

Anonymous

W Austron

Her Honour Acting Judge C E Backhouse QC

M H Baird

J Bartos

P Batley

R P Battley

R C Beasley

R Beech-Jones SC

R S Bell

His Honour Judge J Bennett SC

S A Benson

D R Benson

G Berecry

H P T Bevan

Dr C J Birch SC

The Hon Justice P Biscoe

The Hon A D Bishop

P H Blackburn-Hart SC

A J Bowen

E Boyle

The Hon J P Bryson QC

G Brzostowski SC

D A Buchanan SC

S J Buchen

G K Burton SC

D Burwood

P Callaghan SC

A D Campbell

A C Canceri

G Carolan

R J Carruthers

D A Caspersonn

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J J Cauchi

K Chapple SC

A Cheshire

M Christie

P R Clay

His Honour Judge R Cogswell SC

N A Confos

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P J Cook	J V Gooley	The Hon Justice P M Kavanagh
A Cotter-Moroz	J P Gormly SC	J T Kearney
D Cowan SC	M Gorrick	D Kell
The Hon Justice D A Cowdroy OAM	G M Gould	K J Kelleher
G P Craddock SC	R J Grady	D P Kelly
M G Craig QC	The Hon G J Graham	D T Kennedy SC
P R Cummings	G Graham	Dr John Keogh
G Curtin	R P Greenhill SC	V F Kerr
D L Davies SC	L T Grey	P W Kerr
W Dawe QC	I Griscti	S M Kettle
K Day	A M Gruzman	N J Kidd
D Day	J L Gruzman	J Kildea
M Dicker	K M Guilfoyle	P R King
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A Djemal	R L Hamilton SC	The Hon Justice D Kirby
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C A Evatt	The Hon Justice C Hoeben AM RFD	D M Loewenstein
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D Feller SC	M L Holz	S E Loomes
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S Flanigan	S Hughes	R Macfarlan QC
J W Fliece	T Hughes	P G Mahony SC
R Foreman	B Hull	P G Maiden SC
P L Formosa	W Hunt	T Maltz
R G Forster SC	G Iknors	N Manousaridis
S Galitsky	E Ito	A M Martin
M J Gallagher	A Jamieson	P D Massey
J M Galluzzo	R Jankowski	R Mater
R Gambi	K C Jhinga	M McAuley
T A Game SC	G T Johnson	L McBride
J T G Gibson	G M Johnston	G C McCarthy
M G Gilbert	E J Johnston	S McCarthy
Magistrate J Giles	G J Jones	R D McCrudden
M A Gillies	D K Jordan	M F McDermott
R D Glasson	B F Katekar	J D McDonald

T J McGill	J Priestley	The Hon Justice M Stone
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P J McGrath	The Hon Dr R Purvis AM QC	W Strathdee
G W McGrath	R E Quickenden	The Hon T J Studdert QC
G McGrath	J Reading SC	A Sullivan
Dr F R McGrath AM OBE	J P Redmond	G J Sundstrom
R S McIlwaine SC	J G Renwick	P Sutherland
A J McNerney	S Reuben	R M Sweet
The Hon Associate Justice J K McLaughlin	G Rich	J O Tancred
L McManus	D M Roberts	R J Taylor
G P McNally SC	M W Robinson	I Taylor
T Z Messner	J E Robson SC	M Thangaraj
R Montgomery	D Ronzani	J C Thompson
C Moschoudis	K Roser	M Tibbey
D R M Murphy SC	L J Rowan	A G Todd
A J Myers QC	P A Rowe	D R J Toomey
P W Neil SC	R Royle	A Tsekouras
T K Neill	N H Rudland	Her Honour Judge R C Tupman
The Hon P J Newman RFD QC	G Rundle	C I Twomey
N Newton	P Russell	G Van Der Vlag
P T Newton	S Russell	W J Walsh
J V Nicholas SC	J J Ryan	M J Walsh
G Nicholson QC	J R Sainty	G K Walsh
His Honour Judge J Nicholson SC	F Santisi	Dr C S Ward
P J Nolan	G Scragg	R S Warren
His Honour Judge S Norrish QC	J P Sewell	J A Waters
J O North	Y Shariff	C C Waterstreet
M Oakes SC	B J Sharpe	G J Watkins
P J O'Connor	W L Sharwood	O G Watt
C P O'Donnell	J Sheller	Dr R J Webb
G O'Gorman	The Hon C S C Sheller AO QC	C A Webster
The Hon B O'Keefe AM QC	C Simpson	J J Webster SC
P P O'Loughlin	C M Simpson SC	R H Weinstein
E Olsson SC	The Hon J P Slattery AO QC	E Welsh
D B O'Neil	D A Smallbone	M B Williams SC
R N O'Neill	The Hon Justice R F Smart	D Wilson
B R Pape	B G Smith	J R Wilson
D Patch	M Southwick	M J Windsor
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G R Petty SC	S J Stanton	J Young
J Phillips SC	M J Steele	
A M Pickles	M J Stevens	Contributions \$25 to \$99
K J Pierce	C Stewart	N Angelov
I H Pike AM	K L Stewart	J Annan
E H Pike	H W M Stitt	His Honour Judge C J Armitage
B Pluznyk	P G W Stitz	J Barnett
D Priestley	A J Stone	D Barry

Contributions to the Barristers' Benevolent Fund

His Honour H H Bell
 R T Bell
 G J Bellew SC
 K G Bennett
 S B Benson
 Dr S Blount
 C Bolger
 L Brasch
 W P Brewer
 A J Bulley
 L J Byrne
 M W Carey
 P R Carr
 N S Carroll
 M Castle
 D Cochrane
 The Hon B J K Cohen QC
 J Cohen
 M A Coleman
 I C Colquhoun
 Dr A L Connolly
 T S Davidson QC
 T Di Francesco
 S B Dixon
 A Doig
 G Donnellan
 J Doyle
 P Dwyer
 L S Einstein
 M Fanning
 L Fernandez
 The Hon M D Finlay QC
 D Forster
 G F Foster
 The Hon M L Foster QC
 His Honour Judge D J Freeman
 M A Gerace
 H Gerondis
 S Gollidge
 The Hon Justice P R Graham
 W J Hadley
 P Hamill SC
 J R Hamilton
 M R Hardwick QC
 D Harkin
 R Harper
 M J Heath

G R Heathcote
 J Henness
 R A Hewson
 S Hill
 M Hirschhorn
 A Hogan
 N S Jackson
 The Hon Justice B M James
 P N D Jenkyn OAM
 The Hon Justice P A Johnson
 The Hon H P W Johnston QC
 J D E Jones
 G C Jones
 L E Judge
 L Karp
 P Kennedy-Smith
 P D Keyzer
 P N Khandhar
 P A Leary
 J A Loxton
 The Hon Justice R N Madgwick
 G F Mahony
 A E Maroya
 His Honour Judge R P McLoughlin SC
 G Miller QC
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 P J Mooney
 The Hon P R Moran
 D A Moujalli
 J A Munday
 A P L Naylor
 N Nelson
 R K Newton
 N A Newton
 The Hon Judge J L O'Meally AM RFD
 M J Perry
 The Hon R J Patterson QC
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 M C Ramage QC
 D Rickard
 G R Rummery QC
 The Hon Justice D M Ryan
 M Seymour
 D Shoebridge
 A J Silink
 R Skiller
 G Smith SC

M S Spartalis
 J Sumption QC
 The Hon R N Talbot
 W Thompson
 The Hon W D Thompson
 J Travassaros
 J A Trebeck
 J Trevallion
 The Hon P Urquhart QC
 J F Viney
 R J Wilson
 T L Wong
 The Hon Lance Wright QC

Contributions under \$25

J Abernethy
 N J Allan
 I N Asuzu
 E H Baskerville
 M J Bateman
 R A Bonnici
 M Campbell
 K Conte-Mills
 J Davis
 B G Docking
 G Doherty
 The Hon J R Dowd AO QC
 Magistrate G Dunlevy
 M Friedgut
 G Gemmell
 J M Harris
 J Horowitz
 J E Ibbotson
 D Imlah
 A Metcalfe
 Q T Nguyen
 J D O'Sullivan
 C Palmer
 G S Poole
 M K Rollinson
 P A Sturrock
 W R Ward
 D S Weinberger
 J S Whyte

Indigenous Barristers' Trust

Financial report for the year ended 30 June 2008

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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 Phillip Street, Sydney NSW 2000.



Income statement

For the financial year ended 30 June 2008

	Note	2008 \$	2007 \$
Revenue from continuing operations	3	88,407	133,838
Bank charges		(91)	(38)
Audit and accounting		(3,000)	(3,000)
Conference expenses		(11,787)	(54,837)
Gifts		(5,000)	(3,000)
Fundraising		(6,005)	-
Surplus before income tax expense		62,524	72,963
Income tax expense		-	-
Net surplus		62,524	72,963

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

Balance sheet

As at 30 June 2008

	Note	2008	2007
		\$	\$
CURRENT ASSETS			
Cash and cash equivalents	7	328,154	293,979
Other receivables	4	35,369	7,020
TOTAL CURRENT ASSETS		363,523	300,999
TOTAL ASSETS		363,523	300,999
CURRENT LIABILITIES			
Trade and other payables		3,000	3,000
TOTAL CURRENT LIABILITIES		3,000	3,000
TOTAL LIABILITIES		3,000	3,000
NET ASSETS		360,523	297,999
ACCUMULATED FUNDS			
Accumulated surplus		360,523	297,999

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 2008

	2008	2007
	\$	\$
As at 1 July - opening	297,999	225,036
Recognised income and expenses	62,524	72,963
As at 30 June - closing	360,523	297,999

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 2008

	Note	2008	2007
		\$	\$
Cash flows from operating activities			
Receipts from sponsorship and general activities		57,058	127,973
Payments to suppliers		(22,883)	(59,200)
Net cash inflow from operating activities	7(b)	34,175	68,773
Net increase in cash and cash equivalents		34,175	68,773
Cash and cash equivalents at the beginning of the year		293,979	225,206
Cash and cash equivalents at the end of the year	7(a)	328,154	293,979

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 2008

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 other authoritative pronouncements of the Australian Accounting Standards Board (including Australian Accounting Interpretations).

Compliance with IFRS

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

Historical cost convention

This financial statement has been prepared under the historical cost convention.

Critical accounting estimates and judgements

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 judgements 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. Revenue is recognised as follows:

(i) Contributions

Revenue from contributions is recognised when the contribution is received.

Notes to the financial statements

For the financial year ended 30 June 2008

(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 six 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) Other receivables

Other receivables are recognised initially at fair value and subsequently measured at amortised cost using the effective interest method, less provision for impairment. Other receivables are usually settled within 60 days from the date of recognition.

Collectibility of other receivables is reviewed on an ongoing basis. Debts which are known to be uncollectible are written off by reducing the carrying amount directly. An allowance account (provision for impairment of other receivables) is used when there is objective evidence that the trust will not be able to collect all amounts due according to the original terms of receivables.

(f) 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.

(g) 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 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 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.

(h) New accounting standards and interpretations

Certain new accounting standards and interpretations have been published that are not mandatory for 30 June 2008 reporting periods. The trust's assessment of the impact of these new standards and interpretations is set out below.

(i) Revised AABS 101 *Presentation of Financial Statements* and AASB 2007-8 *Amendments to Australian Accounting Standards arising from AASB 101*

A revised AASB 101 was issued in September 2007 and is applicable for annual reporting periods beginning on or after 1 January 2009. It requires the presentation of a statement of comprehensive income and makes changes to the statement of changes in equity, but will not affect any of the amounts recognised in the financial statements. If an entity had made a prior period adjustment or has reclassified items in the financial statements, it will need to disclose a third balance sheet, this one being as at the beginning of the comparative period. The trust intends to apply the revised standard from 1 July 2009.

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 and liquidity

Notes to the financial statements

For the financial year ended 30 June 2008

risk. The trust's overall risk management focusses on maintaining sufficient cash and maximising returns on the financial assets held under the policies approved by the trustees.

Risks associated with the use of the financial instruments are measured using a method that reflects the expected impact on the results and the accumulated funds from the reasonable possible changes in the relevant risk variables below.

There is no formal established mandate or strategy to manage the above risks as the trust holds the majority of its assets in cash and cash equivalents so that there is little risk of change in value. Management is of the view that by ensuring that all cash and cash equivalents are held with financial institutions with at least an 'AA' rating, the risks are being managed.

There are no changes in the strategies used to manage the financial risks from the previous period.

(a) Market risk

Market risk is the risk that the fair value of future cash flows of financial instruments will fluctuate due to changes in market variables such as interest rates, foreign exchange and equity prices. Market risk is managed and monitored by ensuring all investment activities are undertaken in accordance with the policies approved by the trustees.

(i) Price risk

Given the trust has no equity securities, the trust has no exposure to equity securities price risk.

(ii) Cash flow and fair value interest rate risk

The trust's main interest rate risk arises from cash and cash equivalents; therefore the trust's income and operating cash flows are subject to changes in market interest rates.

The trust has cash deposits and other interest bearing deposits which have floating interest rates. At 30 June 2008, if interest rates had changed by 100 basis points with all other variables held constant, surplus for the year would have been \$2,777 higher/lower as a result of higher/lower interest income.

(b) Credit risk

Credit risk represents the risk that the counterparty to a financial instrument will fail to discharge an obligation and cause the trust to incur a financial loss. Credit risk is not considered to be significant to the trust as the trust does not hold any investments in debt securities and it does not have any significant loans/receivables at both reporting dates.

Credit quality

The main exposure to credit risk is on cash and term deposits. The credit quality of the financial assets is managed by the trust by using the Standard & Poor's rating categories, in accordance with the policies of the trustees. The trust has investments with National Australia Bank which has an 'AA' rating.

(c) Liquidity risk

Liquidity risk is the risk that the trust will encounter difficulty in meeting obligations associated with financial liabilities. This risk is managed through investment in short term deposits which under normal market conditions are readily convertible to cash. In addition the trust maintains sufficient cash and cash equivalents to meet normal operating requirements. It is for this reason management is of the view that the trust is not exposed to any liquidity risk, as 90 per cent of the trust's assets represent cash and cash equivalents.

Maturity analysis for financial liabilities

Financial liabilities for the trust comprise trade and other payables. Trade and other payables have no conditional maturities but are settled typically within 30 days, hence maturity analysis has not been disclosed.

Total trade and other payables at reporting date was \$3,000 (2007:\$3,000).

(d) Fair value estimation

The fair value of financial assets must be estimated for recognition and measurement or for disclosure purposes. The nominal value less estimated credit adjustments of trade receivables and payables is assumed to approximate their fair values.

Notes to the financial statements

For the financial year ended 30 June 2008

	2008	2007
	\$	\$

3. REVENUE FROM CONTINUING OPERATIONS

Contributions received	69,407	33,235
Interest	19,000	13,426
Conference registration	-	36,521
Conference sponsorship	-	50,656
Revenue from continuing operations	88,407	133,838

4. OTHER RECEIVABLES

Current

NSW Bar Association	30,384	1,250
GST receivable	170	93
Accrued interest	4,815	5,677
	35,369	7,020

Risk exposure

The trust's exposure to risk for trade and other receivables is discussed in note 2.

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 SC	Anna Katzmann SC	Mullenjaiwakka
Michael Slattery QC	Danny Gilbert	

(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.

	2008	2007
	\$	\$

6. REMUNERATION OF AUDITORS

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	3,000
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Notes to the financial statements

For the financial year ended 30 June 2008

	2008	2007
	\$	\$

7. NOTES TO CASH FLOW STATEMENT

(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	50,446	35,761
Term deposits	277,708	258,218
	328,154	293,979

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

Net surplus	62,524	72,963
Changes in assets and liabilities:		
(Increase) in trade and other receivables	(28,349)	(5,865)
Increase in trade and other payables	-	1,675
Net cash from operating activities	34,175	68,773

Trustees' declaration

In the opinion of the trustees of the Indigenous Barrister's Trust – The Mum Shirl Fund, the financial statements and notes as set out on pages 90 to 96:

- (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 2008 and its performance, as represented by the results of its operations, changes in recognised income and expense 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 trustees:

A Katzmann SC

Trustee

C Ronalds SC

Trustee

Sydney

10 September 2008

Independent auditor's report

To the members of the 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 2008, 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 and other explanatory notes as set out on pages 90 to 96.

Trustees' responsibility 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 judgement, 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 Indigenous Barristers' Trust – The Mum Shirl Fund as at 30 June 2008 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.

HLB MANN JUDD

(NSW Partnership)

Chartered Accountants

P B Meade

Partner

Sydney, 12 September 2008