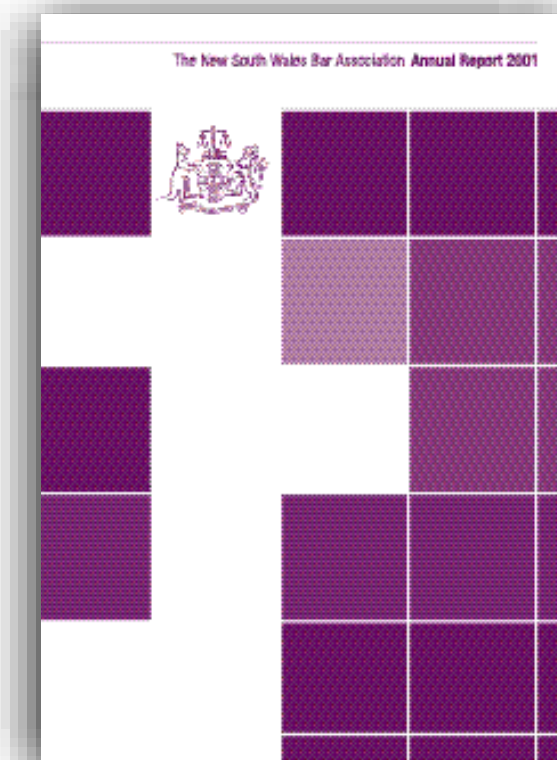

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Incorporating the annual reports of

The New South Wales Bar Association ABN18 526 414 014

Financial results for

Barristers' Benevolent Association of New South Wales ABN 18 466 736 745

The Barristers' Superannuation Fund ABN 23 921 476 227



President's report

for the year ended 30 June 2001

The year has been eventful. It has highlighted the interaction between the Bar and the community to a greater extent than in recent memory. The most usual interaction between the Bar and the community (leaving aside the obvious interaction by representing clients) is in the Association's work commenting on pending legislation and occasionally on issues affecting the judiciary and community reaction to judicial decisions. This year, however, the interaction has been far more varied: ranging from the contribution made by members through the Bar's Olympic Pro Bono Scheme to the world's athletes when they gathered in Sydney for the Olympic Games, the general public condemnation of the Bar following revelations concerning the issue of barristers and bankruptcy, our shared involvement with so many other members of the community in the aftermath of the collapse of HIH and our resistance to knee-jerk amendments to the workers compensation system and similar reform of common law damages for industrial accidents.

In all these, and many other areas, the Bar Association has worked hard to represent our members to our greatest ability. In that work we have had the benefit of a strong Bar Council, dedicated staff in the Association itself and many members who have contributed their time generously to the greater good.

Olympic Games Pro Bono Scheme

The first quarter was dominated for most of the New South Wales population by preparations for the Olympic Games and the event itself. The legal profession was no different: the Olympic Games substantially affected the Bar with virtually no judges sitting in any court save to hear urgent matters.

The Bar participated in the Olympics in the only way it could: by offering its expertise through the Olympic Pro Bono Scheme to athletes who had to deal with legal issues during the games. The Scheme was organised by Slattery QC, Holmes QC and Duncan Miller and administered by Chris Winslow of the Association staff. About 70 or so barristers volunteered. They appeared before the Court of Arbitration for Sport, usually on short notice, at all hours of the day and night. They appeared in cases representing athletes in a wide range of sports, from kayaking to Greco-Roman wrestling. Issues ranged from selection/elimination of athletes for a variety of reasons including recently changed nationality, late arrival in Sydney and allegations of drug use. One case the volunteers undertook involved a Bulgarian weightlifter who had been eliminated when fellow team members tested positive to drugs. The Bar's volunteers' efforts ensured he was restored to the competition. He went on to win a silver medal. A similar scheme was made available for the Paralympic Games which followed shortly after the Olympic Games.

GST

GST issues continued following the introduction of the New Tax System on 1 July 2000. One of the issues which arose almost immediately concerned solicitors asking barristers to address their fee invoice direct to the client rather than to the solicitor. The Association resolved this issue through discussions with the Law Society and an

approach to the Commissioner of Taxation. An interpretative advice was received by the Law Society of New South Wales from the ATO the bottom line of which was that barristers' fees paid by a solicitor did not form part of the solicitor's annual turnover for the purposes of s188-1 of the GST Act as long as the solicitor was acting as agent for the client. In those circumstances, the client was entitled to claim an input tax credit for the creditable acquisition of barristers' services that were acquired through a solicitor as agent even though the tax invoice may show the solicitor as the recipient of the supply. Following receipt of that advice, the result should have been that barrister's memoranda of fees were addressed to the solicitor as is customary, rather than to the client.

Barristers & bankruptcy

The calendar year commenced with a spate of adverse media articles about barristers, bankruptcy and taxation obligations. The media allegations boiled down to the proposition that some barristers were using bankruptcy to avoid their taxation obligations. Whether or not that is the case is a matter for determination on a case by case basis. What the allegations revealed, however, was that the Association's systems for collecting information about the private conduct of barristers which might impinge on their suitability to remain on the roll had been found seriously wanting. The position was not assisted by the Commissioner of Taxation's stance that even where he had prosecuted barristers to conviction or where barristers had been bankrupted on his petition, he could not disclose those public facts to the Association because of his obligation of confidentiality under s16 of the *Income Tax Assessment Act 1936* (Cth).

In the short term, the Association asked the Attorney General, The Hon. Robert Debus MP to pass the Legal Professional Amendment (Notification) Regulation 2001 which required notification to the Bar Council of whether the barrister had become bankrupt, been the subject of a bankruptcy petition, applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with creditors or made an assignment of his or her remuneration for their benefit or been found guilty of an offence (other than certain specified traffic and parking offences). The intention of this notification was to enable the Association to examine the circumstances of the notified incident to determine whether they reflected on the barrister's suitability to hold a practising certificate or to remain on the roll of legal practitioners.

Hitherto the Association had been dependent upon public reports of matters affecting its members not occurring in connection with their practice but which might affect their suitability to retain a right of practice. When such matters had come to its attention it had, in what it considered were appropriate cases, taken proceedings against the barrister concerned. In 1996 the Association took disciplinary proceedings against Thomas Harrison pursuant to Part 10 of the *Legal Profession Act 1987* in relation to his failure to lodge income tax returns over a number of years and his failure to comply with notices issued by the Commissioner of Taxation

President's report

for the year ended 30 June 2001

regarding the lodgment of returns. The case was unsuccessful because the Legal Services Tribunal accepted that there was a medical explanation for Harrison's conduct. However the underlying principle governing the case advanced by the Association and accepted by the Tribunal was that:

evidence that a person had deliberately flouted and avoided his [or her] legal and financial obligations and has been convicted and sentenced for failing to comply with an order of a Court may...demonstrate that a person is not of good character, particularly when that person is a legal practitioner and his [or her] character is being considered in the context of...fitness to practice as a legal practitioner.

Another notable example of the Association's response to notification of tax-related convictions was *Hamman* [1999] NSWCA 404.

Even before the media hubbub, the Association had agreed with the Commissioner of Taxation that officers from the ATO would deliver lectures during the Reading Course to ensure new barristers were as well equipped as possible to make adequate arrangements concerning their tax obligations. Such lectures are now being delivered as part of general education for the Bar. In June 2001 a seminar was held in the Common Room dealing with a wide range of issues relating to tax administration and planning including PAYG – simplified reporting and trusts, business tax, record keeping, cash flow considerations, non-commercial losses and capital gains tax. The seminar was addressed by Ian Gzell QC, Chair of the Association's Taxation Committee and Mr Mick Rolls, Senior Technical Advisor for Tax Education from the ATO.

HIH

Following closely on the heels of the controversy concerning barristers and bankruptcy was the appointment of the provisional liquidator to HIH in March. The consequence of the appointment of the provisional liquidator was, in effect, that a substantial proportion of the Australian community found themselves uninsured for a wide range of liabilities. Amongst their number were approximately 50 per cent of the New South Wales Bar. In addition, members of the Bar were owed substantial fees in respect of work undertaken for HIH and associated companies. An informal survey of members indicated that they were owed approximately \$4 million in this respect. In addition, claims against HIH insured barristers were close to \$3 million.

The immediate consequence of the collapse was that prudent members of the Bar, who had been insured by HIH, had to take out replacement cover for the last 3 months of the 2000-2001 insurance period.

Fortunately the Association had been working with Willis Australia Ltd with a view to obtaining advice generally about the placement of professional indemnity insurance on behalf of members and also to consider what steps could be taken to restrain premium increases. The relationship with Willis had the beneficial effect that affected members of the Bar were able to look to three underwriters

in the reasonably short term to supply their HIH replacement cover. That position continued for the practicing certificate renewals for the 2001-2002 financial year. Although premiums could still not be regarded as modest, we are reasonably confident that the competition between the three underwriters had some limiting effect.

Workers compensation

Ten days after HIH collapsed the Special Minister of State, The Hon. John Della Bosca MLC, introduced the Workers Compensation Legislation Amendment Bill 2001 into the Legislative Council. It had its second reading the same day. The Bill was announced publicly with a flurry of figures said to demonstrate the parlous state of the current WorkCover scheme and the necessity for urgent action. At the same time the Bill was said to achieve the laudable objective of providing a fairer and faster system of workers compensation benefits. The public outcry which followed indicated the public had little faith in the stated objective.

One of the major problems cited by the Government as warranting urgent reforms to the system was the allegation that legal costs were totally disproportionate in relation to the sums paid as weekly benefits. Close analysis by the Association of the figures revealed that the sums and percentages relied upon were inaccurate. In fact, on analysis we demonstrated that there had been no blow out in legal costs from 1998/1999 to 1999/2000 as alleged by the Special Minister. Indeed, legal costs were 11.8 per cent of the total cost of the scheme, including common law, not 18 per cent as claimed by the Government!

Notwithstanding one of the major factual premises being demonstrably inaccurate, some of the reforms were pushed through. The effect of the amendments implemented to the statutory benefits scheme is that the Compensation Court will be sidelined and reserved for coal miners' cases and any existing claims not transferred to the new Workers Compensation Commission which is to be established. That commission will consist of a President, two Deputy Presidents, a Registrar and Arbitrators. Neither the Registrar nor the Arbitrators need to be legally qualified.

I dealt with the detail of the proposed scheme in various issues of *Bar Brief*. The bottom line, however, is that the new commission system effectively denies all parties their fundamental right of access to a court whose members are entitled to judicial independence and who are required to conduct hearings in open court with evidence given under oath, a full transcript and a complete opportunity for the case to be tested. No reason has been given by the Government for its proposal to sideline the experienced judges of the Compensation Court.

Such were the protests about the proposed changes that those changes intended to limit the common law system of industrial accident damages (by limiting damages to those who could satisfy a threshold of greater than 25 per cent whole person impairment) were deferred to be determined by the outcome of an inquiry to be conducted by Justice Terry Sheahan of the Land and Environment Court.

President's report

for the year ended 30 June 2001

Indigenous Lawyers' Strategy

The Bar Association launched its Indigenous Lawyers' Strategy on 21 March 2001 at the annual Lloyd McDermott Rugby Development Team 'Champions of Sports Dinner' in conjunction with Lloyd McDermott (Mullenjaiwakka) and Gary Ella. The strategy is intended to redress, as far as possible, the disadvantages faced by Aboriginal and Torres Strait Islander law graduates seeking a career at the Bar. The essential components of the strategy are that:

- 1 The Bar Association is to support a number of indigenous law students who show potential as barristers. They will be brought into contact with the Bar at the earliest points in their career so that they can develop contacts and begin to think of the Bar as a serious career option. This part of the strategy commenced in January 2001 when the Association's Equal Opportunity Committee played host to the UNSW Indigenous Pre-Law Program. The students visited chambers to observe how barristers run their practice, attended hearings in the Supreme Court and exchanged ideas with judges and barristers over lunch.
- 2 The Bar Association is establishing a trust fund, The Mum Shirl Fund, to provide financial assistance to cover costs such as fees for the Readers' Course and the purchase of essential texts.
- 3 Indigenous Australians who come to the Bar will be introduced to a network of contacts and work support which will, we hope, maximise their opportunities to establish practices in the first two years at the bar. Two of Sydney's leading law firms, Gilbert & Tobin and Corrs Chambers Westgarth, have already offered to participate in the scheme by providing employment opportunities to indigenous law graduates and by supporting the newly admitted indigenous barristers.

The Association hopes that its strategy will result in bringing a small but growing number of indigenous lawyers to the Bar each year. The scheme is being actively supported by the University of New South Wales and the University of Technology which have been chosen as the initial sources of students. If the scheme proves successful, it will be expanded to cover other universities.

Bar Strategy meeting

The Association held a Bar Planning meeting in late May. Forty-three people were present being members of the Bar Council and heads or representatives of Bar committees, Sections and regional bars. Agreement was reached on a number of principles which were to be further developed by the Bar Planning Committee (which planned for and co-ordinated the papers for the meeting) and which were then to be the subject of a process of consultation.

The principle which was accorded the highest priority was the in principle resolution that the Association should introduce a mandatory continuing professional development program to commence on 1 July 2002 to apply to all New South Wales barristers.

In adopting its in principle position the Planning Meeting took into consideration a number of matters.

Most importantly it considered that it was essential, to

maintain the professional reputation of the Bar that it be seen to be serious about raising and maintaining its professional standards at a very high level. An analysis of existing continuing legal education activities revealed that approximately 80 per cent of the Bar did not attend a single CLE event in any given year. These statistics and anecdotal evidence suggested that many barristers have no self imposed program for continuing professional development but leave that exercise to such learning 'on the job' as may be necessary to master a particular brief.

The Planning Meeting clearly thought this approach undesirable and favoured the view that CLE was important in raising the standards of the Bar. CLE was seen as a means for barristers to look beyond their narrow areas of specialty and also a means for barristers who find their area of specialty work diminishing to expand their skills. The analogy drawn was with retraining in commercial organisations.

The Planning Meeting was also influenced by the fact that the English Bar decided in December 2000 to extend its mandatory continuing professional development program to all members of the Bar. The requirement is to be phased in so that by 2005 all English barristers will be required to complete 12 hours of continuing professional development each year.

Further, in 1999 the Queensland Bar Association introduced mandatory CLE for a barrister in the first three years of practice. The New South Wales Law Society has had a mandatory CLE program since 1986 under which 10 hours per annum must be completed. The Law Society recently reviewed its programme and decided to retain it subject to some variations.

The Planning Committee was aware that the New South Wales Legal Professional Advisory Council ('LPAC') had before it for its May meeting a discussion paper proposing mandatory CLE for the first three years of a barrister's practice in the principles and standards of advocacy and appropriate risk management training. As well, the discussion paper proposed to recommend to the Bar Association that it adopt a recommendation of Justice Hampel (as he then was) that at the end of the initial three years period of practice, the Bar Council certify, after assessment, that the barrister is proficient in advocacy and a fit and proper person to hold a practicing certificate as an advocate. The discussion paper also proposed that the Association set out in the NSW Barristers' Rules a code in relation to the standards of good advocacy. On 6 August 2001 the Secretary of the LPAC wrote to me enclosing a draft recommendation which confirmed that the LPAC had adopted all of the three recommendations in the discussion paper.

Among other matters the Strategy Meeting decided should be pursued were the following:

- 1 There was agreement that practice management problems were widespread and that response was appropriate at the level of the Association, rather than leaving it to individual barristers.
- 2 It was agreed that should a compulsory professional development programme be introduced, a mandatory component should deal with business administration.

President's report

for the year ended 30 June 2001

- 3 It was agreed that the Association should engage a person to provide risk management services for barristers.
- 4 It was agreed that it would be proper for the Association to publish a guideline to members along the lines that money should be set aside at regular and appropriate intervals to provide for GST and income tax.
- 5 It was agreed that the Association should develop risk management guidelines. These guidelines would include matters such as noting of appropriate limitation periods; clarifying the extent to which the barrister could rely on the solicitor's research in providing an opinion; and the barrister being comfortable in saying he or she was too busy or could not attend to a brief within the time requested.
- 6 It was agreed that the Bar Council should alter its previous position and move to implement a scheme under the *Professional Standards Act 1994*.
- 7 It was agreed the Bar Council should give attention to developing appropriate limitation of liability clauses for individual barristers to negotiate.

These matters will be progressed gradually as other priorities and resources permit.

BarCare

In May, the Association established BarCare which is a professional counselling service run by qualified professionals as a service to members of the Association. The Association decided to implement BarCare because of an increasing number of cases coming to its attention where barristers were suffering from severe emotional and stress related problems.

BarCare is a resource which can be accessed by barristers as well as members of their family. Under it, the Association will cover the costs associated with a first consultation with a BarCare professional. It is a service which should be kept in mind not only for oneself, but for colleagues who are clearly in distress.

Bar Council

The Bar Council has worked hard this year to deal with a number of challenges. It has been a strong Council, serving members well with many lively, but good-natured, debates about a wide range of issues. I have tried to ensure that the chair (or a senior member) of most committees is a member of the Council so that there is strong communication between the committees and the Council. This has worked well, I believe, to streamline the Council's work and enhance its efficiency.

Bar committees

As I mentioned at the outset, the Association is fortunate to have so many members who voluntarily give generously of their time to assist in Association activities. Many of those activities involve the preparation of detailed commentaries on the plethora of law reform reports, discussion and issues papers, draft legislation and the like which are regularly sent to the Association

for comment both by Government and Opposition as well as law reform agencies. The Association welcomes the opportunity to contribute its legal expertise to those seeking this advice which ultimately is intended to benefit the community.

In this respect and in its many other activities, the Association has been extraordinarily well-served by its committees, many of which include members of the community in their ranks. Their hard work is reflected in the committee reports which accompany this annual report. It is impossible to convey in a necessarily brief report the full extent of the prodigious amount of work undertaken by the committees. I thank their members for their dedication and support.

The extent of the Bar's enthusiasm and generosity is demonstrated by the large numbers who volunteer for Association committees each year. Much to my regret, it is simply not possible to accommodate the number of volunteers within the existing number of committees. All offers are, however, gratefully acknowledged.

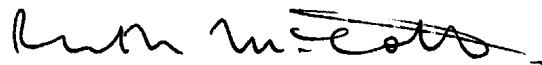
The Association

As always, the hard working staff of the Association has provided unstinting support to the Bar Council, its committees and all members throughout the year. We are indebted to them.

We are indebted too, to our Executive Director, Philip Selth, whose extraordinary dedication and hard work keep all the wheels in motion.

As President I wish to convey my personal thanks to the Executive, Philip Selth, the members of the Council, the staff of the Association, all committee members and members of the Bar generally for the support and assistance I have received during the year. At the worst of times words of support from members of the Bar went a long way to relieving a great deal of strain.

Thank you all.



Ruth McColl S.C.

President



Executive Director's report

for the year ended 30 June 2001

The Association's administrative work is, by and large, carried out unseen – and usually unnoticed – by members. This is as it should be. Nonetheless, the work of the Association's staff is important. This annual report provides an opportunity to inform members of what the staff do and are doing to support the Association's activities and to assist individual members.

Role of the Association

The Association performs a variety of roles, including regulatory; education; legal lobbyist; provider of considerable advice on the operation of the court system, both State and federal; a source of news for the media; a small business; a source of legal assistance to members of the public; and pastoral assistance to members. The Association makes an enormous (unpublicised) contribution to the improvement of State legislation.

To better support these activities, in recent years the Association's administration has been radically overhauled. The accounts, for instance, are now maintained in such order that the auditors no longer find it necessary to spend the full amount of time in the office they had set aside for the annual audit.

Services to members

The services to members, particularly in the distribution of information (e.g. the web page, *Bar Brief*, *Bar News*, *Library Bulletin*) have been greatly enhanced.

The Association is now providing information to members and clerks by e-mail, which is quicker and cheaper than by fax. However, the still relatively low use of e-mail by the Bar means we need to maintain duplicate systems, with all the administrative problems that entails. Efforts are being made to enhance the use of e-mail across the Bar.

Considerable effort and resources continue to be put in to upgrading the Library, in particular to systems so that members can electronically access the Library's services from wherever they are in NSW – or further afield. A web-based catalogue has been designed and electronic access to the Library's catalogue is being introduced. An online reservation and renewal service and a system of automatically generating overdue and recall notices is being implemented.

The Association's web page has been redesigned and upgraded to enhance the quality and value of the information being made available to members and the public. *Find a barrister* is receiving hundreds of 'hits' each week. We are aware of significant use of the web page by educational facilities, community groups, the media and members of parliament.

The database on which is recorded information obtained from practising certificate and membership applications and renewals is being reconfigured to enable the ready production of valuable statistical information. A statistical information booklet will be available to members later in the calendar year.

Professional conduct

The work of the Professional Conduct Department has grown markedly since the introduction of the Legal Profession Amendment (Notification) Regulation 2001. The additional staffing required in

the Department is funded by the Public Purpose Fund; the additional related work that has had to be undertaken by other members of the Association's staff has had to be 'absorbed' into their normal duties. The impending Legal Profession Amendment (Disciplinary Provisions) Bill 2001 will also increase the Association's responsibilities and workload, as will the imminent Law Reform Commission's report on Part 10 of the *Legal Profession Act 1987*. The constant changes and proposed changes to the Act occupy a considerable amount of time and effort by several staff.

The work being undertaken by committees continues to increase exponentially, primarily because of the quality of the work of those committees. The Government, parliamentary committees, parliamentarians, law reform agencies and others are constantly seeking the Association's views and assistance on a wide range of legislative and other matters. The administrative support required by the committees is considerable. Administrative support for the sections is also provided, but the requirement for assistance is not as great.

Education courses

The Readers' Course has been expanded, as has the CLE program. Consideration is being given by the Bar Council to a greatly enhanced scheme of mandatory continuing legal education, which will need to be undertaken by all holders of NSW practising certificates. The introduction of such a scheme will give rise to very significant and complex issues of administration and service-delivery that will need to be addressed by the Association's staff and others.

Social activities

The Association's social program ('15 bobbers', Bench and Bar Dinner, informal gatherings with members of the judiciary and parliamentarians etc) impose a significant workload on administrative staff. Trying to meet the social and gastronomic wishes of the dozens and in some cases hundreds of persons attending a function is a challenge. Because not all members are able to attend these activities, they are generally self-funded.

The establishment of an electronic record system for the Association, now all but completed, has been a major exercise.

The Bar Association now has a modern, workable Constitution. A proposed new Constitution for the Benevolent Association is being prepared which will be circulated later this calendar year for the consideration of members. A booklet describing *BarCare* and the way it works has been provided to all members.

Legal assistance

Requests for legal assistance continue to increase due in part to the reduction in the availability of legal aid. There is a marked increase in requests from litigants acting for themselves. There are growing difficulties in dealing with unsatisfied and persistent applicants. The number of requests for assistance through the court assistance schemes continues to grow (as does the number of courts introducing such schemes).

The Bar Council has revised the guidelines for the Association's Legal Assistance Referral Scheme. A booklet describing how the scheme aims to provide legal assistance to persons who would

Executive Director's report

for the year ended 30 June 2001

otherwise not be able to obtain such assistance without suffering severe financial hardship has been circulated to bodies such as community legal centres and the Legal Aid Commission. The scheme supplements the enormous amount of *pro bono* work carried out on an informal basis by members of the Bar.

The administrative support to meetings of the Bar Council, and the implementation of the Council's decisions, is now of a very high order.

The lease for the Association's office and the Library expires at the end of 2002; preliminary discussions have been held with Counsel's Chambers about possible alternative accommodation. The sub-lease of the dining room, kitchen and take-away similarly expires at the end of 2002 and consideration is also being given to possible future arrangements.

New initiatives

In recent months the Bar Council has approved a number of very important initiatives:

- The introduction of BarCare, a confidential counselling scheme to assist barristers with emotional and stress related problems, including family and marital problems, drug and alcohol dependency and practice pressures.
- An arrangement whereby senior members of a financial organisation will assist barristers with HIH-related financial problems to restructure their debts, and negotiate with creditors, including the Australian Taxation Office.
- The development of a 'practice management' program to assist barristers with the management of their practice, including with taxation and fee-recovery matters.
- The participation of the Bar Association in the NSW Legal HelpLine. This is a joint arrangement with the Attorney General's Department, Law Society, Legal Aid and PILCH (in conjunction with community legal centres) aimed at providing a 'one stop shop' for advice and referrals to participating agencies for people seeking legal advice and representation.
- The strategy to assist Indigenous lawyers to practice as barristers.
- The professional indemnity insurance survey undertaken by Willis Australia Limited which proved very valuable in the work undertaken in recent months by the Association to have a number of professional indemnity insurers offer policies in 2001-2002 and in dealing with some of the fallout from the collapse of HIH Insurance.

There is a good working relationship between the Association and, for example, bodies such as the Attorney General's Department, Legal Services Commissioner, Legal Aid Commission, NSW and federal law reform agencies, State and federal parliamentary committees, State and federal DPPs, other law societies and bar associations, the Law Council of Australia and the Australian Bar Association (of which McColl S.C. is President).

The Bar Association has a good reputation for providing useful insights for the public and members of parliament about legal issues. While much of its work is necessarily confidential, the Association's views are often sought, and usually listened to. An enormous amount of

effort is given by members, mainly through the Committee structure, in preparing submissions to Government, parliament, law reform agencies and the like. Requests by government and the media for comment and assistance have risen markedly in recent years. The Association is also seen as providing a useful insight for the public through the media on legal issues. The achievements this year in responding to, for example, the 'bankrupt barrister' issue, collapse of HIH and the need to have PII available in 2001-2002, and proposed changes to workers compensation legislation, have been very significant.

There is considerable appreciation for, for example, the various legal assistance schemes; the 'Speakers Bureau'; the assistance given to Indigenous students considering a career in the legal profession; and members' assistance with school moots and debates.

The expectations of members and outside organisations are now very much greater than they were, say, a few years ago. Not only is there a higher level of expectation, but as the work and services have become better known, more and more is being asked of the Association by members, government agencies, the media and the public. Dozens of inquiries from members of the public and members are routinely handled each day. Not all of these requests should be addressed to the Association.

The very significant enhancements to the administrative work of the Association have been achieved without any increase in the PC or membership fee.

In appreciation

I continue to be impressed, and grateful, for the dedicated work and support of the staff, who do so much to advance the Association's Objects and to assist individual members. Few outside the office know of the inordinate amount of work and long hours many put in to provide a quality service to members and others.

I am also very grateful for the assistance and support the staff and I receive from the Bar Council, committees, sections, working parties and other members whose help we so often seek. I acknowledge personally the support I have received from the President and the Bar Council Executive in particular this year when at times it seemed as if the tsunami just kept rolling over all our heads.



P.A. Selth
Executive Director

Bar Association office bearers

for the year ended 30 June 2001

President	Ruth McColl S.C
Senior Vice President	Bret Walker S.C.
Junior Vice President	Ian Harrison S.C.
Secretary	Michael Slattery QC
Treasurer	Anna Katzmann S.C.
Members	
Inner Bar	Bernard Coles QC Steven Rares S.C. Alexander Street S.C. Philip Greenwood S.C. Stephen Odgers S.C. Justin Gleeson S.C.
Outer Bar	Peter Maiden Hugh Marshall Alison Stenmark Jeremy Gormly John Fernon Kate Traill Rena Sofroniou James Renwick Ingmar Taylor Rachel Pepper

Bar Association staff

for the year ended 30 June 2001

Office of the Executive Director

Executive Director	Philip Selth
Executive Assistant	Kathy O'Neill
Project Officer	Kim Nichols

Accounts Department

Finance Manager	Basil Catsaros
Deputy Finance Manager	Tess Santos
Membership Officer	Barrie Anthony

Administration Department

Administrative Support Manager	Elizabeth Beazley
Administrative Officer (Bar Council / EO Committee)	Shanthini Govindasamy
Assistant to Administrative Support Manager	Robert Miks
Administrative Officer (Records)	Kim Ellis
Reception Officer	Barbara Coorey
Administrative Officer (Grade 2)	Patrina Malouf
Administrative Officer (Social Functions)	Denise Fleming
Bar Manager	Tony Mitchell
IT Consultant	Darren Covell

Public Affairs

Public Affairs Officer	Chris Winslow
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Education Department

Manager	Kelly Wright
Assistant Education Manager	Emma Wright
Education Assistant	Irene Puntillo

Legal Assistance Scheme

Manager	Heather Sare
Assistant	Julia Sharpe

Library

Librarian	Lisa Allen
Assistant Librarian	Jennifer Campbell-Watt
Technical Services Librarians	Larissa Reid, Jennifer Hughes
Library Assistant	Leanne Drew

Professional Conduct Department

Director	Helen Barrett
Deputy Directors	Elizabeth Maconachie, Dr Jim Macken
Assistant	Barbara Stahl
Assistant	Denisha Govender

Committees of the Bar Association

for the year ended 30 June 2001

Arbitration

Alexander Street S.C. (Chair)
 Glen Miller QC
 Brian Donovan QC
 Larry King S.C.
 Ray McLoughlin S.C.
 Ross Letherbarrow S.C.
 Robert Hunt
 Chandra Sandrasegara
 Robert O'Neill
 Andrew Lidden
 Michael Eagle
 Kerrie Leotta
 Peter Dooley
Bar Association Staff Member
 Kim Nichols

Bar Planning

Justin Gleeson S.C. (Chair)
 Brian Rayment QC
 Philip Greenwood S.C.
 Peter Zahra S.C.
 Jeremy Gormly
 Rena Sofroniou
 Bar Council Executive (ex officio)
Bar Association Staff Member
 Philip Selth

Bar History

Geoff Lindsay S.C. (Chair)
 Jim Macken
 Richard Taperell
 Bill Walsh
 Robert Lovas
 Francois Kunc
 Duncan Graham
 Miles Condon
 Carol Webster
 Prof. Ros Atherton
 Prof. Bruce Kercher
Bar Association Staff Member
 Chris Winslow

Bar News

Justin Gleeson S.C.
 Andrew Bell
 James Renwick
 Rena Sofroniou
Bar Association Staff Member
 Chris Winslow

Common Law

Anna Katzmann S.C. (Chair)
 Brian Murray QC
 Desmond Kennedy S.C.
 Andrew Morrison RFD S.C.
 David Higgs S.C.
 Len Levy S.C.
 Campbell Bridge S.C.
 Ross Letherbarrow S.C.
 Daniel Feller
 Phillip Perry
 Brian Ferrari
 Valerie Heath
 Michael Fordham
 Andrew Stone
Bar Association Staff Member
 Kim Nichols

Criminal Law

Tim Game S.C. (Chair)
 Tony Bellanto QC
 Peter Bodor QC
 Malcolm Ramage QC
 Clive Steirn S.C.
 John Nicholson S.C.
 Paul Byrne S.C.
 David Buchanan S.C.
 Peter Johnson S.C.
 Elizabeth Fullerton S.C.
 Peter Berman S.C.
 Stephen Odgers S.C.
 Glenn Bartley
 Robert Sutherland
 Virginia Lydiard
 Mark Marien
 Daniel Howard
 Phillip Boulten
 Chris Hoy
 Richard Button
 Lloyd Babb
 David Re
Committee Secretary
 Gabi Bashir
Bar Association Staff Member
 Elizabeth Beazley

Bar Association District Court

Circuit Committee
 Letherbarrow S.C.

Duty Barrister

Kate Traill (Chair)
 Ingmar Taylor
 Ian Duncan
 Sigrid Higgins
 Louise McManus
Bar Association Staff Member
 Denise Fleming

Education

Clarrie Stevens QC (Chair)
 Bernard Coles QC
 Peter Hastings QC
 Peter Taylor S.C.
 John Nicholson S.C.
 David Nock S.C. (Chair, Reading Review Panel)
 David Davies S.C.
 Steven Finch S.C.
 Richard White S.C. (Chair, Practising Certificate and Reading Sub-Committee)
 Luigi Lamprati
 Greg Laughton (Chair, Bar Practice Course Sub-Committee)
 Carolyn Davenport
 Janet Oakley (Chair, Examinations Sub-Committee)
 Jeremy Gormly
 Rashda Rana
 Rachel Pepper
Bar Association Staff Member
 Kelly Wright

Advocacy Subcommittee

Steven Finch S.C. (Chair)
 Her Hon. Judge Ann Ainslie-Wallace
 Brian Donovan QC
 Bruce Collins QC
 John Timbs QC
 Nigel Cotman S.C.
 Ray McLoughlin S.C.
 Michael Bozic S.C.
 Peter Berman S.C.
 David Robinson
 Robert Sutherland
 Greg Laughton
 Virginia Lydiard
 Carolyn Davenport
 Leslie Einstein
 Warwick Tregilgas

Committees of the Bar Association

for the year ended 30 June 2001

Kate Traill
 Mary Walker
 Gordon McGrath
 Rena Sofroniou
 Mario Sindone
 Greg Melick
 Patrick Griffin
Bar Association Staff Member
 Emma Wright

CLE Advisory Subcommittee

Clarrie Stevens QC (Chair)
 Geoff Lindsay S.C.
 Howard Insall
 Bernard Sharpe
 Rashda Rana
 Pam Koroknay
 Rachel Pepper
 and heads or nominees of Bar Council
 Committees and Sections
Bar Association Staff Member
 Emma Wright

Education subcommittees

(These members, after consultation with the Chair of the Education Committee, have been appointed to sub-committees of the Education Committee. These are: Practising Certificate and Reading, Examinations, Bar Practice Course and Reading Review Panel. These sub-committees are chaired by a member of the Education Committee.)

Glen Miller QC
 John Graves S.C.
 John Griffiths
 John Levingston
 Mariz Tzannes
 Andrew McSpedden
 John de Meyrick
 Richard Lancaster
 Brian Ralston
 Carol Webster
 Dennis Ronzani
 Robert Newlinds
 David Jordan
 Alan Hogan
 Les McCrimmon, Associate Professor

Equal Opportunity

Michael Slattery QC (Chair)
 Steven Rares S.C.
 David Davies S.C.
 Mullenjaiwakka
 Sylvia Emmett
 Chris Ronalds
 Hugh Marshall
 Chrissa Loukas
 Dominique Hogan-Doran
 Angela Pearman
 Philippa Gormly
 Rachel Pepper
 John Bowers
 Louise Byrne
 Michelle Painter
 Kate Eastman
 Tony McAvoy

Indigenous Lawyers

Strategy subcommittee
 Michael Slattery QC (Chair)
 John Nicholson S.C.
 Mullenjaiwakka
 Chris Ronalds
 Tony McAvoy
 Professor Paul Redmond
 Professor David Barker
Bar Association Staff Member
 Shanthini Govindasamy

Family Law

Grahame Richardson S.C. (Chair)
 Alexander Todd
 Robert Lethbridge
 Mark Le Poer Trench
 Peter Maiden
 Elizabeth Cohen
 Greg Johnston
 Brian Knox
 Richard Schonell
 Anne Rees
 Neil Jackson
 Maureen Fanning
Bar Association Staff Member
 Elizabeth Beazley

Human Rights

Nicholas Cowdery QC (Convenor)

Information Technology

Peter Kite S.C. (Chair)
 Stuart Bell
 Rena Sofroniou
 Ingmar Taylor
 Michael Green
 David Newhouse
 Michael McHugh
Bar Association Staff Member
 Lisa Allen

Legal Aid

Stephen Odgers S.C. (Chair)
 Ian Temby QC
 Peter Bodor QC
 John Nicholson S.C.
 Geoff Lindsay S.C.
 Tim Game S.C.
 Paul Blacket S.C.
 Elizabeth Fullerton S.C.
 Kenneth Owen Earl
 Phillip Boulten
 Chris Whitelaw
 Richard Schonell
 Paul King
 Dean Jordan
 Scott Corish
 Dina Yehia
 Adam Searle
Bar Association Staff Member
 Elizabeth Beazley

Committees of the Bar Association

for the year ended 30 June 2001

Mediation

Robert Angyal (Chair)
 Jeff Shaw QC
 Steven Rares S.C.
 Richard Bell
 Ian Bailey
 Peter Gray
 Mary Walker
 Geraldine Hoeben
 Ian Davidson
 Katherine Johnson
 Anthony Lo Surdo
 David Knoll
 Hugh Stowe
Bar Association Staff Member
 Kim Nichols

PCC#1

Anna Katzmann S.C. (Chair)
 Peter Bodor QC
 Stephen Robb QC
 Andrew Morrison S.C.
 Alexander Street S.C.
 Robin Margo S.C.
 Stephen Rushton S.C.
 Elizabeth Cohen
 Christopher Simpson
 Josephine Kelly
 Christine Adamson
 Richard McHugh
 Victoria Hartstein
 Angus Ridley
 Susanne Weress (Community member)
 Kate Nacard (Community member)
 Sue Thaler (Community member)
 Dr Christine Parker (Academic)
Bar Association Staff Member
 Liz Maconachie

PCC#2

Michael Slattery QC (Chair)
 Ian Temby QC
 Francis Douglas QC
 William Dawe QC
 Murray Aldridge S.C.
 Anastasia Seeto
 Hugh Marshall
 Robert Kaye
 Lindsay Ellison
 John Fernon
 Andrew Colefax
 Mark Lynch
 Fred Curtis
 Valerie Heath
 Sheila Kaur-Bains
 John Blount (Community member)
 Anna Fader (Community member)
 Matthew Smith (Community member)
 Prof. David Barker (Academic)
Bar Association Staff Member
 Liz Maconachie

PCC#3

Steven Rares S.C. (Chair)
 Martin Einfeld QC
 Peter Hastings QC
 David Davies S.C.
 John Sheahan S.C.
 Peter McEwen S.C.
 Philip Dowdy
 Martin Blackmore
 Alison Stenmark
 James Stevenson
 Brian Knox
 Simon Kerr
 Peter Brereton
 Ingmar Taylor
 Michelle Painter
 Paul Bolster
 Helen Steptoe (Community member)
 Robert Nakhla (Community member)
 Les McCrimmon (Academic)
Bar Association Staff Member
 Helen Barrett

PCC#4

Ian Harrison S.C. (Chair)
 Peter Graham QC
 Robert McDougall QC
 Bernard Coles QC
 Philip Hallen S.C.
 Peter Johnson S.C.
 Grahame Richardson S.C.
 Bill Kearns S.C.
 Elizabeth Fullerton S.C.
 Chris Leahy
 Philip Mahony
 Peter Gray
 Rhonda Henderson
 Daniel Howard
 James Renwick
 Patrick Griffin
 Sally Dowling
 Kate Eastman
 Prof. Derek Anderson
 (Community member)
 Phil Marchionni (Community member)
 Carol Randell (Community member)
 Francine Feld (Academic)
Bar Association Staff Member
 Helen Barrett

PCC#5

Bernard Coles QC (Chair)
 Ian Gzell QC
 David Bloom QC
 Robert McDougall QC
 Steven Rares S.C.
 Richard Edmonds S.C.
 Stephen Walmsley S.C.
 Murray Aldridge S.C.
 Robert Quickenden
 Brian Skinner
 James Lockhart
 Carol Webster
 Robert Newlinds
 Mark Speakman
 Lucy McCallum
 Paul Walker (Community member)
 John White (Community member)
 Dr Malcolm Voyce (Academic)
Bar Association Staff Member
 Dr Jim Macken

Committees of the Bar Association

for the year ended 30 June 2001

Professional Indemnity

Tony Meagher S.C.
Peter Garling S.C.
Noel Hutley S.C.
Rena Sofroniou
Andrew Bell
Bar Association Staff Member
Philip Selth

Taxation

Ian Gzell QC (Chair)
Anthony Slater QC
Holger Sorensen
Peter Fraser
Mark Richmond
Bar Association Staff Member
Philip Selth

Young Barristers

James Renwick (Chair)
Andrew Stone
Rachel Pepper
Ingmar Taylor
Kelly Rees
Henry Silvester
Hugh Stowe
Paul Bolster
Bar Association Staff Member
Shanthini Govindasamy

Senior Counsel Selection

Ruth McColl S.C.
Bret Walker S.C.
Peter Hastings QC
Robert Forster S.C.
Stephen Walmsley S.C.
Bar Association Staff Member
Lisa Allen

Working parties of the Bar Association

for the year ended 30 June 2001

Workers Compensation Working Party

Anna Katzmann S.C. (Chair)

Harry Bauer

Allan Cooley

Phillip Perry

Brian Ferrari

Leigh Stone

Peter Mooney

Terrance Willis

Robert Taylor

Bar Association Staff Member

Kim Nichols

Supreme Court Equity Working Party

Robert Foster S.C.

Robert Newlinds

Defamation Working Party

Steven Rares S.C. (Chair)

The Hon TEF Hughes AO QC

Alexander Shand QC

William Nicholas QC

Robert Stitt QC

Maurice Neil QC

Terence Tobin QC

John Sackar QC

Stuart Littlemore QC

Bruce McClintock S.C.

Guy Reynolds S.C.

Des Kennedy S.C.

Tim Hale S.C.

Peter Berman S.C.

Clive Evatt

Tom Molomby

Robert Campbell

Scot Wheelhouse

Paul Lakatos

Mark Lynch

Tom Blackburn

Bruce Connell

Lucy McCallum

David O'Dowd

Kieran Smark

Nicole Abadee

Richard McHugh

Michael Rollinson

Alec Leopold

Alistair Henskens

Richard Lancaster

Michael Hall

Matt White

Peter Gray

Judith Gibson

David Caspersonn

Robert Glasson

Kevin Andronos

Sections of the Bar Association

for the year ended 30 June 2001

Administrative Law

Convenor Alan Robertson S.C.
Secretary Stephen Lloyd

Family Law

Convenor Grahame Richardson S.C.
Secretary Greg Watkins

Common Law

Convenor Anna Katzmann S.C.
Secretary Andrew Stone

Intellectual Property Law

Convenor David Yates S.C.
Secretary Richard Cobden

Constitutional Law

Convenor David Jackson QC
Secretary David Knoll

Maritime, Air and Transport Law

Convenor Brian Rayment QC
Secretary Gregory Nell

Construction Law

Convenor Glen Miller QC
Secretary Geoff Underwood

Trade Practices and Consumer Protection Law

Convenor Jeffrey Hilton S.C.
Secretary Andrew Ogborne

Corporations, Securities and Insolvency Law

Convenor Tom Bathurst QC
Secretary Rodney Smith S.C.

Criminal Law

Convenor Tim Game S.C.
Secretary Glenn Bartley

Environmental, Local Government and Valuation

Convenor Malcolm Craig QC
Secretary Josephine Kelly

Appointments to the Bench

for the year ended 30 June 2001

Supreme Court of New South Wales	The Hon. Justice Roderick Howie (formerly of the NSW District Court) The Hon. Justice Peter McClellan The Hon. Justice George Palmer
New South Wales District Court	His Hon. Judge Stephen Norrish QC His Hon. Judge Michael Finnane QC Her Hon. Judge Penelope Hock Her Hon. Judge Judith Gibson
New South Wales Local Court	Elaine Truscott Lisa Stapleton
Federal Court of Australia	The Hon. Justice Richard Conti The Hon. Justice James Allsop
Family Court of Australia	The Hon. Justice Janine Stevenson

Bar Association representatives on educational bodies

for the year ended 30 June 2001

Centre for Legal Education, Advisory Board Clarrie Stevens QC

College of Law, Board of Directors Richard White S.C.

Legal Practitioners Admission Board Peter Taylor S.C.
Jeremy Gormly

Legal Practitioners Admission Board, Clarrie Stevens QC
Legal Qualifications Committee Caroline Needham S.C.
Janet Oakley

Legal Practitioners Admission Board, David Nock S.C.
Law Extension Committee Anthony O'Brien

University of Sydney, Faculty of Law Carolyn Davenport

University of Technology, Sydney, Geoff Lindsay S.C.
Faculty Board

University of Newcastle, Faculty of Law Ralph Coolahan

University of NSW, Law School Kelly Wright
Undergraduate Education Committee

University of Western Sydney, Robert O'Neill
Faculty of Law Advisory Committee Peter Dooley

University of Wollongong, Stuart Hill
PLT Course Advisory Committee

University of Wollongong Faculty of Law, Bruce Collins QC
Visiting Committee

Court committees and working parties

for the year ended 30 June 2001

Compensation Court Rules Committee

Brian Ferrari
Gregory Beauchamp

Court of Appeal Users Committee

Russell McIlwaine S.C.
Guy Reynolds S.C.

District Court Civil Business Committee

Brian Murray QC
Andrew Lidden

District Court Users Committee

Richard Bell

District Court Criminal Listings Review Committee

Kate Traill

District Court Technology in the Courtroom Project

Michael Lawler

District Court Rule Committee

Ross Letherbarrow S.C.

Downing Centre and Central Local Court Users Forum

Kate Traill

Dust Diseases Tribunal Rules Committee

Brian Ferrari

Fair Trading Tribunal - Home Building Division Consultation Group

Simon Kerr

Family Court Case Management Committee

Grahame Richardson S.C.

Federal Court Electronic Filing Working Party

Michael McHugh

Industrial Relations Commission Users Group

Max Kimber S.C.
Trish McDonald

Land & Environment Court Users Group

Jeff Kildea

Land & Environment Court Information Technology Implementation Group

Jeff Kildea

Local Courts (Civil Claims) Rule Committee

Andrew Kostopoulos

Local Courts (Civil Claims) Court Users Group

Jeremy Gruzman

St James Local Court Family Matter User Forum St James Local Court Users Forum

Kate Traill

Supreme Court Commercial Users Committee

Robert Macfarlan QC
Glen Miller QC
Steven Rares S.C.
Noel Hutley S.C.
Michael Rudge S.C.
David Hammerschlag

Supreme Court Common Law Users Committee

Dennis Wheelahan QC
Steven Walmsley S.C.

Supreme Court Common Law Division Criminal Users Committee

Tim Game S.C.
Phillip Boulten

Supreme Court Common Law Division Civil Users Committee

Brian Murray QC
Henric Nicholas QC

Supreme Court Company List User's Group

Malcolm Oakes S.C.
James Thomson
Robert Newlinds
James Johnson

Supreme Court Probate User's Group

Michael Willmott

Supreme Court Rule Committee

Ruth McColl S.C.
Jeremy Gormly

Local Courts Rule Committee

Kate Traill

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

Christopher Gee QC
Leonard Levy S.C.

Supreme Court Registry Users Group

Mr John Hennessy
Mr Michael Meek

Statutory appointments

for the year ended 30 June 2001

Administrative Decisions Tribunal

Legal Services Division

Caroline Needham S.C. (Deputy
President and Divisional Head)
Annabel Bennett S.C.
John McCarthy QC
Robert McFarlan QC
Linton Morris QC
Henric Nicholas QC
Sharron Norton
David Officer QC
Bruce Oslington QC
Lionel Robberds QC
Wendy Robinson QC
Barry Toomey QC
John West QC

Equal Opportunities Division

Caroline Needham S.C.
Penelope Goode
Peter King
Chrissa Loukas

General Division

Caroline Needham S.C.
Ronald Davidson
Geraldine Hoeben
Mark Robinson
Peter Skinner
Matthew Smith

Retail Leases Division

Caroline Needham S.C.
Ronald Davidson
Geraldine Hoeben

Law and Justice Foundation

Bret Walker S.C.

Law Week Board

Philip Selth

Legal Aid Commission Legal Aid Review Committees

Committee No.1

John McCarthy QC

Committee No.2

David Higgs S.C.

Family Law Committee No.1

Gregory Moore

Family Law Committee No.2

Bradley Richards

Legal Profession Advisory Council

Philip Greenwood S.C.
Peteris Ginters

Motor Accidents Authority

Senior Assessors Service

Brian Murray QC
Peter Capelin QC
Larry King S.C.
Ross Letherbarrow S.C.

Claims Assessment and Resolution Service

Ian Cullen
Geoffrey Charteris
Raymond McLoughlin S.C.
David Russell
Stephen Finnane

National Native Title Tribunal

Jennifer Stuckey-Clarke

NSW Cancer Council

Garry Downes QC

Other appointments

Attorney General's Department Evidence Act Working Party

Stephen Odgers S.C.

Department of Health Medical Negligence Working Party

Stephen Walmsley S.C.

Australian Advocacy Institute

Elizabeth Fullerton S.C.

Australasian Dispute Resolution Centre

Richard Bell

International Commission of Jurists

Nicholas Cowdery QC

Law Council of Australia committees

Access to Justice Committee

Jane Needham

ALRC Working Group

Bret Walker S.C.

Accident Compensation Committee

Anna Katzmann S.C.

Australian Young Lawyers Committee

Rachel Pepper

Advisory Committee on Indigenous Legal Issues

Ruth McColl S.C. (Chair)

Michael Slattery QC

Anthony McAvoy

Criminal Law National Liaison Committee

Bret Walker S.C.

Tim Game S.C.

Stephen Odgers S.C.

Equalising Opportunities in the Law Committee

Chrissa Loukas

Cross-vesting Working Group

Stephen Gageler S.C.

National Profession Taskforce

Bret Walker S.C.

Law Society of

New South Wales committees

Arbitration Liaison Committee

Sandy Street S.C.

Arbitration Liaison Committee - Arbitration

Refresher Course Sub-Committee

John Heazlewood

Criminal Law Committee

Tim Game S.C.

NSW Council of Professions

Peter Maiden

Andrew Stone

Public Interest Law Clearing House

Peter Maiden

Rachel Pepper

Trustees of the Pro Bono Disbursement Fund

Philip Selth

Bar Association court liaison members

for the year ended 30 June 2001

High Court	David Jackson QC
Federal Court	Malcolm Oakes S.C.
Supreme Court of NSW	
NSW Court of Appeal	Don Grieve QC
Admiralty List	Alexander Street S.C.
Criminal matters	Tim Game S.C.
Common Law Division	Richard Burbidge QC
Equity Division	Robert Forster S.C.
Land & Environment Court	Malcolm Craig QC
Industrial Relations Commission of NSW	Peter Kite S.C.
Local Court	Kate Traill Christopher Millard

Membership

for the year ended 30 June 2001

Ordinary members - Class A and B(i)* holding NSW practising certificates (including members based interstate & overseas):

	1978
Male	1723 (87.1%)
Female	255 (12.9%)

Number of Senior Counsel (QC or S.C.)†:

	260
Male	254 (97.9%)
Female	6 (2.1%)

Number of 'junior' barristers‡:

	1718
Male	1471 (85.6%)
Female	247 (14.4%)

† Senior Counsel (QC and S.C.) are commonly, called 'silks'. S.C.'s have been appointed since 1993 and replaced the appointment of Queen's Counsel.

‡ The term 'junior' barrister means all barristers except those who have been appointed Senior Counsel (QC or S.C.). A junior barrister does not necessarily indicate the ability or number of years at the Bar; for example, some 'juniors' have been practising for 30 years.

Practising address of Ordinary members - Class A and B(i)

New South Wales	1844
Victoria	3
A.C.T.	39
Queensland	64
South Australia	9
Western Australia	4
Northern Territory	1
Tasmania	0
Overseas	14

Number of Honorary Life members, Honorary members and Ordinary members - Class B(ii) and B(iii)*

(including members interstate & overseas):	428
Male	369 (86.1%)
Female	59 (13.9%)
Honorary Life members	20
Honorary members	1

Occupation of Ordinary members - Class B(ii) and B(iii)

Judges	144
Magistrates	7
Statutory/Government Officers	2
Members of Parliament	2
Interstate barristers	118
Non practising barristers	32
Academics (non practising)	10
Retired practitioners	
(Retired judges, retired barristers)	92

Total number of members 2406

* For Membership details, see Clause 4 of the Constitution of the New South Wales Bar Association, 1 January 2000

Practitioners holding NSW practising certificates

Total (including practitioners based interstate & overseas):	2059
Male	1791 (87%)
Female	268 (13%)

Number of practitioners who are

Senior Counsel (QC or S.C.):	266
Male	258 (97%)
Female	8 (3%)

Number of junior barristers:

Male	1533 (85.5%)
Female	260 (14.5%)

New South Wales

Male	1638 (86.7%)
Female	252 (13.3%)
Silks	236 (12.5%)
Juniors	1654 (87.5%)

Membership

for the year ended 30 June 2001

A.C.T.	41	Overseas	17
Male	34	Male	14
Female	7	Female	3
Silks	4	Silks	8
Juniors	37	Juniors	9
Victoria	3		
Male	3	Overseas practitioners by country of residence:	
Female	0	United States of America	1 male Junior
Silks	1	United Kingdom	9 practitioners
Juniors	2		5 silks (4 male, 1 female)
Queensland	90		4 juniors (3 male, 1 female)
Male	86	Hong Kong	4 practitioners
Female	4		3 silks (male)
Silks	13		1 junior (male)
Juniors	77	New Zealand	3 practitioners
South Australia	12		3 juniors (2 male, 1 female)
Male	10		
Female	2		
Silks	3		
Juniors	9		
Western Australia	5		
Male	5		
Female	0		
Silks	1		
Juniors	4		
Northern Territory	1		
Male	1		
Female	0		
Silks	0		
Juniors	1		
Tasmania	0		
Male	0		
Female	0		
Silks	0		
Juniors	0		

Reports from committees

for the year ended 30 June 2001

Arbitration Committee

The Arbitration Committee met frequently during 2000-2001 and received valuable contributions from all members.

One of the more significant areas requiring the Committee's attention was the making of separate recommendations to the different State courts as to persons who are to be appointed or reappointed as arbitrators and/or evaluators. Those recommendations, although ultimately reviewed and approved by Bar Council, are not decisions as to appointment, and inevitably changes are made to those who are recommended and some applicants must be unsuccessful. The Committee is, however, delighted at the enthusiastic support reflected in the significant number of applications received for recommendation as an arbitrator or evaluator. The Committee wishes to acknowledge the contribution of all those who have or are serving on the different court panels as arbitrators and/or evaluators, as well as to acknowledge those willing to serve and those willing to continue to serve as arbitrators and/or evaluators.

A number of steps have been taken to attempt to streamline and simplify the obtaining of barristers willing to serve as arbitrators and/or evaluators as well as the duration of the appointment. Different areas of specialisation are generally required by different courts and significant obligations have now been imposed upon all those who are recommended for appointment by the Bar Association to make immediate disclosure of relevant circumstances which in substance mirrors the obligations found in the Supreme Court's *Practice Note 102* and which is designed to ensure continuing confidence in those members of the Bar that are appointed by the different courts to serve as arbitrators and/or evaluators.

Steps have also been taken by the Committee to enhance the flow of information between both the courts and the Bar Association in relation to the services provided by arbitrators and evaluators.

Significant importance has been attached to the objective of ensuring fair, impartial and expeditious arbitral hearings, together with prompt delivery of the proposed award supported by succinct and adequate reasons. The general expectation is for awards to be delivered either immediately following the hearing or at a maximum of one month thereafter. Protracted reserved awards, for example exceeding a period of one month, or inadequate reasons to support the award are aberrations that are not expected to occur. The Committee would also like to acknowledge the invaluable administrative support now provided by Kim Nichols and the valuable former service by Lynne Colley. The Executive Director, Philip Selth has continued to provide outstanding administrative coordination and liaison

with the courts in this area of alternate dispute resolution, which is essential to the administration of justice.

Bar History Committee

The Bar History Committee's objectives for 2001 were as follows:

- to identify, obtain and preserve material relevant to describing and recording the history of the New South Wales Bar for the benefit of its members and of the people of New South Wales;
- to obtain from time to time, and to facilitate publication of, suitable material of historic interest and, in particular, to encourage the publication of articles for the Association's centenary;
- to review the diary of Judge John Callaghan and, in particular, to take steps, if possible, to arrange for a legible transcript of that diary to be obtained and made available to the Association;
- to take, or to facilitate the taking of, oral history interviews so as to preserve in accessible form the recollections of current or former members of the Association on issues of historical significance;
- to participate in the organisation of the Association's centenary dinner (2002); and
- to enter into scholarship arrangements with Macquarie University with a view to encouraging the publication of articles relating to the history of the NSW Bar.

During 2000-2001 the Bar History Committee made substantial progress on a number of new and existing projects in support of these objects.

In last year's annual report, it was noted that negotiations were under way with Macquarie University for the creation of a post-graduate scholarship. The purpose of the scholarship is to foster interest in the history of barristers in New South Wales and to support postgraduate research by law or history students enrolled at Macquarie University. The Bar Association will pay a stipend of \$20,000 per annum for two years to MA or LLM students, or three years for those doing a PhD. The scholarship agreement was signed in early 2001 and the process of implementation has begun.

The Committee's oral history project came to fruition when Tony Hewitt S.C. and Luke Brasch did a videotaped interview with Sir Richard Kirby in early 2001. Plans are progressing for its transcription and publication, as well as interviews with other prominent, retired barristers.

Work has also progressed on the publication of the diary of John Callaghan, a 19th century New South Wales District Court judge. In May 2001 the Committee approached Dr John Bennett, author of *A History of the New South Wales Bar*, to transcribe and annotate the diary. Dr Bennett has since agreed to undertake this work.

Reports from committees

for the year ended 30 June 2001

Another event of significance to the history of the Bar was held on 1 December 2000, when the Association hosted the Sydney launch of *Edmund Barton: The one man for the job*, by Geoffrey Bolton AO. More than 70 guests came to hear the author and The Chief Justice of Australia, The Hon. Justice AM Gleeson AC launch the first biography of Edmund Barton in 50 years.

Centenary of the Bar Association

2002 will represent the centenary of the formation of the New South Wales Bar Association. In 2001 the Committee formulated for Bar Council's consideration a number of initiatives to celebrate the occasion. By June 2001, preliminary work had commenced on the publication of essays dealing with the recent history of the Bar, to be published in June 2002. By the end of the reporting year, the Committee had also advanced plans for an ongoing programme for the publication of history essays in *Bar News*.

Common Law Committee

This year has been, without doubt, an *annus horribilis* for the common law and the Common Law Committee. Most of the year has been spent in campaign mode.

In October 2000 the State Government began its assault on workers compensation. It introduced legislation into Parliament making certain procedural changes, particularly to the process of conciliation and to the time when a worker will be deemed to have elected to sue for damages, rather than claim lump sum compensation under the statutory scheme. The Committee was given an opportunity to present its views on the changes to both the Minister's staff and to the Minister himself. None of the recommendations were adopted.

The Committee was then informed that more substantial changes would be introduced in 2001, but given no indication of what they would be. Then in March the Committee's worst fears were realised. The Government introduced the Workers Compensation Legislation Amendment Bill (No. 1), which marginalised the Compensation Court, sought to introduce the American Medical Association's *Guides to the evaluation of permanent impairment* as the measure of impairment and loss, and to restrict access of workers to the courts. It also drastically altered the threshold for commencing actions for damages for work injuries to require more than 25 per cent whole person impairment before a worker could sue. There is little doubt that if such a threshold were introduced, damages would be available to a minuscule proportion of working people injured through their employers' negligence.

The public outcry generated by the Bill is now notorious. The Government then withdrew it and promised to consult

(albeit belatedly) with the unions.

Then there emerged the Workers Compensation Legislation Amendment Bill (No. 2) which, in some respects, was worse than the first version but which omitted the changes to the common law.

The Government commissioned The Hon. Justice Terry Sheahan to conduct an inquiry into workers compensation common law matters. That inquiry is due to report in September. The Bar will be making a written submission to the Inquiry.

The Common Law Committee and the Workers Compensation Working Party were preoccupied with these developments. They prepared many submissions, made numerous speeches and provided assistance to stakeholders, commentators and parliamentarians to assist their understanding of the implications of the new laws. Much time and effort was expended in dealing with misinformation disseminated by the media.

The Committee spent some considerable time in seeking to persuade members of Parliament and the general public that the changes were against the interests of the people of New South Wales.

A number of members addressed public meetings in western Sydney and in country areas. Terry Willis, in particular, is to be congratulated for his work in this regard.

However, the Government prevailed using its numbers in Parliament. Some of the documents prepared during the campaign were published on the Bar Association web site at www.nswbar.asn.au.

In the meantime, the Government introduced the Health Care Liability Bill 2001, capping damages for medical negligence in a similar way to the changes effected to motor vehicle claims in September 1995. A proposal to introduce a raft of changes to damages for medical negligence had been announced before the July parliamentary sittings. After the intervention of the Executive Director, Philip Selth, the Bar was invited to participate in a working party that considered the proposed Bill. Stephen Walmsley S.C. represented the Bar on that working party and attended Parliament with the President, Katzmann S.C. and the Executive Director to brief the cross-bench on its implications.

The common law is under constant assault. Recent newspaper articles would also suggest that a campaign is under way to limit liability in slip and fall cases wherever they occur. Lawyers are invariably criticised when citizens avail themselves of it. Nonetheless, the Common Law Committee will continue to defend the rights of citizens to restorative justice.

A great number of members contributed to the work of the Bar in endeavouring to deal with the Government's legislative programme concerning workers compensation and damages for workplace torts. Above all, though, Brian

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Ferrari has contributed selflessly to the work of the Committee. He has devoted considerable time and energy at great personal sacrifice. The Committee is enormously grateful to him.

Andrew Stone has been the representative on the equivalent Law Society Committee and that contact has been invaluable.

The Committee would like to pay tribute to Lynne Colley, the former Administrative Support Manager and an invaluable member of staff who, regrettably for us, has moved to greener pastures, presumably where she can see natural light from her office! For Kim Nichols, the new Committee Secretary, the task she inherited was undoubtedly a daunting one.

Criminal Law Committee

Once again, the Criminal Law Committee was kept extremely busy in responding to many proposed legislative changes and initiatives in the area of criminal justice. In future, the Committee proposes to keep the profession up-to-date on proposals and submissions by reports in *Bar Brief* and *Bar News*.

Subjects addressed in 2000-2001 have included:

- submissions on proposed amendments to the *Search Warrants Act 1985*;
- submissions and representations in relation to the Crimes Amendment (Excessive) Punishment Bill 2000;
- a Bar Association proposal to enable fixing of non-parole periods for life sentence prisoners following the decision of the Court of Criminal Appeal in *R v Harris* (2000) 50 NSWLR 409;
- submissions on *Pre-trial Diversion of Offenders Act 1985*;
- submissions on Right to Self Defence Bill 2001 and the *Workplace (Occupants) Protection Act 2001*;
- submissions on Crimes Legislation Amendment (Existing Life Sentences) Bill 2001;
- submissions on Cybercrime Bill 2001; and
- representations to the Commonwealth Parliament Joint Standing Committee on Treaties regarding the proposed International Criminal Court.

The Committee is particularly grateful for the conscientious contribution of its members, many of whom provided written submissions for, or made representations on behalf of, the Association.

Close and successful liaison with the Law Society's Criminal Law Committee has continued.

The criminal Bar continues to face enormous challenges, given both the changing nature of criminal law practice and the immense difficulties that persist in relation to legal aid funding. Ongoing problems with legal aid funding are being addressed by the Legal Aid Committee in liaison with

representatives of the Legal Aid Commission.

Over the next twelve months, and through the Criminal Law Section, the Committee intends to take a much more active, educative role for the profession.

Duty Barristers Scheme

The Duty Barristers Scheme continued to provide a vital community service throughout 2000 - 2001. The scheme, overseen by Kate Trill, includes 90 barristers, three of whom are rostered on each sitting day.

Principal activities

- The brochure on the Duty Barristers Scheme was circulated throughout the relevant courts, legal centres and Police stations.
- The scheme continued to be promoted to a wide range of community help groups including victims of crime, the Redfern Legal Centre, Australian Consumer Association, Aboriginal legal services, the Department of Fair Trading, Domestic Violence Advisory Service, the NRMA Legal Department and the Salvation Army. These groups regularly received the Association's brochure about the scheme, to be distributed to anyone seeking assistance.
- During the year the matters considered included committals, larceny, driving offences, bail applications, appeals, apprehended violence orders and assault charges.
- The Duty Barrister Scheme in the Australian Industrial Relations Commission, which is overseen by Ingmar Taylor, also provided a vital community service to unrepresented litigants before the AIRC at the call over. This call over determines certain jurisdictional issues in the course of proceedings. Approximately 50 barristers have volunteered for the scheme and participate in the scheme at each call over.

Education Committee

Principal 2000 - 2001 activities were:

Bowral regional conference

The conference was held on 13 - 14 July 2000 at Milton Park in the Southern Highlands, with the theme: 'Evidence: developments in law and defining the issues'. Keynote speakers were The Hon. Justice Virginia Bell on 'Developments in the law of evidence', with Stephen Odgers S.C. as commentator, followed by The Hon. Justice Kevin Lindgren on 'Case analysis and evidentiary issues'. A practical workshop was included in the afternoon dealing with case analysis and evidentiary issues. The workshop groups were led by Brian Donovan QC, James Glissan QC, Geoff Lindsay S.C. and Carolyn Davenport. Robert O'Neill from the Parramatta Bar and Stuart Hill from the

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Wollongong Bar participated as chairs of various sessions. While only 46 members attended the conference, it was greatly enjoyed by all those who attended - particularly the trivial pursuit game at the conference dinner which brought out all the competitive instincts of the Bar.

The inaugural Sir Maurice Byers Address

The address took place at the Bar Association on 30 November 2000. The Association was pleased and honoured to have as the inaugural speaker The Hon. Sir Gerard Brennan AC KBE. Sir Gerard spoke on 'Strength and perils: the Bar at the turn of the century'. Lady Byers and members of her family attended as guests of the Association. The speech was published in the Summer 2000/2001 edition of *Bar News*.

The Bar Education Forum, Brisbane, October 2000

The annual meeting of Bar course organisers from the three eastern States' bars is a low key but valuable occasion. At these discussions, issues relevant to the advocacy training and reading period of new barristers in Queensland, Victoria and New South Wales are canvassed and opinion, suggestions and support offered and received. The Queensland Bar Association hosted the 2000 forum. The main topic of discussion was the draft competency standards for pre-admission practical legal training and the implications for Bar practice training. The draft standards had been formulated co-operatively by the Australasian Professional Legal Education Council (APLEC) and the Law Admissions Consultative Committee (LACC). The discussion was led by Elizabeth Loftus, Executive Director of the Leo Cussen Institute of Victoria. No formal resolutions were passed but it was agreed that course managers would meet to draft initial competencies for Bar courses for submission to the next forum.

Tutors' and Readers' Dinner

Only one dinner was held in the reporting period as it became necessary to hold a combined event for 2/00 and 2/1 readers and tutors. The Hon. Justice D A Ipp of the Supreme Court of Western Australia and Acting Judge of the NSW Court of Appeal was the guest of honour. His topic, both thought provoking and challenging, was 'Enduring values and change'. Luke Brasch gave the vote of thanks on behalf of the readers.

Bar examinations

November 2000:	Practice & Procedure	Evidence	Ethics
No. of candidates:	39	38	34
Average mark:	79.4	72.5	79.8
Total pass (per cent):	81	84.2	94.12
Total candidature:	44		
Distance candidates:	3 (Canberra and Newcastle)		

The Blashkie Award for the highest score was won by Grant Carolan.

June 2001:	Practice & Procedure	Evidence	Ethics
No. of candidates:	45	52	44
Average Mark:	72.5	74.7	78.7
Total pass (per cent):	64.5	80.7	95.5
Total candidature:	57		
Distance candidates:	2 (Canberra)		

The Blashkie Award for the highest score was won by Jeremy Kirk.

In November 2000 the format of the evidence examination was changed to incorporate unseen questions, in addition to the usual seen questions. That is, candidates were asked to answer 15 seen questions drawn from the pool of questions issued prior to the exam and also five unseen questions. As a result of that exercise, the same format was introduced for the Practice and Procedure exam in June 2001. All pools of questions and reading lists underwent extensive review for the June 2001 exams.

Bar practice courses

- *August 2000*: 37 people attended this course. Of these, the average age was 40 years, and five of the group were female (13 per cent). Twenty seven (72 per cent) had previous experience as solicitors.
- *February 2001*: 40 people attended the February 2000 course. The average age was 35 and 37.5 per cent (15) of the group were female. Thirty five (87 per cent) had previous experience as solicitors.

The new five-week timetable, foreshadowed in the *1999-2000 Annual Report*, was used for both of these courses. The five-week format has successfully allowed for the introduction of a communications module and additional advocacy practice in the form of mini trials.

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The Continuing Legal Education Programme

The program for July 2000 - June 2001 was as follows:

13-14 July 2000	Regional conference, Milton Park, Southern Highlands. The Hon. Justice Virginia Bell and The Hon. Justice Kevin Lindgren
20 July 2000	Appellate workshop Geoff Lindsay S.C.
24 July 2000	'The Land & Environment Court: practice directions' Malcolm Craig QC (Chair) Brian Preston S.C.
9 August 2000	Debate: 'That NSW should go ahead with the Bill of Rights' The Hon. Justice Murray Wilcox The Hon. Justice Keith Handley AO Bret Walker S.C. Noel Huntley S.C. Andrew Bell Rena Sofroniou
25 August 2000	'Legal disputes in sport' The Hon. Tom Hughes AO QC (Chair) John Boulton AM, Director, Australian Institute of Sport
6 October 2000	Prison visit: Metropolitan Regional Remand Centre (Silverwater)
16 October 2000	'GST: first returns seminar' Ian Gzell QC
18 October 2000	'Using unreported judgements' Naida Haxton, Council of Law Reporting
13 November 2000	'Barristers behaving badly' Trevor Morling QC (Chair) Alexander Street S.C. Robert Angyal Jeremy Gormly
16 November 2000	'Voice and presentation in court' Robyn Fraser LSDA
30 November 2000	Sir Maurice Byers Address The Hon. Sir Gerard Brennan AC KBE
1 December 2000	Coroners Court visit Professor Hilton Kevin Best
5 December 2000	Practice management workshop David Nock S.C. John Nicholson S.C. Jennifer Stuckey-Clarke
11 December 2000	Appellate workshop Geoff Lindsay S.C.

2001

6 March 2001	' <i>The Insurance Contracts Act</i> and the insurance contract: an aid to interpretation' Elizabeth Cheeseman (Chair) Richard Cavanagh
12 March 2001	'Federal Magistrates Service and its impact on family law practice' Grahame Richardson S.C. (Chair) Federal Magistrate Steven Scarlett RFD
5 April 2001	'The work of the Legal Representation Office' Jeremy Gormly (Chair) Christine Nash
30 April 2001	'Class actions' Steven Finch S.C., Bret Walker S.C.
27 April 2001	Prison visit Metropolitan Regional Remand Centre (Silverwater)
30 April 2001	Breakfast seminar: 'Law and literature' The Hon. Justice Ian Callinan
14 May 2001	'Financial management for barristers' Robert J Kelly (Chair) John Levingston
21 May 2001	'Using unreported judgements' Naida Haxton, Council of Law Reporting
25 May 2001	Coroners Court visit Professor Hilton Kevin Best
7 June 2001	'Voice and presentation in court' Robyn Fraser LSDA
14 June 2001	Practice management workshop John Griffiths Rashda Rana
18 June 2001	'Recent development in evidence in criminal matters' Christopher Maxwell QC (Chair) Stephen Odgers S.C.
19 June 2001	'Tax Issues: administration and planning' Ian Gzell QC Mick Rolls, Senior Technical Advisor for Tax Education, Australian Taxation Office

With the reconstitution of the Education Committee after the November Bar Council elections in 2000, the format of the Committee and subcommittees was slightly altered. The general Education Committee became smaller, but subcommittees had some co-opted members. (See committee and subcommittee lists, pp. 9-10). A well-oiled format now operates whereby most of the discussion and decision making

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process is taken at the Subcommittee level, who forward recommendations to the general Committee. This allows expertise to develop within the subcommittees in dealing with specific sets of problems, but the general Committee is informed and has ultimate authority to make final resolutions. It also spreads the workload and has fostered a team approach to the work of the Education Committee.

The Committee again acknowledges its enormous debt to members of the Bar, magistrates and judges who support the education activities of the Association through their contribution to the Bar examinations, Bar courses, reading, continuing legal education and advocacy training. Without this continued support, the Education Programme simply could not function.

Equal Opportunity Committee

The work of the Equal Opportunity Committee expanded significantly in 2001. This year the Committee has continued to focus its work on three principal issues: women at the Bar, Indigenous lawyers, and disability.

After the launch of the Bar's Indigenous Lawyer's Strategy, in March 2001, it became necessary to devolve this part of the Committee's work into a separate committee, the membership of which includes the law school deans and others involved in piloting this strategy. As a consequence, the work of the Indigenous Lawyer's Strategy Subcommittee this year is described separately in this report. The work of the Subcommittee has been regularly reported on and discussed throughout the year by the Equal Opportunity Committee. To manage the Committee's workload as efficiently as possible this year, responsibility to see that the Committee's objectives were achieved in each of its areas of action was allocated to a particular member. Steven Rares S.C. took responsibility for disability issues, Chris Ronalds (the Committee's Deputy Chair) for the Indigenous Lawyer's Strategy) and Michael Slattery QC (the Chair) for women at the Bar. In her work on the Indigenous Lawyer's Strategy, Chris Ronalds was closely assisted by, and consulted with, Mullenjaiwakka and Tony McAvoy.

Women at the Bar

At the suggestion of the Committee, this year Bar Council approved an amendment to the protocol for the appointment of Senior Counsel. This amendment which, is to be operative from January 2002, adds to the other criteria for appointment the demonstration of leadership in promoting the community and diversity of the Bar. This is designed to ensure that an important ingredient for success at the Bar is leadership in the promotion of the interests of less advantaged groups at the Bar.

This year the Committee has piloted a mentoring scheme for female members of the junior Bar in their second year of

practice. The scheme is designed to assist in the practice development of female junior barristers. A number of silks and senior juniors have volunteered to be mentors in this pilot scheme. Depending on its success, it will be recommended to Bar Council that the scheme be operated on a permanent basis.

One of the Committee's objectives is to ensure equality of opportunity for all qualified people who wish to commence practice at the Bar. To promote this outcome, the Committee has organised for the first time a day on which final-year female law students who have aspirations of coming to the Bar are able to visit the chambers of female barristers to closely observe practice at the Bar and to meet female judges. The contacts made on this occasion will assist these students in considering the Bar as a career choice.

The Committee has corresponded during the year with the State and Federal attorneys-general in order to promote equality of briefing practices by those attorneys-general and State and Federal Government agencies.

The Committee has continued to examine proposals in relation to listing and court sitting times and chambers' management arrangements, in order to better accommodate family obligations for both female and male barristers. In this task the Committee has benefited from the experience of consultants who have advised some of the national law firms in respect of flexible work practices to accommodate the interests of parents and families.

In the course of a review of the insurance policy conditions offered by the Barristers' Sickness & Accident Fund to members of the Bar, the Committee suggested, and the Fund adopted, a policy change which ensured that the pregnancy exclusion from the policy was in conformity with current industry practice for such policies.

Disability issues

This year the Committee has continued to be active in the field of disability discrimination reform and specifically in respect of access to chambers and courts. Many chambers continue to have restricted access for elderly, infirm or permanently disabled people, particularly those who rely on wheelchairs for mobility.

As a result of the successful discussions between the Committee (on behalf of the Bar Association) and Counsel's Chambers Limited during mid to late 2000, an access ramp has now been opened at the Phillip Street entrance of the Wentworth/Selborne Chambers building. This has substantially rectified deficiencies in wheelchair access to that building. The Committee is opening discussions with the owners of other chambers in the Central Business District where access appears to be difficult for persons with mobility disability.

Throughout the year the Committee has maintained

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contacts with law schools about the mentoring of students with disabilities. Further, the Committee has monitored the measures being taken by State and Federal Government in relation to the improvement of courtroom facilities throughout New South Wales for persons, witnesses, parties and members of the profession with disabilities.

Other issues

The Committee commenced looking this year more closely at two other areas. As there is an increasing tendency for barristers to continue in practice to an older age, the Committee started to gather information about the special needs of older members of the Bar.

The Committee is also looking at issues of special importance to gay and lesbian members of the Bar. The Committee made recommendations which were adopted by Bar Council during the year in relation to the making of submissions about the Sex Discrimination Amendment Bill 2000.

The Committee wishes to specially thank its assistant, Shanthini Govindasamy, for the invaluable work that she has done throughout the year in helping the Committee to keep track of, and implement, its growing agenda.

Indigenous Lawyer's Strategy Subcommittee

The Indigenous Lawyer's Strategy Subcommittee is a special committee set up to implement the Indigenous Lawyer's Strategy at the NSW Bar. The NSW Bar is conscious that Indigenous Australians are underrepresented in the legal profession, and at the Bar in particular. Last year Bar Council adopted *A Strategy to Assist Indigenous Lawyers to Practice at the NSW Bar*. The strategy is aimed directly at addressing this under-representation of Indigenous Australians at the Bar. This scheme has the particular support of the law schools of the University of New South Wales and the University of Technology, Sydney. The deans of those law schools, Professor Paul Redmond and Professor David Barker, are members of the Committee and have both generously given their time to ensure that the Bar's strategy is effective in reaching Aboriginal law students.

The objectives of the strategy are threefold.

- the provision of financial support whilst studying law for Aboriginal law students for whom practice at the Bar is a primary career preference;
- promoting assistance to and funding for the financial needs of Indigenous law graduates between completing law school studies and coming to the Bar; and
- ensuring that Indigenous Australians who come to the Bar are introduced to a network of contacts and work support which will assist in the development of their practices.

The Indigenous Lawyer's Strategy was launched by the President in March 2001. Since then, the Bar has established

the principal vehicle for the financial implementation of the strategy, The Indigenous Barristers' Trust – the MumShirl Fund ('the Trust'). The Bar is in the course of applying for endorsement of the Trust as a deductible gift recipient as a public benevolent institution under the *Income Tax Assessment Act 1936 (Cth)*. Upon ultimate endorsement of the Fund as a deductible gift recipient, it will receive initial capital from the winding up of the MumShirl Foundation, a trust designed to commemorate the late Shirley (MumShirl) Smith. The new silks appointed in 2000 have indicated their readiness to make a gift to the Trust. Ruth McColl S.C. is the settlor of the Trust and the first trustees are Bret Walker S.C., the Senior Vice-President, Mullanjaiwakka, Chris Ronalds and Mr Dan Gilbert of Gilbert & Tobin, solicitors.

Prior to the launch of the Indigenous Lawyer's Strategy, the Subcommittee organised a visit to the Bar in January of this year for the law students in the University of NSW Pre-Law Program. This visit provided the indigenous law students with an opportunity to become familiar with practice as a barrister in chambers and in court. Special thanks are due to Phllis Lee at UNSW and Chris Ronalds for organising this visit to the Bar. This occasion will now occur annually as part of the University of New South Wales Pre-Law Program.

Members of the Subcommittee, together with the President Ruth McColl S.C., have visited the New South Wales Department of Aboriginal Affairs to discuss the Bar's strategy with departmental officers.

Close cooperation exists in implementing the strategy with the NSW Crown Prosecutors and Public Defenders. The Public Defenders and Prosecutors have been able to secure funding assistance from the NSW Government to help an Indigenous barrister to commence practice in each of their chambers. The Committee thanks two members of the Committee, Mark Tedeschi QC, the Senior Crown Prosecutor, and His Honour Judge Nicholson S.C., formerly the Senior Public Defender, for their work in helping to secure this government assistance.

As a result of the work of the Subcommittee it is expected that a number of qualified Indigenous law graduates will commence practice at the Bar in 2002 and 2003.

Family Law Committee

The past year has seen the introduction of significant statutory reform, which will have long term application to those who practise in the jurisdiction. For example, on 27 December 2000 the *Family Law Amendment Act 2000 (Cth)* commenced operation.

However, the most substantial reform was the introduction of Part VIII A of the *Family Law Act 1975 (Cth)*, which introduced binding financial agreements.

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These agreements can be entered into before marriage, during marriage and after dissolution of marriage without involvement of any court, subject to observing rudimentary requirements as to the incorporation of certificates from a lawyer acting for each party. Already, in the context of a well-known commercial catastrophe, it seems that the scene may be set for the waters to be tested as to the extent, if any, that such agreements might be used by spouses seeking to protect the wealth of one or the other from potential claims of creditors.

For the first time Australians have available a regime by which persons intending to marry will be able to enter into a pre-nuptial agreement which has the capacity to determine their future financial obligations in the event of the breakdown of marriage. It remains to be seen to what extent this opportunity will be embraced by the public.

The operation of the long expected amendments intended to enable the Family Court to make orders, or parties to come to an agreement about, the division of superannuation entitlements are much closer. The Family Law Legislation Amendment (Superannuation) Bill 2000 was passed in the Senate on 18 June 2001. The Act will commence on proclamation or within 18 months of assent, which is intended to enable the superannuation industry to prepare itself for the implementation of these significant reforms.

Throughout the past year the Committee has maintained involvement in:

- providing representation to a Case Management Committee in the Family Court's Sydney Registry;
- providing representation and submissions as to the implementation of a substantially revised case management procedure, presently being introduced to the Sydney Registry on a trial basis. This is the culmination and implementation of the wide ranging report of the Family Court Future Directions Committee;
- the preparation of the Association's published *Guidelines for barristers on dealing with self represented litigants*. This project involved enormous input and commitment by Brian Knox and will culminate with a launch by the President on 23 July 2001; and
- representation on a liaison committee with members of the Federal Magistrates' Service at Parramatta.

Fees Committee

A total of \$166,770 was recovered on behalf of members for the financial year ended 30 June 2001. This was up from the figure of \$73,506 recovered in the year ended 30 June 2000 and also up on the figure of \$130,371 recovered in the year ended 30 June 1999.

During the year, the Association received 61 new complaints regarding unpaid fees, compared to 43 in the previous year. Of course, a number of matters relating to

complaints made in previous years are ongoing.

The fee recovery service is now delivered free to all members. The Bar Council has recently resolved that while it will continue to act for members in recovery of their fees it will discontinue the practice of issuing to members a list of solicitors who have failed to pay counsel's fees without reasonable excuse. Rather, if the Association's efforts to recover members fees fail, the member will be invited to institute proceedings in the appropriate court (usually the Local Court) against the solicitor. To that end the Council will, in the next few months, invite a number of solicitors to tender to be included in a panel of solicitors who are prepared to undertake fee recovery work on behalf of members at reasonable rates. More information about this new scheme will be available to members in the coming months.

The Association's long-stated policy is not to assist in recovery of fees where the member has not complied with the cost disclosure provisions of Part 11 of the *Legal Profession Act 1987*. This policy will continue. Members are also reminded of the need to include estimates in disclosures and of the need to revise estimates if there is likely to be a significant increase in costs: see sections 177 and 178 of the *Legal Profession Act*. An article on Part 11 appeared on page 14 of the July 99 edition of *Stop Press* (as it then was) and is available the Bar Library.

Inquiries about the fee recovery system or the operation of Part 11 of the Act should be made in the first instance to Helen Barrett or Liz Maconachie. Greg McNally is the Fees Convenor and is consulted about difficult matters. The Association is indebted to McNally for his continuing assistance.

Information Technology Committee

The Information Technology Committee was instituted in 2000. Its Terms of Reference are:

- To inform the members of the Bar regarding new developments in information technology and to encourage their early adoption by members.
- To develop a strategy to utilise the collective buying power of the Bar to negotiate best possible pricing on electronic information and other products necessary to a barrister's practice and with regard to developing the electronic resources of the library and access to same by members of the Bar.
- To assist in promoting and arranging initiatives which inform members of the Bar of the latest developments in information technology as it relates to practice and to developments in court procedures.

This year the Committee has been concentrating on second of these. The challenge for the Bar Association is to harness the market power of its members as purchasers.

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The Committee has been investigating the most effective strategies to employ, particularly in its negotiations with legal publishers

The Information Technology Committee was addressed at its April meeting by a representative of PricewaterhouseCoopers as to the possibility of the Association becoming a member of their B2B Exchange. The B2B Exchange uses the strength of its membership to negotiate prices on business items. The object was to gauge the effectiveness of the strength of the numbers of the members of the Bar Association and the purchasing power of the exchange.

Another strategy considered has been to determine the scope and effectiveness of networks, such as those developed by Counsel's Chambers and BarNet, to negotiate prices. While not advocating the establishment of another network in competition with these, the Committee has been in discussion with both Counsel's Chambers and BarNet with regard to these issues.

Another possibility is to persuade the publishers that there is a broader market available to them at reduced prices. Accumulating information on members' current subscriptions and those they would subscribe to at a more attractive price is currently being addressed. The Committee is also discussing the approach that has been taken by other Associations, such as the Queensland Bar Association.

The library has been working on:

- 1 installation of a new network for use of electronic databases in the library;
- 2 connection of this network to the Bar Association's main computer network;
- 3 design and construction of library's web page with area for access to electronic databases;
- 4 assessment of programs for controlling remote access to this (e.g. ISOS); and
- 5 negotiations with publishers regarding licences to enable password restricted access to their materials, which is currently being done in parallel with the Information Technology Committee's preparation for renewed negotiations with publishers for better subscription rates.

Members of the Committee have also participated in the Supreme Court-Federal Court Electronic Filing Project and the Parliamentary Counsel Advisory Committee's Legislative Drafting and Database System Project.

Human Rights Committee

The role of the Committee is to advise and assist the President and the Bar Council - with the assistance, where appropriate, of others who have volunteered to help - on matters arising and issues confronted that have human rights implications. The Committee also acts as a liaison point for the Bar Association with other organisations

involved in the protection and enforcement of human rights under a just rule of law.

In practice, the bulk of the work is in the preparation for the President of correspondence, submissions and reports on relevant domestic and international human rights issues affecting the legal profession and the administration of the law as they arise.

The Convenor (Cowdery QC - who enjoys the role of a one person Committee) is also the Human Rights Liaison Officer to the International Bar Association (IBA), of whose Human Rights Institute he is a Council member (as Immediate Past Co-Chairman). He is also Human Rights Adviser to the Law Council of Australia and an officer of various other human rights organisations associated with the law.

The IBA regularly enlists the support of the NSW Bar Association in representations it makes to officials in countries where human rights abuses are perpetrated against lawyers and those involved in legal systems.

In the year under review 11 such calls for assistance were dealt with. They were directed at abuse or potential abuse in Brazil, Colombia, Croatia, Ecuador, Guatemala, Iran, Mexico, Sudan and Zambia.

All members are asked to report to the Association any cases of human rights infringements where it may be appropriate for the Bar Council to act. (It should be noted that these do not normally include cases of the regular pursuit of legally enforceable remedies.)

Legal Aid Committee

The Committee has maintained its focus on ensuring good relations with the NSW Legal Aid Commission and its new Managing Director, Margaret Allison. The Commission is going through a period of considerable restructuring, with the aim of introducing greater 'efficiencies' within the organisation. The Committee has attempted to encourage the Commission not to lose sight of the primary goal of providing quality legal assistance to those members of the community who cannot afford private representation. The appointment of Geoff Lindsay S.C., a member of the Committee, as the Bar Association nominee on the Legal Aid Commission, has helped in ensuring that the Commission takes into account the perspective and interests of the Bar.

As the Federal election approaches, pressure will be brought to bear on the major parties to disclose their legal aid policies, and particularly their funding allocations. Support will be given to policies which will redress the decline in legal aid funding. The Committee will assist the Bar Association in liaising with the Law Council of Australia in this regard.

The Bar Association had some success in 2000 in obtaining an increase in fees paid to members of the Bar who

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perform legal aid work. Continuing efforts in 2001 have so far proved fruitless and consideration of more creative options than simply across the board increases will be needed. It may be time for a review of the whole legal aid fee structure so as to ensure that barristers receive appropriate remuneration for all the legal aid work which they perform.

Legal Assistance Referral Scheme

The Legal Assistance Referral Scheme (LARS) provides legal assistance for free, or at reduced rates, to persons who would otherwise not be able to obtain legal assistance without suffering severe financial hardship.

The Bar Association's Legal Assistance Department runs LARS, with the majority of funding for the administrative support provided by the Public Purpose Fund. In mid-2000 the existing Legal Assistance Scheme was re-named (with the addition of 'Referral') and a new set of guidelines were approved by Bar Council. A new booklet detailing the arrangements has been widely circulated.

As a result of these changes, personal injury, medical negligence, neighbourhood disputes and Apprehended Violence Orders are excluded from the scheme. Further, LARS will not consider matters refused assistance by other legal assistance providers due to a lack of legal merit. The income threshold for applicants has been quantified at a gross income not exceeding \$1000 per week.

Once an applicant has financially qualified for assistance, an attempt is made to refer the matter to a barrister for an assessment of the legal merit on a no-fee basis. After the provision of the initial advice, if further legal services are recommended, the applicant may deal with the barrister on one of the following bases:

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

During the period 1 July 2000 to 30 June 2001, the scheme received more than 550 enquiries about legal assistance and related matters. A number of applications were the direct result of a court advising a litigant to seek assistance from the Bar Association. Many enquiries were made in person by prospective applicants.

Of these 550 enquiries, 380 resulted in formal

applications for legal assistance. This represents an 8.5 per cent increase over last year's figures. Barristers accepted matters in the above-mentioned categories as follows:

Speculative/costs entitlement/recovery of costs	28
Reduced fee	33
Market rates	1
No fee	183

One hundred and thirty five applicants fell outside the guidelines.

During 2000-2001 financial year, barristers contributed approximately 3,500 hours of work. Since the scheme's inception in 1996, barristers have contributed approximately 17,000 work hours.

Listed below are some of the achievements during 2000-2001:

- The Law Society Pro Bono Scheme referred an unrepresented defendant in a District Court application by the plaintiff for an extension under the *Limitation Act 1969* in personal injury proceedings. The plaintiff was suing the defendant for severe burn injuries suffered when he was eight years of age. The defendant had previously instructed solicitors. However, because the matter had been twice not reached in the District Court, funds which had been provided by his home building insurer (which had refused to indemnify him) had been exhausted. If the *Limitation Act 1969* period had been extended, the defendant would have faced a costly legal battle. He was a pensioner and not in good health. The defendant strongly disputed liability. The parties reached a settlement of all issues on terms which protect the defendant from any further claims by the plaintiff. The barrister was assisted by a solicitor acting through the Law Society Pro Bono Scheme.
- A community legal centre referred an elderly couple who had been dismissed from their position as caretakers on a large rural estate. A retired judge appeared on their behalf in a hearing in the Industrial Relations Commission. The commissioner found in favour of the former employees and awarded them \$13,000 in unpaid wages and benefits.
- A South Coast community legal centre referred an unrepresented young woman who was seeking Family Court orders for residency of her six year old son with access only to her 70 year old husband. Legal aid had been refused on lack of prospects of success. After a four-day hearing, the judge was so concerned about the father's influence on the child that he made interim orders not only providing that the child live with the mother, but that the father be assessed as to his psychiatric condition in order to assist His Honour in

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determining whether the child should have any contact at all with his father.

Interaction with other pro bono service providers

The Association's LARS staff work closely with staff administering the Law Society Pro Bono Scheme. Not only does the Law Society refer matters requesting a barrister's involvement, but also it is not uncommon for our scheme to ask for the Society's help in obtaining the services of a solicitor on behalf of applicants where legal merit has been established.

Community legal centres are a significant source of referrals to the scheme. LARS provided placements for the Public Interest Law Clearing House Summer & Winter School, where two students spent time at the Association's offices, going to court and meeting with barristers who have assisted the scheme. The Manager also spoke at the Summer & Winter Schools' seminars. The President of the Bar Association is the current President of PILCH.

Volunteers encouraged

In the February 2001 edition of *Bar Brief*, the President published an article exhorting members of the Bar to volunteer their services to the scheme. The results were pleasing.

The Legal Assistance Manager spoke to readers at the biannual Bar Practice Course; over half the Readers volunteered their services.

Barristers' Referral Service

The Barristers' Referral Service was designed to address the increasing number of requests to the Association for assistance in obtaining the services of a barrister. In the last twelve months, persons requesting information have been referred to the 'Find a barrister' database on the Association's web site, which received 30,000 visits during the financial year. An impending upgrade of the web site will allow an accurate determination of how many times 'Find a barrister', specifically, has been accessed.

Court appointed pro bono schemes

At the request of the Chief Judge of the District Court, the Association has established a list of barristers willing to assist in matters referred by the Court. A significant proportion of these requests seems to be due to the unavailability of legal aid. The request from the Court follows the success of the introduction of the Federal and Supreme courts' legal assistance schemes. Recently, the Association was approached by the Land & Environment Court with a request to cooperate in the preparation of protocols to establish a procedure for unrepresented litigants to receive assistance. The Federal Magistrates Service is considering the possible introduction of a similar scheme.

Incorporation of the scheme into the Legal HelpLine

The State Government's proposed Legal HelpLine is scheduled to begin operations in April 2002. The HelpLine is

intended to be a central telephone legal advice and assistance referral service. The Bar Association's LARS will be one of the service providers, together with the NSW Attorney General's Department, NSW Legal Aid Commission, the Law Society of New South Wales and community legal centres. New guidelines and protocols for the Association's involvement in the Legal HelpLine have been developed. Legal and administrative officers employed by the HelpLine will make appropriate referrals to the scheme after a detailed assessment of a client's problem.

It is anticipated that an increase in workload due to the scheme's involvement with the HelpLine will be managed with the aid of changes to administration and work practices. These changes were the result of a detailed review conducted during the year by a management consultant.

Mediation Committee

The Mediation Committee is responsible for aspects of mediation of interest and importance to the Bar. The Arbitration Committee deals with arbitration and early neutral evaluation.

The Mediation Committee's objectives for 2001

The Committee's objectives for 2000-2001 included:

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

The Supreme Court issued *Practice Note 118* in February 2001, which describes in outline how the Court will administer its new power to refer proceedings to mediation whether or not the parties consent to mediation. As a result, the Committee added to its objectives:

- observing compulsory mediation under *Practice Note 118*; and
- making constructive suggestions to the Court on the implementation of *Practice Note 118* and on the methods to be used by registrars in considering whether to refer proceedings to mediation.

The education of the Bar as counsel representing parties at mediation and the education of the Bar as mediators

The Committee spawned the Mediation Forum, chaired by Steven Rares S.C. and with Hugh Stowe as its secretary. The Mediation Forum had a successful first meeting on 5

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June 2001 and at year end was planning its first function - a distinguished panel discussion followed by dinner.

At year end, the Committee was planning to provide a continuing legal education segment on how to represent clients at mediation, and an article for *Bar News* on the same subject.

After considering tenders from several teaching organisations, the Committee decided that it would invite Bond University's Dispute Resolution Centre, for the first time, to present a highly-regarded two-day intensive course on how to represent clients at mediation. The Bar Association offered the course to barristers at a much lower price than would a commercial organisation. The course was offered in February but had to be cancelled for lack of interest. Regrettably, the same thing happened when the course was again offered in May. The course has been put on hold indefinitely as a result.

Over the years, the Bar has responded enthusiastically when offered training in how to be a mediator. The Mediation Committee welcomes suggestions on what would appeal to the Bar as training in how to represent clients at mediation. As members would be aware, such training can only enhance their all-round skills in advocacy and their ability to represent clients in all fora.

The likely advent of compulsory continuing legal education may enhance the attractiveness to barristers of high-quality training in how to represent clients at mediation.

Nomination to Bar Council of barristers for the Bar's panel of mediators

The Bar's criteria for selecting barristers for the Bar Association's panel of mediators require training and experience at mediation, and compliance with the Supreme Court's *Practice Note No. 102*. The panel is recommended to the Supreme Court and the District Court as part of their lists of mediators, and is intended to be used when those courts order that a matter be referred to mediation. It is not clear whether the lists are, in fact, used very much.

The amount of work required, both of Bar Association staff and of Mediation Committee members, in soliciting, processing and considering applications for the panel continues to be a matter of concern to the Committee.

Following a meeting in April 2001 between members of the Supreme Court's ADR Steering Committee and representatives of the Bar Association and the Law Society, a draft protocol for the appointment of mediators by the Court (largely drafted by the Mediation Committee) was approved by Bar Council and by the Council of the Law Society after year end.

The draft protocol will now be jointly proposed to the Court. If the Court adopts the protocol, it will dispense with its existing (long) list of mediators and, instead, when referring proceedings to mediation, will refer the selection of the mediator alternately to the President of the Bar Association and

to the President of the Law Society. After year end, Bar Council authorised the President to propose the same arrangement to the Chief Judge of the District Court.

Liaison with, and development of good relations with, the Law Society

The Law Society has had a Dispute Resolution Committee since 1986. The Committee adopted this objective believing there to be potential for mutual benefit resulting from cooperation between the two committees and joint activities. The informal contacts that were made last year have been strengthened by the process of drafting the joint protocol for the appointment of mediators to be proposed to the Supreme Court.

Work to be done

Little has been achieved in the promotion of barristers as mediators and as counsel for parties at mediation. The Mediation Committee is of the view that, before efforts in this area can be effective, more barristers need to be trained in mediation skills.

Professional Conduct

In the financial year ended 30 June 2001 a total of 69 investigation files were opened, not including files opened in respect of notifications made by barristers pursuant to regulations 69D and 69E of the Legal Profession (Notification) Regulation 2001.

Of those 69, 55 complaints were forwarded by the Legal Services Commissioner to Bar Council for investigation (including two complaints made by the Commissioner himself). Fourteen complaints were made by Bar Council pursuant to s134(2) of the *Legal Profession Act 1987*. These figures compare with 65 complaints referred by the Commissioner in the previous year and three complaints made by Bar Council in the same period. Overall, the number of matters requiring investigation (excluding notifications) has remained at the same level as the previous two financial years.

Four professional conduct committees met either fortnightly or monthly throughout the year. A fifth professional conduct committee was formed by the President in February 2001, to report on notifications made pursuant to the Legal Profession (Notification) Regulation 2000 which was gazetted on 9 March 2001. A breakdown of notifications made and a report on disposal of most of those matters is the subject of a separate report (see report of PCC#5 which follows).

Major issues.

1 NSW Law Reform Commission Review.

In March 2000 the then Attorney-General, The Hon Jeff Shaw QC MLC, made a referral to the New South Wales Law Reform Commission in the following terms:

The Law Reform Commission is to review the procedures for

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dealing with complaints against legal practitioners under Part 10 of the *Legal Profession Act 1987*, taking into account recent case law on the operation of Part 10 and the practical experience of the operation of the statutory provisions.

In May 2000 the Council forwarded its submissions of issues for consideration in the context of the Commission's review. In October 2000 the Commission released its issues paper. The Bar provided its comments on the issues paper in December 2000, as did the Legal Services Commissioner and the Law Society of New South Wales. The Commission is yet to release its report on the referral. The Bar Association expects to make further submissions once that report is made public and to be involved in drafting any legislative changes proposed to the operation of Part 10 as a result.

The Bar Association's main submissions to the Law Reform Commission were:

- 1 There should be an endeavour to ensure that there is a just, quick and cheap disposal of proceedings against legal practitioners.
- 2 The Association supported a regulatory scheme (representing a modification of the present scheme of the *Legal Profession Act 1987*) in which:
 - (a) the complex and time-consuming procedural requirements required by recent court decisions would be modified to the maximum extent possible, consistent with a legal practitioner against whom a complaint has been made being made aware of the details of the complaint and having an opportunity to respond to the complaint.
 - (b) the Legal Services Commissioner, the Association and the Law Society of New South Wales jointly and severally maintain their oversight of the legal profession, subject to the Supreme Court continuing to exercise jurisdiction over them and the profession generally.
 - (c) the Legal Services Commissioner would have prime responsibility for dealing with consumer disputes and monitoring of the Association and the Law Society in the performance of their disciplinary functions.
 - (d) each of the Commissioner, the Association and the Society would be empowered to commence and maintain disciplinary proceedings in the Administrative Decisions Tribunal (or another statutory Tribunal exercising similar jurisdiction) and the Supreme Court.
 - (e) jurisdictional impediments to an exercise of disciplinary jurisdiction by the Tribunal would be kept to a minimum, and the Tribunal would be empowered to give such directions as may be necessary or desirable to ensure that all allegations of misconduct, or unfitness to practise, could be heard and determined on their merits.
 - (f) appeals from decisions of the Tribunal would be to the Supreme Court, and governed by s75A of the

Supreme Court Act 1970 (which governs appeals to the Court generally), without an intermediate appeal to an Appeal Panel of the Tribunal.

(g) the investigative powers of the Association would be strengthened to conform to the investigative powers available to the Society.

(h) the regulatory powers of the Association and the Society with regard to the issue of practising certificates would be strengthened and made more flexible (subject to a *de novo* appeal to the Supreme Court as presently provided for by s38B of the *Legal Profession Act 1987* or some modification of that section).

2 Introduction of the Legal Profession (Notification) Regulation 2001

The Legal Profession (Notification) Regulation 2001 gazetted on 9 March 2001 provided that barristers were obliged to notify Bar Council if the barrister became bankrupt, the subject of a bankruptcy petition, applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with creditors, or made an assignment of remuneration for the benefit of creditors. In addition, a barrister became obliged to notify the Bar Council if he or she had been found guilty of any offence (other than certain specified traffic and parking fines).

In the case of bankruptcy (and related acts), the barrister is also obliged to provide a statement as to why, despite the incident the subject of the notification, he or she is a fit and proper person to hold a practicing certificate as a barrister. Notifications are dealt with in greater detail in the report of PCC#5 which follows.

Ethical advice to members

The Bar Council does not provide 'rulings' or legal advice to members. However, senior members of the Association's conduct committees provide ethical advice and guidance to members. Members who require advice should contact a silk on a conduct committee. After the advice is given the member should, if they wish a record of that advice to be kept, record back to the silk the facts and circumstances which led to the giving of the advice and the advice which was given, with a copy to the Professional Affairs Director. Staff of the Professional Conduct Department are able to provide the names and telephone numbers of senior members of committees able to give ethical advice and guidance.

Promotion of ethical conduct

Bar Council and the conduct committees have continued to promote conduct issues of concern in *Bar Brief*. The committees are often able to identify an area of particular concern in the course of investigating complaints. Members of the conduct committees also serve on the Education Committee. Many of the Ethics Exam questions which

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entrants to the Readers Course face have been written by conduct committee members.

Responding to complaints

Barristers are likely to be obliged, under the terms of their professional indemnity policy, to notify their insurer on receipt of a complaint about them. Some insurers refer the barrister to their solicitors for advice/reply. The policy of the Bar Council is to require the barrister to sign, personally, all replies. Where a need for an extension of time can be demonstrated, the extension will be given but barristers are expected to give priority to responding to complaints made against them.

The following are recommended reading for any barrister who receives a complaint against them:

- *Conduct of complaints against barristers*, by Jeremy Gormly, republished in the February 1998 edition of *Stop Press*. A copy is available in the Bar Library and from Professional Affairs Department staff.
- *Disciplinary proceedings affecting barristers*, by Bob Stitt QC and Geoff Lindsay S.C. The paper is available from the Bar Association's web site and from the Education Department. A copy is held in the Bar Library.

Decisions involving barristers:

The following court and tribunal decisions involving barristers have been handed down in the reporting period. Summaries of the decisions are available on the Association's web site under the heading 'Outline of disciplinary and related decisions'. If the full text of the decision is available on another web site the Association's record is linked to that site. The Association's web site also contains other important decisions which have been handed down, some of which involve solicitors (*vide Barwick v Law Society of New South Wales & Ors* (2000) 169 ARL 236; *Murray v Legal Services Commissioner* (1999) NSWLR 224 and *Carson v Legal Services Commissioner and Legal Services Tribunal* [2000] NSW 64).

1 *Bar Association v Henry di Suvero*

In last year's annual report there was a report on the outcome of proceedings before the Tribunal involving the barrister. The Tribunal found that the following matters would be regarded as unsatisfactory professional conduct on the part of the barrister:

- the making of unsubstantiated allegations of dishonesty against another legal practitioner;
- the making of insults directed to another practitioner or the judge;
- unsubstantiated allegations of bias on the part of the judge;
- the unjustified attribution of bad motives to another legal practitioner in the conduct of a trial; and
- conduct which aims, without justification, to procure a discharge of a jury.

As also reported last year, the barrister appealed the

Tribunal's decision. On 29 March 2001 the Appeal Panel (comprising Judge O'Connor, Officer QC and Ms Geddes) handed down its decision, dismissing the barrister's appeal.

The Tribunal found that no error of law was revealed by any of the matters in the barrister's grounds of appeal. A full copy of the Appeal Panel's judgment may be obtained via the Association's web site at www.nswbar.asn.au.

2 *Prothonotary of the Supreme Court of NSW v*

Paul Matthew Darveniza

The NSW Court of Appeal (comprising Sheller JA, Powell JA and Hodgson CJ in Equity) handed down judgment in this matter on 27 April 2001.

The Prothonotary (claimant) sought declarations that the barrister was not a person of good fame and character, and not a fit and proper person to remain on the Roll of Legal Practitioners. The claimant also sought orders that the barrister be removed from the roll, and be required to pay the claimant's costs.

The barrister, a former member of the Queensland Police Force was admitted to practice as a barrister in Queensland on 10 April 1995.

In 1998 the barrister had been convicted on 2 drug supply charges. The first charge was that on 26 January 1997 at the Gold Coast, he supplied a dangerous drug, namely methyl dioxide methylamphetamine. The second was that on 27 December 1996 he supplied a dangerous drug, namely methylamphetamine, to the same individual. On 7 October 1998 the magistrate found the barrister guilty on each charge, and fined him \$1000 in respect of each matter. However, the magistrate determined not to record convictions against the barrister.

The barrister's appeal against the finding of guilt and sentence and a cross appeal against the adequacy of the sentence were both dismissed by Judge Healy QC on 26 March 1999.

The Queensland Barristers' Board applied to have the barrister removed from the Roll of Barristers in Queensland. The matter was heard before the Queensland Court of Appeal (comprising McMurdo P, Thomas JA and White J) in June 2000. Thomas JA gave the principal judgment with which the other members of the Court agreed. The Queensland Court of Appeal ordered that the barrister's name be removed from the Roll of Barristers in Queensland. The Court also found that the barrister had sworn a false affidavit in the Court of Appeal proceedings.

In November 1999 the barrister applied to the NSW Bar Association for the issue of a practising certificate under the *Legal Profession Act 1987* (NSW). The application

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consisted of a form and statutory declaration in which the barrister on 10 November 1999 solemnly and sincerely declared that the information and particulars set forth in the application for a practising certificate were true in substance and in fact and made 'this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1900*'. Included in the NSW Bar Association's application form was the following question:

Are you aware of any facts or circumstances which might give rise to a complaint or disciplinary proceedings against you or which might influence or affect your good fame and character or your fitness to remain a legal practitioner?

To this question the barrister answered:

No.

The barrister furnished to the Bar Association a letter dated 1 November 1999 from the Chief Executive of the Bar Association of Queensland confirming that according to the Association's records no complaint had been made to the Association about the barrister and no order had been made directing his suspension from practice in Queensland nor had any proceedings been instituted to strike his name from the Roll of Barristers. The letter went on to say that the Association knew of no facts concerning the barrister which should be disclosed to the Bar Association or to the Court on the hearing of his application for admission in New South Wales.

On 17 November 1999 the Executive Director of the New South Wales Bar Association issued a practising certificate in accordance with s32 of the Legal Profession Act entitling the barrister to practise as a barrister until 30 June 2000.

The Court found that the nature and outcome of the criminal proceedings in Queensland made the barrister's answer to the questions in the application form to the NSW Bar Association insupportable and almost certainly false. As the Prothonotary submitted, no legal practitioner, acting reasonably, could fail to regard the criminal proceedings as germane to the determination of his good fame and character and his fitness to remain a legal practitioner.

Sheller JA quoting the reasons for judgment of Thomas JA, referred to the fundamental rule that a barrister does not lie to a judge who relies on that barrister for information.

At best his negative answer to the NSW Bar Association on his application for a practising certificate revealed a lack of professional standards and at worst a deliberate false statement in statutory declarations.

and

For my part I would not accept [the barrister's] statement that he had an honest and reasonable belief that the circumstances surrounding the finding of guilt by Dowse SM did not and would not have given rise to a question concerning his fitness to practise. If this was his belief it demonstrates a basic failure to appreciate the basic failure to appreciate the standard of behaviour required of a legal practitioner.

The court ordered that the barrister's name be removed from the Roll of Legal Practitioners in NSW.

Miscellaneous matters

The Council also provided advice to the Legal Services Commissioner in one matter. The Commissioner requested the Council to consider whether assertions by (another) barrister, or inferences, relating to possible offences under the *Crimes Act 1900* by the barrister the subject of the complaint could, in the Council's opinion, amount to either unsatisfactory professional conduct or professional misconduct. The complaint arose out of a dispute about unpaid floor fees, and associated expenses. The Bar Council advised the Commissioner that there was insufficient evidence to satisfy the elements of the particular offence alleged under the Crimes Act. It should be noted that the conduct the subject of the complaint was not a failure to pay floor fees but the conduct of sending a threatening letter. The barrister had not been charged with or convicted of the particular offence and was unlikely ever to be charged.

The Council has reminded members on many occasions of the need for barristers to be scrupulous in their dealings with others and in their conduct outside the practise of law. This has been reinforced by the recent legislation regarding notification of acts of bankruptcy, tax offences and indictable offences.

Similarly, barristers should be cautious of using their letterhead as a barrister, in matters unconnected with their practise as a barrister.

The conduct committees have made recommendations to Bar Council in respect of a number of applications for readmission. When reapplying, applicants must serve their application on both the Bar Association and the Law Society of New South Wales, either of whom can object. The Legal Practitioners Admission Board determines applications for readmission. Pursuant to s13A of the *Legal Profession Act, 1987* the Board has power to refer to the Supreme Court any application for admission if, in the opinion of the Board, it would be more practical in the circumstances of the case for the Supreme Court to consider whether or not the candidate is of good fame and character or is otherwise suitable for admission. If one or more of the professional bodies opposes an application and the applicant seeks to maintain their application the Board

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commonly, but not always, refers the matter to the Supreme Court. In such circumstances the objecting Council is joined as a party in the proceedings.

The Bar Council sometimes receives information or a judgment which, on its face, tends to show conduct which justifies the making of a complaint by the Council pursuant to s134(2) of the Act, about either unsatisfactory professional conduct or professional misconduct. Usually the Council or Executive will ask a conduct committee to examine the matter on a preliminary basis. Sometimes, a barrister will be asked to proffer an explanation before the Council makes a decision about whether to make a complaint.

Performance criteria

Section 171MB of the Act provided for the development of performance criteria by Bar Council related to the handling of complaints. The criteria must be included in the Council's annual report, together with an assessment of the Council's performance against the criteria (see tables which follow).

1 July 1999 to 30 June 2001

Table 1: Number of complaints received by complaint type, compared to previous year

	Year	No	Yr Total Complaints	%
Acting Contrary to/Failure to Carry Out Instructions	2000/2001	4	69	5.80%
	1999/2000	3	68	4.41%
Acting Without Instructions	2000/2001	1	69	1.45%
	1999/2000	0		
Breach costs disclosure provisions Part 11 LPA	2000/2001	0		
	1999/2000	0		
Breach of Confidentiality	2000/2001	0		
	1999/2000	1	68	1.47%
Breach of s152 of the LPA	2000/2001	1	69	1.45%
	1999/2000	2	68	2.94%
Breach of undertaking	2000/2001	1	69	1.45%
	1999/2000	1	68	1.47%
Breached Bar Rule 35 (Clyne case)	2000/2001	2	69	2.90%
	1999/2000	2	68	2.94%
Breached Bar Rule 54 (communicating with another client)	2000/2001	0		
	1999/2000	0		
Breached Bar Rule 74/75 (Barrister's work)	2000/2001	1	69	1.45%
	1999/2000	4	68	5.88%
Breached Bar Rule 80 (direct access)	2000/2001	0		
	1999/2000	0		
Breached Bar Rule 98 (passed brief late)	2000/2001	0		
	1999/2000	0		
Breached Bar Rule - other	2000/2001	0		
	1999/2000	0		
Conflict of Interest	2000/2001	1	69	1.45%
	1999/2000	1	68	1.47%
Conspiracy to Pervert Course of Justice	2000/2001	0		
	1999/2000	0		
Delay/Failure to Provide Chamber Work	2000/2001	1	69	1.45%
	1999/2000	0		
Disinterest	2000/2001	0		
	1999/2000	0		
Failure to Account	2000/2001	2	69	2.90%
	1999/2000	0	68	
Failure to Adduce Available Evidence	2000/2001	4	69	5.80%
	1999/2000	0		
Failure to Advise Properly or at all	2000/2001	2	69	2.90%
	1999/2000	1	68	1.47%
Failure to Appear	2000/2001	2	69	2.90%
	1999/2000	5	68	7.35%

	Year	No	Yr Total Complaints	%
Failure to Communicate	2000/2001	1	69	1.45%
	1999/2000	0		
Failure to Comply with Bar Council's/LSC Directions	2000/2001	0		
	1999/2000	0		
Failure to Conduct a Fair Hearing	2000/2001	2	69	2.90%
	1999/2000	0		
Failure to cross examine competently	2000/2001	1	69	1.45%
	1999/2000	0		
Failure to explain terms of settlement (properly or at all)	2000/2001	1	69	1.45%
	1999/2000	0		
Failure to Prepare Competently (read & understand brief)	2000/2001	2	69	2.90%
	1999/2000	2	68	2.94%
Failure to Transfer/Return Documents/Property	2000/2001	0		
	1999/2000	1	68	1.47%
Failure to Use Interpreter	2000/2001	0		
	1999/2000	0		
False Swearing	2000/2001	0		
	1999/2000	1	68	1.47%
Forgery	2000/2001	0		
	1999/2000	0		
Inadequate/poor advice re settlement	2000/2001	0		
	1999/2000	0		
Incompetence in and out of court	2000/2001	1	69	1.45%
	1999/2000	2	68	2.94%
Incompetence (in court)	2000/2001	2	69	2.90%
	1999/2000	3	68	4.41%
Incompetence (outside court eg. advice)	2000/2001	2	69	2.90%
	1999/2000	0		
Intoxicated when appearing or seeking to appear	2000/2001	0		
	1999/2000	1	68	1.47%
Misleading Conduct/dishonesty	2000/2001	7	69	10.14%
	1999/2000	15	68	22.06%
Obstruct/Delay Proceedings	2000/2001	2	69	2.90%
	1999/2000	0		
Other Unethical Conduct	2000/2001	4	69	5.80%
	1999/2000	7	68	10.29%
Otherwise Negligent	2000/2001	0		
	1999/2000	1	68	1.47%
Over Zealous cross-examination (harranging a witness)	2000/2001	2	69	2.90%
	1999/2000	1	68	1.47%
Overcharging/Overservicing	2000/2001	1	69	1.45%
	1999/2000	3	68	4.41%
Personal Conduct	2000/2001	7	69	10.14%
	1999/2000	5	68	7.35%
Practising without a pc	2000/2001	5	69	7.25%
	1999/2000	0		
Pressure to Change Plea/ Plead Guilty	2000/2001	2	69	2.90%
	1999/2000	0		
Pressure to Settle	2000/2001	1	69	1.45%
	1999/2000	3	68	4.41%
Rudeness/Discourtesy	2000/2001	1	69	1.45%
	1999/2000	3	68	4.41%

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1 July 1999 to 30 June 2001

Table 2: Number of complaints received by complainant type, compared to previous year

	Year	No	Yr Total Complaints	%
Attorney General	2000/2001	0		
	1999/2000	0		
Bar Council	2000/2001	14	69	20.29%
	1999/2000	3	68	4.41%
Barrister	2000/2001	3	69	4.35%
	1999/2000	5	68	7.35%
Client/Former Client	2000/2001	28	69	40.58%
	1999/2000	21	68	30.88%
Government Department/Statutory Law body	2000/2001	1	69	1.45%
	1999/2000	1	68	1.47%
Instructing Solicitor	2000/2001	2	69	2.90%
	1999/2000	1	68	1.47%
Judge/Magistrate	2000/2001	1	69	1.45%
	1999/2000	1	68	1.47%
Judicial/Quasi Judicial Officer	2000/2001	0		
	1999/2000	0		
Juror	2000/2001	0		
	1999/2000	0		
Law Society	2000/2001	0		
	1999/2000	0		
Legal representative on behalf of another	2000/2001	0		
	1999/2000	0		
Legal Services Commissioner	2000/2001	2	69	2.90%
	1999/2000	4	68	5.88%
Member of Parliament	2000/2001	0		
	1999/2000	0		
Opposing Client	2000/2001	6	69	8.70%
	1999/2000	10	68	14.71%
Opposing Solicitor	2000/2001	8	69	11.59%
	1999/2000	12	68	17.65%
Other	2000/2001	2	69	2.90%
	1999/2000	7	68	10.29%
Police	2000/2001	0		
	1999/2000	2	68	2.94%
Relative/Friend	2000/2001	0		
	1999/2000	1	68	1.47%
Witness	2000/2001	2	69	2.90%
	1999/2000	0		

1 July 1999 to 30 June 2001

Table 3: Number of complaints received by jurisdiction, compared to previous year

	Year	No	Yr Total Complaints	%
Appeal	2000/2001	2	69	2.90%
	1999/2000	0		
AVO/ADVO	2000/2001	3	69	4.35%
	1999/2000	3	68	4.41%
Bankruptcy	2000/2001	1	69	1.45%
	1999/2000	0		
Children's Court	2000/2001	1	69	1.45%
	1999/2000	1	68	1.47%
Civil Arbitration	2000/2001	1	69	1.45%
	1999/2000	1	68	1.47%
Civil Litigation - Other	2000/2001	9	69	13.04%
	1999/2000	17	68	25.00%
Civil Litigation - Personal Injury	2000/2001	5	69	7.25%
	1999/2000	2	68	2.94%
Costs Assessment	2000/2001	0		
	1999/2000	1	68	1.47%
Criminal	2000/2001	13	69	18.84%
	1999/2000	15	68	22.06%
Equity/Commercial/Contract	2000/2001	8	69	11.59%
	1999/2000	6	68	8.82%
Family Law	2000/2001	5	69	7.25%
	1999/2000	8	68	11.76%
Immigration/Federal Court - other	2000/2001	1	69	1.45%
	1999/2000	1	68	1.47%
Industrial	2000/2001	2	69	2.90%
	1999/2000	2	68	2.94%
Land & Environment	2000/2001	1	69	1.45%
	1999/2000	2	68	2.94%
Other	2000/2001	9	69	13.04%
	1999/2000	4	68	5.88%
Personal Conduct	2000/2001	5	69	7.25%
	1999/2000	1	68	1.47%
Probate/Family Provision/ De Facto Relationships	2000/2001	1	69	1.45%
	1999/2000	2	68	2.94%
Victim's Compensation	2000/2001	0		
	1999/2000	0		
Worker's Compensation	2000/2001	1	69	1.45%
	1999/2000	2	68	2.94%

1 July 1999 to 30 June 2001

Table 4: Number of complaints received broken down by years in practice, compared to previous year

	% of each category in practice at NSW Bar	Year	No	%
Silks	12.50%	2000/2001	6	8.70%
	12.00%	1999/2000	4	5.88%
10 years & up to silk	41.20%	2000/2001	30	43.48%
	38.20%	1999/2000	33	48.53%
7 - 10 years in practice	12.80%	2000/2001	13	18.84%
	12.20%	1999/2000	14	20.59%
5 - 7 years in practice	6.40%	2000/2001	6	8.70%
	6.80%	1999/2000	8	11.76%
1 - 5 years in practice	21.20%	2000/2001	7	10.14%
	24.40%	1999/2000	4	5.88%
Less than 1 year in practice	5.90%	2000/2001	3	4.35%
	6.40%	1999/2000	3	4.41%
Non - practising		2000/2001	4	5.80%
		1999/2000	2	2.94%
TOTAL		2000/2001	69	
		1999/2000	68	

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Table 5: Number and percentage of matters commenced in the period and currently under investigation which have been open for

	Year	No	Total	%
1 - Less than 6 months	2000/2001	25	35	71.43%
	1999/2000	28	39	71.79%
2 - Between 6 and 9 months	2000/2001	4	35	11.43%
	1999/2000	8	39	20.51%
3 - Between 9 and 12 months	2000/2001	6	35	17.14%
	1999/2000	3	39	7.69%

1 July 1999 to 30 June 2001

Table 6: Outcome (by result) of investigations commenced in the period, compared to the previous year

	Year	No	Total	%
Complaint under Investigation	2000/2001	36	69	52.17%
	1999/2000	39	68	60.29%
Discontinued	2000/2001	2	69	2.90%
	1999/2000	0	68	
s155(2): refer to Tribunal - professional misconduct	2000/2001	4	69	5.80%
	1999/2000	0	68	
s155(2): refer to Tribunal - unsatisfactory professional conduct/prof misconduct	2000/2001	2	69	2.90%
	1999/2000	1	68	1.47%
s155(3)(a): - reprimand - unsatisfactory professional conduct	2000/2001	1	69	1.45%
	1999/2000	2	68	2.94%
s155(3): dismiss - unsatisfactory professional conduct but otherwise competent and diligent	2000/2001	0	69	
	1999/2000	2	68	2.94%
s155(4): dismiss	2000/2001	19	69	27.54%
	1999/2000	23	68	33.82%
s37: cancel practising certificate	2000/2001	1	69	1.45%
	1999/2000	0	68	
Withdrawn	2000/2001	4	69	5.80%
	1999/2000	1	68	1.47%

1 July 1999 to 30 June 2001

Table 7: Outcomes (by result) completed in the period i.e. matters the subject of a final Bar Council resolution in the period

	Year	No	Total	%
Discontinued	2000/2001	3	84	3.57
	1999/2000	1	56	1.79
No proceeded with by complainant	2000/2001	0		
	1999/2000	1	56	1.79
Resolved (Mediation)	2000/2001	0		
	1999/2000	1	56	1.79
S139(1)(a) - Dismiss	2000/2001	1	84	1.19
	1999/2000	0		
S155(2) Refer to Tribunal - professional misconduct	2000/2001	7	84	8.33
	1999/2000	2	56	3.57
S155(2) Refer to Tribunal - unsatisfactory professional conduct	2000/2001	2	84	2.38
	1999/2000	0		
S155(2) Refer to Tribunal - Unsatisfactory professional conduct / professional misconduct	2000/2001	13	84	15.48
	1999/2000	3	56	5.36
S155(3)(a) Reprimand - unsatisfactory professional conduct	2000/2001	11	84	13.10
	1999/2000	7	56	12.5
S155(3)(b) Dismiss - unsatisfactory professional conduct but otherwise competent and diligent	2000/2001	1	84	1.19
	1999/2000	1	56	1.79
S155(4) Dismiss	2000/2001	41	84	48.81
	1999/2000	37	56	66.07
S37(1)(a) & (f) - cancel practising certificate	2000/2001	1	84	1.19
	1999/2000	0		
Withdrawn	2000/2001	4	84	4.76
	1999/2000	3	56	5.36

The figures in Table 5 reflect an increase in the time it takes for Bar Council to make a determination under s155 of the Act, by reason of the need to afford procedural fairness in complaints in respect of which the investigating conduct committee proposes to make a recommendation to Bar Council which is adverse to the barrister. The effect of the decision of the NSW Court of Appeal in *Murray v Legal Services Commissioner* is that the Council must, before it makes a decision under s155, afford the barrister the right to make submissions in respect of whether his or her conduct would amount to unsatisfactory professional conduct or professional misconduct and, if yes, which of the options available to the Council under s155 (if any) it should consider exercising. While, for example, the Council has no option but to refer a complaint involving professional misconduct to the Tribunal for hearing and determination, the barrister may seek to argue that his or her conduct (while admitted) does not amount to professional misconduct, but rather amounts to unsatisfactory professional conduct and that, for example, he or she should be reprimanded rather than be referred to the Tribunal.

A necessary consequence of receiving 'Murray submissions' from the barrister is the need to also give consideration to whether new factual material has been provided in respect of which the complainant must be afforded the opportunity to respond. The effect on a claim for compensation (if arising) must also be considered.

Therefore, the time it takes the Council to deal with a small proportion of complaints it investigates has increased. The Council made submissions to the NSW Law Reform Commission in relation to this matter.

The figures in Table 7 reflect the fact that the Council was required, as a consequence of the decision of the Court of Appeal in *Murray v Legal Services Commissioner*, to rescind (in March 2000) decisions it had earlier made under s155(2) to refer various matters to the Tribunal for hearing and determination, to enable 'Murray submissions' to be invited from the barristers affected.

A total of 15 matters were so affected. All but one of those 15 matters was the subject of a decision by Bar Council under s155 in the year 2000/2001.

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Professional Conduct Committee #1

Many thanks to the community members, Kate Nacard and Susanne Weress. Their contributions to the work of the committee are greatly valued. They take very seriously their role as community representatives and serve those interests well. Thanks also to academic member Dr Christine Parker, from the University of New South Wales.

For the period of 1 July 2000 to 30 June 2001, 18 new matters were assigned to the Committee for investigation. The committee had fifteen matters outstanding from previous years.

The 18 matters allocated were dealt with as follows:

- Five complaints were dismissed pursuant to s155(4) of the Act (no reasonable likelihood of a finding of unsatisfactory professional conduct or professional misconduct).
- Two complaints were withdrawn.
- Eleven matters remain under investigation at the date of writing this report.

In respect of the five complaints dismissed, no complainant has exercised the right to have the decision reviewed by the Legal Services Commissioner.

A number of matters continued to be investigated from the previous year and became the subject of a determination by Bar Council this year. In one such matter the barrister was reprimanded by the President, because although he had given more than adequate advice to a client and solicitor, he then failed to continue to prepare the work for court and the matter was in danger of becoming time barred. When the instructing solicitor requested the barrister return the brief or provide the advice, the barrister did not communicate with the solicitor or the client and did nothing further in the matter. When a complaint was made to the Legal Services Commissioner the barrister failed to respond to the Commissioner who finally issued a notice pursuant to s152 of the *Legal Profession Act 1987* requiring the barrister to respond. Again, the barrister failed to respond. After the Bar Council commenced its investigation the barrister returned the brief and apologised to the client and solicitor who then, being satisfied, sought no further action. However, the Bar Council formed the view that the barrister had been guilty of unsatisfactory professional conduct and the barrister was asked to consent to a reprimand, which he did.

In another matter the same barrister conducted a matter in court successfully and prepared a hand written settlement agreement for the solicitor and client but then failed to have the document engrossed, signed or filed in court. Eventually the barrister was asked to return the brief, which he failed to do. Bar Council found that the barrister might be found guilty by the Tribunal of either unsatisfactory professional conduct or professional misconduct. The matter has been referred to the Tribunal. The same barrister, when the

complaint was made initially to the Legal Services Commissioner, failed to respond to a s152 Notice compelling the barrister to respond and provide a statutory declaration. The barrister failed to respond in any form to the Legal Services Commissioner and when the Legal Services Commissioner referred the complaint to the Bar Association the barrister then too failed to respond to the Association's questions and s152 Notice. The matter has been referred to the Tribunal on the basis the Tribunal would find the barrister guilty of either unsatisfactory professional conduct or professional misconduct in respect of his failures to respond.

Another complaint the Committee dealt with involved a matter in which a barrister accepted a direct access brief (in attempting to keep the client's costs down) but failed to appear in court. In this case the barrister responded that he was not aware that the matter was listed in court and that if he had been aware he would have informed the client he could not attend on the day. It is often difficult when a solicitor is not present for a barrister to find a witness to the fact that he or she informed a client that he or she could not appear on a certain date or that the client informed the barrister when exactly the barrister was required to appear in court. When undertaking direct access work it is best practice to commit to writing any instructions to the client and confirm the content of any oral communication. In this case the barrister consented to be reprimanded.

Professional Conduct Committee #2

The committee would like to express its gratitude to its community member, John Blount, whose contribution to the work of the committee over the years has been most valuable. So too has been the contribution of Professor David Barker, Dean of the Faculty of Law, University of Technology. The Committee has welcomed two new community members this year, Anna Fader and Matthew Smith, who have already been of great assistance to the work of the Committee.

For the period 1 July 2000 to 30 June 2001 19 new matters were assigned to the Committee of investigation, including one complaint made by the Legal Services Commissioner and five by Bar Council. Seventeen complaints were referred to the Committee in the previous year. Eight complaints remained under investigation from the previous year.

Matters carried forward from the previous year were also dealt with by Council in the current financial year. Some of those matters are also worthy of report (see below).

The 19 new matters assigned to the Committee were dealt with as follows:

- Five were dismissed pursuant to s155(4) of the Act (no

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reasonable likelihood of a finding of unsatisfactory professional conduct or professional misconduct).

- Three matters have been referred to the Tribunal on the basis the Council is satisfied the barristers would be found guilty by the Tribunal of professional misconduct.
- Eight matters remain under investigation at the date of writing this report (including one matter which has been referred back to the Legal Services Commissioner for investigation).
- One matter resulted in the barrister consenting to be reprimanded pursuant to s155(3)(a), on the basis that the Council is satisfied he would found guilty by the Tribunal of unsatisfactory professional conduct.
- One matter resulted in the cancellation of a practising certificate pursuant to s37(1)(a) and 37(1)(f) of the Act.
- One investigation (consequent on a Bar Council complaint) was discontinued.

A number of matters continued to be investigated from previous years and became the subject of determinations by Bar Council this year. One such matter, involving a complaint that the barrister overcharged and was incompetent in that the barrister failed to prepare the client's case adequately for hearing, was originally referred to the Tribunal. Thereafter, the Bar Council rescinded its decision to refer the matter to the Tribunal to enable submissions to be made by the barrister as to whether his conduct would amount to unsatisfactory professional conduct and, if yes, what penalty should follow (vide *Murray v Legal Services Commissioner*). After submissions were received from the barrister's solicitors, the complainant agreed to the Council conducting a mediation with an independent mediator. At the mediation it became clear that although many barristers may have done the same job and achieved the same result with less work and expense, the barrister had advised the complainant that his case had very little merit and was unlikely to succeed. Minds could reasonably differ about whether the quantity of the work was reasonably needed, and as to its quality. Expert costs consultants were consulted by both sides and gave different opinions about the reasonableness of the fees charged. The complainant, like many clients, sincerely believed that his case had merit. When he was not successful in court he blamed his legal advisors, particularly his barrister. Following the mediation the complaint against the barrister was dismissed. Nevertheless, the barrister could have saved himself anguish and legal costs if he had advised his client in no uncertain terms at the first or second conference, and provided written advice, that the client's case had very little merit and was unlikely to succeed.

Another complaint referred from previous years but dealt with to finality this year involved an allegation that a barrister was negligent. The barrister, through lack of

knowledge, charged for victims' compensation tribunal work when prevented by statute from doing so, and failed to make a fee disclosure in accordance with the terms of Part 11 of the Legal Profession Act. Further, the barrister performed work which she was not entitled to perform under NSW Barristers' Rule 75. The barrister did this with goodwill but in ignorance of the rules. Bar Council resolved that the barrister would have been found guilty of unsatisfactory professional conduct by the Tribunal. The barrister consented to a reprimand pursuant to s155(3)(a) of the Legal Profession Act.

A number of complaints were made by Bar Council pursuant to s134(2) of the Legal Profession Act against barristers who failed to renew their practising certificate before 30 June 2000 but who nevertheless continued to practise without a practising certificate after 1 July 2000.

Practise as a barrister involves not only appearances in court or conducting conferences with clients and/or solicitors, but extends to writing letters on barrister letterhead, taking phone calls and giving oral or written advice as a barrister, or even writing to or informing a court that one cannot appear and proffering an excuse for that (e.g. sickness rather than the fact that the barrister does not have a current practising certificate). In one particular case of failure to renew a practising certificate, the barrister admitted to the Bar Council that he had been practicing. Like every other barrister he received more than adequate warning that completion and return of his practising certificate renewal form, payment of his practising certificate fee and insurance is required to be organised before 30 June each year. In this instance the barrister was reprimanded by the President, the Council being satisfied that he would have been found guilty by the Legal Services Division of the Administrative Decisions Tribunal of unsatisfactory professional conduct.

In another matter, it came to the attention of Bar Council that a former barrister had not renewed his practising certificate for the last four years yet had been practising as a barrister. The former barrister did not carry any professional indemnity insurance during that period. Upon investigation, the former barrister admitted his conduct. Bar Council resolved that the barrister would be likely to be found guilty of professional misconduct and the matter was referred to the Tribunal. Since the conduct is admitted, only the penalty remains to be determined by the Tribunal.

One barrister was referred to the Tribunal when a complaint was made that the barrister held money on trust for a client and then misappropriated that money. Although that particular matter is pending in the Tribunal the barrister's practising certificate had earlier been suspended, in reliance on the powers available to the Council under s37(1)(a) of the Act.

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A further complaint was made about the same barrister by Bar Council when it came to the Council's attention that, in applying for admission in Victoria, the barrister failed to disclose to the admitting authority the existence of the complaint referred to above. When confronted with the Bar Council's complaint, the barrister apparently attempted to conceal the date on which he had in fact made the statutory declaration in the other State.

A third complaint was made about the same barrister, again for misappropriating money allegedly held in trust for a client of the instructing solicitor. In this instance the barrister said that he was merely holding the money for a joint venture investment but again informed the client that he was a barrister and that he would hold the money in trust for the client. This matter is still pending in the Tribunal.

In the last 12 months three applications for re-admission as a legal practitioner were considered by the committee and recommendations made to the Council to either oppose or not oppose the readmission of the practitioner.

Two of the applications were made by the one applicant. Initially the applicant made an informal application which was opposed by Bar Council. He then later re-applied pursuant to s13 of the *Legal Profession Act 1987*. The applicant had previously been a solicitor who had been struck off the Roll of Solicitors (as it then was) in 1993 for having attempted to bribe a police prosecutor in the late 1980s, an offence for which he was convicted. The Bar Council opposed the application because of the gravity of the original offence and because the applicant had not been frank with the Court of Appeal or the Migration Agents' Registration Board. The applicant submitted to the Legal Practitioners Admission Board that his earlier conviction was a spent conviction. The Bar Council formed the opinion that it was not, but that, in any event, a court or tribunal should be able and entitled (if not obliged) to take earlier convictions into account in deciding whether the applicant is of good fame and character and a fit and proper person to be on the Roll of Legal Practitioners. Bar Council expects any applicant for admission (or readmission) as a legal practitioner to be frank, honest and showing complete integrity.

In the other application for re-admission which the Committee considered, the applicant had formerly been a solicitor and had dishonestly misappropriated monies from clients when a solicitor. In this instance the applicant was frank and honest with the Council but advised that he had not sought to repay to the Law Society's Fidelity Fund any of the monies paid out of the fund to compensate the clients from whom monies had been taken. Although the applicant was not in a position to repay all of the monies owed, he had made no attempt to repay any of the money. His application for readmission was also opposed by the Council.

Professional Conduct Committee #3

Dr Richard Klugman retired as a community member in December 2000. He gave outstanding service to the community in that role, having served in that capacity for eight years. He was well known for his probing and insightful questions. Helen Steptoe and Robert Nakhla joined the Committee as community members in February 2001.

Mr Les McCrimmon, the academic member from the University of Sydney, has also been an enthusiastic participant in the Committee's deliberations. The Committee is also greatly indebted to him.

In the period 1 July 2000 to 30 June 2001 the committee was allocated 19 new matters, up from the 13 matters it dealt with in the previous year. The 19 matters include one complaint by the Legal Services Commissioner and eight complaints made by Bar Council. The committee continued to investigate three matters initially referred in the previous year.

Of the 19 matters:

- five complaints were dismissed pursuant to s155(4) (ie no finding of unsatisfactory professional conduct or professional misconduct);
- one complaint (made by Bar Council) was discontinued;
- two matters were referred to the Tribunal (one on the basis the Council is satisfied the barrister would be found guilty by the Tribunal of professional misconduct and the other on the basis the Council is satisfied the barrister would be found guilty by the Tribunal of either unsatisfactory professional conduct or professional misconduct);
- two complaints were withdrawn; and
- nine complaints remain under investigation.

In respect of the five complaints dismissed, there have been no applications to the Legal Services Commissioner for a review of the Council's decision at the time of reporting.

The first matter which has been the subject of referral to the Tribunal involves the personal conduct of the barrister. The barrister had earlier been convicted of possession of a loaded firearm, possessing an unregistered firearm and handling a firearm whilst under the influence of alcohol. The Council formed the view the barrister's actions have, and have the potential to continue to, deleteriously impede the confidence, respect and reliance of the members of the profession and the public with whom he must deal. The Tribunal is yet to hear the matter.

The second matter which has been the subject of referral to the Tribunal involves allegations that the barrister informed a client and the client's solicitor that the client had a caveatable interest in the nature of a trust when he knew that the Supreme Court had determined that any such interest was unenforceable and not properly the subject of a caveat. Despite this, the barrister advised the client to lodge

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a caveat which contravened s74O of the *Real Property Act 1900*. The matter has not yet been heard.

Professional Conduct Committee #4

The Committee would like to extend its continuing gratitude to its longstanding community members, Professor Derek Anderson and Phil Marchionni. Their input and scrutiny is extremely important to maintaining the integrity of the complaint process.

Thanks also to our continuing academic member, Francene Feld, from the Faculty of Law, University of Western Sydney. It is a tribute to her dedication that she travels so far to attend professional conduct committee meetings.

For the period 1 July 2000 to 30 June 2001 13 new complaints were assigned to the committee for investigation, down from 18 in the previous year. The committee continued to deal with 13 matters under investigation from the previous year, so it has remained busy.

Of the 13 matters referred for investigation this year:

- four complaints were dismissed pursuant to s155(4) (ie no finding of unsatisfactory professional conduct or professional misconduct);
- one matter was referred to the Tribunal on the basis the Council is satisfied the barrister would be found guilty by the Tribunal of unsatisfactory professional conduct or professional misconduct; and
- eight complaints remain under investigation.

One of the four matters dismissed by the Council became the subject of an application for review by the Legal Services Commissioner. The Legal Services Commissioner confirmed the Council's decision to dismiss the complaint.

While the conduct committees aim to deal with complaints to finality within six months of receipt by the Council, this is not always possible for a variety of reasons. In particular, if the conduct committee intends to report to Bar Council on a basis adverse to the barrister the effect of the decision of the NSW Court of Appeal in *Murray v Legal Services Commissioner* (1999) 46 NSWLR 224 is that the committee is first obliged to forward its report to the barrister to afford the barrister an opportunity to comment on whether the conduct the subject of complaint would amount to unsatisfactory professional conduct or professional misconduct and, if yes, what decision the Council should make under s155 of the Act. The conduct committee then considers the barrister's *Murray* submissions and also determines whether the complainant should be afforded a right to make additional submissions or present additional evidence. This occurs before the committee reports finally to Bar Council.

The matter which has been referred to the Tribunal (as involving either unsatisfactory professional conduct or professional misconduct) involves allegations that the barrister breached the *NSW Oaths Act 1900* by witnessing various affidavits and, further, that the barrister breached NSW Barristers' Rule 75(a) by commencing two Local Court proceedings in the barrister's own name. The matter has not yet been heard in the Tribunal.

Professional Conduct Committee #5

Bar Council established PCC#5 to investigate notifications of bankruptcy incidents as well as notifications of criminal offences committed in the previous ten years. The committee met for the first time on 28 February 2001.

The enactment of the Legal Profession Amendment (Notification) Regulation 2001 on 9 March 2001 obliged all barristers to notify both criminal convictions (excluding certain traffic and parking offences) and bankruptcy incidents. All such notifications were required to be lodged with Bar Council by 6 April 2001. A notification committee was established to review the notifications and establish guidelines for dealing with them. On 19 April 2001 Bar Council adopted the recommendations of the notification committee to categorise the criminal notifications.

The Council received 147 notifications under both Clauses 69D and 69E of the Legal Profession Amendment (Notification) Regulation. There were six barristers who did not notify but as to whom there was some reason for thinking that they should have. They were asked for an explanation.

Of the 147 notifications, 65 were as to Regulation 69D (non-bankruptcy matters). Of these, 62 were disposed of according to the resolution of Bar Council of 19 April 2001. The resolution sorted the notifications in order of seriousness and letters appropriate to the notification were sent to the barristers in question. None of these was considered to be sufficiently serious to warrant the making of a complaint by the Council under Part 10 of the Legal Profession Act. The remaining three notifications (all of which relate to high range prescribed concentration of alcohol offences) were referred to another professional conduct committee for investigation of the underlying facts and circumstances.

Of the 82 notifications under Clause 69E (bankruptcy and related matters), 23 were disposed of as not indicating an incident capable of being construed as being with the Regulation. Of the remaining 59 notifications under Clause 69E, 41 required the provision of further information by the

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barrister. All 41 barristers were written to and replies were considered at meetings of PCC#5 between 23 May and 30 June. Ten of the 41 were disposed of by 30 June 2001.

The committee is greatly assisted in its work by its academic member, Dr Malcom Voyce from Macquarie University and Paul Walker and John White, the community members of the committee.

Professional Indemnity Insurance Committee

The Committee was formed in May 2000 in response to the dramatic increase in the renewal premiums offered by HIH Casualty & General Insurance Limited (HIH) for 2000 - 2001. In August 2000, the Committee submitted a report to the Bar Association recommending that it appoint an insurance broker to advise about the placement of professional indemnity insurance of the Association's members. The Committee's report noted that there was no system in place under which the Association received or kept ongoing statistics with respect to the claims experience of its members. As a result, the Association was unable to assist effectively its members to take steps to limit their exposure to claims or to negotiate premiums with insurers by reference to reliable statistics.

In November 2000, on the recommendation of the Committee, the Association invited five organisations to submit proposals for appointment as its insurance broker to provide advice with respect to:

- the maintenance of claims statistics for NSW barristers;
- the development of risk management practices for the Association's members; and
- the establishment of claims handling procedures designed to reduce the costs of defending claims.

Four responses were received and after consideration the Association appointed Willis Australia Limited (Willis) to provide services and advice connected with professional indemnity insurance for a period of three years.

Because there were no reliable statistics available concerning the recent claims experience of NSW barristers, in February 2001 Willis conducted a survey of the members of the Association. Seven hundred and ninety-six members responded to that survey. With the benefit of the information provided by that survey Willis approached the market to establish an insurance facility for NSW barristers for 2001 - 2002.

On 15 March 2001 HIH was placed into provisional liquidation. As a result, Willis and the current brokers offering professional indemnity insurance to NSW barristers (Aon Professional Services and Heath Lambert) sought to arrange replacement cover for those members who had insurance with HIH. Eventually Heath Lambert, Willis and Aon were able to offer replacement cover for

the period to 30 June 2001.

For 2001 - 2002 insurance was offered by Willis (the insurers being Allianz Australia Insurance Limited and Gerling Australia Insurance Company Pty Limited), Aon (QBE Insurance (Australia) Limited, Employers Reinsurance Corporation and Suncorp Metway Insurance Limited) and Heath Lambert (Lloyds via Resource Underwriting Pacific Pty Limited).

Premium levels for 2001 - 2002 increased from those offered in 2000 - 2001. The increases were not as dramatic as those for barristers in other States. Before the collapse of HIH, the market view was that premiums charged before 2000 - 2001 in NSW had been significantly lower than should have been charged, having regard to past claims experience. The demise of HIH reinforced that view and insurers were only prepared to come into the market at premium rates above those charged by HIH in 2000 - 2001.

The primary objective of this Committee is to see that viable professional indemnity facilities are available to NSW barristers in the long term. To enable this to occur, it is necessary for the Association and its members to develop and implement risk management strategies to minimise the incidence of claims and at the same time to work with insurers to develop means of minimising the costs incurred in investigating and defending claims.

Taxation Committee

Gzell QC, Slater QC, Durack S.C., Sorensen, Fraser and Richmond were re-appointed to the GST Committee for the year under review.

Of immediate concern was the assertion of the Australian Government Solicitor that the fees of counsel retained by the AGS should only rise by 8.5 per cent, rounded down to the nearest \$5.00, upon the introduction of GST. Members of the Committee drafted submissions to the effect that the expenses of barristers had increased by the full 10 per cent. As a result, the Bar Council won the pyrrhic victory of gaining an increase of 9.5 per cent.

Upon the commencement of the new legislation, solicitors were concerned that they might be liable to PAYG on receipt of funds to pay counsels' fees, might be liable for the GST on counsels' tax invoices and small firms might be liable to register for GST because of the receipt of funds to pay counsels' fees. Barristers throughout Australia were requested to render tax invoices directly to clients, a request resisted by bar associations around the country.

The Committee was able to arrange a meeting at short notice with a Senior Assistant Deputy Commissioner and, as a result, drafted a submission on behalf of the President of the Law Society of New South Wales and a supporting submission by the President of the Bar Association. This led

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to an interpretative advice of 10 October 2000, stating that where a solicitor acts as agent of a client in retaining a barrister, the barrister's fee paid by the solicitor does not form part of the solicitor's annual turnover for GST purposes. Money received by a solicitor from a client for payment of a barrister's fee does not form part of the solicitor's installment income for PAYG purposes. The solicitor's client may claim an input tax credit for a barrister's fee if it is a creditable acquisition by the client when the tax invoice is addressed to the solicitor and not to the client.

During the year the name of the Committee was changed from the GST Committee to the Taxation Committee reflecting a more general brief.

A member of the Committee was one of a delegation involved in a series of meetings with the Australian Taxation Office on the issue of GST on court orders and settlements resulting in *GST Ruling GSTR 2001/4*.

Durack S.C. tendered his resignation during the year, which was accepted with regret. Members of the Bar Association are indebted to him for the work he has done for the Committee.

A seminar entitled 'Tax Issues: administration and planning' was held as a 'nuts and bolts' practice management topic addressed by a member of the Committee and Michael Rolls, Senior Technical Advisor for Tax Education from the Australian Taxation Office. It is intended that sessions like this will be repeated from time to time.

A member of the Committee was instrumental in obtaining from the Australian Taxation Office an interpretative advice for the Law Council of Australia, which included an affirmative answer to the question: when an Australian barrister provides services to an Australian solicitor who is acting as agent for a non-resident client who is not in Australia when the barrister supplies the service and the service is not directly connected with real property in Australia, or the non-resident client obtains the services in carrying on an enterprise and is neither registered nor required to be registered, are the barrister's services GST-free?

Finally, members of the Committee have contributed articles to *Bar Brief* during the period under review.

Young Barristers Committee

The Younger Barristers Committee was reinstated this year, having been dormant for more than five years. The old committee had much more of a social focus than the new. While, for example, the new committee hosted welcome drinks for the readers course in August 2001, the principal role of the present Young Barristers Committee is,

as much as practicable, to ensure that the Bar Association and Bar Council are aware of the concerns of younger barristers - younger barristers being defined for this purpose as those within seven years of their call to the Bar.

At the outset, the committee considered it needed much more information about younger barristers. Accordingly, the committee instituted a survey which, under strict conditions of confidentiality, sought information from barristers of under five years seniority about their experiences in law prior to coming to the Bar, the areas they practised in and their overheads and income. Response to the survey was voluntary. An encouraging number of those surveyed did respond, this being partly attributable to the questionnaire being disseminated by e-mail and being able to be responded to by the same medium.

The results of the questionnaire are being analysed. The resulting statistics ought to, for example, permit those lawyers thinking of coming to the Bar to have some up to date and reliable information about their likely income and outgoings from people who have recently been in the same position.

During the year the committee made recommendations to the Bar Council on a number of topics including the HIH Insurance collapse, BarCare, keeping CLE fees low for younger barristers, a revised sexual harassment policy for the Bar, electronic access to library resources, part-time work and financial planning advice for young barristers.

The committee also liaised regularly with other Bar Council committees including the Equal Opportunity Committee and the Education Committee. One member of the committee made a short presentation to the Bar Practice Course on common experiences and pitfalls of the first five years in practice and it is to be hoped that this will become a regular part of the Bar Readers Course.

Committee representatives also had an opportunity to participate in and make a contribution to the Bar Planning meeting, which is mentioned elsewhere in the report. Members of the committee attended a Young Lawyers conference and the Australian Young Lawyers Committee of the Law Council of Australia.

In summary, in its first year of operation after a period of hibernation the committee has made good progress and has developed a number of proposals which will be considered next year.

Reports from sections and working groups

for the year ended 30 June 2001

Administrative Law Section

During the 2000-2001 financial year, the Administrative Law Section held lunchtime and evening meetings on a range of topics relevant to the practice of the Section's members, including:

- A paper entitled 'An Overview of the proposed Commonwealth Administrative Review Tribunal' was presented by Nick Beaumont with comments by John Griffiths and Alan Robertson SC.
- A paper entitled 'The High Court and refugees' was presented by Stephen Lloyd.
- In conjunction with the Australian Institute of Administrative Law, Robert Beech Jones and Professor Margaret Allars each presented papers on different aspects of the *functus officio* doctrine in relation to tribunals and administrative decision-makers.

In addition, the Section had a well-attended annual dinner, at which The Hon. Justice William Gummow AC of the High Court of Australia spoke about a range of administrative law issues arising in recent High Court cases.

Constitutional Law Section

The Section was active in 2000-2001. On 16 and 29 November 2000 three papers dealing with constitutional aspects of industrial laws were presented.

Robert Buchanan QC presented 'An historical overview of the industrial power'. He was assisted in the preparation of his paper by Ian Neil.

Richard Kenzie QC presented 'The present scope of the industrial power', assisted by Ingmar Taylor with the preparation of the paper.

Neil Williams presented 'The interrelationship between the industrial power and other heads of power on Australian industrial law'. He was assisted in the preparation of his paper by Andrew Gotting.

On Thursday, 9 August 2001 John Basten QC presented his paper on 'The expanding scope of the constitutional writs' which was followed by a very well attended and successful annual dinner.

The Section thanks those who participated in its activities during the year. The next session planned for the last quarter of 2001 is a session on the new *Corporations Act*.

Trade Practices and Consumer Protection Law Section

The Trade Practices and Consumer Protection Law Section has held three meetings since its last report. On the very day *The Australian* newspaper published an article under the headline 'Doctors should declare fees

up front, says ACCC', the convenor, Jeffrey Hilton S.C., presented a topical paper entitled 'Competition law and the Australian medical profession'. In June, Ian Tonking delivered a paper on 'Facilitating access' based on the decision of the ACCC on freight handling at the Sydney International Airport. Tonking had originally been retained as counsel for Ansett, which intervened in the matter before the tribunal, and was able to give insights into the issues raised by the decision under Part IIIA of the *Trade Practices Act 1974*. Finally, Robertson Wright and Michelle Painter presented a paper on 'Recent developments in the application of section 46; *Melway* and *Boral* considered'. This paper was well received and later published in the Winter 2001 edition of *Bar News*. The Section plans to hold further meetings this year and encourages all members to attend.

Defamation and Contempt working groups

Defamation Working Group

In August last year the Attorney-General asked the Bar Association for submissions in relation to the *Defamation Act 1974* (NSW), in particular as to the role of the judge and jury during defamation trials, the retention of the imputation as the cause of action in defamation under the Act and proposals made by the Law Reform Commission in 1995. A large and enthusiastic group of defamation practitioners was established and a number of meetings was held in late 2000 and early 2001.

A submission was prepared which was approved by Bar Council and forwarded to the Attorney General. The Association's submission put forward the following:

- Repeal of s7A of the Act. That provision had been introduced in 1994 for the purposes of limiting the role of the jury simply to determining whether any of the plaintiff's imputations were conveyed and, if so, whether they were defamatory, rather than allowing the jury to determine all issues of fact, including questions of truth, comment, malice and damages.
- Amendment of the *District Court Act 1973*. This would provide for jury trial in defamation actions that Court in conformity with the position under s88 of the *Supreme Court Act 1970*.
- Reverting to the common law. The view of the majority of the group was that that New South Wales should revert to the common law position that publication of the matter complained of gave rise to the cause of action, rather than the publication of an imputation conveyed by a matter complained of, as is now the case. Importantly, there was considerable

Reports from sections and working groups

for the year ended 30 June 2001

concern that the defence of comment had become very difficult to run under the Act. The plaintiffs' counsel could formulate imputations which it was impossible to defend as comment notwithstanding that the matter complained of was clearly intended to be understood as conveying an opinion and the facts upon which the opinion was based.

- The need for developing some consistency in national defamation laws. This was hoped for particularly having regard to the complexity in intra-national cases of defamation following the decision in *John Pfeiffer Pty Limited v Rogerson*¹. [2000] 74 ALJR 1109]
- Disagreement with the Law Reform Commission's proposed 1995 reforms (namely the proposals for making falsity to the cause of action, precluding a plaintiff from bringing an action to recover damages for non economic loss if a correction requiring certain requirements were published or if a declaration of falsity were obtained from the Court, and reducing the limitation period to one year).
- Restoring exemplary damages. Juries should be allowed to award exemplary damages provided that they identified the amount awarded on that head separately so that it would be readily identifiable in an appeal.

Bar Council was appreciative of the considerable input and effort which the working group made in formulating the submission.

Contempt Working Group

Following publication, earlier this year of the Law Reform Commission's Discussion Paper 43: *Contempt by Publication*, the Commission sought submissions from the Bar Association on the matters in the working paper.

Again, a wide group of practitioners was consulted for their views. After several meetings of this group, Bob Stitt QC, Henric Nicholas QC, Steven Rares S.C. and Robert Campbell had a fruitful meeting with members of the Law Reform Commission responsible for the reference. A number of ideas and comments were exchanged.

The Chair of the Working Group, Steven Rares S.C., would like to thank all those who have taken part in assisting in both groups during the course of the past 12 months for their considerable interest and assistance.
