



ANNUAL REPORT 2018-19

# The New South Wales Bar Association





## Directory

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75 Elizabeth Street  
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### Annual General Meeting

The Annual General Meeting  
will be held on Thursday,  
7 November 2019 at 5.00pm in the  
Bar Association Common Room.

### Cover photo

Jessica Hromas

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## President's Report



Tim Game SC  
President

I would like to begin by thanking Arthur Moses SC who was president of the Bar Association from May 2017 until the last election in November 2018. During Arthur's presidency, the Bar Association continued to be active in the media and made a large number of submissions to government on important issues for the New South Wales Bar and the justice system. Under his leadership the association set up specialist working groups and committees (First Nations, Industrial Relations, Employment, Health & Safety, Innovation and Technology and the Commercial Law Section). These join other association committees which place the association and the New South Wales Bar in position to address issues affecting the future of the profession. On behalf of the Bar Council and the Bar Association, I would like to express my sincere thanks to Arthur for his advocacy, leadership and commitment to ensuring the New South Wales Bar remains relevant to the broader community and promotes the rule of law.

Two-thirds of the new Bar Council, which was elected into office on 2 November 2018, is constituted by women (14 women and 7 men). Later that month I had the honour of being elected president in the first meeting of the new Bar Council. I am pleased to report that women also hold a majority on our Bar Executive

(three women and two men). While women currently only make up 23 per cent of the New South Wales Bar I hope that the representation on Bar Council will not only encourage other women to nominate for Bar Council but inspire more women to consider a career at the New South Wales Bar.

From 15 to 17 November 2018, the Bar Association held a joint national conference with the Australian Bar Association in Sydney – RISE2018. The conference was a culmination of 18 months of work between the New South Wales Bar Association and the Australian Bar Association (ABA). It demonstrated the strength, unity and collegiality of the New South Wales Bar and the Bench across the nation in coming together to discuss and reflect on topics involving commerce, tax, criminal law and the future practice of the profession. The New South Wales Bar Association continues to have a strong relationship with the ABA.

*As always, the Bar Association's Law Reform and Public Affairs agenda for the year was large and covered a wide range of topics including defamation law reform, drug law reform, the overuse of strip searches by police, indigenous incarceration and the need for a Walama court and the proposed Family Court merger.*

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Throughout 2018-19, the association repeatedly raised its concerns that the state's CTP scheme continues to favour insurer profits and unfairly excludes genuinely and

permanently injured people. In September 2018 and again before the state election, the association called for an independent review of the Compulsory Third Party (CTP) scheme.

The New South Wales state election was held in March 2019 and in preparation the Bar Association launched its Pre-election Policy Statement in February 2019.

The Policy Statement called on all political parties to implement key proposals which reflect the law reform priorities of the Bar Association in a number of crucial areas – court resourcing, indigenous justice, legal aid, criminal law, human rights, personal injury, family law and alternative dispute resolution. Many of the priorities continue to be matters for which the Bar Association will advocate until change is achieved.

*The issue of adequate government funding for critical justice services remained at the forefront of policy issues for the association's agenda.*

The issue of adequate government funding for critical justice services remained at the forefront of policy issues for the association's agenda.

Another pressing issue related to adequate government funding is the proper funding of Legal Aid. The Bar Association has been in ongoing discussions with Legal Aid NSW and the New South Wales attorney general on the proper resourcing of rates for barristers handling legal aid matters. There had not been an increase in legal aid rates paid to private practitioners since 2007. There has not even been indexation for CPI increases over that period. This means that barristers undertaking legal aid work have experienced at least a 20 per cent reduction in fees in real terms over the last twelve years.





## President's Report (continued)

Our ethical obligations as barristers require us to fearlessly promote our clients' interests to the best of our skill and diligence. Unfortunately, the poor level of legal aid rates makes it increasingly difficult for barristers in many cases to spend the time to do all of the necessary work with the proper care and diligence to satisfy those ethical obligations in the absence of satisfactory funding. We have repeatedly made representations to government to address the poor level of funding but this year's state budget failed yet again to address the issue. The Bar Association took the extraordinary step in advising members of the New South Wales Bar that they should not feel that they have any obligation to take legal aid briefs when they will not receive adequate payment to perform the important work. Since then the Bar Association has initiated a formal consultation with Legal Aid NSW pursuant to section 39 of the *Legal Aid Commission Act 1979* by which Legal Aid NSW is required to determine fees on a rational, equitable basis in consultation with the association, and those rates should reflect the work actually done in particular cases. I will report back to the New South Wales Bar on these consultations in coming months.

*The Bar Association's drug law reform agenda continues to have relevance since it was first issued in 2014.*

The Bar Association's drug law reform agenda continues to have relevance since it was first issued in 2014. In November 2018, the New South Wales Government announced the establishment of the Special Commission of Inquiry into the Drug 'Ice'. The Bar Association provided a submission to the inquiry on 7 May 2019. A final report from the Special Commission is expected



to be issued by 28 January 2020. The Bar Association is also a participant in the Uniting Church in Australia's drug law reform campaign, Fair Treatment, which was launched in late 2018, and the association's Pre-election Policy Statement reiterated our support for decriminalisation of individual possession of small amounts of illegal drugs such as cannabis and the adoption and proper resourcing of harm reduction strategies.

Similarly, the Bar Association's pre-election policy supported the decriminalisation of abortion in NSW and proposed that New South Wales adopt a similar legislative framework to the *Termination of Pregnancy Act 2018* (Qld). At the time of writing a Bill proposing the decriminalisation of abortion along these lines is being debated in the NSW Parliament.

Throughout 2018-19, the Bar Association played an integral role in providing submissions and participating in roundtable meetings on significant areas of proposed law reform – reform to the test for admissibility of tendency and coincidence evidence in criminal proceedings which is a result of recommendations of the *Criminal Justice* report by the Royal Commission into Institutional Responses to Child Sexual Abuse, as well as the New South Wales Law Reform Commission's review of sexual consent laws. These areas of proposed law reform will continue

to be a key part of the association's policy agenda in the financial year ahead. Over the reporting year, the association provided 99 submissions to government, statutory bodies such as the NSW Law Reform Commission, parliamentary committees and the courts. I would like to take this opportunity to thank the Bar Association's committees and policy staff for their contribution to this key aspect of our operations.

In addition to the law reform issues which formed a major part of the Bar Association's policy agenda, in February 2019 the association provided a submission to the Australian Human Rights Commission's National Inquiry into Sexual Harassment in Australian Workplaces and we continue to work on the issue from policy, educational and regulatory perspective.

*On 17 June 2019, Bar Council approved a Protocol in Respect of Aboriginal and Torres Strait Islander Peoples.*

On 17 June 2019, Bar Council approved a Protocol in Respect of Aboriginal and Torres Strait Islander Peoples. The protocol provides guidance to members on matters ranging from acknowledgement of country, general observations for barristers to consider when acting for an Aboriginal and Torres Strait Islander client and recommended



## President's Report (continued)

resources. On behalf of Bar Council, I would like to thank the First Nations Committee for developing the protocol and consulting widely before finalising the resource.

The Bar Association released a special diversity Autumn edition of *Bar News* in 2019. I would like to express special thanks to the Bar News Committee for diligent work on our journal publication. The edition was positively received by members of the New South Wales Bar and judiciary as well as from members of the profession in other states and territories. The edition was aimed at illustrating inclusion at the New South Wales Bar and highlighting the positive stories of our diverse Bar.

The Bench & Bar Dinner was held on 17 May 2019 and, for the first time in the event's history, all the speakers were female. The guest of honour was the Hon Justice Julie Ward, chief judge in the Equity Division of the Supreme Court of NSW, Ms Senior was Ruth Higgins SC and Ms Junior was Julia Roy. We held a number of well-attended events during the year but I would like to highlight the pleasure it was to host the unveiling of the portrait of Katrina Dawson which now hangs permanently in our Common Room.

is key to ensuring high standards in our profession which is relevant not only to our competitiveness but our reputation more generally. A robust educational program is one of my priorities as president and I am pleased that in 2018-19, we launched our Vulnerable Witnesses Advocacy Program and Advocacy Skills Workshop for those of 3-5 years call to the New South Wales Bar. We hope the first of these courses will be run in October and November 2019. At the same time, we need to ensure the wellbeing of our members. There are many initiatives in this space including a review of the Benevolent Fund terms to ensure they continue to serve the needs of members.

Finally, I wish to thank the Bar Council, the Executive, the Bar Association committees, Greg Tolhurst, Alastair McConnachie, Jocelyn Sparks and the staff of the Bar Association and all members who have given of their time over the year to help the association with its work.

I commend the 2018-19 New South Wales Bar Association annual report to you.

**Tim Game SC**  
**President**

### *The New South Wales Bar continues to attract consistent numbers of new entrants to the profession.*

The New South Wales Bar continues to attract consistent numbers of new entrants to the profession. In 2018-19, across the two Bar Practice Courses, we had a total of 97 participants with approximately 40 per cent of each course consisting of women participants. The entry criteria for the New South Wales Bar, consisting of the Bar Exam and Bar Practice Course, ensure that we attract quality candidates but ongoing professional development



## Executive Director's Report



Greg Tolhurst  
Executive Director

### Introduction

In the annual diary of the Bar Association's statutory processes and functions, the months leading up to 30 June are concerned mainly with Continuing Professional Development and renewal of practising certificates (PCs). The 2018-19 financial year heralded the start of a new chapter in the certification of practising barristers in New South Wales when the Bar Association converted to a fully online membership and PC renewals process. Working closely with a group of key members of staff, the Bar Association's IT contractor developed a bespoke system that manages personal and practice-related information, such as mandatory professional indemnity insurance policies, as well as the numerous disclosures required under various pieces of legislation. It also manages payments and distributes practising certificates. The transition from a decades-old paper-based system to one that is entirely online proceeded as smoothly as we had hoped. I would like to thank the staff of the Bar Association for all their work in helping develop the online renewals system. I would also like to thank members for engaging with the new system.

The further development of information technology will assist with governance of the Bar Association in other ways. At the

Bar Association's Annual General Meeting on 1 November 2018, amendments to the Bar Association's Constitution were passed which provide for election ballot papers in electronic form – in other words, online voting. This important move will bring the Bar Council elections into line with various member-based organisations around the country. It is to be hoped that online voting will increase the participation rate in the election of the Bar Council. We are planning to launch on-line elections for the 2020 elections.

By the time this annual report is published, the new Bar Association website will feature a dashboard, where members will login to amend their profile, access the library, obtain costs and fees precedents, view CPD seminars and browse for member benefits. Parallel with the development of the new website is a new CPD diary which forms part of a larger project to review the CPD program in terms of substantive offerings, marketing and support. Part of the results of that review can be seen with the launch this year of the Advocacy Skills Workshop and the Vulnerable Witness Advocacy Program. 'Find a Barrister' was reviewed and overhauled by the Innovation and Technology Committee, under the chairmanship of Michael Green SC, and I am confident that the new search facility will become an important practice development tool for barristers. This too will be launched with the new website. I would like to thank Michael, the committee and the team of programmers that designed the new Find a Barrister. I would also like to thank all the staff of the Bar Association for their work on the new website.

### Understanding our membership

In the last year we have instituted routine surveying and collection of data, particularly during practising certificate renewals. It

is impossible for a member-based organisation, such as the Bar Association, to function without an accurate picture of the economic and personal challenges of being a sole practitioner, facing intense competition and continually eroding fees for legal aid matters. We now have a better understanding of practice management and development issues, socio-economic and cultural diversity at the New South Wales Bar and the wellbeing of members. In particular, the Bar Association has a better understanding of the incidence of:

- Income, expenses and late payment of fees
- Direct access
- Direct briefing
- Diversity
- Emergency childcare as a result of extended or delayed court sittings
- Professional standards

Increasingly, the Bar Council and its committees can make decisions based on more detailed data. The development of the next strategic plan has begun and the growing quality and quantity of data collected by the Bar Association will contribute to that process. The next strategic plan comes at an important time due to the degree of uncertainty facing the legal services sector. The Bar Council has set aside 12 months to consider, consult and develop the next strategic plan.

### Professional standards

The Legal Profession Uniform Law, the Constitution and the Strategic Plan 2017-20 form three pillars of this organisation's remit. There is another important component, which is not discussed often enough. During FY2018-19 the Bar Association drafted and submitted an application for its third Professional Standards Scheme under the *Professional Standards Act 1994* (NSW). The current scheme expires on 30 June



## Executive Director's Report (continued)

next year. As all members are no doubt aware, the scheme limits the liability arising from a single cause of action to the extent to which the liability results in damages exceeding \$1.5m. The scheme reduces risk to members, insurers and consumers of legal services provided by the New South Wales Bar. The methodology underpinning the Professional Standards Act and the registered schemes, is for an occupational association, such as the Bar Association, to protect consumers by implementing its Risk Management Plan. This involves collection and analysis of professional indemnity insurance claims data, rigorous review and implementation of entry requirements, training, continuing professional development, and ethics advice, as well as discipline and complaints handling. To that list could be added a unique feature of the Bar Association's quality assurance role, which is of course, the appointment of senior counsel. The scheme amounts to a comprehensive system to ensure that local practising barristers maintain the highest standards of excellence in advocacy and legal advice. I hope to report in next year's annual report that our application for a third scheme has been successful.

### Uniform Law

Throughout the year we have worked closely with the Law Society of New South Wales and the Office of the Legal Services Commissioner to develop a set of proposed amendments to the Uniform Law. Those proposals are being considered by the Legal Services Council. We have also continued to work closely with the Australian Bar Association throughout the year to support its initiatives. At the time of writing the ABA is carrying out a public consultation for an amendment to the Legal Profession Uniform Continuing Professional Development (Barristers) Rules to

make clear what activities constitute 'CPD Activity' under the Rules.

### Professional conduct

The statistics for 2018-19 are set out in the Professional Conduct section of this annual report. In short, the number of new complaints each year has been steadily increasing.

In order to cope with this, in June 2018 a decision was taken to restructure and better resource the department. The director's role was revised and effectively split into two. Now, the director, professional conduct manages a team of lawyers who handle complaints, litigation, provision of ethical guidance to members, management of trust money accounts and practising certificate issues.

A new position, director legal, fulfils a 'general counsel' role, providing in-house advice on diverse legal issues and is currently working on the proposed amendments to the Uniform Law referred to earlier.

It was apparent that rather than just replace the outgoing staff, it would be prudent to recruit more staff to cope with the increasing workload and to modernise and re-model the department.

Through a rolling process of recruitment and training from mid-2018 to mid-2019, we now have four in-house lawyers handling not only complaints and litigation, but also show cause events, management of financial and medical conditions on practising certificates, disclosures made under section 51 of the Legal Profession Uniform Law, working with the LPAB on applications for admission (or re-admission) and trans-Tasman applications. I would like to thank the director, professional conduct, Jocelyn Sparks, for all her work and energy in building this new department from the ground up while at the same time managing a very busy year in the department.

In accordance with the vision and objectives of the association's strategic plan, the director, professional conduct and PCD staff are keen to become more involved in education and training on regulatory/LPUL issues, and to provide an accessible, member-focussed service.

To that end, members will find them becoming more 'visible' over coming months. They are working with the Professional Development Department to assist with information on regulatory and practice issues for new barristers on the Bar Practice Course and to existing members through CPD and regional conferences.

Members are encouraged to avail themselves of the ethical guidance scheme operated by the PCD staff and on issues pertaining to compliance with clause 15 of the Legal Profession Uniform General Rules relating to trust money accounts. As a general rule the staff will endeavour to respond to all enquiries (both calls and emails), promptly and certainly within 24 hours. They can facilitate more urgent guidance, if required.

Finally, it has been a year of change and challenge at the Bar Association and I would like to thank all the Bar Association directors and staff for their help, effort, work and dedication to the Bar Association during the year and I extend my thanks to the president, the Executive, Bar Council and committees for all their support during a busy and exciting year.

**Greg Tolhurst**  
Executive Director



## Membership statistics

The Bar Association is a voluntary association. Being a member and holding a barrister's practising certificate (PC) are distinctly separate.

As at 30 June 2019 the Bar Association had 3239 members.

	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
<b>Members, practising</b> (as at 30 June. Inc. life members with a PC)						
Male	1788	1805	1838	1832	1862	1852
Female	456	485	500	518	536	559
X (Unspecified)	0	0	0	0	0	1
<b>Total</b>	<b>2244</b>	<b>2290</b>	<b>2338</b>	<b>2350</b>	<b>2398</b>	<b>2412</b>

<b>Members, practising - senior counsel</b> (as at 30 June. QC or SC)						
Male	326	334	352	351	342	334
Female	35	37	38	40	42	42
<b>Total</b>	<b>361</b>	<b>371</b>	<b>390</b>	<b>391</b>	<b>384</b>	<b>376</b>

<b>Members, practising - junior counsel</b> (as at 30 June)						
Male	1462	1471	1486	1481	1520	1518
Female	421	448	462	478	494	517
X (Unspecified)	0	0	0	0	0	1
<b>Total</b>	<b>1883</b>	<b>1919</b>	<b>1948</b>	<b>1959</b>	<b>2014</b>	<b>2036</b>

<b>Members without a NSW practising certificate</b> (as at 30 June)						
Former barrister	145	156	169	179	191	214
Former judge / magistrate	111	106	107	106	103	104
Interstate / overseas barrister	183	185	195	197	191	185
Judge	174	176	183	179	183	184
Judicial officer	3	5	5	4	5	5
Magistrate	31	30	26	29	32	33
Solicitor-general (Commonwealth or state)	1	1	1	0	0	0
Crown prosecutor (interstate or Commonwealth)	3	3	1	0	0	0
Statutory appointment	9	9	9	11	11	10
Member of parliament	1	2	2	2	2	2
Trial advocate	0	0	0	0	1	0
Academic	13	13	14	14	14	15
Clerk	20	44	41	43	38	40
Other	37	38	37	36	35	35
<b>Total</b>	<b>731</b>	<b>768</b>	<b>790</b>	<b>800</b>	<b>806</b>	<b>827</b>

<b>Life members</b> (as at 30 June)						
Current NSW PC holders	9	7	7	13	11	11
Non-practising	27	32	32	32	35	37
<b>Total</b>	<b>36</b>	<b>39</b>	<b>39</b>	<b>45</b>	<b>46</b>	<b>48</b>

### Members

# 3239

### Members with a NSW PC

# 2412

### Members without a NSW PC

# 827

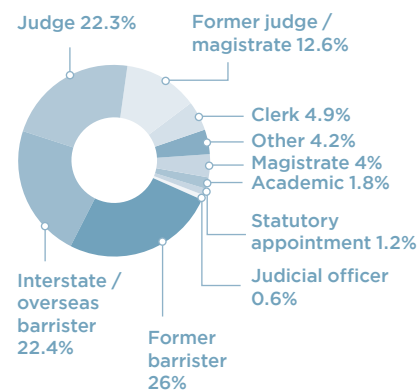




## Membership statistics (continued)

	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
<b>Top 10 occupations of non-practising members</b>						
Former barrister	145	156	169	179	191	214
Interstate / overseas barrister	183	185	195	197	191	185
Judge	174	176	183	179	183	184
Former judge / magistrate	110	106	107	106	103	104
Clerk	20	44	41	43	38	40
Other	37	38	37	36	35	35
Magistrate	31	30	26	29	32	33
Academic	13	13	14	14	14	15
Statutory appointment	9	9	9	11	11	10
Judicial officer	3	5	5	4	5	5

### Top 10 occupations of non-practising members



## Practising certificates

### Practitioners by gender and jurisdiction of residence

As at 30 June

	NSW	QLD	WA	ACT	SA	TAS	VIC	UK	NZ	USA	TOTAL
<b>Senior counsel</b>											
Male	333	0	0	1	0	0	0	2	1	0	337
Female	42	0	0	0	0	0	0	0	0	0	42
X (Unspecified)	0	0	0	0	0	0	0	0	0	0	0
	375	0	0	1	0	0	0	2	1	0	379
<b>Junior counsel</b>											
Male	1518	1	0	2	0	1	1	0	0	0	1523
Female	522	1	1	0	1	0	0	0	0	1	526
X (Unspecified)	1	0	0	0	0	0	0	0	0	0	1
	2041	2	1	2	1	1	1	0	0	1	2050
<b>Total</b>	<b>2416</b>	<b>2</b>	<b>1</b>	<b>3</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>2429</b>

# 23.4%

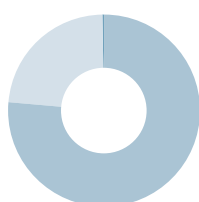
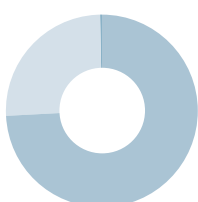
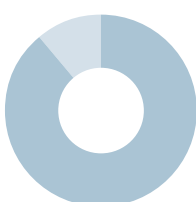
of practitioners  
are female

### Percentage of male and female barristers with a NSW PC

**Senior**  
89% Male  
11% Female  
0% Unspecified

**Junior**  
75.25% Male  
25.7% Female  
0.05% Unspecified

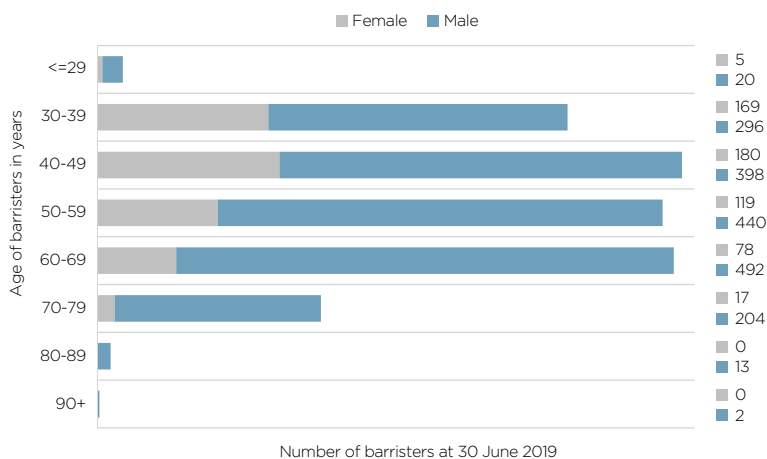
**Total**  
76.56% Male  
23.4% Female  
0.04% Unspecified



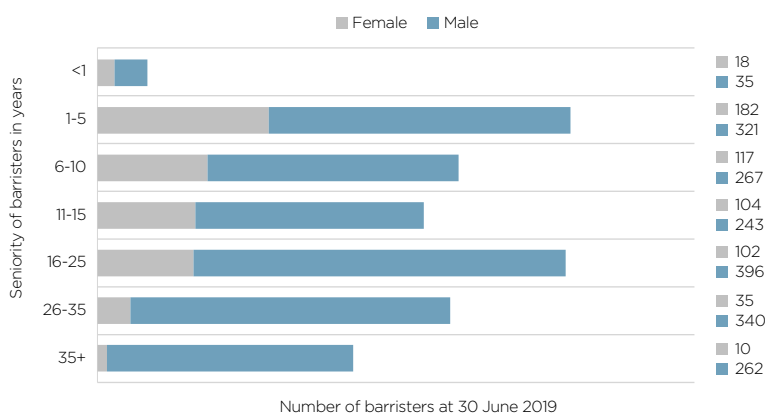


## Practising certificates (continued)

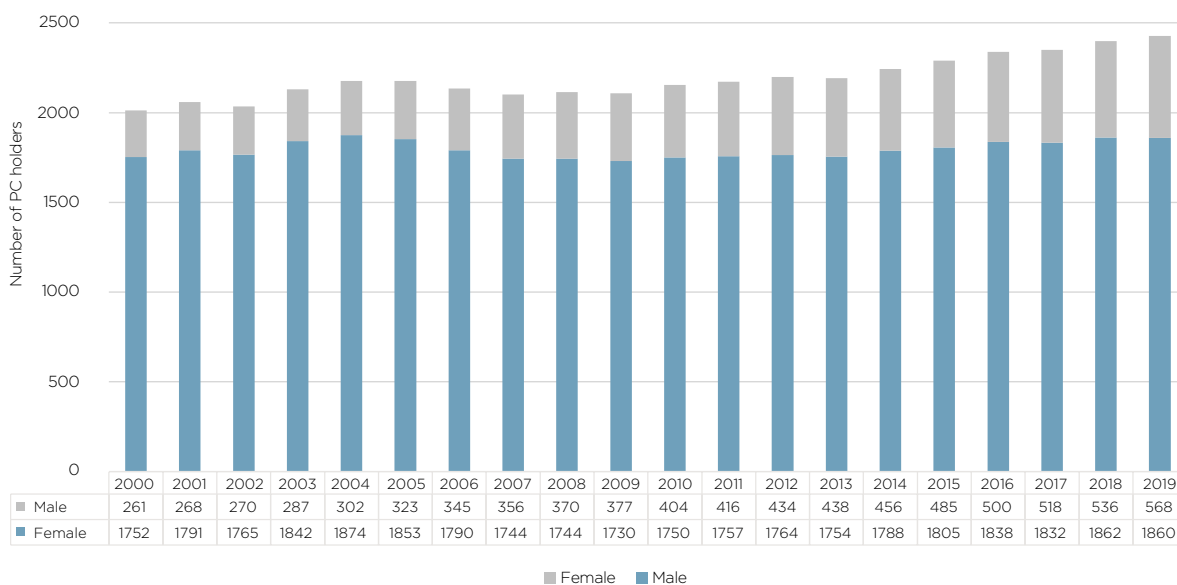
### Practising barristers, by age and gender



### Practising barristers, by seniority and gender



### PC holders, male and female, 2000-19





## Office Bearers



Tim Game SC  
President



NEW SOUTH WALES  
**BAR ASSOCIATION®**



Michael McHugh SC  
Senior Vice-President



Gabrielle Bashir SC  
Junior Vice-President



Anna Mitchelmore  
Treasurer



Catherine Gleeson  
Honorary Secretary

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## Bar Council

As at 30 June 2019

Tim Game SC  
Michael McHugh SC  
Gabrielle Bashir SC  
Anna Mitchelmore  
Catherine Gleeson  
Kate Eastman SC

Garry McGrath SC  
Kylie Nomchong SC  
Ruth Higgins SC  
Vanessa Whittaker SC  
Mary Walker  
Emily Welsh

Ben Katekar  
David Rayment  
Elizabeth Raper  
Sera Mirzabegian  
Yaseen Shariff  
Julia Roy

James Mack  
Vanja Bulut  
Talitha Hennessy



## Bar Association Staff

As at 30 June 2019

### Office of the Executive Director

Executive Director	Greg Tolhurst
Executive Assistant and Publications and Promotions Co-ordinator	Michelle Nisbet
Director Legal	Jennifer Pearce

### Services and Benefits

Co-ordinator, Services and Benefits	Chris Winslow
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### Shared Services Department

Manager, Shared Services	Kim Kemp
Events Manager	Hayden Doria
Receptionist	Maree Fitzgerald
Document Controller / Record Management	Kim Ellis
Records Administrator / Facilities Management / Receptionist	Melanie Whitehorn

### Bar Library

Librarian	Lisa Allen
Assistant Librarian	Leonie Anderson
Technical Services Librarian	Emma Sellwood

### Finance Department

Finance Manager	Basil Catsaros
Assistant Accountant	Lubaina Paisawala

### Legal Assistance Referral Scheme

Legal Assistance Manager	Heather Sare
Administrative Assistant - Legal Assistance Referral Scheme / LR & PA	Ray Burgess

### Professional Conduct Department

Director, Professional Conduct	Jocelyn Sparks
Lawyer, Professional Conduct	Jessica Smith
Lawyer, Professional Conduct	Marilyn Cox
Lawyer, Professional Conduct	Shar Doudman
Certification Officer	Georgina Stow
Senior Administrative Assistant, Professional Conduct	Corinne Gilbert

### Law Reform and Public Affairs

Deputy Executive Director	Alastair McConnachie
Senior Policy Lawyer	Roshana Wikramanayake
Senior Policy Lawyer	Ting Lim
Policy Officer	Richard Easton

### Professional Development Department

Director, Professional Development	Bali Kaur
Manager, Learning Design and Development	Tiffany McDonald
Education Assistant	Courtney Ford





## Committees As at 30 June 2019

### Alternative Dispute Resolution

Mary Walker (Chair)  
Stephen Walsh QC  
Max Kimber SC  
Peter Callaghan SC  
John Fernon SC  
Michael Eagle  
Steven Goldstein  
Neil Jackson  
Hugh Stowe  
Jodi Steele  
Fiona Sinclair  
Deborah Robinson  
Elizabeth Picker  
Terry Mehigan  
Jane Muir

### Bar News

Ingmar Taylor SC (Chair)  
Gail Furness SC  
Anthony Cheshire SC  
Farid Assaf  
Dominic Villa  
Penny Thew  
Daniel Klineberg  
Catherine Gleeson  
Lyndelle Barnett  
Victoria Brigden  
Juliet Curtin  
Kevin Tang  
Belinda Baker  
Stephen Ryan  
Joe Edwards

### Common Law

Robert Sheldon SC (Chair)  
Simon Harben SC  
Eugene Romaniuk SC  
Michael Inglis  
Lorna McFee  
Richard Royle  
Richard Sergi  
Elizabeth Welsh  
Paresh Khandhar  
William Fitzsimmons  
Andrew Combe  
Kavita Balendra  
Phillipa Clingan  
Ross Stanton  
Andrew Oag  
Kayt Hogan

### Costs and Fees

Mark Brabazon SC (Chair)  
Mark Walsh SC  
Michael Eagle  
Philippe Doyle Gray  
Andrew Harding  
Janet McDonald  
David Stewart  
Luke Fermanis  
Nicholas Mirzai  
Emma Beechey

### Criminal Law

Stephen Odgers SC (Co-Chair)  
Gabrielle Bashir SC (Co-Chair)  
John Agius SC  
Tim Game SC  
Peter McGrath SC  
Peter Skinner  
David Jordan  
Helen Roberts  
Peter Lange  
Richard Wilson  
Kieran Ginges  
Nathan Steel  
Sophia Beckett  
Lester Fernandez  
Sharyn Hall  
Paul Coady  
Robert Ranken  
Sophie Anderson  
Elizabeth McLaughlin  
Belinda Baker  
Rose Khalilzadeh

### Academic members:

Nicholas Cowdery QC  
Luke McNamara  
Alex Steel (UNSW)  
David Hamer (USYD)

### Diversity and Equality

Kate Eastman SC (Chair)  
Richard Scruby SC  
Stephanie Fendekian  
Melissa Fisher  
Penny Thew  
Sophie Callan  
Brenda Tronson  
Aditi Rao  
Lee May Saw

Samuel Pararajasingham  
Nicholas Kelly  
Zoe Hillman  
Surya Palaniappan  
Sonia Tame  
Alexandra Rose  
Diana Tang  
Jeh Coutinho (Clerk)

### Education

Robert Hollo SC (Chair)  
Graham Turnbull SC  
Richard Weinstein SC  
Ian Bourke SC  
Patrick Griffin SC  
Edward Muston SC  
David O'Neil  
John-Paul Redmond  
Sean Docker  
Michael O'Meara  
Gillian Mahony  
Tamara Phillips  
Jocelyn Williams  
Louise Hulmes  
David Birch  
**Academic member:**  
Alex Steele

### Family Law

Michael Kearney SC (Chair)  
Peter Cummings SC  
Peter Campton SC  
Lynette Judge  
Warwick Tregilgas  
Mark Anderson  
Suzanne Christie  
Derek Hand  
Angela Petrie  
Giles Stapleton  
John Longworth  
Claire Cantrall

### First Nations

Tony McAvoy SC (Chair)  
Chris Ronalds AO SC  
Janet Manuell SC  
Susan Phillips  
Simeon Beckett  
Andrew Smith  
Vanessa Bosnjak  
Peggy Dwyer  
Damian Beauflis

Sian McGee  
Andrew Boe  
Jeni Engel (Academic)

### Human Rights

Angus Stewart SC (Co-Chair)  
Naomi Sharp SC (Co-Chair)  
Richard Lancaster SC  
Michael Wright SC  
Simeon Beckett  
Shane Prince  
Trent Glover  
Georgia Lewer  
Celia Winnett  
Victor Kline  
Madeleine Bridgett  
Sebastian De Brennan

### Academic member:

Professor Andrew Byrnes (UNSW)

### Industrial, Employment, Health and Safety

Bruce Hodgkinson SC (Chair)  
Yaseen Shariff (Secretary)  
John Fernon SC  
Anthony Britt  
Mark Gibian  
Bruce Miles  
Oshie Fagir  
Jaye Alderson  
Vanja Bulut  
Lucy Saunders  
Maurice Baroni

### Innovation & Technology

Michael Green SC (Chair)  
Greg Waugh SC  
Beth Oliak  
James King  
Talitha Fishburn  
Anton Hughes  
Emma Beechey  
James Mack  
Sonia Stewart  
Wen Wu

### Legal Aid

Dean Jordan SC (Chair)  
Tim Game SC  
Alex Radojev



## Committees As at 30 June 2019 (continued)

David Price  
Mark Dennis  
Ashok Kumar  
Greg Bullard  
Nathan Steel  
Sharyn Hall  
Scott Fraser  
Emmanuel Kerkyasharian  
Michelle Swift  
Clylyn Sperling  
Stephen Lawrence  
Rose Khalilzadeh  
Talia Epstein

### New Barristers

James Mack (Chair)  
Geoff Farland  
Corrie Goodhand  
Louise Hulmes  
David Birch  
Stephen Ryan  
Emily Graham  
Nick Roucek  
Wen Wu  
Kayt Hogan  
Brendan Jones  
Trish Hoff (Clerk)  
Michelle Kearns (Clerk)

### Practice Development

Ian Hemmings SC (Chair)  
Michelle Painter SC  
Christopher Freeman  
Peter Lowe  
David Thomas  
William Edwards  
Robert Carey  
Philip Wallis  
Stephanie Patterson  
Victoria O'Halloran  
Geoff Farland  
Sonia Stewart  
Michele Kearns (Clerk)  
Paul Walker (Clerk)

### Wellbeing

Kylie Nomchong SC (Chair)  
Todd Alexis SC  
Mark Dempsey SC  
Kevin Connor SC  
Peter McGrath SC  
Patrick Griffin SC

Kellie Edwards  
Theresa Baw  
Elizabeth James  
Tim Castle  
Chris Tam

### PCC#1

Edward Muston SC  
(Co-Chair)  
Kate Morgan SC (Co-Chair)  
Timothy Game SC  
Anthony McInerney SC  
Matthew Darke SC  
Michael Izzo SC  
Vanessa Whittaker  
Madeleine Avenell  
Vanja Bulut  
Catherine Gleeson  
Kieran Ginges  
Reg Graycar  
Lisa-Claire Hutchinson  
Ben Katekar  
Daniel Klineberg  
Surya Palaniappan  
Elizabeth Raper  
Peter Russell  
Jennifer Single

### PCC#2

Anna Mitchelmore  
SC (Chair)  
Todd Alexis SC  
Nick Kidd SC  
David McLure SC  
Ingmar Taylor SC  
Simon Buchen SC  
Scott Aspinall  
Belinda Baker  
Nicholas Broadbent  
Courtney Ensor  
Nick Kelly  
Rob Ranken  
Julia Roy  
Richard Sergi  
Mark Seymour  
Donna Ward  
Jocelyn Williams  
Justin Young

### PCC#3

Dr Ruth Higgins SC (Chair)  
Gail Furness SC  
Peter McGrath SC

Nicholas Owens SC  
David Williams SC  
Clarissa Amato  
Sophie Callan  
James Emmett  
Andrew Fox  
Sheila Kaur-Bains  
Jonathan Kay Hoyle  
Nick Kirby  
Patricia Lane  
Brendan Lim  
Peter Newton  
Stephanie Patterson  
Angela Petrie  
Yaseen Shariff  
Elizabeth Welsh  
Andre Zahra

### PCC#4

Michael McHugh SC (Chair)  
Garry McGrath SC  
Dominic Toomey SC  
Edward Cox SC  
Mark Anderson  
Greg Antipas  
Lisa Doust  
Amy Douglas-Baker  
Michelle England  
Jill Gatland  
Trent Glover  
Talitha Hennessy  
Nick Kabilafkas  
Ben Kremer  
Peter Maddigan  
Andrew Naylor  
David Rayment  
Robert Yezerki

## Sections

For the year 2018–19

### Commercial Law

Convenor: Michael Izzo SC  
Secretary:  
Sera Merzabegian

### Public Law Section

Convenor:  
Neil Williams SC  
Secretaries:  
Stephen Free &  
Katherine Richardson

### Women Barristers Forum

Chair: Kate Richardson SC  
Co-Vice Chair:  
Brenda Tronson  
Co-Vice Chair:  
Catherine Hamilton-Jewell  
Co-Secretary:  
Caroline Dobraszczyk  
Co-Secretary:  
Elizabeth Picker  
Treasurer:  
Rosalind Winfield  
Information  
Technology Officer:  
Kavita Balendra  
WLNSW Liaison:  
Larissa Andelman  
CPD Coordinators:  
Madeleine Ellicott,  
Brin Anniwell

## Working Parties

For the year 2018–19

### Examination Working Party

Edward Muston SC (Chair)  
Patrick Griffin SC  
Michael Hall SC  
Andrew Pickles SC  
Sandra Foda  
Hamish Bevan  
Elisabeth Peden  
Peter Maddigan  
Ross Glover  
Daniel Klineberg  
Nicholas Broadbent  
Michelle Swift

### PII Working Group

Garry Rich SC



## Professional Development Department

### The Professional Development Department provides education, training and additional learning and development services to all practising barristers in NSW.

The main responsibilities of the department are to:

- Co-ordinate induction to practice of, and services for, new barristers. There are two main aspects to the substantive educational services for new barristers: the Bar Examinations; and the Bar Practice Course
- Provide continuing professional development (CPD) seminars and conferences

The department remains focussed on our core objectives: to continue to provide relevant, practical and intellectual content to members to assist in their ongoing professional and practice development. The department continues to work closely with the Bar Council and the committees to promote collegiality and mutual assistance among its members and to implement the Strategic Plan. This involves identifying areas of need and interest to members and to provide services that address those needs and interests in a timely and cost effective manner.

The department this year commenced work on a key strategic initiative championed by President Tim Game SC: the advancement of the Continuing Professional Development Program (CPD). The aim is to improve and advance the current CPD offering in order to provide high quality CPD from subject matter experts utilising the vast knowledge and experience at the Bar. This involved addressing specialist advocacy training as part of the ongoing improvement and development plan. The department worked to: keep members up-to-date on legislative changes and decisions of interest; provide a

better understanding of the law; and discuss ethical quandaries, professional conduct matters, advanced advocacy, practice management and business skills. These developments will be released in 2020 in order to improve member engagement.

### Exams

A total of 115 candidates registered for the February 2019 Bar Exam, although only 95 candidates sat the examination. For the June 2019 exam, the numbers were 137 and 113 respectively.

A total of 37 members of the association assisted in the preparation and marking of papers in February 2019 and 28 assisted with the June 2019 examinations.

The Bar Examination Working Party, a subcommittee of the Education Committee and chaired by Edward Muston SC, continues to provide support, guidance and assistance to the department in the implementation of the Bar Council policy in relation to the Bar Exam. The Bar Council wishes to extend its sincere thanks to all those involved in the writing and marking of the Bar Exam.

### Bar Practice Course

The 54th and 55th Bar Practice courses were held in August-September 2018 and May 2019, under the direction of Gillian Mahony. Ninety-seven readers completed the two courses. The course continues to see a greater percentage of women undertaking the course (38 per cent) than the overall percentage of women in practice at the Bar generally (23 per cent).

The course continues to be structured as a four week program of intensive, full-time study. The overall format of the course has remained constant in recent years while individual components have been developed and refined in

In February 2019

# 95

candidates sat the Bar examination.

In June 2019

# 113

candidates sat the Bar examination.

In 2018-19

# 97

readers completed the two Bar Practice Courses,

# 16

fewer readers than 2017-18.

In 2018-19

# 38%

of candidates were women. The overall percentage of women in practice at the Bar is generally 23 per cent.



## Professional Development Department (continued)

response to feedback, as well as to developments in practice.

It would not be possible to deliver the Bar Practice Course to the high standard that it is without the generous support of more than 200 barristers and members of the judiciary, who give so willingly of their time, frequently for both courses, year after year, to help provide readers with the best possible induction to practice at the bar.

The Bar Practice Course spans over 50 scheduled lectures, mini-trials and workshops, and involves a great many barristers assisting as tutors, lecturers, workshop leaders and advocacy coaches as well as judges, past and present, from all jurisdictions. As such, the course continues to be a major part of the professional development calendar and a considerable administrative task but it culminates in some of the most rewarding experiences of the year. Through the Bar Practice Course, we see the very best of practice at the Bar by way of collegiality, mentoring and tutelage, and dedication to courtcraft as well as the increasing diversity of the profession. The commitment of all involved is absolute.

The department ran its annual advocacy tune-up workshop in November. There was a significant increase in the take-up of this workshop with almost half of the readers participating in the workshop after practising for either twelve or six months. The department, in conjunction with the Australian Advocacy Institute, successfully trained 30 new advocacy coaches at the beginning of this year. This included a large number of female barristers, which will continue to enhance the diversity of instructors.

We could not run these courses without the continuing support from the presenters, instructors and

judges who set aside time from their busy practices to assist in welcoming and guiding the newest members of the bar. The Bar Council wishes to extend its sincere thanks to all those involved in the Bar Practice Course.

### Continuing Professional Development (CPD)

The CPD required to maintain a barrister's practising certificate in New South Wales, is fundamental to maintaining the professional standards and reputation of the Bar.

In 2018-19 the department offered 55 seminars (74 points) covering all four strands plus a number of workshops and conferences. With the support of the IT department, the CPD program and supporting software continue to undergo development and upgrading in order to increase member take up of this service.

The conference program continued to enjoy strong support from all members and provided excellent opportunities for networking and promoting collegiality. Conferences were run throughout February and March in Orange, Newcastle, Parramatta, the North Coast, and two conferences in Sydney. The conference programs were designed to offer a wide range of topics and speakers that would be of interest to all members.

As in previous years, the preparation for the conferences for 2020 will commence around the time of the publication of the Annual Report. If any member would like to be involved in the conferences – or any aspect of the CPD program – you are encouraged to contact the Professional Development Department.

The department is pleased to advise that, as part of its commitment to excellence in advocacy, the Bar Association has released two subsidised training programs for members. The Bar Association is the first independent state bar to

The Bar Practice Course spans over

50

scheduled lectures, mini-trials and workshops.

More than

200

barristers and members of the judiciary supported the Bar Practice Course in 2018-19.

In 2018-19 the department offered

55 seminars

covering all four strands plus a number of workshops and conferences.

offer its members the Vulnerable Witness Advocacy Program, which provides practical training in the sensitivities involved in questioning witnesses who are vulnerable.

The second new program, Advocacy Skills for Trial Advocates, is a workshop aimed specifically at barristers with 3-5 years experience. This workshop will provide participants with the opportunity to hone their in-court advocacy and enhance their ability to deliver personalised and highly effective argument.



## Professional Development Department (continued)



Since 2014 the NSW Bar Association Mentoring program has supported over

# 100

junior barristers in their second year at the bar.

### Mentoring Program

Since 2014 the Bar Association Mentoring Program has supported over 100 junior barristers in their second year at the Bar. The aim is to increase retention and career progression. It is a unique 10-month professional development initiative designed to increase retention and promote career progression by helping junior barristers to build confidence and expand networks. During 2018 and 2019 the program continued to connect junior barristers with a more experienced barrister. The senior barristers are mentors and confidential advisors, offering a private forum, outside of chambers, for mentees to discuss their practice, career plans and challenges.

The 2018 program was launched in May 2018, and 32 barristers in their second year at the Bar successfully completed the program.

The Art of Mentoring was engaged, again, as the external provider in 2019 after a full evaluation of the mentoring program and its suitability to the New South Wales Bar. The 2019 program is currently running with 33 mentors and mentees. The program is made available to all barristers in their second year of practice.

### Additional activities

The University Open Day remains a popular day in the calendar. Held in spring each year, it attracts over 120 students from the ten law faculties in NSW.

### Thank you

As in previous years, the department is extremely grateful for all the assistance provided by a great many volunteers. All give of their time freely and generously with the end goal being the improvement of the Bar. It simply would not be possible for the department to operate without the support and commitment of so many.



## Arranging and promoting continuing professional development

### Education Committee

**The committee provides support and guidance to the Bar Council, The executive director, The Professional Development Department and other departments of the New South Wales Bar Association in respect of the educational activities of the New South Wales Bar, and implements on Bar Council's behalf: the Bar Exam, the Bar Practice Course, the tutor/reader program, the Mentoring Program and Continuing Professional Development Program.**

In its activities the Education Committee supports attainment of the objectives set out in the New South Wales Bar Association's Strategic Plan 2017-20. In 2019 this has included the continuing education of barristers, the development of transformational knowledge and skills so that barristers can compete in the environment of increasing internationalisation of the law: equality and diversity of the New South Wales Bar

membership; and supporting readers and the junior bar.

The committee has made a number of recommendations relating to policy to the Bar Council and has worked collaboratively with the Examination Working Party and the New Barristers' Committee in relation to the exams and issues impacting upon the junior bar. The committee this year focussed on improvements to the Mentoring Program and the advancement of the CPD Program.

## Supporting readers and the junior bar

### New Barristers Committee

Photo: Murray Harris Photography



**The goals and objectives of the New Barristers' Committee are: to promote the pursuit of excellence through targeted Continued Professional Development, camaraderie through social events and other traditions of the general bar among barristers under six years; to assist NSW barristers under six years to build and develop their practices; to make submissions to the Bar Council regarding issues and matters that affect the interests of barristers under six years seniority; and to otherwise support the work of the Bar Council as and when needed.**

The New Barristers' Committee provides a great deal of assistance

to the Professional Development Department, particularly in the design and provision of CPD for the junior bar. These CPDs and workshops provide an informal opportunity for under-6s to practice their advocacy skills. The workshops comprise an initial seminar, followed by a group cross-examination exercise and conclude with a demonstration by senior members of the bar. The next scheduled cross-examination workshop will be in February - March 2020. The committee in October 2018 ran its annual Judicial Q & A, which was well-attended. The committee also provides regular networking opportunities for barristers under six years.

#### Strategic Plan 2017-20

##### Supporting readers and the junior Bar

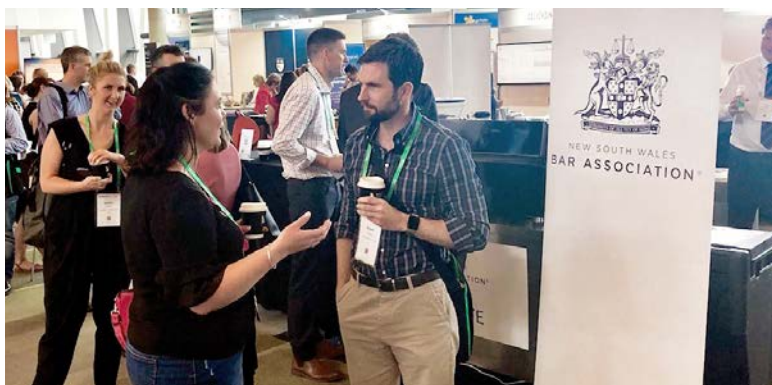
**Rationale:** To provide all the information required for a new barrister to make an informed decision about chambers and areas of practice. Information to prospective readers should be made available on the Bar Association's website. It will also allow all chambers to compete equally for new members.

**1.** To survey all chambers regarding: their availability to provide reader accommodation; the cost (floor fees and other charges); whether the floor / tutor undertake to provide work for the reader.

**2.** To provide a central register recording the results of an annual survey



## Practice Development Committee



**The Practice Development Committee's major responsibilities under the Bar Association's Strategic Plan involve facilitating closer collaboration directly with in-house counsel and the promotion of the bar in the delivery of cost efficient and quality legal services.**

The committee's primary focus in the reporting period was the promotion and marketing of the bar's services to in-house counsel, both corporate and government, in two principal areas: direct briefing and early briefing. The committee has been active in developing new ways to promote the services of the bar beyond our traditional, and still core, market of instructing solicitors.

The Bar Association's Corporate Alliance Partnership with the Association of Corporate Counsel (Australia) (ACC) provides it with opportunities to be involved in conferences and other events involving in-house counsel. In November 2018 David Thomas SC (a member of the committee) and Zoe Hillman (Alinea Chambers) presented a Bar Association-sponsored session on direct briefing at the ACC National Conference on the Gold Coast. David and Zoe were joined on the panel by Marion Hemphill, general counsel and head of government relations at the Australian Red Cross Blood Service. The presentation dealt with issues involving trial by social media and the role the bar can

play in assisting in-house counsel.

More specifically the presentation covered the devising of strategies to control legal and reputational risk in the face of trial by social media, the steps to be taken to promote a fair trial following a social media crisis and the legal responses that should be adopted in circumstances involving trial by social media.

The presentation also dealt with practical issues for in-house counsel in these circumstances including when is it more efficient to brief directly, how to identify the right counsel and the most efficient ways to engage counsel. The presentation was well attended and very well received by delegates and by the ACC. Crucially, the session generated lively discussion between our panellists, the other Bar Association representatives (including three of the clerks) and the delegates, with many of the delegates sharing their own positive experiences of direct briefing.

The association also sponsored the ACC Corporate Responsibility Award at the conference dinner which was presented to Shannon Landers of the Cotton On Group by committee member Victoria O'Halloran. A New South Wales Bar Association Barista Station staffed by volunteer clerks (Michele Kearns (Martin Place Chambers), Angela Noakes (Ground Floor Wentworth) and Paul Walker (13th Floor Wentworth Selborne) ran throughout the conference to

### Strategic Plan 2017-20

#### Marketing and promoting the work of barristers

**Rationale:** To ensure Bar Association members remain engaged in the marketplace and consumers of legal services perceive the Bar as a viable and cost effective option – especially in the earlier stages of litigation.

1. Closer collaboration directly with corporate counsel.
2. Promotion of the Bar as a highly cost efficient part of the litigation process.
3. Encourage, by subsidy or otherwise, educational activities by barristers, including but not limited to teaching advocacy overseas.



## Practice Development Committee (continued)

provide practical advice to in-house counsel regarding briefing the bar. Merchandise promoting the Bar Association and the 'Find-a-Barrister' search was also distributed.

Victoria O'Halloran, a member of the committee who has developed a new toolkit, including precedents, for in-house counsel to assist them in briefing the bar, also attended the conference. The toolkit precedents were posted on the association's website before the conference and were very positively received by delegates.

The toolkit comprises the following precedents:

- Observations to Counsel;
- Index to Brief to Counsel;
- Chronology of Events - Factual;
- Chronology of Events - Court or Tribunal Proceedings; and
- Checklist for Preparing a Brief to Counsel.

Following the ACC National Conference, the toolkit precedents on the in-house counsel section of the website have had New South Wales Bar Association branding added and have been distributed to members via *In Brief* with a note encouraging members to recommend the precedents to clients, solicitors and in-house counsel. Chambers are encouraged to link to the Toolkit from their own websites if so desired.

David Thomas SC was also involved in a well-attended panel session for general counsel at the ACC NSW In-House Counsel Day on 30 May entitled 'Guiding your Company through a Royal Commission'. Association representatives including Junior Vice-President Gabrielle Bashir SC also attended the social function at the conclusion of that conference, which was

sponsored by the Bar Association.

The association's partnership with ACC Australia also provides opportunities for members to contribute articles for ACC publications and allows the association to conduct joint CPD seminars for barristers and in-house counsel. The first such event, dealing with elements of the *Modern Slavery Act 2018*, was arranged with the association's Industrial Employment Health and Safety Committee and held at Clayton Utz in June 2019.

At the ABA/NSWBA RISE2018 Conference in November 2018, Liz Cheeseman SC moderated a session on 'Effective Triage of Major Multi-faceted Disputes: Positioning Clients to Survive the Feeding Frenzy'.

The panellists were Caroline Cox (group general counsel, BHP), Neil Young QC and Reay McGuinness (partner, Webb Henderson). The session, which promoted the way in which the bar can, and does, provide critical strategic advice at each stage of multi-dimensional (and often multi-jurisdictional) disputes was particularly well-attended and successful.

In September 2018 Victoria O'Halloran, Michele Kearns, Paul Walker and Robert Yezerski (Banco), on behalf of the committee, presented to the Woolworths in-house team the first of a series of direct briefing roadshows, which focus on practical guidance for in-house lawyers and solicitors on briefing the bar. The presentation was particularly successful and will readily translate to other in-house teams – both corporate and government. Further presentations have been made by clerks to solicitors from Mills Oakley, Clayton Utz and Ashursts and the committee is working with the NSW Barristers' Clerks Association

to roll out a schedule of legal teams that the briefing session will be offered to later in 2019.

Through the reporting year, the committee also developed educational sessions for practitioners on practice issues. In July 2018 Ian Hemmings SC presented a CPD session on conducting electronic hearings in a paperless environment, based on the system being used in the Land and Environment Court. Geoff Farland from the committee also developed a CPD session on personal marketing for barristers that was held on 11 March 2019. The session was entitled 'I didn't see that coming... Future-proofing your practice - thinking differently about business at the bar'.

Finally, the committee's longstanding chair, Elizabeth Cheeseman SC, stepped down from that position in May 2019. Liz has made an outstanding contribution in guiding the work of the committee since 2015 and the committee thanks her for her hard work on the committee and wishes her well in her future endeavours.





## Alternative Dispute Resolution Committee

### General activities of the ADR Committee

ADR is a firmly established part of barristers' work across New South Wales, with Bar Association members practising as mediators, arbitrators and expert determiners in a legal culture that increasingly promotes the use of alternatives to court proceedings to resolve disputes.

The ADR Committee has continued this year to provide opportunities for all NSW barristers to build on their knowledge of, and experience in, ADR and to promote the interest and expertise of the bar in this area.

*The Bar Association remains one of the largest Recognised Mediator Accreditation Bodies (RMABs) within the National Mediation Accreditation System (NMAS) and currently accredits 109 mediators.*

### Mediator accreditation

The Bar Association remains one of the largest Recognised Mediator Accreditation Bodies (RMABs) within the National Mediation Accreditation System (NMAS) and currently accredits 109 mediators.

The committee has carried out the administration of accreditation and re-accreditation of mediators under the NMAS on behalf of the Bar Association since 2008. Accreditation is for a two-year period and is renewed biennially.

In 2018-19, the committee continued to administer the accreditation and re-accreditation of mediators under the NMAS Standards. As of this year, the committee will accredit members biannually rather than annually. Practising members with over five years' legal experience who meet the NMAS requirements will now be accredited in autumn and spring each year.

### Liaison with the court

The ADR Committee continues to nominate accredited members for inclusion on the Supreme Court's and District Court's panels. The members of the committee have also worked collaboratively with the Law Society of New South Wales and the association's Family Law Committee to maintain and participate in the Family Law Settlement Service.

During its call-over week in March 2019, the Family Court of Australia received great assistance from the ADR Committee, which provided the details of mediators and arbitrators able to assist the court with ADR services.

### CPDs, training and promotion of ADR

The committee has worked throughout the year to increase barristers' skills in the area of ADR through training and CPD programs.

The Bar Association, with the committee's assistance, has continued to present joint CPD events with the Law Society of New South Wales. A well-received networking event was held in the Common Room on 20 March 2019 featuring the Hon Patricia Bergin SC as the guest speaker on the topic of 'ADR and Legal Profession'.

An ADR session is held in the Bar Practice Course to ensure that ADR will now form a greater part of all barristers' preparatory training. The ADR module was presented by members of the committee alongside the Hon Justice Julie Ward, chief judge in Equity and Susan Dixon, commissioner of the Land & Environment Court.

### Strategic Plan 2017-20

#### Dispute resolution outside courts

**Rationale:** Effective dispute resolution encompasses choosing the most appropriate and effective process for resolving a dispute between parties. Traditional litigation is now complemented and augmented by numerous alternatives. The Bar Association should ensure members are able to offer a full suite of services to consumers.

1. To increase the number of barristers as mediators and arbitrators especially for complex matters.
2. Establish a committee to foster the work of barristers who regularly appear in, or sit on, tribunals or administrative bodies.



## Alternative Dispute Resolution Committee (continued)

*The Bar Association is a supporting organisation of the Australian Centre for International Commercial Arbitration (ACICA) and on the committee's recommendation, the association additionally agreed in 2018 to become a supporting organisation of the 'ACICA 45' initiative, launched in October 2018 to profile young and emerging Australian practitioners.*

The Bar Association is a supporting organisation of the Australian Centre for International Commercial Arbitration (ACICA) and on the committee's recommendation, the association additionally agreed in 2018 to become a supporting organisation of the 'ACICA 45' initiative, launched in October 2018 to profile young and emerging Australian practitioners.

### Submission

In March 2019, the ADR Committee assisted in the preparation of the New South Wales Bar Association's submission to the Australian Bar Association's inquiry into opportunities for Australian barristers to practise in international disputes ('the Gyles Inquiry').

In its submission to the Gyles Inquiry, the committee recommended steps that could be taken at a Commonwealth and state level to promote the Australian Bar as a provider of international arbitration services, to enhance the diversity of counsel working in cross-border disputes and to formulate an evidence-based strategy for the development of arbitral institutions in Australia.

### Broadcast email

Regular 'broadcast emails' continue to be sent by the Bar Association to all accredited mediators, approved arbitrators, approved expert determiners and other barristers who have notified their interest in receiving updates on ADR matters.

The broadcast emails provide details about upcoming CPDs, seminars and conferences of interest, important information about accreditation or approval, and other matters relevant to ADR.

## Services and Benefits Department



In [2003] (Winter) *Bar News*, Anna Katzmann SC (as her Honour was then) wrote an opinion piece titled: 'What is the proper role of Bar Council?' The article ventilated several important issues, in particular: where should the balance lie between supporting and enforcing professional standards and what should members expect their association to do *for them*?

In 2018-19 the Bar Council responded decisively to the second question, when it formally began to aggregate the mixture of services and benefits into the Bar Association's organisational structure. This is the first time in the recent history of the association that an annual report has surveyed the benefits of membership in this way.

### Membership

Clause 3.1.19 of the Bar Association's Constitution enables the Bar Council to 'do all such things as may in the opinion of the Bar Council be of benefit to local practising barristers'. Furthermore, Clause 5 of the *Legal Profession Uniform Laws Application Regulation 2015* specifies costs of the Bar Association that may be recovered by the charging of practising certificate fees. These are limited to regulatory costs, because section 38 (6) of the *Legal Profession Uniform Laws Application Act 2015* explicitly prevents the Bar Association from cross-subsidising non-regulatory activities.

Being a member of the Bar Association and holding a NSW barrister's practising certificate are distinctly separate. The Bar Association's Constitution delineates two classes of membership, A and B, where membership of the former is dependent on holding a current PC. Barristers in NSW have long had a strong commitment to membership of their professional association. As at 30 June 2019 there were 2429 barristers with a NSW PC and 2412 of



Photo: Bar News

those were members (99.3 per cent coverage). This rate of membership has remained stable over time.

### Assisting the profession

The Bar Council and the executive director have tasked the co-ordinator of services and benefits with providing members of the Bar Association, both practising and non-practising, with the same quality and variety of services that other professionals, such as surgeons, engineers and solicitors can expect from their peak bodies. In particular, this begins by assisting local practising barristers to:

- Promote their skills and experience as advocates and ADR practitioners to prospective clients
- Better manage their practice
- Care for their health and wellbeing
- Balance family and work commitments
- Cope in times of personal hardship, tragedy or ill-health
- Foster a sense of collegiality at the bar

These objectives can be identified in the rationale underpinning several sections of the Bar Association's Strategic Plan 2017-20. In order

## Services and Benefits Department (continued)



to respond to these and other objectives of the plan, the co-ordinator of services and benefits has instituted a program of regular surveying and data collection centred around the process of practising certificate renewals. That data is forming an emerging '360-degree view' of a barrister's practice and a map of all member 'touch points' and relationships with Bar Association departments.

The Strategic Plan identifies the website as the principal vehicle for 'more efficient and convenient service to members and [delivery of] timely and accurate information to members'. The launch of a re-modelled website is imminent, complete with a new Find a Barrister module and a considerably enhanced member dashboard – accessible only to members who sign-in.

The second vehicle for delivering improved services and benefits to members is the Wellbeing Committee, which has been given enhanced administrative support and resourcing for its growing list of initiatives (covered elsewhere in this report).

Thirdly, the Bar Association in 2018-19 entered into a three-year partnership with Member Advantage, a leading provider of benefits programs to similar professional organisations, such as the Royal Australasian College of Surgeons and the Royal Australasian College of Physicians. Members can log-in, via the Bar Association website, to a dedicated, branded page on the Member Advantage site offering special savings on insurance, financial services, travel and many more, negotiated on their behalf.

One of the salient personal and economic challenges of practising at the bar is balancing professional and personal responsibilities. Since 2014 the Bar Association has had a management agreement with the



Guardian Early Learning Group, which reserves places at three childcare centres in the Sydney CBD.

There is tremendous scope to increase the range and quality of benefits for all classes of members in 2019-20, especially as a new Strategic Plan is promulgated. Among the projects under development is a member services charter and a 'Welcome kit' for new members.





## Bar Library

### Barristers are required to have a knowledge and understanding of:

- the key concepts and principles of law. They should be able to keep up to date with significant changes to these principles and rules.
- the law and procedure relevant to their area(s) of practice

### Barristers should:

- have a good understanding of, and be up-to-date with recent cases and developments in, the area(s) of law in which they practise;
- know the legal texts, journals, materials, documents and research tools relevant to their area of practice and keep their knowledge and skills in their specific area of practice up-to-date; and
- have effective research skills to be able to recognise and identify relevant legal issues and to assess the quality and relevance of sources.

The Bar Library provides an efficient and effective library service to practising members of the profession and to members and staff of the Bar Association and aims to assist barristers in maintaining the skills identified above.

Its major goals are to:

- provide a relevant, up-to-date and well-balanced collection;
- assist members in the effective use of library resources; and
- provide information resources in the most appropriate medium.

It supports the practice of members of the New South Wales Bar by providing the following services:

- identifying, selecting, acquiring, processing and making available resource material, within the parameters of the collection development policy, to constitute



Photo: Murray Harris Photography

a relevant, up-to-date and well-balanced collection

- legal reference services for members, exam candidates and Bar Association staff;
- library orientation and legal research training;
- provision of an online library catalogue that enables members to find, follow and access the materials relevant to their practice; and
- provision of an index of current free access legal web links.

The library continued to provide a valuable loans service, handling an average of 40 loans per day. The increasing availability of textbooks, law reports, journals and commentary services online has influenced this downward trend.

The library's reference service continues to be well-used with more than 4000 requests for information being answered in 2018-19.

The library has maintained its networks to assist in meeting the information needs of members.

The library continues to provide support to the Bar Book Club and the Bar Knit Group, services aimed at improving the wellbeing of members.

### Strategic Plan 2017-20

#### Provision of services to members

**Rationale and objective:** To provide members of the New South Wales Bar Association with services to assist them in the operation of their practices and enable them to maintain links with the Bar Association once they have ceased to practise.

1. To maintain and develop library services for the benefit of practising and non-practising members of the Bar Association.
2. To create a 'member benefits and services' cluster to plan, co-ordinate and develop member benefits and services taking into account the needs of the city and regional bars.
3. To work towards the provision of amenities and resources for practising and non-practising members of the bar Association.

In 2018-19 the librarians answered more than

# 4,000

requests for information.

Around

# 11,000

legal resources were borrowed.



## Wellbeing Committee

**The New South Wales Bar is a cohort of independent, specialist advocates. In order for barristers to thrive as skilled sole practitioners in a disrupted market for legal services, they must function at high levels of concentration in an often stressful environment.**

The Wellbeing Committee has continued to raise awareness among barristers of the factors contributing to better mental health and wellbeing. In doing so, the committee is guided by the latest multi-disciplinary research in psychology, neuroscience and education, as well as the Bar Association's own Quality of Working Life Survey, conducted in March 2017. This knowledge is sometimes referred to as the Five Ways to Wellbeing – in other words, five simple things that barristers can do in their everyday lives to improve their mental and physical health:

- Collegiality
- Activity
- Mindfulness
- Skills and interests
- Philanthropy

The committee's work supports the Bar Association's Strategic Plan 2017-20 and the Bar Association's Constitution (cl 3.1.19). A measure of its work is the number of announcements published via *InBrief*.

### Awareness

A key objective of the committee is to raise awareness among barristers that, in addition to sheer hard work and being learned in the law, mental and physical wellbeing is a crucial component of success in the courtroom. The committee does this through research, CPD seminars and publications.

On 1 May 2019 the committee approved a proposal by a PhD researcher from the University of Sydney, designed to study the prevalence of externalising symptoms of depression (such as substance abuse, risk taking and aggression) among barristers. The study will update the findings of the 2009 study, *Courting the Blues*. The Wellbeing Committee will assist with the dissemination of the questionnaire and will be given a special briefing on the findings.

Other initiatives underway include a series of mental health training seminars for clerks and heads of chambers, to be conducted by the Black Dog Institute.

Wellbeing will feature prominently in the upgraded Bar Association website, including links to self-assessment and self-help resources on respected websites such as The Black Dog Institute and Minds Count.

### Collegiality

Connecting with colleagues is an effective way to build a positive outlook, especially for those in the early years of practice at the bar. The committee has organised two Bench and Bar lunches during the reporting year at the No.10 Bistro, with a plans in place for one in July at the Sky Phoenix restaurant. Both lunches were sold out and extremely well-received. The Bar Book Club and the Bar Knitting Club, though not directly organised by the committee, are long-standing and successful ways for members to interact with friends and colleagues.



**WELLBEING**

at the New South Wales Bar

### Strategic Plan 2017-20

**Assisting barristers with the economic and personal challenges of a sole practitioner**

**Rationale:** One of the objectives of the Bar Association is to promote, maintain and improve the interests and standards of local practising barristers. The Bar Association should look for ways to assist barristers in their practice, easing administrative burdens where possible, and promoting a culture that values and encourages a reasonable work / life balance.

1. To assist barristers in relation to recovering counsels' fees by providing clear and actionable mechanisms to recover unpaid fees.
2. To establish an escrow service provided by the Bar Association to its members in conjunction with a financial institution.
3. Establish mechanisms to allow members to take a short to medium term break from chambers work, whether for personal leave (including carer and parental leave) or other reasons, should they wish to do so.
4. Promote to members the advantages and benefits of a balanced lifestyle, appropriate stress management, and improved physical fitness.
5. Provide greater assistance to members in relation to financial management. Appropriate financial planning including the management of debt, superannuation and insurance.
6. To establish mechanisms to assist members in the transition from the Bar to retirement or other fields of endeavour.

## Wellbeing Committee (continued)

Photo by Chris Winslow



Bench and Bar Lunch 01/2019 at No.10 Bistro.

Another aspect of collegiality is concern for the treatment of colleagues at the bar table, particularly insofar as it relates to bullying from the bench. The 2017 Quality of Working Life (QoWL) survey of NSW barristers identified this as a major concern for members. The committee has delivered to the Bar Council a plan of action, involving discussions with heads of jurisdictions, while the chair has published an article on the subject in the November 2018 edition of Judicial Officers' Bulletin.

Further evidence of collegiality at the New South Wales Bar is the strong culture of philanthropy, both in the form of individual fundraising ventures and as part of teams organised by the Bar Association. Whether members are: shaving their head to raise money for the Leukaemia Foundation; accepting clothing donations as part of the Fitted for Work Clothing Drive; taking part in the Distinguished Gentleman's Ride; or joining the NSW Bar team running in the Sun Herald City to Surf, tens of thousands of dollars are raised each year. In the recent SMH Half Marathon, a team of seven barristers raised \$14,000.

### Eat, Sleep, Move

Clinical studies increasingly show the importance of sleep for cognitive functioning and general physical health. The 2017 Quality of Working Life survey revealed that, among

other things, local barristers are sleep-deprived. In response, the committee will organise a series of seminars on sleep, to be presented by prominent researchers, such as Professor Sharon Naismith from the University of Sydney.

Second only to sleep in its importance for overall wellbeing is diet. The committee plans to host a presentation by Dr Peter Brukner, sports medicine clinician and author of *A Fat Lot of Good*.

The Wellbeing Committee has organised, or lent support to, a number of popular and beneficial sporting activities, such as the annual Great Bar Boat Race, the Bar Football Club (Bar FC), as well as the Bench and Bar vs Solicitors Golf Day. The committee is investigating other, 'non-traditional' sports for members to join, such as LawSki. The more solitary form of exercise, in the gym, received a boost in early 2019 when the committee negotiated corporate rates for membership at Anytime Fitness in Elizabeth Street.

Finally, learning to focus on the present moment and listening to colleagues are essential habits for mental wellbeing and effective performance at the bar table.

The Wellbeing Committee organised two mindfulness meditation sessions in the Bar Common Room during the reporting year - both well attended.

### Transitions

Taking on new roles, stepping outside one's comfort zone, or developing interests, hobbies and pastimes is an effective step to better wellbeing. Conscious of that fact, the committee is developing two major projects: the Experienced Barristers Program, which is designed to meet the needs of the large cohort of barristers aged over 70 as they transition to retirement and; the Skilled Volunteering Program, run by Australian Business Volunteers. Both would involve utilising the skills, knowledge and experience of the bar on a voluntary basis for the benefit of communities, both locally and in the Asia-Pacific region. It is also expected that there will be opportunities for public speaking engagements, judging student law society moots and chairing seminars.

At a recent meeting the committee discussed a program, to be targeted at junior barristers, designed to support their specific wellbeing needs in the crucial early years at the bar.

# BarCare

Confidential Assistance

BarCare is an integral part of the Bar community that provides assistance to barristers who are experiencing difficulties in their professional or personal lives. The service is funded by the Barristers' Benevolent Association and operates independently of the Bar Association. The service is strictly confidential and BarCare does not give any personal information to the Bar Association without the express permission of the barrister involved. In addition to providing professional psychological or other support it also has the capacity to give financial assistance in times of need, such as illness or bereavement.

2018-19 saw 71 barristers and clerks seek assistance for themselves or for a family member, or advice for a colleague for whom they were concerned. As in previous years, the great majority of these contacts have been self-referred with the next largest group of referrals coming from Bar Association staff. As in previous years, the most common primary presenting problems were stress and anxiety (25 per cent), usually related to workplace demands and stresses, followed by relationship issues (11 per cent) and depression (10 per cent). While these may be the primary presenting problem there are frequently secondary issues present, such as problematic alcohol use or physical health issues. Advice was also given to a number of chambers on managing workplace interpersonal difficulties, including bullying and harassment. BarCare is available to meet and talk with barristers and assist them to seek help from one of the psychologists or psychiatrists on the panel of specialists. Alternatively, barristers are able to contact one of the specialists directly to make an appointment. The Barristers' Benevolent Association will pay for the first three or four sessions to support the barrister in accessing



appropriate professional assistance. The service is a confidential one.

In 2018-19 BarCare provided assistance to eight barristers located outside of the metropolitan area. BarCare is aware that the services it offers are not easily accessible to barristers working outside of Sydney, who are often practising in a setting that is both professionally and geographically isolating. Barristers are always welcome to contact the BarCare director, Jenny Houen, and she will locate a suitable person in their area.

*In 2018-19 BarCare submitted seven requests for financial assistance to the Barristers' Benevolent Fund, all of which were granted.*

In 2018-19 BarCare submitted seven requests for financial assistance to the Barristers' Benevolent Association, all of which were granted. These grants were to assist barristers facing a range of unexpected life challenges, including illness and bereavement. Requests for assistance should be discussed with Jenny Houen. These applications are dealt with confidentially by the Bar Association's Executive.

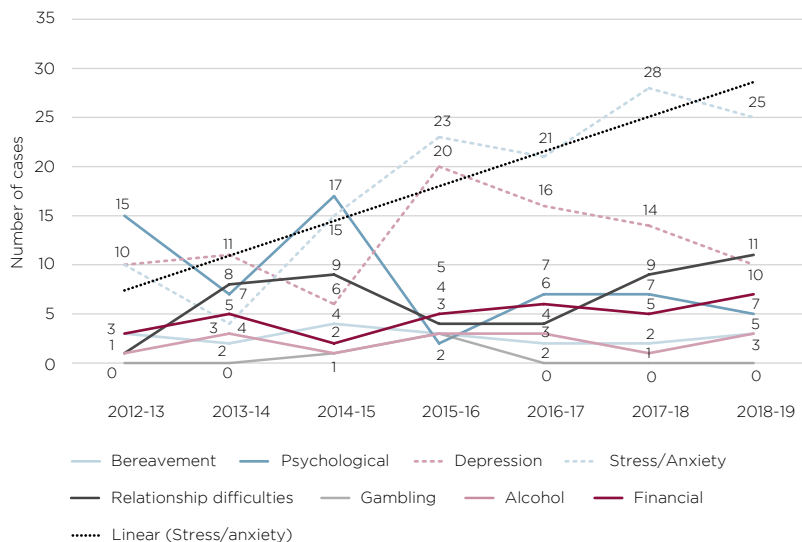
## 8

barristers outside the metropolitan area received assistance from BarCare.

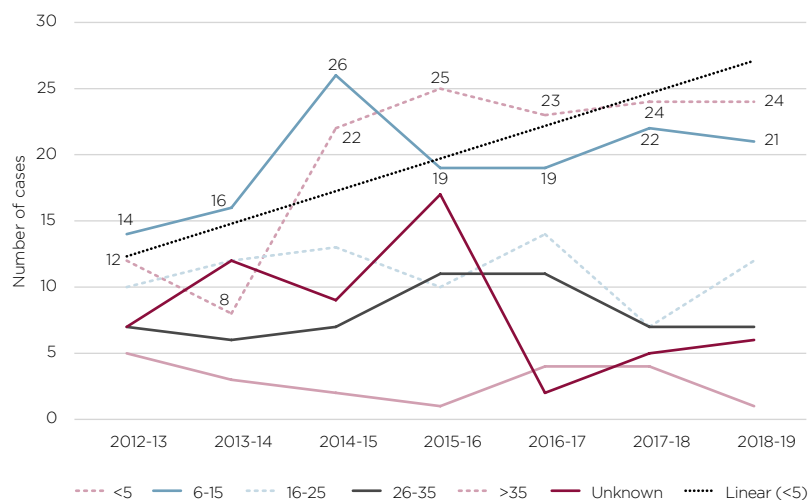
## 71

members in 2018-19 sought assistance for themselves or for a family member, or advice for a colleague for whom they were concerned.

## Primary Presenting Problems



## Barcare consultations, by seniority





# BarCare

Confidential Assistance

Primary presenting problem	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
Siege	0	0	15	2	2	0	0
Bereavement	3	2	4	3	2	2	3
Psychological	15	7	17	2	7	7	5
Depression	10	11	6	20	16	14	10
Stress/anxiety	10	4	15	23	21	28	25
Relationship difficulties	1	8	9	4	4	9	11
Career advice	0	0	1	3	3	1	2
Physical health	4	9	4	9	6	1	1
Alcohol	1	3	1	3	3	1	3
Financial	3	5	2	5	6	5	7
Advice and NFA	6	7	5	9	3	5	4
Rejected offer of assistance	2	1	0	0	0	1	0
<b>Total</b>	<b>55</b>	<b>57</b>	<b>79</b>	<b>83</b>	<b>73</b>	<b>74</b>	<b>71</b>

2012

18%

2019

35%

referrals for stress and anxiety

Source of referral	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
Colleague via bar	2	2	0	0	1	2	1
Bar staff	14	14	13	11	8	7	13
Self	27	22	48	46	44	48	43
Colleague	7	6	7	13	11	8	8
Family	1	3	2	2	2	1	1
Clerk	2	3	4	2	2	3	3
Advice for colleague	2	7	5	9	5	5	2
<b>Total</b>	<b>55</b>	<b>57</b>	<b>79</b>	<b>83</b>	<b>73</b>	<b>74</b>	<b>71</b>

2012

49%

Gender	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
Male	37	37	47	46	41	44	44
Female	18	20	32	37	32	30	27

Age (years)	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
<34	6	3	6	9	8	12	13
35-44	12	12	22	14	7	24	21
45-55	13	11	27	24	17	12	22
56-65	13	15	13	17	20	15	10
>65	4	5	2	20	18	2	3
Unknown	7	11	9	18	0	9	2

2019

61%

Years at bar	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
<5	12	8	22	25	23	24	24
6-15	14	16	26	19	19	22	21
16-25	10	12	13	10	14	7	12
26-35	7	6	7	11	11	7	7
>35	5	3	2	1	4	4	1
Unknown	7	12	9	17	2	5	6
N/A	-	-	-	-	-	5	-

percentage of self-referred



## Costs and Fees Committee

**The committee continued to provide technical and policy advice to Bar Council on legal questions and policy issues concerning costs and fees through the year ended 30 June 2019. Members of the committee additionally respond to confidential inquiries regarding costs-and-fees issues in practice.**

During the year under review, the committee's work included the following:

- The committee advised Bar Council on the Joint Costs Advisory Committee 2018 inquiry into scales of costs in Federal Courts and drafted a submission.
- The committee provided advice to Bar Council on policy in relation to proposed changes to costs disclosure thresholds under the Legal Profession Uniform Law. This contributed to a governmental decision to leave the thresholds unchanged.
- The committee considered costs aspects of the ALRC Inquiry into class actions, particularly the proposal to permit speculative percentage-based fees. (Three members of the committee, Brabazon SC, McDonald and Beechey, have been seconded to an ad hoc working party established by the Bar Council Executive on that subject.)
- The committee advised the Association on problems caused by application of the time limit in s 198 of the *Legal Profession Uniform Law* (NSW) to unpaid barristers (and other unpaid law practices) seeking assessment of costs owing to them. (It is understood that there is a proposal to amend s 198.)

- The committee considered the issue of 'wasted costs' and similar orders against practitioners, particularly under the *Civil Procedure Act 2005* (NSW) s 99, and developed a guidance note.
- The committee commenced consideration of the differential impact of offer-of-settlement regimes under the UCPR.
- The committee considered issues relating to the Law Council's consultation and discussion paper on legal-expense and commenced preparation of advice for Bar Council.

As in previous years, the chair and committee members have provided informal advice to members and to Bar Association staff on a range of cost-related issues and has continued to support the work of the Bar Association's fee-recovery service.



## Innovation and Technology Committee

**The committee exists to support the work of the Bar Association by articulating, considering, and strategically responding to the effect of fundamental and disruptive changes to legal practice and the administration of justice brought about by technological change (and the wider social and economic context). The committee also seeks to provide a means by which the Bar Association and its members can embrace innovative practices which better serve the administration of justice, the community, and an effective independent bar.**

During the financial year, the committee commenced, progressed, and completed a number of important projects supporting the association's strategic objectives. There are three projects deserving particular mention.

The first is the work done by the committee to overhaul the Find-a-Barrister system to substantially improve its utility and establish a platform to aid evolving briefing practices and the promotion of its members. The committee consulted closely with other committees and stakeholders. The system itself will be launched as part of the Bar Association's redesign of its website. It is expected that additional refinements will be made after it is launched.

The second area is the extensive work done to develop *Information Technology and Cybersecurity Guidelines* for members. After the successful publication of the *Social Media Guidelines for Barristers* (in April 2018), this latest guideline takes into account work done by other bar associations around the world to develop practical guidance to assist members to meet the professional obligations in a networked world.

The third area is the development and provision of CPD programs considering both ethical issues

and technological threats and opportunities presented by emerging technologies. The committee plans to include a regular update of technological issues using a blog-style information service.

Other work-in-progress of the committee includes a paper examining the implications of paperless courts for the individual barrister and the New South Wales Bar. This paper will also examine issues of improving the capability of technology in the courts. Another project is intended to better understand the diverse experiences of members of the New South Wales Bar at various stages of their professional careers as well as identify career paths of members and how they may differ across specialisations, and how technology might assist the professional development and retention of members.

## Diversity and Equality Committee



Photo by Jessica Thomas



### In 2018-19 the Diversity & Equality Committee (DEC) focussed its efforts on specific target areas of the New South Wales Bar.

Between 1 July 2018 and 30 June 2019 the DEC met on 10 occasions and the focus of the work shifted to issues that impact particular attribute groups in different ways, rather than dividing the work into sub-committees identified by attribute. Instead of looking at women, culture, family responsibilities, LGBTI and disability through a single lens, the committee focussed on broad problems, such as barriers to entry, retention, flexible work, bullying and harassment and inclusion. The committee examined new proposals and continued to evaluate the effectiveness of existing policies.

### WBF collaboration

The DEC continues to work collaboratively with the Women Barristers Forum (WBF) with two members of the DEC also being members of the WBF. The DEC and WBF continue to work together on the implementation of the Law Council of Australia's National Gender Equitable Briefing Policy.

The committee worked with a number of the large law firms, the Women Lawyers Association and the Law Society of New South Wales on equitable briefing functions to introduce NSW women barristers to a wide range of practice areas, clients and firms. There have

been a number of equitable briefing Continuing Professional Development (CPD) seminars: 'Equitable Briefing of Experts' on 14 March 2019 and 'In Conversation with our Clients: Fresh Perspectives on Equitable Briefing' on 13 June 2019.

In August 2018, the WBF has also worked with the DEC to organise the annual New South Wales Female Student Open Day. Each year the Open Day attracts over 100 registrants from the five metropolitan universities in New South Wales and is dependent on the generosity of time and enthusiasm from the bar and the bench for the event.

### First hundred years

The year 2018 marked the first 100 years of the passing of the Women's Legal Status Act in 1918. The New South Wales Bar Association attended the Law Society of New South Wales's First 100 Years gala event held on 26 November 2018 at the New South Wales Parliament House in which female trailblazers of the profession were honoured and to mark the centenary of a change to the law to allow women in NSW to practise as solicitors and enter politics.

The Diversity and Equality Committee held the inaugural Sybil Morrison Lecture in March 2019 with its first speaker being Claire Palmer, the inaugural recipient of the Katrina Dawson Award.

### Strategic Plan 2017-20

#### Equity and diversity of membership

**Rationale:** In order to assist society the Bar must represent and reflect society. A vibrant Bar will support and encourage equal opportunity in respect of gender, race, disability, sexuality and human diversity.

1. Improve diversity at the Bar and promote and ensure equality of opportunity irrespective of age, physical disability, class, gender, ethnicity, sexual orientation and religion.
2. Identify and remove barriers to entry to the Bar, practice and advancement at the Bar. Promote and ensure equality of opportunity for barristers and for any person wishing to come to the Bar.
3. Increase the adoption of and ensure the implementation of the Equitable Briefing Policy for female barristers by clients, solicitors, government, barristers' clerks and barristers.

## Diversity and Equality Committee (continued)



The lecture was chaired by New South Wales governor-elect, the Hon Margaret Beazley AO QC.

*The Diversity and Equality Committee held the inaugural Sybil Morrison Lecture in March 2019 with its first speaker being Claire Palmer, the inaugural recipient of the Katrina Dawson Award.*

### Responding to sexual harassment

As foreshadowed in the New South Wales Bar Association's 2017-18 Annual Report, sexual harassment at the bar continued to be a significant area of work for the DEC.

The chair and members of the DEC provided assistance to a number of women barristers and those working with barristers who experienced sexual harassment.

Members of the DEC worked over five months to prepare the Bar Association's submission to the Australian Human Rights Commission's (AHRC) National Inquiry into Sexual Harassment in Workplaces which was submitted in February 2019. A roundtable was held by the AHRC in which the association participated. The Bar Association's submission also contributed a large part of the submissions made by the Law Council of Australia and the Australian Bar Association to the AHRC's inquiry. In 2018 the International Bar Association surveyed legal professionals around the world - including members of the New South Wales Bar - on their experiences of bullying and harassment and it issued its report on the findings, *Us Too? Bullying and Sexual Harassment in the Legal Profession* on 15 May 2019.

In addition to responding to the National Inquiry, the DEC organised further CPDs held in March 2019, aimed at assisting



'At the Law Courts', by Robyn Rankin

members experiencing or witnessing harassment about their rights, as well as informing chambers and barristers about their options should they be faced with a complaint of sexual harassment. These CPDs were recorded so can be accessed to members. The DEC is also working on initiatives with the Bar Council to better inform members of their rights, obligations and avenues to seek assistance in instances of sexual harassment.

### LGBTIQ+

In February 2019 Advocate for Change and DEC member, Richard Weinstein SC, was appointed as a judge of the District Court of NSW. The committee congratulates his Honour and thanks him for his contribution to inclusion and diversity at the New South Wales Bar. This includes his participation in the University of Sydney Law School's inaugural Rainbow Mooting competition, which culminated in the winners' trophy being named the Richard Weinstein SC Cup in his honour.





## Diversity and Equality Committee (continued)

The vacancy in the role of Advocate for Change for the promotion of LGBTI diversity and inclusion at the bar was filled in April 2019 by the appointment of Andrew Pickles SC. In June 2019 the president appointed Robert Dubler SC as Advocate for Change to promote inclusion and access at the New South Wales Bar for people with disabilities. Andrew's and Robert's appointments are until July 2021 and they join current Advocates for Change appointed in 2017, Jane Needham SC and Hament Dhanji SC, appointed to advocate for gender and culture respectively.

### Bar News

The committee was fortunate to have the opportunity to work with the Bar News Committee to produce a diversity and inclusion special edition of *Bar News*, published in May 2019. Work on the edition commenced in September 2018 and continued well into early 2019. The edition received high praise from members in NSW, other state and territory bars, the judiciary and members of the wider legal profession.

The feature article in the edition reported on the statistics from the Practising Certificate Renewal Survey collected in April to June 2018 last year. The survey collected data on cultural diversity of members of the bar, languages spoken, practice by seniority and gender as well as appearances in federal and state courts by seniority and gender. The DEC will consider 'what next', now that this data has been collected and will continue to be collected each year.

Other initiatives include:

- participation in the Australian Women Lawyers Association conference held in Sydney in August 2018 at which the president at the time, Arthur Moses SC, participated on a panel on sexual harassment in the legal profession;
- the chair's participation in the Law Society of New South Wales's Women's Leadership Forum;
- preparing and delivering seminars in Newcastle, Orange and Sydney in February - March 2019 on unconscious bias;
- Bar Council approval of the Bar Association's adoption of the Panel Pledge in June 2018;
- Working with the Bar Association's Professional Development Department to improve the information available to prospective readers on readers rooms and receipt of applications;
- attending the Muslim Legal Network's 2019 Iftar Dinner on 20 May 2019;
- conducting a childcare review and formally transferring the portfolio to the co-ordinator of member services and benefits;
- reviewing and amending the diversity and equality content on the Bar Association's website;
- the weekly 'blog' on inclusion and diversity, featured in *InBrief*, which commenced in May 2019; and
- writing to the courts, encouraging counsel to provide speaking roles for junior counsel in matters.

Additionally, to assist with its work, the DEC have invited guest speakers to attend committee meetings. This has assisted in understanding and development of initiatives as well as ensuring cross-committee collaboration. Guest speakers have included:

- Mr Zaahir Edries from the Muslim Legal Network;
- Mr Mark Latchford from Pride in Diversity;
- Ms Kylie Nomchong SC, chair of the Wellbeing Committee;
- Ms Jenny Houen, director of BarCare; and
- Mr Andrew Pickles SC, Advocate for Change.

The DEC has continued to examine issues for the association's members with respect to disability and age.

The committee's standing items include data collection, sexual harassment, flexible working, barriers to entry to the bar, equitable briefing and Best Practice Guidelines.

The DEC has identified the need for reliable data and working collegially with other committees as areas for continuing improvement. In the last year it has made significant headway in shifting the focus onto strategic partnerships to tackle systemic issues and barriers to diversity and inclusion.

## First Nations Committee

**In the first full year of operation since its creation, the First Nations Committee, incorporating and carrying on the work of the Indigenous Barristers' Strategy Working Party which had been in operation since 2001, has provided some valuable input into the work of the New South Wales Bar Association.**

The committee has worked on a number of projects, provided or contributed to submissions by the Bar Association and the Law Council of Australia and co-ordinated or convened Continuing Professional Development events for members and the community.

*A highlight of the work of the committee has been the contributions to the Law Council submissions to the Parliamentary Joint Select Committee on the Recognition of Aboriginal People and Torres Strait Islanders in the Australian Constitution.*

A highlight of the work of the committee has been the contributions to the Law Council submissions to the Parliamentary Joint Select Committee on the Recognition of Aboriginal People and Torres Strait Islanders in the Australian Constitution. Furthering the association's commitment to the principles and directions set out in the Uluru Statement from the Heart, the committee convened an event in November 2018 with speakers including the then president, Arthur Moses SC and Thomas Mayor, Torres Strait Islander man and strong advocate for a First Nations voice to Parliament.

The event provided an opportunity for members of the Bar Association, the judiciary and others to show their support for the Uluru Statement from the Heart by signing a replica



Noel Pearson signs the canvas where the Uluru Statement from the Heart will be painted on, during the closing ceremony in the Mutitjulu community of the First Nations National Convention held in Uluru, on Friday 26 May 2017.

Photo: Alex Ellinghausen / Fairfax Photos

of the Statement which now hangs in the association's premises.

The Uluru Statement from the Heart marks a seminal moment in First Nations policy in Australia. It signals a clearly articulated path to remedying the failings of the relationship with the Australian Government and the Australian people. When adopted at the Uluru Convention on Constitutional Recognition in May 2017, the Statement from the Heart called for the creation of a First Nations representative 'Voice' to the Australian Parliament, and Makarrata Commission which provides for truth and agreement making processes.

The First Nations Committee has reviewed Bar Council policies to ensure they are consistent in language and principles with a diverse Bar inclusive of First Nations people and conscious of matters affecting First Nations people. The recommended amendments to these policies will be put to the Bar Council in the second half of 2019.

During the year it also came to the attention of the First Nations Committee that there was an absence of any guidelines relating to the way that barristers might represent Aboriginal and Torres Strait Islander clients in a manner that was informed by some degree of cultural awareness. Such guidelines exist in South

*The First Nations Committee has reviewed Bar Council policies to ensure they are consistent in language and principles with a diverse Bar inclusive of First Nations people and conscious of matters affecting First Nations people. The recommended amendments to these policies will be put to the Bar Council in the second half of 2019.*

## First Nations Committee (continued)



Australia and Western Australia.

Draft guidelines have been prepared by the committee and were approved by Bar Council on 17 June 2019. There will be a CPD in the second half of 2019 to launch the guidelines and assist barristers in their use.

The First Nations Committee also made or contributed to submissions to the following reviews and inquiries:

- *Native Title Amendment Bill 2018*;
- Ice Inquiry; and
- *Adoption of Children Amendment Act 2018*.

Members of the First Nations Committee also sit on the Indigenous Incarceration Working Group, a committee comprised of members of the First Nations Committee, the Human Rights Committee and the Criminal Law Committee and in that role have made substantial contributions to the work of the association.

The chair of the First Nations Committee and the chair of the Indigenous Barristers Sub-committee also sit as trustees on The Indigenous Barristers' Trust The Mum Shirl Fund. The trust was established in 2001 to provide a gift fund that would provide an opportunity for members of the Bar Association and others to contribute to a fund designed to assist laws students and young solicitors to progress to the Bar. Each year the Indigenous Barristers Trust contributes to the retention and advancement of young Aboriginal and Torres Strait Islander people through their law studies and into practice. At 30 June 2019, there were five Indigenous barristers practising at the New South Wales Bar. This is the high water mark thus far. However, it is in the increased numbers of law graduates and those choosing to practice law that the Indigenous Barristers Trust and the Indigenous Barristers Strategy

have shown to be irreplaceable.

The New South Wales Bar continues to lead nationally in this area and advances not only augur well for the immediate future but also, due to the sustainable nature of the programs, for the long term.

An example of the importance of this work can be seen in the annual University of NSW Indigenous Pre-Law Students visit to the New South Wales Bar. Each year young people aspiring to study law attend at the Bar, hearing from members of the association, visiting chambers, sitting in court watching a matter in progress and then in conversation with the presiding judicial officer at the lunch break. Many Aboriginal and Torres Strait Islander people who have been through the pre-law course have gone on to study law and then practice. Of those who are known to the Indigenous Barristers Sub-committee most have recounted the importance of their visit to the New South Wales Bar in broadening their perspective of what was and is achievable.

The committee also runs a mentoring program for First Nations law students and links them with individual barristers who provide advice and assistance as their law studies progress and expose them to the realities of legal practice.



## Law Reform and Public Affairs

**Two of the major aims contained in the New South Wales Bar Association Constitution relate to the promotion of the administration of justice and making recommendations with respect to legislation, law reform, rules of court and the business and procedure of the courts.**

Further, the Bar Association's Strategic Plan acknowledges its roles in (a) promoting the public good in relation to legal matters and the administration of justice viewed in the broadest context and (b) representing the interests of its members in dealings with government, the broader legal profession, the media and the community. It also states that 'informed public debate and the provision of legal expertise to law reform proposals is crucial to the maintenance of the rule of law in society and the administration of justice' and contains the strategic objective 'to continue the role of the New South Wales Bar Association, collectively and through individual members, as a voice on issues relating to the administration of justice.'

The Bar Association's Law Reform and Public Affairs Department provides secretariat, research and writing support to the association's various policy committees and assists the president and other officeholders in advocating policy positions to government and advancing the association's public profile on matters of law reform.

The Bar Association's policy staff conduct research and prepare submissions in conjunction with Bar committees, sections and *ad hoc* working parties on draft legislation and other policy proposals from government and statutory bodies such as law reform commissions, the NSW Sentencing Council, parliamentary committees and the courts. Furthermore, agencies

such as the Department of Justice and the State Insurance Regulatory Authority frequently seek the association's advice on draft legislation, regulations, guidelines and related instruments. In the reporting year, the department finalised 99 such submissions.

*In the reporting year, the department finalised 99 such submissions.*

This policy work provides opportunities for the association to engage publicly on particular issues. The director, law reform and public affairs works with the president, Executive and Bar Council in preparing and distributing the association's public statements and in responding to requests for comment and information from the media. The co-location of the association's law reform and media affairs functions ensures consistency between the association's policy and public positions.

In accordance with the role encapsulated in its Constitution and Strategic Plan, the association seeks to defend and promote fundamental principles underpinning our justice system, such as the rule of law, in its public affairs work. An ongoing aspect of this work is to educate members, media outlets and the community regarding crucial tenets relating to issues of legal principle and the justice system.

The state election held on 23 March 2019 provided the association with an opportunity to provide political parties with its Pre-Election Policy Statement. The statement, which was publicly released on 22 February 2019, called on all political parties to implement key proposals which reflect the law reform priorities of the Bar Council in a number of crucial areas - court resourcing, indigenous justice, legal aid, criminal law, human rights, personal injury, family law

### Strategic Plan 2017-20

#### Contribute to public debate

**Rationale:** Informed public debate and the provision of legal expertise to law reform proposals is crucial to the maintenance of the rule of law in society and the administration of justice.

1. To continue the role of the New South Wales Bar Association, collectively and through individual members, as a voice on issues relating to the administration of justice.

and alternative dispute resolution. Responses to the policies contained in the statement were received prior to the election from the government, opposition, Greens and others. In order to effectively advocate on behalf of its members, the association is necessarily required to adopt a non-partisan approach, and the positive responses received from political parties reflects the regard in which the association is held as an objective and respected source of legal policy and law reform initiatives.

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During the reporting year, the president in his role as the association's spokesperson made extensive contributions to public debate regarding justice and law reform issues.

One of the law reform proposals

## Law Reform and Public Affairs (continued)



pursued by the association in recent times has involved the increase in the judicial retirement age to 75. After extensive advocacy from the association, the attorney general announced in September 2018 that the New South Wales Government would introduce legislation to implement the initiative. On 20 September the then president, Arthur Moses SC, stated by way of media release:

We support judges and magistrates being able to serve on the bench of NSW courts until the age of 75.... While the association welcomes these changes in principle, any legislative reform in this space must be prospective, not retrospective, to maintain the independence of the bench, including the appearance of the independence of the judiciary which is fundamental to the rule of law.

The Bar Association has consistently expressed concern regarding the inadequacy of judicial resourcing in the District Court. On 29 October 2018 then president, Arthur Moses SC, made the point in a media release that 'the Bar Association has been very concerned for some time about the lack of resourcing and other support for District Court judges in the face of a crushing workload. The lack of resources has resulted in long delays in matters being heard, which unacceptably impacts adversely on defendants, witnesses and victims of crime. The stress on victims caused by delays is of significant concern'.

The next evening Moses SC appeared on ABC Television news to expand on the point:

'The Bar Association is of the view that a comprehensive review of the court's jurisdiction, structure and processes is required to identify systemic issues that may affect the



MachineHeat / iStock

proper and timely administration of justice. We have prepared and provided the attorney general with draft terms of reference for a comprehensive review of the court and its practices, and urge the government to institute such a review as soon as possible.'

*Another longstanding concern of the association relates to the parlous state of legal aid rates for practitioners and the flow-on effects for the justice system.*

At the time of writing the government has, in early July 2019, announced a review of the criminal jurisdiction of the court to be conducted by the chief judge.

Another longstanding concern of the association relates to the parlous state of legal aid rates for practitioners and the flow-on effects for the justice system.

After extensive discussions with Legal Aid NSW and the New South Wales Government failed to bring about any increase in the 2019 State Budget for legal aid, President Tim Game SC publicly stated that it was 'no longer financially sustainable for many barristers to spend the time and do all that is necessary to undertake legal aid work' and there had been 'no will' on the part of successive governments to fix the problem.... 'The matter is now out of the profession's hands,' he said. 'I

will be advising our members that they are under no obligation to take on legal aid work when they will not receive anything approaching adequate payment to perform this important work.... Once unpaid hours and overheads are taken into account, some barristers undertaking legal aid matters find themselves working for around half of the minimum wage.' (Sydney Morning Herald, 20 June 2019). These comments received widespread coverage in print and electronic media and the president was interviewed on ABC Radio 702 on 20 June 2019, along with other media outlets, in this regard.

*Once unpaid hours and overheads are taken into account, some barristers undertaking legal aid matters find themselves working for around half of the minimum wage.*

For some years the association has run a campaign, along with other legal profession organisations, to improve access to proper compensation for victims of motor accidents. Prior to the state election in March 2019, President Tim Game SC reiterated these concerns in the light of the claims experience under the *Motor Accidents Injuries Act 2017* scheme:

While the aim of reducing legal fees has been achieved, that has been achieved by diminishing





## Law Reform and Public Affairs (continued)

people's legal rights. In addition, insurance companies are making large profits from the scheme. Victims suffering 'minor injuries' receive no more than 26 weeks of benefits under the scheme. Yet the definition of 'minor injury' is so expansive it can capture injured people who may never return to work....In circumstances where, to date, 60 per cent of assessed claims have been classified as involving minor injuries, this should be a red flag to the government and the opposition....this indicates that there are significant flaws in the assumptions underpinning the scheme, and that the scheme can result in badly injured people not being paid compensation in circumstances where ample funds are being collected that could be used to compensate them properly.

*Bar Association media release,  
18 March 2019*

In 2018 the Bar Association took a major role in proposing a principled alternative to the proposal of the federal attorney-general, the Hon Christian Porter MP, to abolish the Family Court and transfer its jurisdiction to the Federal and Federal Circuit courts. On 31 July 2018, the Bar Association released a discussion paper to encourage a national conversation about the benefits of preserving a specialist Family Court of Australia as an alternative to the government's proposed restructure. The discussion paper, entitled 'A Matter of Public Importance: Time for a Family Court of Australia 2.0' and accompanying opinion piece from Moses SC received extensive coverage in the media, and the paper was endorsed by a number of legal and community groups. As a subsequent piece by the chair of the Family Law Committee, Michael Kearney SC stated: 'There is also agreement

amongst the legal profession and domestic violence service providers that the Bills are not the solution and should not be passed. There is a real risk that the Bills if enacted will only further increase cost, delay and confusion for families. What is required is widespread consultation and considered, holistic reform of the family law system to ensure a meaningful, long-term investment in our most important social justice infrastructure.' (Opinion piece, *The Australian*, 22 March 2019). At the time of writing the government's legislation has not passed the Australian Parliament.

An enduring feature of the association's public profile involves public support for the independent role of the judiciary in this state and the defence of judicial officers from unjustified criticism. An example of this aspect of the association's public affairs work arose in the context of media commentary on the decision of Chief Judge Preston of the Land and Environment Court in *Gloucester Resources Ltd v Minister for Planning* in early 2019:

***An enduring feature of the association's public profile involves public support for the independent role of the judiciary in this state and the defence of judicial officers from unjustified criticism.***

The New South Wales Bar Association has the highest regard for the integrity of the judiciary and has concerns about recent claims in the media of judicial overreach with respect to the judgment of Preston CJ in *Gloucester Resources Ltd v Minister for Planning*....Whilst appropriately eschewing an assertion of bias, one newspaper nevertheless referred to the chief judge as having co-founded the Environmental Defenders Office (which represented one of the parties in proceedings)

and made reference to extra-judicial papers the chief judge has given extracting parts of his speeches that might give the impression that his Honour was biased in relation to the subject of climate change.

That is an attack on the character of the chief judge... If there was any concern about judicial bias, it was open to the parties to raise that and ask the judge to recuse himself.'

*Tim Game SC, Media Release,  
13 February 2019.*

These kinds of statements embody the association's dual public affairs functions of contributing to policy debate and educating the media and public on issues relating to the bar, the justice system and the rule of law.



## Human Rights Committee

### **The Human Rights Committee worked on a broad range of matters during the last year.**

At the commencement of the reporting year, Naomi Sharp SC and Angus Stewart SC (as he then was) took over as co-chairs from Sarah Pritchard SC. The thanks of the committee and the association generally are due for Pritchard SC's contribution and leadership over the previous six years as chair.

The committee resolved to make advocacy for the introduction of state and federal Human Rights Acts one of its core projects. For many years the committee and the Bar Council have advocated for the introduction of a Charter or Bill of Rights both at federal and state levels.

The 70th anniversary of the adoption of the Universal Declaration of Human Rights by the United Nations General Assembly provided the opportunity for the committee to arrange a special joint event with the NSW Law Society, Australian Lawyers for Human Rights and the Human Rights Law Centre, hosted by Gilbert + Tobin. On 4 December 2018 a panel comprising Mr Rob Hulls, the former Victorian attorney-general and director of the RMIT University's Centre for Innovative Justice, Ms Helen Watchirs, president of the ACT Human Rights Commission and Mr Hugh De Kretzer, executive director, Human Rights Law Centre, discussed the case for the introduction of both a federal and New South Wales Human Rights Act.

The session was chaired by Law Council of Australia president (and immediate past-president of the New South Wales Bar Association) Arthur Moses SC. The event was exceptionally well-attended and provoked vigorous discussion amongst seminar attendees. It is through these kinds of events that

the committee aims to encourage an ongoing dialogue across the legal profession regarding human rights protections and the need for this kind of legislation.

Through the committee the Bar Association also became a founding member of the Human Rights for NSW Alliance, which is concerned to promote the introduction of a Human Rights Act in New South Wales. The Alliance is principally driven by Australian Lawyers for Human Rights.

A diverse collection of community groups have come together to join the alliance, including National Children's and Youth Law Centre, the NSW Aboriginal Land Council, NCOS and Seniors Rights Service just to name a few. Readers can find the Alliance website at [humanrightsfornewsw.org](http://humanrightsfornewsw.org)

*Another core focus of the committee was on the rights of asylum seekers and, in particular, the question of medical removals from immigration detention.*

Another core focus of the committee was on the rights of asylum seekers and, in particular, the question of medical removals from immigration detention. A CPD session was arranged and held in the Common Room on 22 November 2018, titled 'How to save a life: seeking orders for health care for detained asylum seekers'. In that presentation Geoffrey Watson SC discussed the legal and practical steps required to obtain an urgent injunction to facilitate medical treatment in Australia for detained asylum seekers, and two medical professionals, Associate Professor Munjed Al Muderis and Dr Barri Phatarfod, shared their insights into the medical services needed in the detention environment. Associate Professor Al Muderis

### *The committee's charter requires it:*

- *To monitor legislation and prospective legislation and policy for its impact on human rights*
- *To provide opinion to the Bar Council, the Criminal Law Committee and the President on human rights issues*
- *To deal with such other matters as are referred to it by the Bar Council or the Executive for consideration and report*
- *To raise awareness among members of the profession and public of human rights issues.*

## Human Rights Committee (continued)



spoke of his first-hand experience as a detainee in Australian immigration detention pending the resolution of his asylum claim.

Dr Phatarfod exposed the brutal reality of every day life for immigration detainees on Nauru, highlighting amongst other things the chronic medical conditions suffered by many of them and the very real problem of chronic dehydration in an island setting where drinking water is a scarce resource.

Throughout the reporting year, the committee was involved in the preparation of a number of submissions to parliamentary committees and other bodies, including:

- A submission to the Senate Legal and Constitutional Affairs Legislation Committee regarding *Freedom of Speech Legislation Amendment (Insult and Offend) Bill 2018* and cognate legislation. Naomi Sharp SC and Professor Andrew Byrnes appeared on behalf of the association at the committee's hearing on 15 February 2019. The Bills were not passed by the Senate prior to the May 2019 federal election and have lapsed.
- Comments to the Law Council of Australia regarding draft terms of reference for the subsequent Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability; and
- Comments in relation to the review of the Australian Human Rights Commission Regulations and *Disability Discrimination Commission Regulations 1996*

Other issues that the committee was involved in over the reporting year included discussions with the NSW interim anti-slavery commissioner, Professor Jennifer Burn, regarding draft regulations in relation to the as yet uncommenced *Modern Slavery Act 2018*, and the possibility of members acting pro bono in test cases once the new legislation commences, and considering possible criteria to be applied for applications for legal assistance from the Bar Association in overseas human rights-related matters.



## Family Law Committee

### General activities of the Family Law Committee

The state of family law in Australia is of great concern. Delays are endemic and proper resourcing of the system is critical. The Family Law Committee was, therefore, particularly active in the areas of law reform and policy in the 2018-19 year.

The committee led the Australian Bar's opposition to the Commonwealth attorney-general's proposed amalgamation of the family courts with its July 2018 discussion paper on the reformulation and reinvigoration of the Family Court of Australia. Submissions were then made by the committee to the Senate's Legal and Constitutional Affairs Legislation Committee on the need for urgent reforms to resolve endemic delays in proceedings in November 2018.

The committee also worked closely with the Law Council of Australia, including the Family Law Section, in consultation on a variety of other issues affecting family law practice.

While maintaining a high level of engagement in law reform, the committee still managed to support practitioners by organising well-received CPD events and continuing to liaise with the courts on matters of general issues of concern for the association's members in their day-to-day practice.

In addition the committee contributed to the development of the association's First Nations Protocol, providing input from a family law perspective.

### CPDs and training

The committee continues to provide training to members in complex and challenging areas of family law.

On 21 November 2018, the committee held a CPD event, presented by Suzanne Christie SC and April Francis, on the interplay between family law and

criminal law, a seminar that was later repeated at the Newcastle Conference in February 2019.

To assist members in their first five years of practice, the committee additionally organised a CPD seminar in March 2019 with speakers the Hon Justice Louise Henderson of the Family Court of Australia and her Honour Judge Elizabeth Boyle of the Federal Circuit Court of Australia on evidentiary issues arising in, and preparing for, interim family law hearings.

*The state of family law in Australia is of great concern. Delays are endemic and proper resourcing of the system is critical.*

### Liaison with the court and Legal Aid NSW

The committee additionally continues to attend meetings of court user groups in Parramatta, Newcastle and Sydney to raise issues facing members in their daily practice.

The members of the committee have also continued to work collaboratively with the Law Society of New South Wales and the association's ADR Committee to maintain and participate in the Family Law Settlement Service a mediation programme for financial or property disputes.

To prepare for the implementation of the Family Cross-examination of Parties Scheme, which will prevent potentially abusive parties in proceedings from cross-examining witnesses, the committee has worked closely in 2019 with Legal Aid NSW to formulate policies to ensure the Bar is adequately prepared to assist the courts.

### Law reform and submissions

In July 2018, the committee was, with the publication of its 'A Matter of Public Importance: Time for

a Family Court of Australia 2.0' discussion paper, an early voice against the attorney-general's proposed merger of the Federal Circuit Court with the Family Court of Australia, an amalgamation that would, in effect, bring an end to superior court of record specialising in family disputes four decades in the making and would risk a significant diminution in the quality of the Australian family law justice system.

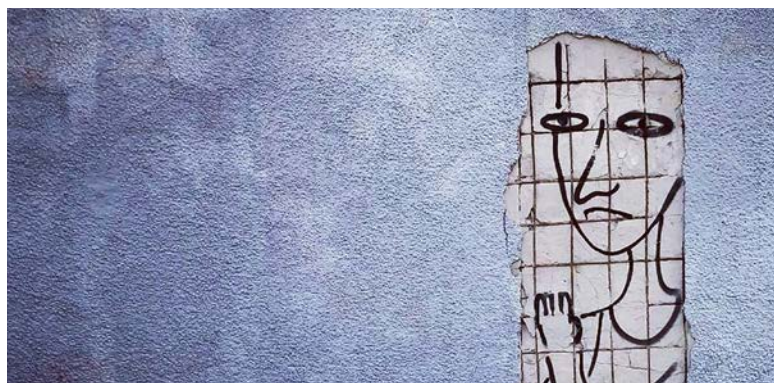
The committee followed its discussion paper up with submissions, delivered on 23 November 2018, on behalf of the association to the Senate Legal and Constitutional Affairs Legislation Committee's Inquiry into the *Federal Circuit and Family Court of Australia Bill 2018* and *Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Bill 2018*. A month later the chair of the committee, Michael Kearney SC, and the association's junior vice-president, Michael McHugh SC, gave evidence in Canberra before the Senate's inquiry into the attorney-general's proposed court-amalgamation scheme.

In August 2018, and following submissions during the consultation phase, chair of the committee Michael Kearney SC appeared on behalf of the association and gave evidence to the Senate Legal and Constitutional Affairs Legislation Committees Inquiry into the *Family Violence and Cross-Examination of Parties Bill 2018*.

## Criminal Law Committee



Photo by Rostyslaw Savchyn on Unsplash



**During the last year the Criminal Law Committee has made an important contribution to the development of criminal law in New South Wales. The attorney general introduced a number of criminal justice proposals between 2018 and 2019 with significant reforms requiring ongoing consideration.**

The committee has considered and responded to over 40 government consultations which include statutory reviews, inquiries, participation in meetings as well as reviewing miscellaneous justice amendments and wide-ranging substantive amendments to criminal justice legislation.

### **NSWLRC review of consent in relation to sexual offences**

On 8 May 2018 the attorney general announced that the New South Wales Law Reform Commission (NSWLRC) would review section 61 HE (formerly s 61HA) of the *Crimes Act 1900* (NSW) which deals with consent in relation to sexual offences.

In October 2018 the NSWLRC released its consultation paper on the review and on 26 February 2019, the Bar Association provided the NSWLRC with its response. The NSWLRC convened a number of roundtable meetings before NSWLRC Chairperson, Alan Cameron AO and the commissioner, Acting Justice Carolyn Simpson AO. The president and co-chairs Stephen Odgers SC and Gabrielle

Bashir SC, attended one of those roundtable meetings in May 2019.

### **Mental health reforms**

In August 2018, the government began to implement the recommendations contained in the NSWLRC Report 135: *People with cognitive and mental health impairments in the criminal justice system* which was released in 2012. The reforms proposed are significant with the association having reviewed and responded to proposed Bills such as the:

- *Mental health and Cognitive Impairment Forensic Provisions Bill 2018*;
- *Mental Health (Forensic Provisions) Amendment (Victims) Bill 2018*;
- *Mental Health (Forensic Provisions) Amendment (Victims) Regulation 2018*;
- *Mental Health Amendment (Forensic Provisions) Regulation 2018*; and
- *Crimes (Sentencing Procedure) Amendment (Victim Impact Statements) Regulation 2018*.

The Bar Association has made submissions to government as a consequence. Committee members, Belinda Baker, Sharyn Hall and Peter Skinner have represented the Bar Association at regular roundtable meetings regarding these reforms. The mental health reforms will be an ongoing area of work for the Criminal Law Committee in 2019-20.

### **Admissibility of tendency and coincidence evidence in criminal proceedings**

Following the recommendations made by the Royal Commission into Institutional Responses to Child Sex Abuse in its Criminal Justice Report the Council of Attorneys-General (CAG) formed a working group to review the test for admissibility of tendency and coincidence evidence in criminal proceedings. The Bar Association's Criminal Law Committee has assisted the Law Council of Australia in coordinating a response to consultation papers from the CAG on proposed reforms. A roundtable meeting was convened by the NSW Department of Justice to further discuss the proposed reforms – Stephen Odgers SC attended on behalf of the Bar Association and Gabrielle Bashir SC attended on behalf of the Law Council of Australia.

### **Early Appropriate Guilty Pleas Working Group**

Earlier this year the government set up an Early Appropriate Guilty Plea (EAGP) Working Group which is tasked with monitoring the implementation of the EAGP mechanism which commenced on Monday, 30 April 2018 and additionally the sentencing reforms associated with the EAGP that commenced on 24 September 2018. The association has made submissions in relation to this and the association representative, Sophia Beckett attends regular roundtable meetings held by the NSW Department of Justice. She is also the committee's representative on the Sexual Assault Communications Privilege subcommittee.

### **Other submissions and roundtable meetings**

In addition, the Criminal Law Committee has provided submissions to:



## Criminal Law Committee (continued)



- the Sentencing Council's review of sentencing for murder and manslaughter;
- the New South Wales Law Reform Commission's Open Justice Review;
- the minister for police in response to the statutory review of the *Crime Commission Act 2012* (NSW);
- the Special Commission of Inquiry into the Drug 'Ice';
- the Office of the Director of Public Prosecutions in response to the Consultation Draft Prosecution Guidelines;
- the NSW Police and the NSW Crime Commission regarding informants – obligations of counsel to clients and duties to the court; and
- the Standing Committee on Law and Justice in response to the *Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019*.

Members of the Criminal Law Committee continue to represent the Bar Association in critical roundtable discussions with the government. Between July 2018 and June 2019 the association attended more than 10 such meetings with a majority of the consultations requiring ongoing engagement as well as written responses to proposals.

The Criminal Law Committee would also like to acknowledge and thank former members of the committee, his Honour Judge Ian Bourke SC and her Honour Judge Nanette Williams who were both appointed and sworn in as judges of the District Court of New South Wales in February 2019.

*Members of the Criminal Law Committee continue to represent the Bar Association in critical roundtable discussions with the government. Between July 2018 and June 2019 the association attended more than 10 such meetings with a majority of the consultations requiring ongoing engagement as well as written responses to proposals.*



## Common Law Committee

**The Common Law Committee's primary focus in 2018-19 was its continued engagement with the New South Wales Government regarding its changes to the motor accidents scheme, which commenced in December 2017.**

By the time of the commencement of the new scheme, it was apparent that the approach taken to the definition of minor injury was at odds with the government's stated aim of preserving common law rights for the seriously injured. The categorisation of certain injury types as falling within the definition of 'minor injury' means that many people with moderately severe injuries are excluded from claiming common law damages. Over the reporting year the association has been provided with monthly data by the State Insurance Regulatory Authority (SIRA) on claims under the new regime so that the effect of the definition can be monitored. After 18 months of data it is clear that the level of claims under the new scheme is much lower than anticipated, which strongly suggests that the scheme has been weighted too heavily in favour of insurers, not the injured.

After repeatedly raising its concerns with the minister, and in various meetings with SIRA through the year, that the state's green slip scheme continues to favour insurers' profits and unfairly excludes genuinely and permanently injured people, on 7 September 2018 the association published a media release which publicly called for an independent review of the CTP scheme. The *Daily Telegraph* ran the story and the government announced that icare, a separate government body under the minister's portfolio, would conduct a review of CTP costing and benefits. In December the association received a copy of the icare report with a covering letter from the minister, which on its face indicates that claim levels

are lower than expected and could justify a reduction in CTP premiums. However, the government does not appear to be prepared to consider an increase in benefits for the injured despite the low level of claims, and despite earlier suggestions by the minister that if the scheme targets were exceeded the response would be an improvement in benefits. It appears that this is no longer the preferred option.

*The Bar Association will continue to press for this additional data and advocate for changes to the motor accidents scheme which restore fairness and equity to people injured in motor accidents.*

The government instead proposes to conduct a review of the scheme later in 2019 at the two-year anniversary of its operation. The Bar Association has taken the view that the disparity between the claims estimates that the 2017 scheme was based on and the actual claims experience since then justify a more urgent review. On 18 March 2019, in the week of the state election, the association issued a media release calling on all parties to conduct an immediate review of the 2017 scheme.

The Common Law Committee continues to have concerns regarding the sufficiency of data regarding the operation of the scheme, and has particularly identified the need for access to insurance data in relation to the calculation of premiums. The Bar Association will continue to press for this additional data and advocate for changes to the motor accidents scheme which will restore fairness and equity to people injured in motor accidents.

A related issue concerns the government's proposals to establish a merged personal injury jurisdiction

in NSW to deal with motor accidents and workers compensation claims. After receiving advice from the committee, the president has expressed concerns to government that any attempt to include damages claims within a merged tribunal structure would have the potential to further reduce the rights of the injured and ultimately limit both the involvement of legal professionals and judicial scrutiny, with a consequent reduction in public confidence in the schemes and their administration. The Bar Association will continue to pursue this position.

Other significant work done by the committee in the reporting period included:

- The chair, Robert Sheldon SC, and Elizabeth Welsh gave evidence on behalf of the association to the Legislative Council Standing Committee on Law & Justice review of the motor accidents scheme on 23 August 2018, presenting the association's detailed concerns regarding the operation of the CTP scheme;
- Ross Stanton appeared before the Legislative Council Standing Committee on Law & Justice review of the workers compensation scheme to give evidence on the association's behalf on 24 July 2018. The Bar Association's submissions supported the establishment of a single jurisdiction to determine all statutory workers compensation disputes (the Workers Compensation Commission). Legislation was subsequently introduced later in 2018 which largely sought to implement this goal;
- Participating in ongoing consultations with SIRA regarding CTP scheme performance, CTP guidelines, workers compensation regulations and claims administration guidelines;

## Common Law Committee (continued)



- Raising concerns regarding the practical operation of the District Court's online registry system, which was established late in 2018. The District Court's judicial registrar is to conduct a CPD session on the practical operation of the system in the Bar Common Room in August;
- Developing the program for the association's very successful 2019 Personal Injury and Common Law Conference, which was held at the Sheraton Grand Sydney Hyde Park on Saturday, 16 March; and
- Organising a successful common law drinks function on 30 August 2018 at the Edinburgh Castle Hotel. The guest of honour was the Hon Justice Clifton Hoebe AM RFD;

Particular thanks are due to Elizabeth Welsh, Paresh Khandhar and Ross Stanton for their contributions during the reporting year.



## Legal Aid Committee

**The Legal Aid Committee has continued to work strategically with the president, Bar Council and Legal Aid NSW over the reporting period to assist members of the association performing legal aid work.**

*The main project for the committee has been to pursue an increase in fees paid to barristers undertaking criminal matters for Legal Aid NSW.*

The main project for the committee has been to pursue an increase in fees paid to barristers undertaking criminal matters for Legal Aid NSW. These legal aid rates have not been increased for 12 years. Members of the committee worked closely with Legal Aid NSW on a business case for an increase in fees after a comprehensive review of fees paid in such matters was conducted. The Bar Association assisted Legal Aid NSW by providing advice on the actual time commitments of counsel in legally aided criminal matters, and the disparity in the limited hours covered by legal aid grants. The chair and some members of the committee attended several meetings with the CEO and other officers of Legal Aid NSW regarding draft fee proposals made by Legal Aid NSW, and the flow-on benefits for the justice system of properly funded counsel in criminal matters.

However, no increase in legal aid funding was forthcoming from the New South Wales Government in the May 2019 State Budget. The Legal Aid Committee assisted with a subsequent statement to members and a media release from the president in June 2019 which noted that the provision of a properly funded legal aid system is crucial to upholding the rule of law and should be a first priority of government.

The president's statement pointed out that it is no longer financially sustainable for many barristers to spend the time and do everything that it is necessary to undertake legal aid work, and has suggested that barristers should not feel that they have any obligation to take on legal aid briefs when they will not receive anything approaching adequate payment to perform this important work.

The Bar Association's position was subsequently vindicated by the judgment of the Hon Justice Fagan in *R v Munshizada; R v Danishyar; R v Baines (No 2)* [2019] NSWSC 834. In that matter his Honour vacated the date for a four-month murder trial as a direct result of the failure of the accused to obtain defence counsel on legal aid fee scales. In the course of the judgment, his Honour noted that the 'inability to secure the services of trial counsel at legal aid rates on reasonable notice for a long trial is a problem that requires urgent attention to enable this court to do its work'.

The government has publicly responded by indicating that it is considering Legal Aid NSW's business case for a fee increase, and that that review will be completed later in 2019. The Legal Aid Committee, in conjunction with the president and the Bar Council, will continue to press for additional legal aid funding both publicly and in further discussions with government. In this context the Bar Association has initiated a formal engagement with Legal Aid NSW pursuant to section 39 of the *Legal Aid Commission Act 1979* regarding the fees paid by it to private legal practitioners for legal aid criminal work.

Other work undertaken by the committee during the reporting period included:

- Contributing to Legal Aid NSW's Improved Collaboration with Panel Practitioners Project, which is examining how Legal Aid NSW engages with private lawyers who undertake legal aid work, including ways in which the commission can better support private lawyers and ensuring that the processes used to engage practitioners are as efficient as possible;
- Preparing advice to Legal Aid NSW regarding proposed amendments to the *Legal Aid Commission Regulation 2016* to provide for a simplified and more flexible process for re-appointing existing panel members;
- Making representations to Legal Aid NSW regarding the detail of the new fee structure for matters under the Early Appropriate Guilty Pleas Scheme in the District Court;
- Making representations to Legal Aid NSW regarding delays in payment of legal aid grants;
- Preparing submissions to Legal Aid NSW regarding the terms of reference for its ongoing review of the Mental Health Advocacy Service;
- Preparing responses to Legal Aid NSW in relation to the membership of various groups including its Sexual Assault Communications Panel and Legal Aid Review committees.



## Industrial, Employment, Health & Safety Committee

**The Industrial Employment Health and Safety Committee's priorities for 2018-19 included the development of CPD events on topical industrial law issues and organising an annual function for the industrial bar.**

These goals were both achieved during the reporting year.

### CPD events

The committee identified working with relevant courts and tribunals on two potential joint CPD events regarding topical industrial and employment issues as a priority. The first such event, regarding issues appearing before industrial tribunals, was developed in consultation with the Fair Work Commission and held in the Bar Common Room on 9 August 2018. The CPD was presented by Vice President Catanzariti of the Fair Work Commission and Ingmar Taylor SC. Committee members also worked with the Federal Court to arrange an extended CPD session held at the court on Thursday, 25 October entitled 'Current Issues in the Practice of Employment and Industrial Law'. The Federal Court event was particularly well attended and included a number of presenters from the New South Wales Bar: Kate Eastman SC, Kylie Nomchong SC, Ingmar Taylor SC and Mark Gibian SC.

Further CPD events have been held in 2019. On 21 March 2019 Scotting J of the District Court of NSW presented on the new District Court practice note regarding work health and safety prosecutions.

*A well-attended CPD session was held jointly with the Association of Corporate Counsel Australia on 18 June on the Modern Slavery Act 2018.*

A well-attended CPD session was held jointly with the Association of Corporate Counsel Australia on 18 June on the *Modern Slavery Act 2018*.

The panel for the session included Arthur Moses SC, president of the Law Council of Australia, Jon Downes, head of legal, Willis Towers Watson and Mark Devadason, senior adviser in Asia, Business for Social Responsibility. The breakfast event was hosted by Clayton Utz and also provided networking opportunities for barristers and in house counsel. Thanks are particularly due to Jaye Alderson of the committee for co-ordinating the event.

### Industrial Bar Function

A very successful and well attended function was held at the Arthouse Hotel on 22 August 2018. Thanks are due to Vanja Bulut for her work in identifying and liaising with the venue. The committee considers that this kind of function is important in fostering collegiality at the industrial bar and plans are underway for a similar event in August 2019.

### Other work of the committee

The committee chair and its secretary, Yaseen Shariff, participate in Federal and Federal Circuit Court industrial law user groups as well as user groups for the Fair Work Commission and Industrial Relations Commission. The user groups provide an important forum whereby the views of the industrial bar can be conveyed on a variety of issues in these jurisdictions. The Federal Court User Group process allowed the committee the opportunity to provide comments on a draft proposed Federal Court Employment and Industrial Relations

Practice Note in early 2019.

In late 2018 the committee considered a draft framework drawn up by the Fair Work Commission for the Bar Association's involvement in pro bono matters. The committee provided some initial comments to the association regarding the proposal, which would involve matters being assigned to practitioners through the association's Legal Assistance Referral Scheme (LARS).

The committee also prepared detailed comments in response to the draft District Court Practice Note 16 regarding work health and safety prosecutions. The committee will monitor the operation of the new practice note over the next twelve months and the views of work health and safety practitioners will be sought at that time.





## Legal Assistance Referral Scheme

### Hours of work

It has been 25 years since the inception of the Bar Association's Legal Assistance Referral Scheme (LARS) in April 1994. During that time LARS has processed over 6,350 applications. This year the Bar Association's staff received in the order of 500 enquiries about legal assistance and related matters.

For the 2018-19 financial year, 291 formal applications for assistance were received and processed. This is an almost 10 per cent increase on the number of applications received last year. Of the 291 applications, 123 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 are 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 1350 hours of work through the scheme, with 34 matters still in the court system. This was made up of approximately 1250 hours of work in matters referred in the current period and an additional 100 hours of work in continuing matters commenced in previous financial years. This represents a significant reduction in the total number of hours of work done by barristers from the previous year. The 34 matters still in the court system yet to be finalised are thought to be a contributing factor in this reduction.

Since the scheme's inception in 1994, barristers have contributed approximately 58,700 hours of work.

Barristers also contributed approximately 600 hours of work through the court-appointed Federal Court Pro Bono Scheme. There are also two duty barristers rostered on every day at the Downing

Centre Local Court and one duty barrister rostered on four days per week at John Maddison Tower.

The following facts arising from the attached statistical analysis of the scheme's activities over the last financial year are worth noting:

- No fee arrangements comprised 81 per cent of referred matters; judges, magistrates and registrars continued to comprise the highest referral source. They comprised 85 per cent of referred matters and 36 per cent of all applications received by the scheme.
- There was a 30 per cent increase in the number of matters referred on the same day. This figure reflects the urgent referrals received from judges or the DPP in criminal trial matters.
- There was a 300 per cent increase in the number of matters received in the Family Court of Australia, particularly in property settlement matters
- Nearly 74 per cent of matters referred to barristers were considered to have legal merit/prospects of success. This figure includes those matters which justified urgent referral to a barrister by a judge, registrar or ODPP in the interests of the administration of justice
- There was a 46 per cent increase in the number of referrals received from the NSW Civil and Administrative Tribunal (NCAT).
- Over 80 per cent of the applications to the scheme were refused Legal Aid as being outside the commission's guidelines.



In 2018-19 barristers contributed

**1350** hours

of work through the legal assistance referral scheme.



**291**

formal applications for assistance were received and processed in 2017-18.

the total number of hours represents a

**10%** increase

from the previous year.

**123**

applications were eligible under the scheme's guidelines for referral to a barrister.

## Legal Assistance Referral Scheme (continued)



Photo by Matthew Henry on Unsplash

### Interaction with other pro bono service providers

LARS works closely with the Law Society of NSW Pro Bono Scheme.

There is also a close working relationship with RACS and Salvos Legal.

Legal Aid consistently refers matters to the scheme where it is unable to assist and Justice Connect contacts us when matters are outside its parameters for assistance.

The Bar Association is a member of the NSW Legal Assistance Forum (NLAF). The deputy executive director attends board meetings with the manager of the scheme as his alternate.

The executive director of the Bar Association is a board member of Law Access. The association's deputy executive director, who oversees the operation of LARS, deputises for the executive director at Law Access board meetings and at meetings of the trustees of the Pro Bono Disbursement Trust Fund.

Some of the activities of the manager of the scheme during the year were as follows:

- attended a function hosted by the National Pro Bono Centre re accessing experts;
- with the assistance of LARS staff arranged a cocktail party to thank all members of the bar who supported LARS and the Duty Barrister Schemes over the previous two years;
- attended meetings with the deputy executive director and the deputy president of NCAT to assess the efficacy of the referral arrangement with NCAT in its Administrative and Equal Opportunity Division;
- attended the National Pro Bono Conference in Canberra;
- attended the Bench & Bar Dinner; and
- assisted the deputy executive director in the setting up of formal arrangements with the Fair Work Commission for a pilot assisting self-represented litigants referred by the commission.
- continued to be a member of the steering committee of the Justice for Refugees (JFR) project initiated by the Refugee Advice & Casework Centre (RACS);



# 30%

increase in the number of matters referred on the same day.

# 300%

increase in the number of matters received in the Family Court.



## Legal Assistance Referral Scheme (continued)

### Volunteers encouraged

In 2018-19, the executive director and the manager of the scheme made two presentations to new barristers at the Bar Practice Course with a pleasing response in the number of readers who volunteered to help the scheme and go on the Duty Barrister Roster. The president and the executive director, by circular and personal representation, have also encouraged members to participate in all schemes administered by the Bar Association and in the various court-appointed pro bono schemes.

### Duty Barrister Schemes

The manager and staff of LARS manage the operation of the Duty Barrister Scheme which operates at the Downing Centre and John Maddison Tower to assist the Local and District Courts. 120 barristers of all levels of seniority have volunteered to assist. Barristers are rostered to attend each day at the courts. The schemes were promoted to readers at each of the Bar Practice courses, which resulted in a healthy number of additional volunteers being added to the roster.

### Find a Barrister

Find a Barrister is aimed at addressing the increasing number of requests to the Bar Association for assistance in obtaining the services of a barrister. Enquiries are directed to the Bar Association's website under 'Find a Barrister', where there have been 477,929 sessions on the site over the past twelve months. This avenue 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 them a list of barristers in the relevant areas of practice.

### The Law Kitchen

The Law Kitchen (TLK) was established in 2011 by barristers Les

Einstein and Geoff Pulsford, joined by Stephen Richards, solicitor and stalwart support of TLK's work.

Very sadly since those early days, both Geoff and Steve have passed away but their contribution to the work of TLK continues to have an enduring influence.

TLK has an informal arrangement with Hope Street Urban Compassion, a charitable organisation operating in the Woolloomooloo area which manages a number of services. This arrangement which has gone on for some years now has enabled both TLK and Hope Street to provide a more holistic service to marginalised individuals and their families who are in need of legal assistance, social work, counselling and someone to talk to.

Hope Street Urban Compassion has recently provided a quiet and safe office space in the downstairs area of its premises. This is a significant step. The legal difficulties of a number of clients seen by TLK arise out of circumstances which are highly sensitive and confidential. TLK's ability to respect and protect that sensitivity has now been enhanced by the availability of the private working space afforded to them.

Over the last year a number of barristers have continued to volunteer to assist TLK and the Bar Association's solicitor employee to ensure that TLK provided legal advice sessions almost every week. The association is extremely grateful to all of them.

Whilst we acknowledge that TLK is not part of the funding arrangement with the Public Purpose Fund, we include it because of its co-location and synchronicity with the work of LARS.



Judges, magistrates and registrars comprised the highest referral source.

more than **80%**  
of the applications to  
the scheme were refused  
Legal Aid as being outside the  
commission's guidelines.

## Legal Assistance Referral Scheme (continued)



### Court-appointed pro bono schemes

The manager and staff of LARS assist with the administration of court-appointed legal assistance schemes in respect of day-to-day enquiries 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 operating in the Federal Court, the full bench of the Family Court of Australia, Federal Circuit Court, Land & Environment Court, the District Court of NSW and NCAT in its Anti-Discrimination list. The executive director has ongoing discussions with members of the judiciary and court staff in relation to these schemes.

There continue to be 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 Bar Association also have to deal with the applicants who attend unannounced. Staff have received training in dealing with difficult clients and in how to identify, and deal with, those clients suspected of having a mental illness.

### Conclusion

The pro bono landscape has changed significantly since the inception of the scheme in 1994. There are now more organisations, including courts, offering assistance. The association is committed to ensure the highest possible level of co-ordination between legal service providers, and will continue to work with these organisations in that regard. LARS is a scheme which operates at the coalface, offering services to those requiring 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.

---

# 61%

of matters referred to barristers were considered to have legal merit/prospects of success.

---

Since the inception of LARS barristers have contributed more than

# 58,700

hours of work.



## Legal Assistance Referral Scheme Case Studies

**An acting justice of the Land & Environment Court referred a man to us in circumstances where the man had been issued with a summons to remove his Shetland pony from his property. The pony had been living at the property for some 17 years and in that time had been the subject of a number of complaints to the Local Council from a neighbor. The council had instituted various court proceedings against the man because of these complaints. The pony was a treasured part of the local community. Senior and junior counsel agreed to assist. In preparation for the hearing counsel made a site visit, a conference with a veterinary surgeon, appeared in interlocutory matters, attended a one-day mediation which failed, prepared for a two-day hearing which was vacated, and appeared at a two-day hearing. After careful consideration of the long history of the matter the judge found in the man's favour and the pony was allowed to stay.**

\*\*\*

The prothonotary of the Supreme Court contacted the scheme to advise that a Supreme Court judge had made an urgent pro bono referral on behalf of a defendant, the mother of a deceased young woman, who was in a dispute with the plaintiff over the burial of her daughter's body. The plaintiff was the alleged de-facto partner of the deceased and

the father of one of the deceased's children. For cultural reasons he wanted the body to be buried and the mother contended that it was her daughter's wish that she be cremated. A barrister immediately accepted the referral to appear the next day before the court. As part of the evidence put before the court the judge considered the deceased's FaceBook page and the description of 'Single' in the status profile. The deceased also had a live profile on a dating site at the time of her death. His Honour found in the defendant's favour and the mother was able to bury her daughter in accordance with her wishes.

\*\*\*

**A partner in a large firm of solicitors with an extensive pro bono practice referred a matter to the scheme which involved a second-year Aboriginal medical student. He had been the subject of adverse findings by his previous university in relation to alleged behavioural misconduct. A barrister agreed to assist. The appeal grounds included the fact that the investigation and decision had not been conducted in accordance with the university's rules or in a procedurally fair manner and the student had not been given an appropriate opportunity to respond to the decisions being made or the penalties imposed. In Case 1, the appeal was decided against the**

**student but on grounds that were not available to the appeal decision maker – consequently it was submitted that this appeal had to be re-determined. On the second appeal finding, the appeal was dismissed. In Case 2, the matter was remitted back to the original decision maker. Further submissions were made that there was no option but to dismiss the matter given the length of time that had passed since the original incident (almost two years) which meant any new investigation and decision could not be conducted in a procedurally fair manner. The decision maker accepted this and dismissed the matter. Counsel was involved in the matter for approximately 18 months.**

\*\*\*

In 2014 a solicitor referred a woman to the scheme in relation to an international relocation matter in the Family Court of Australia. A member of the Bar agreed to assist. The woman had been a senior police officer in the Balkans before marrying in Australia. She was seeking to return there with her young daughter to access family support after the breakdown of her marriage due to domestic violence. The father objected and wanted the child to stay with him. The woman had tried many times to join the police force here but was rejected on language grounds. The woman was now on

a single parent pension. In the initial hearing the mother was given sole residency of the child, but was not allowed to return to her country of origin. The father appealed to the Full Bench. He was represented by senior counsel. The Full Bench, without considering the merits, made a decision that the matter should be remitted for a re-trial as both parties were unhappy with the outcome and wanted a re-trial. At the re-trial in December 2018, orders were made giving the mother sole parental responsibility for the child, ordering that the child reside with her, ordering that she could relocate with the child to the Balkans, ordering the father to sign all documents necessary for an Australian and Balkan passport for the child and making no provision for the father to have any future contact with the child. The barrister was instructed by the Law Society pro bono solicitor at the hearing as the long-term solicitor was unavailable. The father appealed the decision and asked for a stay. Judgment has yet to be handed down in respect of the appeal. The barrister has contributed over 350 hours of work to date on a no fee basis.

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## Legal Assistance Referral Scheme Case Studies (continued)

A Supreme Court judge referred both parties to the scheme for assistance in Equity proceedings which had been fixed for hearing in the following month. The parties were husband and wife. They were living separately but were not divorced and were now both on an aged pension. The matter concerned a dispute relating to a company set up in the 1990s through which the husband and wife had operated separate businesses, the husband a concreting business and the wife a travel business. Neither business was still operating. In the early to mid-2000s, the company purchased five properties in Queensland and two in Sydney. In 2012 the wife became the majority shareholder or director of the company. Since the wife took control of the company, disputes between the husband and wife arose about the management of its assets and affairs. The husband's claim was the wife held shares in the company on a constructive trust for him on the basis that his business financed the acquisition of the properties and the servicing of the mortgages over them. There were substantial debts secured against the properties and it was unclear what equity there was in the properties because their values were unknown. Two barristers agreed to assist, one for

each of the parties. The court set the matter down for mediation, which the barristers attended and no settlement was reached. The proceedings were finalised at the next hearing before the court.

\*\*\*

A Supreme Court judge referred a plaintiff to the scheme in a matter in the Commercial List. The plaintiff was a retired journalist who was now on an aged care pension. The matter related to a documentary which was filmed and presented for a large television network. The plaintiff alleged that he had an agreement with the producer which entitled him to receive profits and a producer credit, neither of which materialised. Senior counsel agreed to assist. The matter was settled on satisfactory terms to the plaintiff.

\*\*\*

A senior member of NCAT sitting in the Administrative & Equal Opportunity Division referred a woman to the scheme who claimed that she had been discriminated against in her employment with a prestigious private school. The central issue in the case was the allegation that in the course of the job interview, the interviewer did not have an open mind due to the woman's new parenting status and was biased against the application leading to discrimination. The woman suffered

intense anxiety as a result of the decision and the school's treatment of her. A part-time return to work offer made by the school did not support a work schedule which enabled her to access treatment whilst remaining at work. She did not return to work after maternity leave. She was the main breadwinner in the family. She lodged a claim against the school for discrimination in employment. A barrister agreed to assist and reviewed the NCAT proceedings. His advice was to accept the offer which had been made by the school. The woman accepted the advice and the matter was settled prior to mediation.



## Legal Assistance Referral Scheme Statistics

	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
<b>High Court</b>						
Application for special leave	2	2	2	3	11	5
Original jurisdiction	-	-	-	-	1	-
<b>Total</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>3</b>	<b>12</b>	<b>5</b>

<b>Federal Court</b>						
Full bench appeals	-	2	-	2	3	1
Immigration	3	4	2	5	10	4
Administrative	2	2	-	-	1	3
Discrimination	3	1	-	-	-	-
Intellectual property	-	-	-	-	-	1
Trade practices	-	-	-	-	-	-
Native title	-	-	2	1	1	-
Bankruptcy	2	1	2	2	-	2
General	-	-	-	1	1	-
<b>Total</b>	<b>10</b>	<b>10</b>	<b>6</b>	<b>11</b>	<b>16</b>	<b>11</b>

<b>Family Court</b>						
Full bench appeals	1	-	-	-	-	-
Access	5	4	3	6	4	6
Residency	7	5	2	5	1	9
Child support	-	-	-	2	2	1
Spousal maintenance	-	-	-	-	1	1
Property settlement	7	-	1	5	-	9
<b>Total</b>	<b>20</b>	<b>9</b>	<b>6</b>	<b>18</b>	<b>8</b>	<b>26</b>

<b>Federal Circuit Court</b>						
Discrimination	1	1	1	-	-	1
Family law - access	10	10	4	2	3	4
Family law - child support	1	1	2	-	-	-
Family law - residency	5	2	1	1	1	5
Family law - property settlement	4	8	2	3	3	3
Family law - spousal maintenance	-	2	1	-	-	-
Intellectual property	-	-	-	1	-	-
Industrial relations	-	2	-	-	2	5
Immigration	13	19	11	9	12	9
Bankruptcy	2	4	2	3	1	2
General	-	-	1	1	1	-
<b>Total</b>	<b>36</b>	<b>49</b>	<b>25</b>	<b>20</b>	<b>23</b>	<b>29</b>

## Legal Assistance Referral Scheme Statistics (continued)



	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
<b>Supreme Court</b>						
Court of Appeal	11	6	13	12	12	13
Court of Criminal Appeal	9	7	9	5	4	3
Common Law	26	32	38	27	27	27
Administrative	1	3	7	7	29	-
Equity	23	25	28	28	8	22
Criminal	1	2	4	7	7	12
Corporations List	-	-	-	-	11	-
Commercial	1	3	1	2	-	-
Family Provisions	8	8	8	8	-	3
Defamation	2	5	4	7	1	1
Professional Negligence	1	1	4	1	1	-
Adoptions list	-	-	-	3	-	2
<b>Total</b>	<b>83</b>	<b>92</b>	<b>116</b>	<b>107</b>	<b>100</b>	<b>83</b>
<b>District Court</b>						
Criminal	9	10	12	28	38	40
Civil	11	12	10	18	17	15
Care proceedings	1	2	6	-	-	-
Defamation	-	3	2	1	-	-
Professional negligence	-	-	-	-	-	-
<b>Total</b>	<b>21</b>	<b>27</b>	<b>30</b>	<b>47</b>	<b>55</b>	<b>55</b>
<b>Local Court</b>						
Criminal	16	16	18	10	12	21
Civil	14	14	7	7	9	10
Coronial inquest	1	1	-	-	-	1
Family law - residency and access	-	-	1	-	-	-
<b>Total</b>	<b>31</b>	<b>31</b>	<b>26</b>	<b>17</b>	<b>21</b>	<b>32</b>
<b>Other courts</b>						
Land and Environment Court	3	5	4	5	4	4
Children's Court	2	1	1	1	2	1
Coroner's Court	2	3	3	1	1	-
<b>Total</b>	<b>7</b>	<b>9</b>	<b>8</b>	<b>7</b>	<b>7</b>	<b>5</b>
<b>Tribunals</b>						
Administrative Appeals Tribunal	2	2	1	2	-	4
NCAT	8	16	13	25	26	38
Workers' Compensation Commission	-	-	1	-	-	-
<b>Total</b>	<b>10</b>	<b>18</b>	<b>15</b>	<b>27</b>	<b>26</b>	<b>42</b>
<b>Commissions</b>						
Fair Work Commission / NSW IRC	-	-	9	4	4	3



## Legal Assistance Referral Scheme Statistics (continued)

	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
<b>Referral source</b>						
Community legal centre	34	45	20	25	25	23
Law Society / solicitor	64	75	35	51	37	46
Member of the public	49	32	66	47	51	51
Legal Aid	26	23	20	22	27	19
LawAccess	21	24	18	17	15	23
Judge / magistrate / registrar	19	32	62	61	61	73
Member of the bar	15	15	13	16	22	11
Member of parliament	1	1	2	-	2	1
Justice Connect (formerly PILCH)	1	1	3	2	-	1
Pro bono director of a large firm	3	2	3	2	1	2
Welfare / community group	1	1	-	6	4	9
Attorney General's Department / DPP	1	1	2	22	35	32
Website hits	10,580	3,977	4,418	* 3,351	* 4,418	4,410
* unique hits to the pages of Legal Assistance, Duty Barrister / LARS guidelines on the Association's updated website						

### Client location

#### Sydney Metropolitan Area

West	70	70	63	89	64	80
North	51	49	30	22	29	32
South	39	41	40	40	44	40
East	19	8	21	12	25	17
Inner City	12	23	12	7	29	18
Central Coast	9	11	9	17	23	24
Country	15	12	32	31	15	35
Prison	12	16	14	28	10	14
Villawood Detention Centre	8	4	2	4	17	16
Interstate	4	5	15	10	16	13
Overseas	-	4	4	1	1	2
<b>Total</b>	<b>239</b>	<b>243</b>	<b>242</b>	<b>261</b>	<b>273</b>	<b>291</b>

### Types of work done

Merit assessment - no fee	95	114	111	142	83*	77*
Advice (over and above initial merit assessment)	67	76	67	113	107	106
Conferences	31	40	31	74	55*	45*
Appearances	22	26	22	40	30*	30*
Appearances at hearing	5	12	2	24	27*	19*
Appearance at hearing as amicus	-	-	-	-	-	21
Mediations	1	1	1	13	10	10
Other (inc. 2nd opinion and prep.submission)	26	17	26	37	38*	29*

\* These numbers are not truly reflective as at this stage we are not able to collect multiples

In 2018-19

73

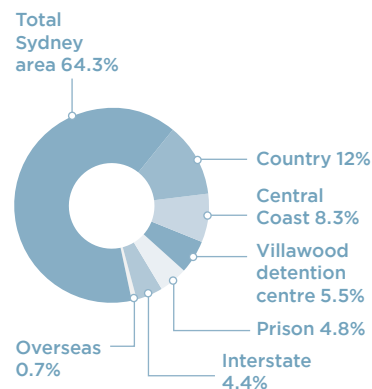
referrals were from a judge / magistrate or registrar.

In 2018-19

11

referrals were from a colleague / member of the bar.

### Client Location



## Legal Assistance Referral Scheme Statistics (continued)



2013-14 2014-15 2015-16 2016-17 2017-18 2018-19

**Rejection / No action**

Outside guidelines	70	69	70	54	58	77
No further information received / no further contact from applicant	38	38	36	36	61	64
No longer requires LARS assistance	16	17	4	6	7	6
Subject to Federal Court RRT LAS	5	-	-	-	-	-
Subject to Federal Court LAS	2	-	-	-	7	-
Subject to Supreme Court LAS	-	-	-	-	2	-
Referred to community legal centre	-	-	-	2	1	-
Briefed barrister privately	2	4	4	6	-	1
Briefed solicitor privately	2	4	4	6	2	3
Matter discontinued	1	-	1	-	-	-
Unable to refer - insufficient resources	1	1	1	-	1	1
Requires a migration agent	-	-	-	-	-	-
Too late notification	4	2	6	8	7	13
Matter dismissed	-	1	1	-	-	-
Matter settled	2	-	-	-	-	2
Conflict of interest	-	-	1	1	-	1
<b>Total</b>	<b>143</b>	<b>136</b>	<b>128</b>	<b>119</b>	<b>146</b>	<b>168</b>

**Turnaround**

Same day	17	25	20	37	42	55
Less than a week	19	30	37	33	14	15
1-2 weeks	29	21	29	28	24	26
2 weeks plus	30	35	42	44	37	21
Matters pending	-	-	-	-	20	6
<b>Total</b>	<b>95</b>	<b>111</b>	<b>128</b>	<b>142</b>	<b>137</b>	<b>123</b>

**Basis brief accepted**

No fee - merit assessment	95	111	114	142	117	-
No fee - access to justice: urgent requests from DPP	-	-	-	-	31	32
No fee - continuing involvement	69	76	84	93	90	57
Reduced fee - continuing involvement	14	14	13	21	7	6
Speculative / costs recovery - continuing involvement	11	20	17	22	9	9
Market rates - continuing involvement	1	1	-	6	-	2

**Basis on which refused legal aid**

Merit	27	35	23	21	19	21
Financial	28	20	35	46	36	32
Outside guidelines	184	188	184	194	218	238

Percentage of  
matters considered  
by a barrister to have  
legal merit/prospects  
of Success/justifies  
access to justice:

**73.4%**

Percentage of matters  
considered by a barrister  
to have legal merit/  
prospects of success  
in the previous year:

**61%**





## Professional Conduct

**The Professional Conduct Department has a broad range of functions. Its principal regulatory function is to facilitate the investigation of complaints about barristers, show cause events, and other disclosures.**

The department also:

- provides advice and policy support to the Bar Council in respect of the council's functions under legal profession legislation, including functions related to practising certificates and legal practice in general,
- facilitates the provision of ethical guidance to barristers,
- responds to queries from barristers, solicitors and members of the public regarding complaints and regulatory processes,
- assists the Bar Council in connection with enquiries from, and reports submitted to, the Legal Profession Admission Board,
- assists in the ongoing development and review of legal profession legislation, including rules relating to barristers,
- provides assistance to the Executive and other departments within the Bar Association in relation to the interpretation and application of legal profession and other legislation, and
- liaises with the Professional Development Department in relation to CPD and other training issues which come to notice in connection with regulatory matters.

The department also participates on behalf of the Bar Council in consultations regarding amendments to the Legal Profession Uniform Law. This includes liaison with the Legal Services Council, Commissioner for Uniform Legal Services Regulation, the Office of the Legal Services Commissioner, the Law Society,

Legal Profession Admission Board and Law Council of Australia.

### Complaints

Complaints about a barrister's conduct in New South Wales are made to the NSW legal services commissioner. The commissioner refers most disciplinary matters concerning barristers to the Bar Council for assessment, investigation and determination.

All such matters are assessed and investigated by one of the four professional conduct committees established by the Bar Council. The committees report to the Bar Council, which makes a determination in respect of each complaint.

In 2018-19 the majority of complaints were dealt with under the Legal Profession Uniform Law (NSW), although there are still a very small number that must be considered under the *Legal Profession Act 2004*.

In the course of 2018-19 the Bar Council investigated 160 complaints – 79 complaints made during the year and 81 complaints made in previous years but still ongoing.

Of those investigations, the Bar Council made a determination in 63 matters during the year.

- 49 were dismissed under the *Legal Profession Act 2004* or closed under the Legal Profession Uniform Law (NSW);
- 11 resulted in the barrister being cautioned or reprimanded, and
- two were referred to the New South Wales Civil and Administrative Decisions Tribunal.

In addition, four complaints were withdrawn and five were referred to the Office of the Legal Services Commissioner (due to conflict of interest or jurisdictional issues).

In 2018-19 there were no reviews by the legal services

In 2018-19

# 160

complaints were investigated by the Bar Council.

In 2018-19

# 11

complaints resulted in the barrister being cautioned or reprimanded.



## Professional Conduct (continued)

commissioner of Bar Council decisions made under the Legal Profession Uniform Law (NSW).

An analysis of the complaints received in 2018-19 shows:

- 77 barristers were the subject of one or more complaints made in 2018-19 (approximately three per cent of the barristers in NSW);
- 38 per cent were made by the barrister's client or former client and 17.8 per cent by the opposing party or opposing solicitor;
- Many complaints are to do with competence and diligence. Other significant issues include costs (including failure to comply with disclosure obligations, overcharging and billing issues) and ethical matters;
- 14 per cent of complaints arise from matters in which the barrister was directly retained by the client.

### Breakdown of complaints by practice area

	Number	Per cent
Civil / other	22	28
Commercial / Corporations	7	9
Criminal	14	18
Family / de facto	13	16
Immigration	5	6
Personal conduct	7	9

The Professional Conduct Department continues to work closely with the Professional Development Department to develop training on the issues that arise most frequently in complaint matters and promote an educative approach.

### Show cause events

Under the Legal Profession Uniform Law (NSW) barristers must notify the Bar Council of automatic show cause events, that is, certain bankruptcy matters, a conviction for a serious offence (as defined in the legislation) or a tax offence. The Bar Council is

required to determine whether the barrister is a fit and proper person to hold a practising certificate.

The investigation of show cause events is carried out by the professional conduct committees.

In 2018-19 three show cause events were examined. One investigation was completed during the reporting year, with the Bar Council determining that the barrister was not a fit and proper person to hold a practising certificate. The other matters remain under investigation as at 30 June 2019.

### Professional conduct committees

The professional conduct committees comprise barrister members and community members. Each committee is chaired by a senior member of the New South Wales Bar. The lawyers of the Professional Conduct Department serve as secretaries of the committees. The committees held 41 meetings in total during the reporting year.

The committees conduct the preliminary assessment and, where necessary, the investigation of complaints. Committee members devote many hours of their time, on a voluntary basis, and their input is highly valued by the Bar Council.

Community representation on the professional conduct committees is vital to the healthy functioning of the complaint-handling process. The Bar Council would like to thank the community members who served on these committees for their significant and ongoing contribution.

The Bar Council also wishes to express its sincere appreciation to the 77 barristers who served on the professional conduct committees this year. Their service demonstrates the commitment of the profession to ensuring complaints regarding the conduct of barristers are fully investigated

In 2018-19

**77** barristers

served on the professional conduct committees this year.

In 2018-19

**41** meetings

in total were held during the reporting year.

## Professional Conduct (continued)



and appropriate disciplinary action taken, in the interests of maintaining professional standards and public confidence in the profession.

### Ethical guidance and information

The Bar Association Ethical Guidance Scheme enables practising barristers to seek ethical guidance from the senior counsel serving on the association's professional conduct committees. Thirty senior counsel were available to assist members in 2018-19. Most calls are initially directed to (and 'triaged' by) the association's Professional Conduct Department staff.

The department also receives calls from barristers, solicitors and members of the public enquiring about Barristers' Rules, conduct issues and the processes relating to complaints, show cause events and practice issues. In 2018-19 the department received over 420 calls seeking either ethical guidance or information.

In addition, the staff dealt with over 80 queries relating specifically to fees in advance and trust money accounts. As well as calls, the department receives email enquiries on a daily basis.

---

In 2018-19 the department  
received over

**420** calls

seeking either ethical  
guidance or information.

---

In 2018-19 the staff  
dealt with over

**80** queries

relating specifically to fees  
in advance and trust money  
accounts.



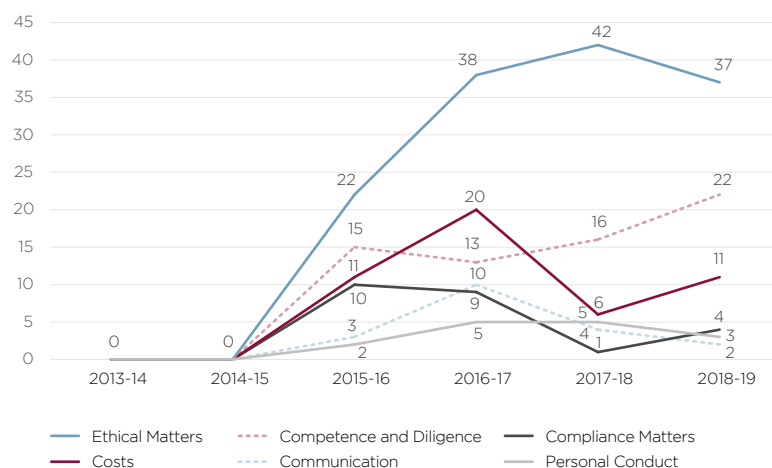
## Professional Conduct Statistics

### Number & type of complaints referred to the Bar Council during the year

Complaint type	Number
Communication	2
Competence and diligence	22
Compliance matters	4
Costs	11
Ethical matters	37
Personal conduct	3
<b>Total number of complaints</b>	<b>79</b>

Figures comprise complaints referred by the LSC to the Bar Council for assessment, investigation and determination (including complaints made by the Bar Council).

### Type of complaint referred to the Bar Council



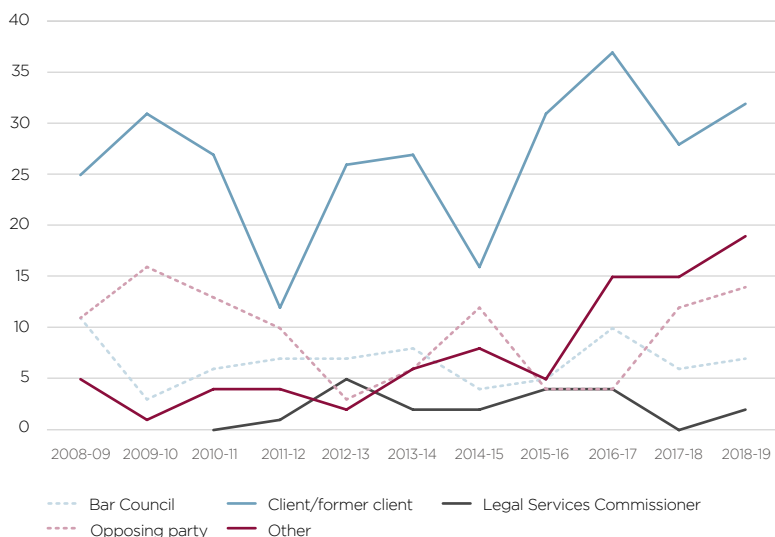
### Source of complaints referred to the Bar Council during the year

Source of complaints	Number
Bar Council	7
Barrister	0
Client / former client	32
Government department / statutory body	1
Instructing solicitor	2
Legal Services Commissioner	2
Opposing party	14
Opposing solicitor	1
Witness	1
Other	19
<b>Total number of complaints</b>	<b>79</b>

## Professional Conduct Statistics (continued)



## Selection of complaints by source 2008-09 to 2018-19



## Number &amp; type of complaints assessed/investigated during the year by the Bar Council

All complaints referred to the Bar Council were disciplinary matters - no consumer matters were referred.

Complaint type	Complaints made during the year	Complaints made in previous years
Communication	2	3
Competence and diligence	22	16
Compliance matters	4	4
Costs	11	12
Ethical matters	37	39
Personal conduct	3	7
<b>Sub-totals</b>	<b>79</b>	<b>81</b>
<b>Total number of complaints assessed/investigated</b>		<b>160</b>

Figures include complaints remaining under investigation as at 30/06/2019, all complaints in respect of which the Bar Council made a decision & complaints that were withdrawn or referred to the Bar Council during the year.

## Number &amp; type of complaints dismissed under the Legal Profession Act 2004 or closed under the Legal Profession Uniform Law (NSW) during the year by the Bar Council\*

Complaint type	Complaints made during the year	Complaints made in previous years
Communication	1	2
Competence and diligence	0	10
Compliance matters	0	1
Costs	4	3
Ethical matters	4	22
Personal conduct	0	2
<b>Sub-totals</b>	<b>9*</b>	<b>40</b>
<b>Total Number of complaints dismissed / closed</b>		<b>49</b>

\* In addition, five complaints were returned to the Legal Services Commissioner due to jurisdictional issues or conflict of interest.





## Professional Conduct Statistics (continued)

### 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
Communication	0	1
Competence and diligence	0	2
Compliance	0	1
Costs	0	3
Ethical matters	0	3
Personal conduct	0	1
<b>Sub-totals</b>	<b>0</b>	<b>13</b>
<b>Total Number of reprimands or cautions:</b>		<b>13</b>

### Number & type of complaints withdrawn during the year

Complaint type	Complaints made during the year	Complaints made in previous years
Competence and diligence	1	0
Costs	0	1
Ethical matters	1	0
Personal conduct	0	1
<b>Sub-totals</b>	<b>2</b>	<b>2</b>
<b>Total Number of complaints withdrawn:</b>		<b>4</b>

### Number & type of complaints referred by the Bar Council to the NSW Civil and Administrative Tribunal during the year

Complaint type	Complaints made during the year	Complaints made in previous years
Ethical matters	1	1
<b>Sub-totals</b>	<b>1</b>	<b>1</b>
<b>Total number of Complaints referred to Tribunal</b>		<b>2</b>

Decisions made by NCAT during the reporting year are available on the Bar Association website at [www.nswbar.asn.au](http://www.nswbar.asn.au)

### Number & type of complaints in respect of which proceedings were instituted in the NSW Civil and Administrative Tribunal during the year by the Bar Council

Number and type of complaint where proceedings were instituted	Number
Ethical matters	1
<b>Total number of complaints</b>	<b>1</b>

In addition, one barrister commenced proceedings in NCAT seeking a review of the Bar Council determination in a complaint matter.

## Professional Conduct Statistics (continued)



## 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	Number	Complaints made in the year ending 30 June
Less than six months	33	2019
Between seven and twelve months	29	2018
Between thirteen and eighteen months	10	2018
Between nineteen and and twenty four months	9	2017
Up to three years	4	2017
Up to three years	3	2016
<b>Total</b>	<b>88</b>	

Note:  
These complaints remain under investigation

## Time intervals involved in the complaint process, being the time between receipt of a complaint and finalisation of the complaint

Time intervals between receipt of complaint and completion	Number
Up to six months	21
Between seven and twelve months	22
Between thirteen and eighteen months	17
Between nineteen and twenty four months	7
Up to three years	5
<b>Total</b>	<b>72</b>



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These financial statements cover The New South Wales Bar Association as an individual entity. The financial statements are presented in Australian dollars, which is The New South Wales Bar Association's functional and presentation currency. The New South Wales Bar Association is an unlisted public company limited by guarantee.

The financial statements were authorised for issue by the directors on 5 September 2019. The directors have the power to amend and reissue the financial statements.

## Directors' Report

For the year ended 30 June 2019

The Directors present their report together with the financial statements of The New South Wales Bar Association ('the Association') for the year ended 30 June 2019 and the auditors' report thereon.

### Directors

The following persons were directors of the Association i.e. members of the Bar Council, during the whole of the financial year and up to the date of this report:

T Game SC	K Nomchong SC	D Rayment	B Katekar
M McHugh SC	A Mitchelmore SC	J Roy	J Mack
G Bashir SC	M Walker		

The following persons were directors from the beginning of the financial year to 2 November 2018:

A Moses SC	M Izzo SC	S Callan	C. Ensor
K Morgan SC			

The following persons were directors from 2 November 2018 up to the date of this report:

K Eastman SC	C Gleeson	E Walsh	B Bulut
Y Shariff	T Hennessy	E Raper	

N Williams was a director from 2 November 2018 to 6 December 2018. R Weinstein SC was a director from 1 July 2018 to 10 January 2019. A Bell SC was a director from 1 July 18 to 31 January 2019. P Khandhar SC was a director from 1 July 2018 to 29 March 2019. S. Mirzabegian was appointed director 6 December 2018. G McGrath SC was appointed director 4 Feb 2019. R Higgins SC was a director from 1 July 2018 to 2 November 2018 and from 17 January 2019. V. Whittaker SC was was a director from 1 July 2018 to 2 November 2018 and from 29 March 2019.

All Directors are practising barristers.



## Directors' Report (continued)

For the year ended 30 June 2019

### 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 including:

- operating the Bar Library;
- organising the Bar Exams and a program of Continuing Professional Development;
- running various programs for the benefit and wellbeing of its members such as: Member Advantage, Fee Recovery Assistance, Ethical Guidance, BarCare, social events, and various publications;
- administering the Bar Association's Professional Standards Scheme;
- making submissions and providing advice to government and government agencies on specific legal policy and practice issues as they arise;
- working with media organisations and other bodies in order to disseminate to the public the Bar Association's position on key issues;
- co-ordinating the provision of pro bono or reduced cost legal services to underprivileged sections of the public through the Bar Association's Legal Assistance Referral Scheme and Duty Barristers Schemes; and
- fulfilling the Bar Association's statutory duties in relation to the regulation of the legal profession through the work of its Professional Conduct Committees and the Bar Council.

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

### Short and long term objectives and strategies

The Association's aims are to:

- promote the public good in relation to legal matters viewed in the broadest context;
- promote collegiality and mutual assistance amongst its members;
- represent the interests of its members in dealing with Government, the broader legal profession, the media and the community;
- promote fair and honourable practice among barristers;
- promote the continuing education of barristers;
- promote, maintain and improve the interests and standards of local practising barristers;
- help members grow their practice either locally or internationally through education and the development of commercial opportunities; and
- (through the statutory role of its Council) assist in matters of professional discipline of members and the resolution of complaints against them.

The Association's strategies for achieving these aims are set out in its strategic plan and include:

- promoting a national legal profession to enhance the independence of the legal profession by retaining control over the development of practice, conduct, and continuing professional development rules;
- marketing and promoting the work of NSW barristers;
- assisting barristers with the economic and personal challenges of a sole practitioner;
- contributing to informed public debate and the provision of the Bar's legal expertise in relation to law reform proposals;
- provision of services to its members, including welfare services through BarCare;
- supporting and encouraging equity and diversity at the NSW Bar; and
- promoting the administration of justice.

### Strategies and Performance

Each year the incoming Bar Council reviews progress made over the preceding 12 months in achieving the stated objectives. The Bar Council has developed a Strategic Plan which charts many of the Association's objectives over a three year period.

### Review and Results of Operations

The Association continued to engage in its principal activities during the financial year. The comprehensive surplus of the Association for the year ended 30 June 2019 was \$581,045 (2018: \$336,356).



## Directors' Report (continued)

For the year ended 30 June 2019

### Association Particulars

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

174 Phillip Street  
Sydney NSW 2000

### Meetings of Directors

From 1 July 2018 to 30 June 2019 there were 24 meetings.

Name	Meetings Attended	Meetings Held
Tim Game SC	21	24
Andrew Bell SC	10	12
Arthur Moses SC	7	8
Richard Weinstein SC	11	12
Garry McGrath SC	11	12
Kylie Nomchong SC	17	24
Michael McHugh SC	21	24
Gabrielle Bashir SC	23	24
Kate Eastman SC	15	16
Kate Morgan SC	8	8
Ruth Higgins SC	14	20
Mary Walker	19	24
Paresh Khandhar SC	11	17
Nanette Williams	7	10
Ben Katekar	14	24
David Rayment	17	24
Anna Mitchelmore	22	24
Vanessa Whittaker	12	17
Michael Izzo SC	8	8
Sophie Callan	7	8
Catherine Gleeson	14	16
Elizabeth Welsh	14	16
Julia Roy	22	24
Courtney Ensor	8	8
Elizabeth Raper	14	16
James Mack	23	24
Sera Mirzabegian	13	16
Yaseen Shariff	13	16
Vanja Bulut	15	16
Talitha Hennessy	14	16



## Directors' Report (continued)

For the year ended 30 June 2019

### Meetings of Directors (continued)

#### Meetings of the Finance, Investment and Audit Committee

From 1 July 2018 to 30 June 2019 there were 4 meetings.

Name	Meetings attended	Meetings entitled to attend
Tim Game SC	3	4
Michael McHugh SC	3	4
David Rayment	2	3
Kylie Nomchong SC	3	4
Andrew Bell SC	2	2
Anna Mitchelmore SC	3	4
Kate Morgan SC	1	1

### MEMBERS' GUARANTEE

If the Association is wound up, the Constitution states that each member is required to contribute an amount not exceeding \$4 per member to meet all outstanding obligations of the Association and any such amounts as may be required. The Association had 3,224 members at balance date, and the total that members are liable to contribute is \$12,896.

### 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 RSM Australia is included on page 70.

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

T Game SC  
President

M McHugh SC  
Treasurer

Sydney, NSW  
5 September 2019



## Auditor's Independence Declaration



### RSM Australia Partners

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[www.rsm.com.au](http://www.rsm.com.au)

### AUDITOR'S INDEPENDENCE DECLARATION

As lead auditor for the audit of the financial report of New South Wales Bar Association for the year ended 30 June 2019, I declare that, to the best of my knowledge and belief, there have been no contraventions of:

- (i) the auditor independence requirements of the *Corporations Act 2001* in relation to the audit; and
- (ii) any applicable code of professional conduct in relation to the audit.

A handwritten signature in blue ink that reads 'Rsm'.

**RSM AUSTRALIA PARTNERS**

A handwritten signature in blue ink that reads 'C J Hume'.

**C J Hume**  
Partner

Sydney, NSW  
Dated: 5 September 2019



## Statement of Surplus and Other Comprehensive Income

For the year ended 30 June 2019

	Notes	2019 \$	2018 \$
Revenue	2	10,417,668	9,636,155
Employee benefits expense		(4,145,171)	(3,853,560)
Legal and professional fees		(1,629,211)	(1,420,656)
Subscriptions		(945,528)	(953,949)
Communications and information technology expense		(507,591)	(468,839)
Depreciation and amortisation expense		(317,442)	(339,020)
Occupancy expense		(831,900)	(825,170)
Advertising and marketing expense		(317,811)	(273,349)
Financial expense		(172,726)	(136,863)
Seminar and function expense		(600,982)	(302,317)
Other expenses from ordinary activities		<u>(532,274)</u>	<u>(711,534)</u>
Surplus before investment revaluation to market		417,032	350,898
Profit on financial assets at fair value through surplus or deficit		<u>103,854</u>	<u>52,724</u>
Surplus before income tax expense		520,886	403,622
Income tax benefit / (expense)	3(a)	<u>60,159</u>	<u>(67,266)</u>
<b>Net surplus</b>		<b><u>581,045</u></b>	<b><u>336,356</u></b>
<b>Other comprehensive income for the year, net of tax</b>		<b><u>-</u></b>	<b><u>-</u></b>
<b>Total comprehensive income</b>		<b><u>581,045</u></b>	<b><u>336,356</u></b>

The above statement of surplus and other comprehensive income should be read in conjunction with the accompanying notes.



## Statement of Financial Position

As at 30 June 2019

	Notes	2019 \$	2018 \$
<b>ASSETS</b>			
<b>CURRENT ASSETS</b>			
Cash and cash equivalents	12	3,499,653	1,361,509
Receivables		19,118	11,732
Other financial assets	4	10,122,256	11,362,891
Inventories		10,912	6,078
Other assets	5	412,296	255,077
<b>TOTAL CURRENT ASSETS</b>		<b>14,064,235</b>	<b>12,997,287</b>
<b>NON-CURRENT ASSETS</b>			
Other financial assets	4	3,168,836	3,033,981
Deferred tax assets	3(b)		22,756
Property, plant and equipment	7	1,267,166	1,423,518
<b>TOTAL NON-CURRENT ASSETS</b>		<b>4,436,002</b>	<b>4,480,255</b>
<b>TOTAL ASSETS</b>		<b>18,500,237</b>	<b>17,477,542</b>
<b>LIABILITIES</b>			
<b>CURRENT LIABILITIES</b>			
Trade and other payables	8	1,236,004	666,984
Employee benefits		525,190	661,554
Fees received in advance	9	6,728,224	6,641,238
<b>TOTAL CURRENT LIABILITIES</b>		<b>8,489,418</b>	<b>7,969,776</b>
<b>NON-CURRENT LIABILITIES</b>			
Employee benefits		45,140	40,217
Deferred tax liabilities	3(b)	-	82,915
<b>TOTAL NON-CURRENT LIABILITIES</b>		<b>45,140</b>	<b>123,132</b>
<b>TOTAL LIABILITIES</b>		<b>8,534,558</b>	<b>8,092,908</b>
<b>NET ASSETS</b>		<b>9,965,679</b>	<b>9,384,634</b>
<b>ACCUMULATED FUNDS</b>			
Accumulated surpluses		9,965,679	9,384,634
<b>TOTAL ACCUMULATED FUNDS</b>		<b>9,965,679</b>	<b>9,384,634</b>

The above statement of financial position should be read in conjunction with the accompanying notes.



## Statement of Changes in Accumulated Funds

For the year ended 30 June 2019

	Accumulated Surpluses \$	Total Accumulated Funds \$
<b>Balance at 30 June 2017</b>	<b>9,048,278</b>	<b>9,048,278</b>
Surplus after income tax expense for the year	336,356	336,356
Other comprehensive income for the year, net of tax	-	-
Total comprehensive income for the year	336,356	336,356
<b>Balance at 30 June 2018</b>	<b>9,384,634</b>	<b>9,384,634</b>
Surplus after income tax expense for the year	581,045	581,045
Other comprehensive income for the year, net of tax	-	-
Total comprehensive income for the year	581,045	581,045
<b>Balance at 30 June 2019</b>	<b>9,965,679</b>	<b>9,965,679</b>

The above statement of changes in accumulated funds should be read in conjunction with the accompanying notes.

## Statement of Cash Flows

For the year ended 30 June 2019

	Notes	2019 \$	2018 \$
<b>Cash flows from operating activities</b>			
Receipts from operating activities		11,067,913	9,859,008
Payments to suppliers and employees		(10,401,471)	(9,291,848)
Dividends received		177,556	104,740
Interest received		210,205	233,249
Income tax paid		-	-
Net cash inflow from operating activities		1,054,203	905,149
<b>Cash flows from investing activities</b>			
Proceeds from sale of plant and equipment		769	1,842
Payments for plant and equipment		(161,859)	(211,541)
Proceeds from sale of investments		1,292,888	1,076,279
Payment for purchase of investments		(47,857)	(11,260,350)
Net cash (outflow)/inflow from investing activities		1,083,941	(10,393,770)
Net (decrease)/increase in cash and cash equivalents		2,138,144	(9,488,621)
Cash and cash equivalents at the beginning of the financial year		1,361,509	10,850,130
<b>Cash and cash equivalents at the end of the financial year</b>	12	<b>3,499,653</b>	<b>1,361,509</b>

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



# Notes to the Financial Statements

For the year ended 30 June 2019

## 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

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

### (a) Basis of Preparation

These general purpose financial statements have been prepared in accordance with Australian Accounting Standards – Reduced Disclosure Requirements and interpretations as issued by the Australian Accounting Standards Board, and the *Corporations Act 2007*. The New South Wales Bar Association is a Not-for-profit entity for the purpose of preparing the financial statements.

### *Historical cost convention*

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

### *Critical accounting estimates and judgements*

The preparation of financial statements 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) Revenue from contracts with customers*

Revenue from contracts with customers is recognised when control of the goods or services are transferred to the customer at an amount that reflects the consideration to which the company expects to be entitled in exchange for those goods or services. The company has generally concluded that it is the principal in its revenue arrangements.

#### *(ii) 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 to which the fees relate.

#### *(iii) Administration Charge*

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

#### *(iv) Dividends Received*

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

#### *(v) Interest Income*

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

#### *(vi) Grants*

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

#### *(vii) Other Income*

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

### (c) Income Tax

The 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 in calculating income for tax purposes.

Deferred income tax is provided in full, using the liability 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 end of the reporting period and are expected to apply when the related deferred tax assets is realised or the deferred tax liability is settled.

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



## Notes to the Financial Statements (continued)

For the year ended 30 June 2019

### 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

Deferred tax assets and liabilities are offset when there is a legally enforceable right to offset current tax assets and liabilities and when the deferred tax balances relate to the same taxation authority. Current tax assets and liabilities are offset where the entity has a legally enforceable right to offset and intends either to settle on a net basis, or to realise the asset and settle the liability simultaneously.

Current and deferred tax is recognised in surplus or deficit, except to the extent that it relates to items recognised in other comprehensive income or directly in equity. In this case, the tax is also recognised in other comprehensive income or directly in equity, respectively.

#### (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 (Note 10). Payments made under operating leases (net of any incentives received from the lessor) are charged to surplus or deficit on a straight-line basis over the period of the lease.

#### (e) Impairment of non-financial assets

Non-financial assets are reviewed for impairment whenever events or changes in circumstances indicated 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.

Recoverable amount is the higher of an asset's fair value less costs of disposal and value-in-use. The value-in-use is the present value of the estimated future cash flows relating to the asset using a pre-tax discount rate specific to the asset or cash-generating unit to which the asset belongs. Assets that do not have independent cash flows are grouped together to form a cash-generating unit.

#### (f) Cash and Cash Equivalents

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

#### (g) Trade and other receivables

Trade receivables are initially recognized at fair value and subsequently measured at amortised cost using the effective interest method, less any allowance for expected credit losses.

The entity has applied the simplified approach to measuring expected credit losses, which uses a lifetime expected loss allowance. To measure the expected credit losses, trade receivables have been grouped based on days overdue.

Other receivables are recognised at amortised cost, less any allowance for expected credit losses.

#### (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) Financial Instruments

##### (i) Classification

From 1 June 2018, the Company classifies its financial assets in the following measurement categories:

- those to be measured subsequently at fair value (either through OCI or through profit or loss), and
- those to be measured at amortised cost.

The classification depends on the Company's business model for managing the financial assets and the contractual terms of the cash flows.

For assets measured at fair value, gains and losses will either be recorded in profit or loss or OCI. For investments in equity instruments that are not held for trading, this will depend on whether the Company has made an irrevocable election at the time of initial recognition to account for the equity investment at fair value through other comprehensive income (FVOCI).

The Company reclassifies debt investments when and only when its business model for managing those assets changes.

##### (ii) Recognition and derecognition

Regular way purchases and sales of financial assets are recognised on trade-date, the date on which the Company commits to purchase or sell the asset. Financial assets are derecognised when the rights to receive cash flows from the financial assets have expired or have been transferred and the Company has transferred substantially all the risks and rewards of ownership.





## Notes to the Financial Statements (continued)

For the year ended 30 June 2019

### 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

#### ***(iii) Measurement***

At initial recognition, the Company measures a financial asset at its fair value plus, in the case of a financial asset not at fair value through profit or loss (FVPL), transaction costs that are directly attributable to the acquisition of the financial asset. Transaction costs of financial assets carried at FVPL are expensed in profit or loss.

Financial assets with embedded derivatives are considered in their entirety when determining whether their cash flows are solely payment of principal and interest.

#### ***(iv) Impairment***

From 1 June 2018, the Company assesses on a forward looking basis the expected credit losses associated with its debt instruments carried at amortised cost and FVOCI. The impairment methodology applied depends on whether there has been a significant increase in credit risk.

For trade receivables, the Company applies the simplified approach permitted by AASB 9, which requires expected lifetime losses to be recognised from initial recognition of the receivables.

#### ***(v) Account policies applied until 30 June 2018***

Until 30 June 2018, the Company classifies its financial assets in the following categories:

#### ***Classification***

The Association classifies its financial assets in the following categories: receivables, available-for-sale financial assets and held-to-maturity investments. The classification depends on the purpose for which the financial assets were acquired. Management determines the classification of each investment at initial recognition.

#### ***(i) Receivables***

Receivables and other financial assets are non-derivative financial assets with fixed or determinable payment amounts 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 end of the reporting period which are classified as non-current assets.

#### ***(ii) Held-to-maturity investments***

The Association classifies its term deposits as held-to-maturity investments. Held-to-maturity investments are non-derivative financial assets with fixed or determinable payments and fixed maturities that the Association's management has the positive intention and ability to hold to maturity. Held-to-maturity investments are included in current assets except for those with maturities greater than 12 months from the end of the reporting period, which are classified as non-current assets.

#### ***(iii) Designated at fair value through surplus or deficit***

The Association classifies financial assets 'at fair value through surplus or deficit', unless they are otherwise classified. Changes in fair value of these financial assets are recognised in surplus or deficit.

#### ***(iv) Recognition and Derecognition***

Receivables and held-to-maturity investments are initially recognised at cost.

Financial assets at fair value through surplus or deficit are initially recognised at fair value plus transactions costs, with fair values based on current bid prices for listed securities, and on published market prices for fixed interest securities

#### ***(v) Subsequent Measurement***

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

Financial assets at fair value through surplus or deficit are subsequently carried at fair value. Gains and losses are recognised within other income or other expense.



## Notes to the Financial Statements (continued)

For the year ended 30 June 2019

### 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

#### (j) Property, plant and Equipment

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

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

- Refurbishments	4 to 15 years
- Furniture, Computers, Computer Software, Office Machines and Equipment	3 to 10 years
- Kitchen Equipment	5 years

The assets' residual values and useful lives are reviewed, and adjusted if appropriate, at the end of each reporting period.

An item of property, plant and equipment is derecognised upon disposal or when there is no future economic benefit to the incorporated association. Gains and losses between the carrying amount and the disposal proceeds are taken to profit or loss.

#### (k) 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.

#### (l) Employee Benefits

##### (i) Short-term employee benefits

Liabilities for wages and salaries, including non-monetary benefits, annual leave and long service leave expected to be settled wholly within 12 months of the reporting date are measured at the amounts expected to be paid when the liabilities are settled.

##### (ii) Other long-term employee benefits

The liability for annual leave and long service leave not expected to be settled within 12 months of the reporting date are measured at the present value of expected future payments to be made in respect of services provided by employees up to the reporting date using the projected unit credit method. Consideration is given to expected future wage and salary levels, experience of employee departures and periods of service. Expected future payments are discounted using market yields at the reporting date on national government bonds with terms to maturity and currency that match, as closely as possible, the estimated future cash outflows.

#### (m) 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 statement of financial position.

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.

#### (n) Changes in accounting policies, disclosures, standards and interpretations

The Company has adopted all of the new or amended Accounting Standards and Interpretations issued by the Australian Accounting Standards Board ('AASB') that are mandatory for the current reporting period.

Any new or amended Accounting Standards or Interpretations that are not yet mandatory have not been early adopted.

#### AASB 16 Leases

This standard is applicable to annual reporting periods beginning on or after 1 January 2019. The standard replaces AASB 117 'Leases' and for lessees will eliminate the classifications of operating leases and finance leases. Subject to exceptions, a 'right-of-use' asset will be capitalised in the statement of financial position, measured at the present value of the unavoidable future lease payments to be made over the lease term. The exceptions relate to short-term leases of 12 months or less and leases of low-value assets (such as personal computers and small office furniture) where an accounting policy choice exists whereby either a 'right-of-use' asset is recognised or lease payments are expensed to profit or loss as incurred. A liability corresponding to the capitalised lease will also be recognised, adjusted for lease prepayments, lease incentives received, initial direct costs incurred and an estimate of any future restoration, removal or dismantling costs. Straight-line operating lease expense recognition will be replaced with a depreciation charge for the leased asset (included in operating costs) and an interest expense on the recognised lease liability (included in finance costs). In the earlier periods of the lease, the expenses associated with the lease under AASB 16



## Notes to the Financial Statements (continued)

For the year ended 30 June 2019

### 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

will be higher when compared to lease expenses under AASB 117. However, EBITDA (Earnings Before Interest, Tax, Depreciation and Amortisation) results will be improved as the operating expense is replaced by interest expense and depreciation in profit or loss under AASB 16. For classification within the statement of cash flows, the lease payments will be separated into both a principal (financing activities) and interest (either operating or financing activities) component. For lessor accounting, the standard does not substantially change how a lessor accounts for leases. The consolidated entity will adopt this standard from 1 July 2019 and its impact on adoption is expected to result in total assets increasing by \$2,922,774, total liabilities increasing by \$4,274,139 and net assets decreasing by \$1,351,365.

#### (o) Current and non-current classification

Assets and liabilities are presented in the statement of financial position based on current and non-current classification.

An asset is classified as current when: it is either expected to be realised or intended to be sold or consumed in the company's normal operating cycle; it is held primarily for the purpose of trading; it is expected to be realised within 12 months after the reporting period; or the asset is cash or cash equivalent unless restricted from being exchanged or used to settle a liability for at least 12 months after the reporting period. All other assets are classified as non-current.

A liability is classified as current when: it is either expected to be settled in the company's normal operating cycle; it is held primarily for the purpose of trading; it is due to be settled within 12 months after the reporting period; or there is no unconditional right to defer the settlement of the liability for at least 12 months after the reporting period. All other liabilities are classified as non-current.

Deferred tax assets and liabilities are always classified as non-current.

#### (p) Fair value measurement

When an asset or liability, financial or non-financial, is measured at fair value for recognition or disclosure purposes, the fair value is based on the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date; and assumes that the transaction will take place either: in the principal market; or in the absence of a principal market, in the most advantageous market.

Fair value is measured using the assumptions that market participants would use when pricing the asset or liability, assuming they act in their economic best interests. For non-financial assets, the fair value measurement is based on its highest and best use. Valuation techniques that are appropriate in the circumstances and for which sufficient data are available to measure fair value, are used, maximising the use of relevant observable inputs and minimising the use of unobservable inputs.

	2019 \$	2018 \$
<b>2. REVENUE</b>		
<b>Operating revenue</b>		
Subscriptions and practicing certificate fees	6,622,039	6,480,276
Bar Practise Course & Bar Examinations	534,165	606,150
	<u>7,156,204</u>	<u>7,086,426</u>
<b>Other revenue</b>		
Interest and dividends	392,896	331,644
Seminars	112,027	116,914
External funding	2,198,663	1,874,800
Other	557,878	226,371
	<u>3,161,464</u>	<u>2,549,729</u>
<b>Revenue from continuing operations</b>	<b>10,417,668</b>	<b>9,636,155</b>



## Notes to the Financial Statements (continued)

For the year ended 30 June 2019

	2019 \$	2018 \$
<b>3. INCOME TAX EXPENSE</b>		
<b>(a) Reconciliation of income tax expense to prima facie tax payable</b>		
Net surplus from continuing operations	520,886	403,622
Tax at the Australian tax rate of 27.5% (2018: 27.5%)	143,244	110,996
Decrease in income tax expense due to:		
- Net mutual income	(172,727)	(174,246)
Tax effect of amounts which are not deductible	17,883	130,516
Temporary Differences not brought to account	(48,559)	-
Income tax (benefit) / expense	<b>(60,159)</b>	<b>67,266</b>
<b>(b) Deferred taxes</b>		
Deferred tax asset	-	22,756
Deferred tax liability	-	(82,915)
	<b>-</b>	<b>(60,159)</b>
Deferred tax assets not recognised comprises temporary differences attributable to:		
Employee benefits	18,378	
Accrued Expenses	2,671	
Other	(18)	
Tax Losses	150,522	
Interest receivables	(13,928)	
Prepayment	(279)	
Long Term Share Investments	(36,249)	
<b>Total</b>	<b>121,097</b>	

The above potential tax benefit, for temporary differences and tax losses, has not been recognised in the statement of financial position as the recovery of this benefit is uncertain. The above potential tax benefit, for temporary differences and tax losses, has not been recognised in the statement of financial position as the recovery of this benefit is uncertain.



## Notes to the Financial Statements (continued)

For the year ended 30 June 2019

	2019 \$	2018 \$
<b>4. OTHER FINANCIAL ASSETS</b>		
<b>Current</b>		
<b>Held to maturity investments:</b>		
Term deposit (i)	<u>10,122,256</u>	<u>11,362,891</u>
 (i) The Association has classified all its Term deposits as other current financial assets in the current year given the investment term of these deposits are longer than 3 months.		
<b>Non-current</b>		
<b>At cost</b>		
Investments in associates	<u>14</u>	<u>14</u>
<b>Designated at fair value through surplus or deficit</b>		
Shares in Australian listed companies	3,039,403	3,033,967
Fixed interest securities - listed	<u>129,419</u>	<u>-</u>
	<u>3,168,822</u>	<u>3,033,967</u>
<b>Total other financial assets – non current</b>	<u><b>3,168,836</b></u>	<u><b>3,033,981</b></u>

### (a) Investments in associates

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

The Association holds one \$10 share in the Pro Bono Disbursement Fund Pty Ltd. The Executive Director of the Association is a director of that company. The purpose of that company is to hold and pay funds to reimburse legal practitioners for their disbursements incurred in the conduct of pro bono matters.

### (b) Investment in Counsel's Chambers Limited

The Association also holds 7 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 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 reasonable fair value estimate, the Association is precluded from measuring or recognising such values in its financial statements.

## 5. OTHER ASSETS

Prepayments	361,651	209,567
Accrued interest	<u>50,645</u>	<u>45,510</u>
	<u><b>412,296</b></u>	<u><b>255,077</b></u>



## Notes to the Financial Statements (continued)

For the year ended 30 June 2019

	2019 \$	2018 \$
<b>6. INTANGIBLES</b>		
<b>Database &amp; website</b>		
At cost	304,665	304,665
Accumulated amortisation	(304,665)	(304,665)
<b>Net carrying amount</b>	-	-

## 7. PROPERTY, PLANT AND EQUIPMENT

	Library \$	Refurbishments \$	Furniture, computers, computer software, office machines & equipment \$	Kitchen equipment \$	Total \$
<b>At 30 June 2018</b>					
Cost	469,043	3,234,876	1,386,102	3,511	5,093,532
Accumulated depreciation and impairment	(469,043)	(2,165,214)	(1,033,133)	(2,624)	(3,670,014)
<b>Net carrying amount</b>	-	<b>1,069,662</b>	<b>352,969</b>	<b>887</b>	<b>1,423,518</b>
<b>At 30 June 2019</b>					
Cost	-	3,234,876	1,457,177	3,511	4,695,564
Accumulated depreciation and impairment	-	(2,313,656)	(1,111,753)	(2,989)	(3,428,398)
<b>Net carrying amount</b>	-	<b>921,220</b>	<b>345,424</b>	<b>522</b>	<b>1,267,166</b>

Movements:

### Year ended 30 June 2018

At 1 July 2018, net carrying amount	-	<b>1,069,662</b>	<b>352,969</b>	<b>887</b>	<b>1,423,518</b>
Additions	-	-	161,859	-	161,859
Disposals	-	-	(766)	-	(766)
Write off	-	-	-	-	-
Depreciation/ amortisation charge for the year	-	(148,442)	(168,638)	(365)	(317,445)
<b>At 30 June 2019, net carrying amount</b>	-	<b>921,220</b>	<b>345,424</b>	<b>522</b>	<b>1,267,166</b>





## Notes to the Financial Statements (continued)

For the year ended 30 June 2019

	2019 \$	2018 \$
<b>8. TRADE AND OTHER PAYABLES</b>		
Trade and other payables	<u>1,236,004</u>	<u>666,984</u>
<b>9. FEES RECEIVED IN ADVANCE</b>		
<b>Current</b>		
Subscriptions, practicing certificate fees & other revenue received in advance	<u>6,728,224</u>	<u>6,641,238</u>
<b>10. COMMITMENTS</b>		
<b>Lease Commitments</b>		
<b>Operating Lease Commitments Payable</b>		
Within one year	694,970	674,728
Later than one year but not later than 5 years	2,771,441	2,749,699
Later than 5 years	<u>2,051,704</u>	<u>2,768,416</u>
	<u><b>5,518,115</b></u>	<u><b>6,192,843</b></u>

The Association leases from Counsels' Chambers the two premises from which it operates. The main premises are on a fifteen year lease, with an option to renew for a further five years. This lease expires in March 2027. Additional office space is occupied under a three year lease with rent increases of 3% in the 2nd and 3rd year. This lease expires in December 2020. Balances disclosed are GST exclusive.

## 11. 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:

T Game SC	A Moses SC	G McGrath SC	A Bell SC
K Eastman SC	M McHugh SCt	K Nomchong SC	G Bashir SC
R Weinstein SC	R Higgins SC	K Morgan SC	A Mitchelmore SC
V Whittaker SC	P Khandhar SC	M Izzo SC	M Walker
E Welsh	N Williams	B Katekar	D Rayment
S Mirzabegian	S Callan	Y Shariff	E Raper
C Gleeson	J Roy	C Ensor	J Mack
V Bulut	T Hennessy		

### (b) Key management personnel

Key management personnel compensation for the years ended 30 June 2019 and 30 June 2018 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.

Other than the directors, the key management personnel identified for the years ended 30 June 2019 and 30 June 2018 are as follows:

Greg Tolhurst	Bali Kaur	Jocelyn Sparks
Lisa Allen	Basil Catsaros	Kim Kemp
Alastair McConnachie	Jennifer Pearce	Chris Winslow

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.

	2019 \$	2018 \$
Employee benefits	<u>1,717,486</u>	<u>1,388,192</u>



## Notes to the Financial Statements (continued)

For the year ended 30 June 2019

### 11. RELATED PARTY DISCLOSURES (continued)

#### (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.

The Association paid rent (including associated air-conditioning, electricity and cleaning charges) totalling \$821,236 (2018: \$789,868) for office space to Counsel's Chambers Limited, a company of which some directors of the Association are also members. The bulk of this payment was at two-thirds of the normal market rate.

#### (d) Loans to/from related parties

There were no loans to or from related parties at the current and previous reporting date.

#### (e) Receivable from and payable to related parties

There were no trade receivables from or trade payables to related parties at the current and previous reporting date.

### 12. CASH AND CASH EQUIVALENTS

	2019 \$	2018 \$
Cash at bank	1,201,651	954,023
Term Deposits	2,015,102	406,586
Restricted Cash (i)	282,000	-
Petty Cash	900	900
	<b>3,499,653</b>	<b>1,361,509</b>

(i) Restricted cash at year end includes cash that has been used to purchase shares in an investment.

### 13. REIMBURSEMENT BY THE PUBLIC PURPOSE FUND

Section 34 (3)(a) of the Legal Profession Uniform Law Application Act 2014 requires certification by the auditor of the costs incurred by the Bar Council in relation to its regulatory function. Expenditure on regulatory activities in 2018 -2019 amounted to \$1,993,662 (2018: \$1,674,800).

### 14. EVENTS OCCURRING AFTER THE REPORTING DATE

Changes since reporting date in the market values of financial assets at fair value through profit or loss held by the Association has impacted the total value of the financial assets. As at 26 August 2019, the total market value of financial assets at fair value through profit or loss held by the Association was \$3,458,636 compared with \$3,168,836 as at 30 June 2019, an increase of 9.1%

### 15. CONTINGENT LIABILITIES

The company had no contingent liabilities as at 30 June 2019 and 30 June 2018.



## Directors' Declaration

For the year ended 30 June 2019

In the directors' opinion:

- (a) the financial statements and notes set out on pages 71 to 83 are in accordance with the Corporations Act 2001, including:
  - (i) complying with Accounting Standards – Reduced Disclosure Requirements (including the Australian Accounting Interpretations) and the *Corporations Regulations 2001*; and
  - (ii) giving a true and fair view of the company's financial position as at 30 June 2019 and of its performance for the financial year ended on that date; and
- (b) there are reasonable grounds to believe that the company will be able to pay its debts as and when they become due and payable.

This declaration is made in accordance with a resolution of the directors.

T Game SC  
President

M McHugh  
Treasurer

Sydney, NSW  
5 September 2019

## Independent Auditor's Report



### RSM Australia Partners

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### Opinion

We have audited the financial report of New South Wales Bar Association (the Company), which comprises the statement of financial position as at 30 June 2019, the statement of comprehensive income, the statement of changes in equity and the statement of cash flows for the year then ended, and notes to the financial statements, including a summary of significant accounting policies, and the directors' declaration.

In our opinion, the accompanying financial report of the Company is in accordance with the Corporations Act 2001, including:

- (i) giving a true and fair view of the Company's financial position as at 30 June 2019 and of its financial performance for the year then ended; and
- (ii) complying with Australian Accounting Standards – Reduced Disclosure Requirements and the Corporations Regulations 2001.

### Basis for Opinion

We conducted our audit in accordance with Australian Auditing Standards. Our responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Financial Report* section of our report. We are independent of the Company in accordance with the auditor independence requirements of the Corporations Act 2001 and the ethical requirements of the Accounting Professional and Ethical Standards Board's APES 110 *Code of Ethics for Professional Accountants* (the Code) that are relevant to our audit of the financial report in Australia. We have also fulfilled our other ethical responsibilities in accordance with the Code.

We confirm that the independence declaration required by the Corporations Act 2001, which has been given to the directors of the Company, would be in the same terms if given to the directors as at the time of this auditor's report.

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

### Other Information

The directors are responsible for the other information. The other information comprises the information included in the Company's annual report for the year ended 30 June 2019, but does not include the financial report and the auditor's report thereon.

Our opinion on the financial report does not cover the other information and accordingly we do not express any form of assurance conclusion thereon.

In connection with our audit of the financial report, our responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial report or our knowledge obtained in the audit or otherwise appears to be materially misstated.

If, based on the work we have performed, we conclude that there is a material misstatement of this other information, we are required to report that fact. We have nothing to report in this regard.

## Independent Auditor's Report (continued)



### RSM Australia Partners

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### Responsibilities of the Directors for the Financial Report

The directors of the Company are responsible for the preparation of the financial report that gives a true and fair view in accordance with Australian Accounting Standards – Reduced Disclosure Requirements and the Corporations Act 2001 and for such internal control as the directors determine is necessary to enable the preparation of the financial report that gives a true and fair view and is free from material misstatement, whether due to fraud or error.

In preparing the financial report, the directors are responsible for assessing the ability of the Company to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless the directors either intend to liquidate the Company or to cease operations, or have no realistic alternative but to do so.

### Auditor's Responsibilities for the Audit of the Financial Report

Our objectives are to obtain reasonable assurance about whether the financial report as a whole is free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with the Australian Auditing Standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of this financial report.

A further description of our responsibilities for the audit of the financial report is located at the Auditing and Assurance Standards Board website at: [http://www.auasb.gov.au/auditors\\_responsibilities/ar4.pdf](http://www.auasb.gov.au/auditors_responsibilities/ar4.pdf). This description forms part of our auditor's report.

A handwritten signature in blue ink, appearing to read 'RSM'.

**RSM Australia Partners**

A handwritten signature in blue ink, appearing to read 'C J Hume'.

**C J Hume**  
Partner

Sydney, NSW  
Dated: 5 September 2019



## Barristers' Benevolent Association

Financial report for the year ended 30 June 2019

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

The financial statements were authorised for issue by the Committee of Management on 5 September 2019. The Committee of Management has the power to amend and re-issue the financial statements.

## Statement of Surplus and Other Comprehensive Income

For the year ended 30 June 2019

	Notes	2019 \$	2018 \$
Revenue	2	322,153	330,341
(Loss)/profit on sale of investments		35,296	(1,216)
Auditor's remuneration		(9,785)	(9,500)
Bar care costs		(28,572)	(25,814)
Employee benefits expense		(76,915)	(80,614)
Gifts		(148,000)	(105,941)
Impairment of loans - write back		2,600	800
Other operating expenses		(1,338)	(7,486)
Surplus before fair value gains		95,439	100,570
Net gains on non-current assets held at fair value through surplus or deficit		180,447	55,214
Surplus before income tax		275,886	155,784
Income tax expense	1 (c)	-	-
<b>Net Surplus</b>		275,886	155,784
<b>Other comprehensive income</b>		-	-
<b>Total comprehensive income</b>		<b>275,886</b>	<b>155,784</b>

The above statement of surplus and other comprehensive income should be read in conjunction with the accompanying notes.





## Statement of Financial Position

As at 30 June 2019

	Notes	2019 \$	2018 \$
<b>CURRENT ASSETS</b>			
Cash and cash equivalents		479,981	257,866
Held-to-maturity investments	4	1,730,567	2,042,278
Loans and receivables	3	48,163	46,548
<b>TOTAL CURRENT ASSETS</b>		<b>2,258,711</b>	<b>2,346,692</b>
<b>NON-CURRENT ASSETS</b>			
Other financial assets	5	3,463,910	3,086,994
<b>TOTAL NON-CURRENT ASSETS</b>		<b>3,463,910</b>	<b>3,086,994</b>
<b>TOTAL ASSETS</b>		<b>5,722,621</b>	<b>5,433,686</b>
<b>CURRENT LIABILITIES</b>			
Trade and other payables		24,376	9,500
Employee benefits		5,800	7,627
<b>TOTAL CURRENT LIABILITIES</b>		<b>30,176</b>	<b>17,127</b>
<b>TOTAL LIABILITIES</b>		<b>30,176</b>	<b>17,127</b>
<b>NET ASSETS</b>		<b>5,692,445</b>	<b>5,416,559</b>
<b>ACCUMULATED FUNDS</b>			
Accumulated surpluses		5,692,445	5,416,559
<b>TOTAL ACCUMULATED FUNDS</b>		<b>5,692,445</b>	<b>5,416,559</b>

The above statement of financial position should be read in conjunction with the accompanying notes.

## Statement of Changes in Accumulated Funds

For the year ended 30 June 2019

	Accumulated Surpluses \$	Total Accumulated Funds \$
<b>At 30 June 2017</b>	<b>5,260,775</b>	<b>5,260,775</b>
Total comprehensive income	155,784	155,784
<b>At 30 June 2018</b>	<b>5,416,559</b>	<b>5,416,559</b>
Total comprehensive income	275,886	275,886
<b>At 30 June 2019</b>	<b>5,692,445</b>	<b>5,692,445</b>

The above statement of changes in accumulated funds should be read in conjunction with the accompanying notes.



## Statement of Cash Flows

For the year ended 30 June 2019

	2019 \$	2018 \$
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Receipts from members, sponsorship and general activities	118,996	129,680
Payments to suppliers	(259,779)	(229,661)
Interest and dividends received	212,360	212,298
<b>Net cash inflow from operating activities</b>	<b>71,577</b>	<b>112,317</b>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>		
Proceeds from other financial assets	170,698	324,129
Proceeds from held to maturity investments	311,711	294,036
Payments for other financial assets	(331,871)	(476,303)
Payments for held to maturity investments	-	(460,766)
<b>Net cash inflow / (outflow) from investing activities</b>	<b>150,538</b>	<b>(318,904)</b>
Net increase / (decrease) in cash and cash equivalents	222,115	(206,587)
Cash and cash equivalents at the beginning of the year	257,866	464,453
<b>Cash and cash equivalents at the end of the year</b>	<b>479,981</b>	<b>257,866</b>

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

## Notes to the Financial Statements

For the year ended 30 June 2019

### 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

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

#### (a) Basis of Preparation

These general purpose financial statements have been prepared in accordance with Australian Accounting Standards - Reduced Disclosure Requirements and interpretations as issued by the Australian Accounting Standards Board, and the *Australian Charities and Not-for-profits Commission Act 2012*. Barristers Benevolent Association of NSW is a not-for-profit entity for the purpose of preparing the financial statements.

#### Historical cost convention

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

#### Critical accounting estimates and judgements

The preparation of financial statements 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 judgments that have a significant risk of causing material adjustments to the carrying amounts of assets and liabilities within the next financial year.



## Notes to the Financial Statements (continued)

For the year ended 30 June 2019

### 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

#### **(b) Revenue Recognition**

Revenue is measured at the fair value of the consideration received or receivable. Revenue is recognised as follows:

##### ***(i) Revenue from contracts with customers***

Revenue from contracts with customers is recognised when control of the goods or services are transferred to the customer at an amount that reflects the consideration to which the company expects to be entitled in exchange for those goods or services. The company has generally concluded that it is the principal in its revenue arrangements.

##### ***(ii) Contributions***

Revenue from contributions is recognised when the contribution is received.

##### ***(iii) Dividend and Distribution income***

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

##### ***(iv) Interest income***

Interest income is recognised as it accrues.

##### ***(v) Other Income***

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

##### ***(vi) Changes in fair value of investments***

Net gains or losses on investments designated at fair value through surplus or deficit 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**

As the Barristers' Benevolent Association of NSW is a charitable institution in terms of subsection 50-5 of the Income Tax Assessment Act 1997, as amended, it is exempt from paying income tax.

#### **(d) Current and non-current classification**

Assets and liabilities are presented in the statement of financial position based on current and non-current classification.

An asset is classified as current when: it is either expected to be realised or intended to be sold or consumed in the incorporated association's normal operating cycle; it is held primarily for the purpose of trading; it is expected to be realised within 12 months after the reporting period; or the asset is cash or cash equivalent unless restricted from being exchanged or used to settle a liability for at least 12 months after the reporting period. All other assets are classified as non-current.

A liability is classified as current when: it is either expected to be settled in the incorporated association's normal operating cycle; it is held primarily for the purpose of trading; it is due to be settled within 12 months after the reporting period; or there is no unconditional right to defer the settlement of the liability for at least 12 months after the reporting period. All other liabilities are classified as non-current.

Deferred tax assets and liabilities are always classified as non-current.

#### **(e) Cash and Cash Equivalents**

For purposes of presentation in the statement of cash flows, 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.

#### **(f) Trades and Other Receivables**

Trade receivables are initially recognized at fair value and subsequently measured at amortised cost using the effective interest method, less any allowance for expected credit losses.

The entity has applied the simplified approach to measuring expected credit losses, which uses a lifetime expected loss allowance. To measure the expected credit losses, trade receivables have been grouped based on days overdue.

Other receivables are recognised at amortised cost, less any allowance for expected credit losses.



## Notes to the Financial Statements (continued)

For the year ended 30 June 2019

### 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

#### (g) Financial Instruments

##### (i) Classification

From 1 June 2018, the Company classifies its financial assets in the following measurement categories:

- those to be measured subsequently at fair value (either through OCI or through profit or loss), and
- those to be measured at amortised cost.

The classification depends on the Company's business model for managing the financial assets and the contractual terms of the cash flows.

For assets measured at fair value, gains and losses will either be recorded in profit or loss or OCI. For investments in equity instruments that are not held for trading, this will depend on whether the Company has made an irrevocable election at the time of initial recognition to account for the equity investment at fair value through other comprehensive income (FVOCI).

The Company reclassifies debt investments when and only when its business model for managing those assets changes.

##### (ii) Recognition and derecognition

Regular way purchases and sales of financial assets are recognised on trade-date, the date on which the Company commits to purchase or sell the asset. Financial assets are derecognised when the rights to receive cash flows from the financial assets have expired or have been transferred and the Company has transferred substantially all the risks and rewards of ownership.

##### (iii) Measurement

At initial recognition, the Company measures a financial asset at its fair value plus, in the case of a financial asset not at fair value through profit or loss (FVPL), transaction costs that are directly attributable to the acquisition of the financial asset. Transaction costs of financial assets carried at FVPL are expensed in profit or loss.

Financial assets with embedded derivatives are considered in their entirety when determining whether their cash flows are solely payment of principal and interest.

##### (iv) Impairment

From 1 June 2018, the Company assesses on a forward looking basis the expected credit losses associated with its debt instruments carried at amortised cost and FVOCI. The impairment methodology applied depends on whether there has been a significant increase in credit risk.

For trade receivables, the Company applies the simplified approach permitted by AASB 9, which requires expected lifetime losses to be recognised from initial recognition of the receivables.

#### v) Account policies applied until 30 June 2019

Until 30 June 2019, the Company classifies its financial assets in the following categories:

##### Classification

The Association classifies its financial assets in the following categories: financial assets designated at fair value through surplus or deficit and held-to-maturity investments.

##### (i) Financial assets at fair value through surplus or deficit

###### Recognition and Derecognition

Financial assets at fair value through surplus or deficit are initially recognised at fair value and transaction costs are expensed in surplus or deficit. 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 surplus or deficit are subsequently carried at fair value. Gains or losses arising from changes in fair value are recognised in surplus or deficit in the period in which they arise. Dividend income is recognised in surplus or deficit 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. The fair value of fixed interest securities are based on published market prices. The fair values of investments in Australian managed funds are based on the redemption price advised by the relevant fund manager.

##### (ii) Held-to-maturity investments

The Association classifies its term deposits as held-to-maturity investments. Held-to-maturity investments are non-derivative financial assets with fixed or determinable payments and fixed maturities that the Association's management has the positive intention and ability to hold to maturity. Held-to-maturity financial assets are included in current assets except those with maturities greater than 12 months from the end of the reporting period, which are classified as non-current assets.

Held-to-maturity investments are carried at amortised cost using the effective interest method.



## Notes to the Financial Statements (continued)

For the year ended 30 June 2019

### (h) Trade and Other Payables

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

### (i) Employee Benefits

#### (i) Short-term employee benefits

Liabilities for wages and salaries, including non-monetary benefits, annual leave and long service leave expected to be settled wholly within 12 months of the reporting date are measured at the amounts expected to be paid when the liabilities are settled.

#### (ii) Other long-term employee benefits

The liability for annual leave and long service leave not expected to be settled within 12 months of the reporting date are measured at the present value of expected future payments to be made in respect of services provided by employees up to the reporting date using the projected unit credit method. Consideration is given to expected future wage and salary levels, experience of employee departures and periods of service. Expected future payments are discounted using market yields at the reporting date on national government bonds with terms to maturity and currency that match, as closely as possible, the estimated future cash outflows.

### (j) 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 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 statement of financial position.

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.

### (k) Changes in accounting policies, disclosures, standards and interpretations

The Company has adopted all of the new or amended Accounting Standards and Interpretations issued by the Australian Accounting Standards Board ('AASB') that are mandatory for the current reporting period.

Any new or amended Accounting Standards or Interpretations that are not yet mandatory have not been early adopted

### (l) Fair value measurement

When, an asset or liability, financial or non-financial, is measured at fair value for recognition or disclosure purposes, the fair value is based on the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date; and assumes that the transaction will take place either: in the principal market; or in the absence of a principal market, in the most advantageous market.

Fair value is measured using the assumptions that market participants would use when pricing the asset or liability, assuming they act in their economic best interests. For non-financial assets, the fair value measurement is based on its highest and best use. Valuation techniques that are appropriate in the circumstances and for which sufficient data are available to measure fair value, are used, maximizing the use of relevant observable inputs and minimizing the use of unobservable inputs.

	2019 \$	2018 \$
<b>2. REVENUE</b>		
Contributions	109,793	120,690
Distribution and dividend income	159,890	154,334
Interest income	52,470	55,317
<b>Revenue from continuing operations</b>	<b>322,153</b>	<b>330,341</b>



## Notes to the Financial Statements (continued)

For the year ended 30 June 2019

	2019 \$	2018 \$
<b>3. LOANS AND RECEIVABLES</b>		
<b>Current</b>		
NSW Bar Association	38,937	33,649
Accrued interest	9,686	12,679
Interest free loans	3,500	16,100
Allowance for impairment of interest free loans	(3,500)	(16,100)
GST receivable	460	220
	<b>48,163</b>	<b>46,548</b>

## 4. HELD-TO-MATURITY INVESTMENTS

### Term Deposits

Current	<b>1,730,567</b>	<b>2,042,278</b>
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## 5. OTHER FINANCIAL ASSETS

### Non-Current

Designated at fair value through surplus or deficit

- Fixed interest securities	307,500	-
- Shares in Australian listed companies	3,156,410	3,086,994
	<b>3,463,910</b>	<b>3,086,994</b>

## 6. RELATED PARTY DISCLOSURES

### (a) Committee of Management

The names of persons who were members of the Committee of Management of the Association at any time during the financial year are as follows:

T Game SC	A Moses SC	G McGrath SC	A Bell SC
K Eastman SC	M McHugh SC	K Nomchong SC	G Bashir SC
R Weinstein SC	R Higgins SC	K Morgan SC	A Mitchelmore SC
V Whittaker SC	P Khandhar SC	M Izzo SC	M Walker
E Welsh	N Williams	B Katekar	D Rayment
S Mirzabegian	S Callan	Y Shariff	E Raper
C Gleeson	J Roy	C Ensor	J Mack
V Bulut	T Hennessy		

The members of the Committee of Management are also directors of the New South Wales Bar Association.

### (b) Key Management

The key management personnel are the members of the Committee of Management of the Association.

No compensation was paid, or is payable, to the members of the Committee of Management of the Association.

### (c) Other Transactions

The Association conducts its business from the premises of NSW Bar Association at no cost to the Association.

## 7. EVENTS OCCURRING AFTER THE REPORTING DATE

Changes since reporting date in the market values of financial assets at fair value through surplus or deficit held by the Association have impacted the total value of the financial assets. As at 26 August 2019 the total market value of financial assets at fair value through surplus or deficit held by the Association was \$3,560,733 compared with \$3,463,910 as at 30 June 2019, an increase of 2.8%.





## Committee of Management Declaration

In the opinion of the Committee of Management of Barristers' Benevolent Association of NSW;

- (a) the financial statements and notes as set out on pages 88 to 93 satisfy the requirements of the *Australian Charities and Not-for-profits Commission Act 2012*, including:
- (i) complying with Accounting Standards – Reduced Disclosure Requirements and the *Australian Charities and Not-for-profits Commission Regulation 2013*, and
  - (ii) giving a true and fair view of the Association's financial position as at 30 June 2019 and its performance, as represented by the results of its operations, changes in accumulated funds and cash flows, for the year ended on that date; and
- (b) there are reasonable grounds to believe that the Association will be able to pay all of its debts as and when they become due and payable.

*Signed in accordance with subsection 60.15(2) of the Australian Charities and Not-for-profits Commission Regulation 2013.*

T. Game SC

M McHugh SC

Sydney, NSW  
5 September 2019

# Independent Auditor's Report

For the year ended 30 June 2019



## RSM Australia Partners

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## Opinion

We have audited the financial report of Barristers' Benevolent Association of NSW, which comprises the statement of financial position as at 30 June 2019, the statement of comprehensive income, the statement of changes in equity and the statement of cash flows for the year then ended, and notes to the financial statements, including a summary of significant accounting policies, and the declaration by committee of management.

In our opinion, the financial report of Barristers' Benevolent Association of NSW has been prepared in accordance with Division 60 of the *Australian Charities and Not-for-profits Commission Act 2012*, including:

- (a) giving a true and fair view of the registered entity's financial position as at 30 June 2019 and of its financial performance and cash flows for the year ended on that date; and
- (b) complying with Australian Accounting Standards – Reduced Disclosure Requirements and Division 60 of the *Australian Charities and Not-for-profits Commission Regulation 2013*.

## Basis for Opinion

We conducted our audit in accordance with Australian Auditing Standards – Reduced Disclosure Requirements. Our responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Financial Report* section of our report. We are independent of the Barristers' Benevolent Association of NSW in accordance with the ethical requirements of the Accounting Professional and Ethical Standards Board's APES 110 *Code of Ethics for Professional Accountants* (the Code) that are relevant to our audit of the financial report in Australia. We have also fulfilled our other ethical responsibilities in accordance with the Code.

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

## Other Information

The committee of management are responsible for the other information. The other information comprises the information included in Barristers' Benevolent Association of NSW 's annual report for the year ended 30 June 2019 but does not include the financial report and the auditor's report thereon.

Our opinion on the financial report does not cover the other information and accordingly we do not express any form of assurance conclusion thereon.

In connection with our audit of the financial report, our responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial report or our knowledge obtained in the audit or otherwise appears to be materially misstated.

If, based on the work we have performed, we conclude that there is a material misstatement of this other information, we are required to report that fact. We have nothing to report in this regard.

## Independent Auditor's Report (continued)

For the year ended 30 June 2019



### RSM Australia Partners

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### Responsibilities of committee of management for the Financial Report

The committee of management of the registered entity are responsible for the preparation of the financial report that gives a true and fair view in accordance with Australian Accounting Standards – Reduced Disclosure Requirements and the *Australian Charities and Not-for-profits Commission Act 2012* (ACNC Act) and for such internal control as the committee of management determine is necessary to enable the preparation of the financial report that gives a true and fair view and is free from material misstatement, whether due to fraud or error.

In preparing the financial report, committee of management are responsible for assessing Barristers' Benevolent Association of NSW's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless management either intends to liquidate Barristers' Benevolent Association of NSW or to cease operations, or has no realistic alternative but to do so.

### Auditor's Responsibilities for the Audit of the Financial Report

Our objectives are to obtain reasonable assurance about whether the financial report as a whole is free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not a guarantee that an audit conducted in accordance with the Australian Auditing Standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of this financial report.

A further description of our responsibilities for the audit of the financial report is located at the Auditing and Assurance Standards Board website at: [http://www.auasb.gov.au/auditors\\_responsibilities/ar4.pdf](http://www.auasb.gov.au/auditors_responsibilities/ar4.pdf). This description forms part of our auditor's report.

A stylized blue ink signature of RSM Australia Partners.

RSM Australia Partners

A blue ink signature of C J Hume.

C J Hume  
Partner

Sydney, NSW  
Dated: 5 September 2019



## Contributors to the Barristers' Benevolent Fund

Mr J Abernathy	Mr Paul Blackburn-Hart SC	Mr Christopher Catt	Mr Gary Doherty
Chief Commissioner	Mr G Blank	Dr R D Cavanagh	Mr A Doig
Michael Adams QC	Dr S Blount	Mr R Cavanagh SC	Mr Guy Donnellan
Ms C J Allan	The Hon J M Boland AM	Mr Simon Chapple	Dr Roy D J Donnelly
Mr P Allport	Mr Craig Bolger	Mr Ali Cheema	Ms S Dowling SC
Ms J Ambikapathy	Ms A Bonnor	Mr A Cheshire SC	Mr Justin Doyle
Mr Edward Anderson	Mr P R Boulten SC	Mr M Christie SC	Mr P F Doyle
Ms Sophie Anderson	Mr M Boulton	Mr E Chrysostomou	Mr Philippe D Doyle Gray
Mr K W Andrews	Mr S Bourne	Mr J R Clarke SC	Mr J Doyon
Mr Nic Angelov	Mr A J Bowen	Mr Tristan Cleary	Mr R Driels
Ms N Apkarian	Mr Carl Boyd	Mrs S Clemmett	Ms R Druitt
His Honour Judge	Her Honour Judge E Boyle	Mr G A Coakes	Mr I C Duane
D Arnett SC	Mr T J Boyle	Mr R A Coffey	Ms S Duggan SC
Mr J A Arnett	Dr M L Brabazon SC	His Honour Judge	Mr J Duncan
Her Honour Judge	Mr Luke Brasch	Richard Cogswell SC	The Hon J R Dunford QC
L M Ashford	Mr W P Brewer	The Hon B J K Cohen QC	Mr J R Dupree
Mr G E Babe	Mr Campbell Bridge SC	Mr B A Coles QC	Mr D Dura
Mr Eli Ball	Mrs M Bridger	Mr M K Condon SC	Mr Philip Durack SC
Mr Conor Bannan	Ms Madeleine Bridgett	Mr Nicholas J Condylis	Mr P Dwyer
Mr A Bannon SC	Ms Victoria Brigden	Mr N A Confos	The Hon R Edmonds AM SC
The Hon C J Bannon QC	Dr Chester Brown	Dr A L Connolly	Mr M Einfeld QC
Mr Darrell Barnett	The Hon J E Brownie QC	Mr A Conwell	Ms E Elbourne
Ms M Barnett	Mr P Bruckner	Ms A Cotter-Moroz	His Honour Justice M A Elkaim
Mr D Barrow	The Hon J P Bryson QC	The Hon D Cowdroy OAM QC	Mr G Elliott
Mr G M Barter	Mr D A Buchanan SC	Mr G P Craddock SC	Mr L Ellison SC
Mr A J Bartley SC	The Hon T Buddin QC	The Hon M G Craig QC	Ms Neha Evans
Mr J Bartos	Mr G Bullard	Mr M Cranitch SC	The Hon E A Evatt AC
Ms G A Bashir SC	Mr A J Bulley	Mr P R Cummings SC	Ms Tania Evers
Mr E H Baskerville	Ms Vanja Bulut	Mr G Curtin SC	Mr Oshie Fagir
Mr M J Bateman	Mr S Burchett	Mr M Dalla-Pozza	Ms Mary Falloon
Mr P W Bates	Mr Michael Burke	Mr W J Dalley	Ms M Fanning
Mr T J Bates	Mr Gregory Burton SC	Mr Matthew S Daniels	Mr M Fantin
Mr Paul Batley	Mr I F Butcher	Mr Peter D'Arcy-King	Mr Geoff Farland
Mr R C Beasley SC	Mr L J Byrne	Mr M J Darke SC	Ms Stephanie Fendekian
Mr Damian Beauflis	Mr M P Cahill	Mr I E Davidson SC	Mr Lester Fernandez
Miss Elizabeth Beilby	Ms Melanie R Cairns	Ms J Davidson	Mr J J Fernon SC
His Honour H H Bell	Mr P Callaghan SC	Mr T J Davie	Mr S G Finch SC
Mr R S Bell	Ms S Callan	Mr Andrew R Davis	Mr E T Finnane
Ms C Bembrick	Ms S Calokerinos	Mr J Davis	Mr M J Finnane RFD QC
Mr David Bennett AC QC	Mr Benjamin Cameron	Mr W Dawe QC	Mr J M Fitzgerald
Mr Jared Bennett	Mr I Garth Campbell	Mr A T S Dawson SC	The Hon G Fitzgerald AC QC
Mr D R Benson	Ms M Campbell	Mr Sebastian M De Brennan	Mr W M Fitzsimmons
Mr Duncan Berents	The Hon J C Campbell QC	Mr P J Deakin QC	Mr James Foley
The Hon P A Bergin SC	The Hon Justice S Campbell	Mr N E Delaney	Mr M J Fordham SC
Mr Michael Bersten	Mr Adrian C Canceri	Mr M Dempsey SC	Mr Ross Foreman
Dr S Berveling	Mr G Carolan	Mr Tony Di Francesco	Mr David Forster
Mr H P T Bevan	Ms P R Carr	Mr Richard Di Michiel	Mr P J Frame
Mr Anish Bhasin	Ms S J Carr	Mr Christian Dimitriadis SC	Ms R Francois
Mr Benjamin Bickford	Ms Nicole S Carroll	Mr T J Dixon	Mr Ian Fraser
Dr C J Birch SC	Ms V L Carty	Mr Alexander Djurdjevic	Mr Glenn Fredericks
Mr C P Birtles	Mr T D Castle	Mr B G Docking	Mr D J Freeman
Mr J D Blackah	Ms Michelle Castle	Mr P L Dodson	Mr Mark Friedgut
Mr T D Blackburn SC			



## Contributors to the Barristers' Benevolent Fund (continued)

Mr Neal Funnell	Mr David Healey	Ms T Jowett	Mr R H Macready
Mr N E Furlan	Mr T Healey	Ms L E Judge	The Hon R N Madgwick QC
Ms G B Furness SC	Ms A Healey	Mr S D Kalfas SC	Mr C Magee
Mr M J Gallagher	Mr M J Heath	Mr M A Karam	Ms G F Mahony
Ms J L Gallagher	Ms V M Heath	Mr Leonard Karp	Mr David Mallon
Mr J M Galluzzo	Mr G R Heathcote	Mr Anthony Kaufmann	Dr Christos Mantziaris
Mr T A Game SC	Mr John F Heazlewood	The Hon Dr Tricia Kavanagh	Ms Kay Marinos
Mr Stephen Gardiner	Her Honour Judge	Mr J B Kay Hoyle	Mr A E Maroya
Ms J Gatland	L Henderson	Mr J A Kearney	Mr D A Marr
Mr G P Gee	Mr J Hennessy	Mr J T Kearney	Mr H J Marshall SC
Mr G Gemmell	Miss T Hennessy	Mr J Keesing	Ms Louise Mathias
Mr I D George	Mr F P Hicks SC	Mr J Kellaway	Mr M McAuley
Ms H Gerondis	The Hon P J Hidden AM	Mr R Keller	Ms L McBride
Mr Nicolaous Ghabar	Dr Ruth C A Higgins SC	Mr D P Kelly	Mr S McCarthy
Mr James T G Gibson	Mr A Hill	Mr P Kennedy-Smith	Ms S A McCarthy
Mr M G Gilbert	Ms S Hill	Mr G M Kenny	Dr C McConaghy
Mr Kieran D Ginges	Ms JA Hillier	Mr V F Kerr SC	Mr M F McDermott
Mr A Givney	Mr A Hochroth	Mr S M Kettle	Mr C W McEwen SC
Mr R D Glasson	The Hon Justice C	Ms R Khalilzadeh	Ms LP McFee
Ms Catherine Gleeson	Hoeben AM RFD	Mr P N Khandhar SC	Ms Sian McGee
Mr A Goldsworthy	Ms D Hogan-Doran SC	Mr N J Kidd SC	Mr I J McGillicuddy
Ms C R Goodhand	Mr T L Hollo	Mr L King SC	Dr F R McGrath AM OBE
Mr J P Gormly SC	Ms M L Holz	The Hon D Kirby QC	Mr G McGrath
Mr G M Gould	Mr R W Hood	Mr I Kirgiz	Mr M McHugh SC
Mr R J Grady	Ms J S Hopper	Chief Commissioner	Mr G McIlwaine
Mr G J Graham	Mr P A Horobin	P M Kite SC	Mr R S McIlwaine SC
Ms Emily C Graham	Mr W D Hosking QC	Mr D D Knoll AM	Mr A J McInerney SC
Mr E N Gramelis	Mr T G Howard SC	Mr Patrick Knowles	Mr J K McLaughlin AM
Ms R Graycar	Mr Slade Howell	Mr P J Krebs	Magistrate L McManus
Mr M Green SC	Mr S Hughes	Mr G Kumarasinha	Mr S J McMillan
Mr R P Greenhill SC	Mr T Hughes	Mr R Lancaster SC	Ms Jennifer K Mee
Mr L T Grey	Mr V B Hughston SC	Ms J Layani Ellis	Mr M K Meek SC
Ms E Grotte	Mr B Hull	Mr C Leahy	Mr T M Mehigan
The Hon MB Grove	Ms L E Hulmes	Mr James Leaver	Ms T Z Messner
Mr A M Gruzman	Mrs Melissa Humphreys	Mr A Leopold SC	Mr Andrew Metcalfe
Mr JL Gruzman	Mr A Hyam OAM	Mr G Levick	Mr S G Moffet
Ms K M Guilfoyle	The Hon Justice M Ierace	Ms J Levick	Mr A W Mooney
Mr Mark Gunning	Mr Bill Ilkovski	Mr Matthew Lewis	Mr P J Mooney SC
Mr Adam Guy	Ms Emily Ito	Mr D Liebhold	Mr C A Moore SC
Mr L V Gyles SC	Mr C Jackson	Mr Christoph Liedermann	Mr G Moore
Mr J Hale	Mr D F Jackson AM QC	Ms Y C Lin	Mr J Moore
Ms S T Hall	Mr S Jacobs	Ms Constantina Lioumis	Mr Paul Moorhouse
Mr S J Harben SC	The Hon P Jacobson QC	Mr Thomas Liu	Mr T J Morahan
Mr Roger Harper	Mr Evan James	Mr P J Livingstone	Mr L G Morgan
Mr R Harrington	The Hon G R James AM QC	Mr W L S Lloyd	Mr J M Morris SC
Mr J M Harris	Mr R Jankowski	Mr B Loizou	Mr Charles Moschoudis
Mr Jake Harris	Mr G J Johnson	Mr Craig D Longman	Mr A R Moses SC
Mr Christian Hart	Mr Russ Johnson	Mr J Longworth	Mr D A Moujalli
Ms V A Hartstein	Mr B L Jones	Mr J A Loxton	Ms J A Munday
Ms Jo Haughton	Mr Thomas Jones	Dr Juliet Lucy	Ms A Munro
Miss A Hawkins	Mr D K Jordan	Mr M Lynch	Commissioner J Murphy
Mr W R Haylen QC	Mr K Josifoski	Mr Angus Macauley	Mr C L Murphy



## Contributors to the Barristers' Benevolent Fund (continued)

Mr Neil Murray SC	Mr G L Raffell	Mr Y Shariff	R C Tupman
The Hon J A Nader RFD QC	Mr M C Ramage QC	Mr Phillip G Sharp	Mr C I Twomey
Mr Andrew P L Naylor	Mr J P Redmond	Mr J L Sharpe	Mr J Van Aalst
Ms J Needham SC	Mr J Redwood	Mr J C Sheahan QC	Mr J F Viney
Mr I M Neil SC	Mr M Rennie	Mr R S Sheldon SC	Mr Bret Walker SC
Mr P W Neil SC	Mr A J J Renshaw	Mr J Sheller	Mr Philip Wallis
Mrs Danielle New	Mr S Reuben	Mr Lucas Shipway	Mr Mark Walsh SC
Mr C R C Newlinds SC	Mr A Reynolds	Mr Nikolaos Siafakas	Mr W J Walsh
Mr Nicholas Newton	Mr Garry Rich SC	Mr C M Simpson	Dr C S Ward SC
Mr P T Newton	Mr David M Roberts	Mr Craig Simpson	Mr E Wasilenia
Mr Gerald Ng	Mr David W Robertson	Mr Geoff Simpson	Ms Claire Wasley
Mr L W Nicholls	Mr Mark Robertson	Mr R Skiller	Mr G J Watkins
Mr J Nicholson	Mr Scott Robertson	Mr Craig J Smith SC	Mr G M Watson SC
Mr Paul J Nolan	Mr T F Robertson SC	The Hon Greg Smith SC	Ms Watson Keesing
His Honour Judge S Norrish QC	Mr Bryan Robinson	Mr B Snelling	Mr O G Watt
Mr M Oakes SC	Mr M W Robinson	Mr M Southwick	Mr John A Weaver
Mr Rhys O'Brien	Mr Declan Roche	Mr M S Spartalis	Dr R J Webb
Mr B A Odling	Mr Daniel S Roff	Mr C Sperling	Mr P Webb QC
Mr P P O'Loughlin	The Hon R Rolfe	Mr D G Staehli SC	Ms C A Webster SC
The Hon J L O'Meally AM RFD	Mr M K Rollinson	Mr Ashley Stafford	Mr Michael J Weightman
Mr R N O'Neill	Mr D Ronzani	Mr R A Stanton	Mr D S Weinberger
Mr Seyi Onitiri	Mr Patrick Rooney	Mrs Kellie Stares	His Honour Judge R H Weinstein SC
Mr B C Oslington QC	Mr K Roser	Mr C Steirn SC	Mr S A Wells
Ms M Painter SC	Ms F T Roughley	Mr K Stellos	Mr J N West QC
Mr Christopher Palmer	Mr S J Roulstone	Ms A Stenmark SC	Mr S Wheelhouse SC
Mr David Parish	Miss Leah J Rowan	Mr D C P Stewart	Ms J Wilcsek
Mr Andrew J Parker	Mr J E Rowe	Mr Robert Stitt QC	Mr S W Wilkinson
Mr Anthony N Parsons	Mr P A Rowe	Mr P G W Stitz	Her Hon Judge NL Williams
Mr R A Parsons	Ms T Harris-Roxas	Mr Hugh Stowe	Mr Adrian Williams
Ms S Patterson	Mr R Royle	The Hon T J Studdert QC	Mr B Williams
Dr Elisabeth Peden	Mr G Rundle	Mr G J Sundstrom	Mr Jay Williams
Mr E Petersen	Mr Peter Russell	Ms Rebecca Suters	Mr T J J Willis
Miss Meredith Phelps	Mr S Russell	His Honour Judge R F Sutherland SC	Mr M S Willmott SC
Mr J Phillips SC	Mr J J Ryan	Ms Sonia Tame	Mr Dennis Wilson
Ms S Phillips	Mr T J Ryan	Mr J O Tancred	Mr M J Windsor SC
Mr A M Pickles SC	The Hon D M Ryan QC	Mr I Taylor SC	Mr Christopher H Withers
Mr K J Pierce	Mr M V Sahade	Mr R J Taylor	Ms Tiffany L Wong
Mr I H Pike AM	Mr J R Sainty	Ms Jane E Taylor	Mr Christopher Wood
Mr I R Pike SC	Ms K Sant	Mr M Thangaraj SC	Ms D A Woods
Mr B Pluznyk	Mr F Santisi	Mr Cameron L Thompson	Peter P Wray-McCann
Mr J L Polese	Ms Lucy Saunders	Mr J Cranston Thompson	Ms G Wright
Mr Glen Porter	Mr S H Scarlett OAM RFD	Ms W Thompson	Ms Sophie York
Mr R Potter	Mr S A Schaudin	Ms Mandy Tibbey	Mr G T Young
Ms T M Power	Mr RM Schonell SC	Mr T K Tobin QC	Mrs K J Young
Mrs Margaret Pringle	Mr G Scragg	Mr D R J Toomey SC	Mr J Zmood
Mr D R Pritchard SC	Mr Michael Seck	Mr John Travassaros	
Mr AF Puckeridge QC	Ms Rashelle L Seiden SC	Mr J A Trebeck	
Mr Colin Purdy	Mr Ian Serisier	Mr R W Tregenza	
The Hon Dr Rodney Purvis AM QC	Mr J P Sewell	Mr W J Tregilgas	
Mr R E Quickenden	Mr J E Sexton SC	Ms B J Tronson	
	Mr Mark Seymour	Her Honour Judge	
	Mr K P Shadbolt		



## Indigenous Barristers' Trust – The Mum Shirl Fund

Financial report for the year ended 30 June 2019

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

The financial statements were authorised for issue by the Trustees on 29 August 2019. The Trustees have the power to amend and re-issue the financial statements.

## Statement of Surplus and Other Comprehensive Income

For the year ended 30 June 2019

	Notes	2019 \$	2018 \$
Revenue	2	113,259	155,385
Audit and accounting		(3,750)	(6,000)
Bank charges		(2)	(76)
Conference expenses		(47,786)	(21,713)
Grants made		(38,637)	(73,344)
Other expenses		-	-
Surplus before income tax expense		23,084	54,252
Income tax expense	1(c)	-	-
<b>Net surplus</b>		<b>23,084</b>	<b>54,252</b>
<b>Other comprehensive income</b>		<b>-</b>	<b>-</b>
<b>Total comprehensive income</b>		<b>23,084</b>	<b>54,252</b>

The above statement of surplus and other comprehensive income should be read in conjunction with the accompanying notes.





## Statement of Financial Position

As at 30 June 2019

	Notes	2019 \$	2018 \$
<b>CURRENT ASSETS</b>			
Cash and cash equivalents		96,472	69,385
Held-to-maturity investments	4	407,247	408,879
Other receivables	3	39,289	43,910
<b>TOTAL CURRENT ASSETS</b>		<b>543,008</b>	<b>522,174</b>
<b>TOTAL ASSETS</b>		<b>543,008</b>	<b>522,174</b>
<b>CURRENT LIABILITIES</b>			
Trade and other payables		3,750	6,000
<b>TOTAL CURRENT LIABILITIES</b>		<b>3,750</b>	<b>6,000</b>
<b>TOTAL LIABILITIES</b>		<b>3,750</b>	<b>6,000</b>
<b>NET ASSETS</b>		<b>539,258</b>	<b>516,174</b>
<b>ACCUMULATED FUNDS</b>			
Accumulated surpluses		<b>539,258</b>	<b>516,174</b>

The above statement of financial position should be read in conjunction with the accompanying notes.

## Statement of Changes in Accumulated Funds

For the year ended 30 June 2019

	2019 \$	2018 \$
<b>As at 1 July - opening</b>	<b>516,174</b>	<b>461,922</b>
Total comprehensive income/(loss)	23,084	54,252
<b>As at 30 June - closing</b>	<b>539,258</b>	<b>516,174</b>

The above statement of changes in accumulated funds should be read in conjunction with the accompanying notes.



## Statement of Cash Flows

For the year ended 30 June 2019

	Notes	2019 \$	2018 \$
<b>Cash flows from operating activities</b>			
Receipts from sponsorship and general activities		107,482	144,910
Interest received		10,398	9,957
Payments to suppliers and grantees		(92,425)	(100,283)
Net cash (outflow)/inflow from operating activities		25,455	54,584
<b>Cash flows from investing activities</b>			
Proceeds/(Payments) from term deposits		1,632	(50,457)
Net increase/(decrease) in cash and cash equivalents		27,087	4,127
Cash and cash equivalents at the beginning of the year		69,385	65,258
<b>Cash and cash equivalents at the end of the year</b>		<b>96,472</b>	<b>69,385</b>

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

## Notes to the Financial Statements

For the year ended 30 June 2019

### 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

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

#### (a) Basis of Preparation

These general purpose financial statements have been prepared in accordance with Australian Accounting Standards – Reduced Disclosure Requirements and interpretations as issued by the Australian Accounting Standards Board. The Indigenous Barristers' Trust – The Mum Shirl Fund is a not-for-profit entity for the purpose of preparing the financial statements.

#### Historical cost conversion

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

#### Critical accounting estimates and judgements

The preparation of financial statements 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) Revenue from contracts with customers

Revenue from contracts with customers is recognised when control of the goods or services are transferred to the customer at an amount that reflects the consideration to which the company expects to be entitled in exchange for those goods or services. The company has generally concluded that it is the principal in its revenue arrangements.

##### (ii) Contributions

Revenue from contributions is recognised when the contribution is received.

##### (iii) Interest income

Interest income is recognised as it accrues.

##### (iv) Other Income

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



## Notes to the Financial Statements (continued)

For the year ended 30 June 2019

### 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

#### (c) Income Tax

The Trust is exempt from income tax.

#### (d) Current and non-current classification

Assets and liabilities are presented in the statement of financial position based on current and non-current classification.

An asset is classified as current when: it is either expected to be realised or intended to be sold or consumed in the incorporated association's normal operating cycle; it is held primarily for the purpose of trading; it is expected to be realised within 12 months after the reporting period; or the asset is cash or cash equivalent unless restricted from being exchanged or used to settle a liability for at least 12 months after the reporting period. All other assets are classified as non-current.

A liability is classified as current when: it is either expected to be settled in the incorporated association's normal operating cycle; it is held primarily for the purpose of trading; it is due to be settled within 12 months after the reporting period; or there is no unconditional right to defer the settlement of the liability for at least 12 months after the reporting period. All other liabilities are classified as non-current.

Deferred tax assets and liabilities are always classified as non-current.

#### (e) Cash and Cash Equivalents

For purposes of presentation in the statement of cash flows, 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.

#### (f) Held-to-maturity investments

The Trust classifies its term deposits as held-to-maturity investments. Held-to-maturity investments are non-derivative financial assets with fixed or determinable payments and fixed maturities that the Trust's management has the positive intention and ability to hold to maturity. Held-to-maturity financial assets are included in current assets except those with maturities greater than 12 months from the end of the reporting period, which are classified as non-current assets.

Term deposits are recognised at cost.

#### (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 expected credit losses. Other receivables are usually settled within 30 days from the date of recognition.

#### (h) 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.

#### (i) Goods and Services Tax ('GST')

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

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.

#### (j) Changes in accounting policies, disclosures, standards and interpretations

The Company has adopted all of the new or amended Accounting Standards and Interpretations issued by the Australian Accounting Standards Board ('AASB') that are mandatory for the current reporting period.

Any new or amended Accounting Standards or Interpretations that are not yet mandatory have not been early adopted



## Notes to the Financial Statements (continued)

For the year ended 30 June 2019

	2019 \$	2018 \$
<b>2. REVENUE</b>		
Contributions received	102,861	145,428
Interest	10,398	9,957
<b>Revenue from continuing operations</b>	<b>113,259</b>	<b>155,385</b>

### 3. OTHER RECEIVABLES

#### Current

NSW Bar Association	34,954	36,628
GST receivable	2,857	5,814
Accrued interest	1,478	1,468
	<b>39,289</b>	<b>43,910</b>

### 4. HELD-TO-MATURITY INVESTMENTS

#### Current

Term deposits	<b>407,247</b>	<b>408,879</b>
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### 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	Arthur Moses SC
Justice Michael Slattery AM QC	Tony McAvoy SC
Tim Game SC	

#### (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.

## Trustee's Declaration



### RSM Australia Partners

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In the opinion of the Trustees of Indigenous Barristers' Trust – The Mum Shirl Fund ('the Trust'),

(a) the financial statements and notes as set out on pages 100 to 104:

- (i) have been drawn up in accordance with Accounting Standards - Reduced Disclosure Requirements and other mandatory professional reporting requirements in Australia; and
- (ii) present fairly the Trust's financial position as at 30 June 2019 and its performance, as represented by the results of its operations, changes in accumulated funds and cash flows, for the year ended on that date.

(b) 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 the trustees:

A handwritten signature in black ink, appearing to read 'C Ronalds'.

C Ronalds SC  
Trustee

Sydney, NSW  
29 August 2019

## Independent Auditor's Report



### RSM Australia Partners

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### To the Members of The Indigenous Barristers' Trust – The Mum Shirl Fund

#### Opinion

We have audited the financial report of The Indigenous Barristers' Trust – The Mum Shirl Fund, which comprises the statement of financial position as at 30 June 2019, the statement of surplus and other comprehensive income, the statement of changes in accumulated funds and the statement of cash flows for the year then ended, and notes to the financial statements, including a summary of significant accounting policies, and the declaration by trustees.

In our opinion, the financial report of The Indigenous Barristers' Trust – The Mum Shirl Fund has been prepared in accordance with Division 60 of the *Australian Charities and Not-for-profits Commission Act 2012*, including:

- (a) giving a true and fair view of the registered entity's financial position as at 30 June 2019 and of its financial performance and cash flows for the year ended on that date; and
- (b) complying with Australian Accounting Standards – Reduced Disclosure Requirements and Division 60 of the *Australian Charities and Not-for-profits Commission Regulation 2013*.

#### Basis for Opinion

We conducted our audit in accordance with Australian Auditing Standards – Reduced Disclosure Requirements. Our responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Financial Report* section of our report. We are independent of the The Indigenous Barristers' Trust – The Mum Shirl Fund in accordance with the ethical requirements of the Accounting Professional and Ethical Standards Board's APES 110 *Code of Ethics for Professional Accountants* (the Code) that are relevant to our audit of the financial report in Australia. We have also fulfilled our other ethical responsibilities in accordance with the Code.

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

#### Other Information

The trustees are responsible for the other information. The other information comprises the information included in The Indigenous Barristers' Trust – The Mum Shirl Fund's annual report for the year ended 30 June 2019 but does not include the financial report and the auditor's report thereon.

Our opinion on the financial report does not cover the other information and accordingly we do not express any form of assurance conclusion thereon.

In connection with our audit of the financial report, our responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial report or our knowledge obtained in the audit or otherwise appears to be materially misstated.

If, based on the work we have performed, we conclude that there is a material misstatement of this other information, we are required to report that fact. We have nothing to report in this regard.

## Independent Auditor's Report (continued)



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### Responsibilities of Trustees for the Financial Report

The trustees of the registered entity are responsible for the preparation of the financial report that gives a true and fair view in accordance with Australian Accounting Standards – Reduced Disclosure Requirements and the *Australian Charities and Not-for-profits Commission Act 2012* (ACNC Act) and for such internal control as the committee of management determine is necessary to enable the preparation of the financial report that gives a true and fair view and is free from material misstatement, whether due to fraud or error.

In preparing the financial report, committee of management are responsible for assessing The Indigenous Barristers' Trust – The Mum Shirl Fund's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless management either intends to liquidate The Indigenous Barristers' Trust – The Mum Shirl Fund or to cease operations, or has no realistic alternative but to do so.

### Auditor's Responsibilities for the Audit of the Financial Report

Our objectives are to obtain reasonable assurance about whether the financial report as a whole is free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not a guarantee that an audit conducted in accordance with the Australian Auditing Standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of this financial report.

A further description of our responsibilities for the audit of the financial report is located at the Auditing and Assurance Standards Board website at: [http://www.auasb.gov.au/auditors\\_responsibilities/ar4.pdf](http://www.auasb.gov.au/auditors_responsibilities/ar4.pdf). This description forms part of our auditor's report.

A stylized, handwritten signature of RSM Australia Partners.

RSM Australia Partners

A handwritten signature of C J Hume.

C J Hume  
Partner  
Sydney, NSW  
Dated: 29 August 2019



