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Corporate Directory

Incorporating the annual report of

The New South Wales Bar Association
ABN 18 526 414 014

Financial results for:

Barristers' Benevolent Association
of New South Wales ABN 18 466 736 745
The Barristers' Superannuation Fund
ABN 23 921 476 227

Registered office

Selborne Chambers
174 Phillip Street
Sydney 2000
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Fax: +61 2 9221 1149
www.nswbar.asn.au

Auditor

Court & Co Chartered Accountants
PO Box H195 Australia Square
Sydney 2000

Bankers

National Australia Bank
75 Elizabeth Street
Sydney 2000

Annual General Meeting

The Annual General Meeting will be held
at 1.00pm on Friday, 8 November 2002
in the Bar Association Common Room.

Cover Photo

Murray Harris Photography

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Aims

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

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

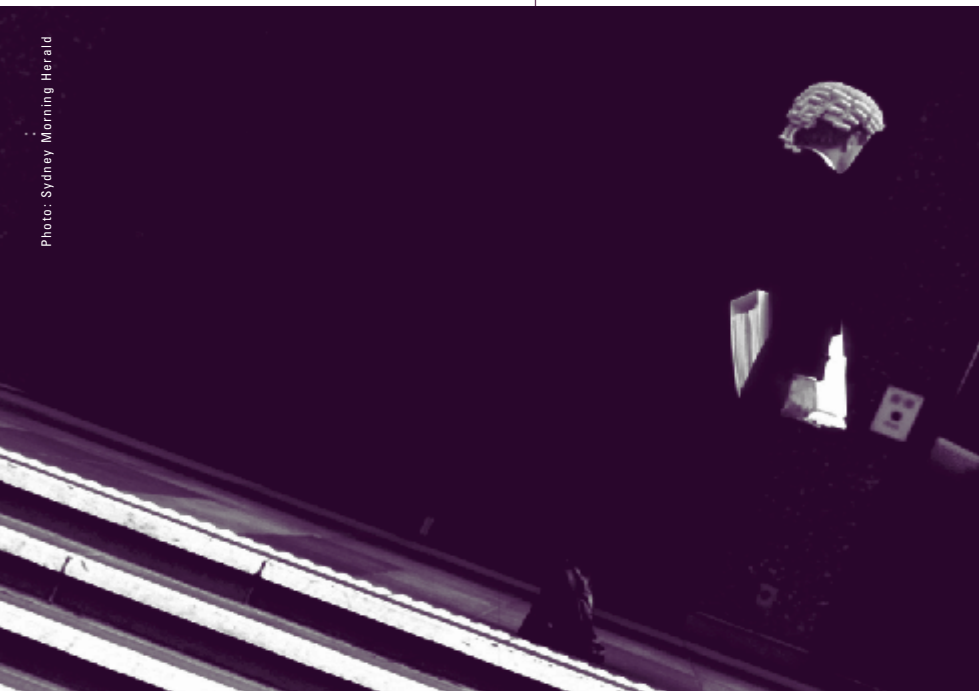


Photo: Sydney Morning Herald

Bar Association Office Bearers

as at 30 June 2002



Back row, left to right: Dominic Toomey, Michael McHugh, Hugh Marshall, Justin Gleeson SC, Alison Stenmark, Hayden Kelly, Bernie Coles QC, Stuart Torrington, Larry King SC, John Fernon.
left to right: Kate Traill, Anna Katzmann SC, Philip Selth, Tom Bathurst QC, Ian Harrison SC, Bret Walker SC, Michael Slattery QC, Jeremy Gormly SC, Rena Sofroniou, Chrissa Loukas.
Absent: Michael Elkaim, Rachel Pepper.



Office holders, left to right:
Philip Selth (Executive Director),
Tom Bathurst QC (Treasurer),
Ian Harrison SC (Senior Vice President),
Bret Walker SC (President),
Michael Slattery QC (Junior Vice President),
Jeremy Gormly SC (Secretary)

Bar Association staff

as at 30 June 2002

Office of the Executive Director

Executive Director
Philip Selth BA (Hons) LLB
Executive Assistant
Kathy O'Neill
Legal Policy Officer
Tahlia Gordon B Soc Sc (Hons)
LLB LLM

Accounts Department

Finance Manager
Basil Catsaros B Comm ACA
Deputy Finance Manager
Tess Santos BSc (Bus Admin)
Membership Officer
Barrie Anthony JP

Administration Department

Administrative Support Manager
Kim Nichols LLB
Administrative Officer (Records)
Kim Ellis
Reception Officer
Barbara Coorey
Administrative Officer
Patrina Malouf
Administrative Officer
(Social Functions)
Denise Fleming
Bar Manager
Tony Mitchell

IT Consultant

Darren Covell

Public Affairs

Public Affairs Officer
Chris Winslow BA(Hons) DIM

Professional Development Department

Director of Studies
Robert Hayes LLB PhD
Education Officer
Meagan Phillips
Education Officer
Chris D'Aeth LLB (Hons) MBA
Education Assistant
Irene Puntillo

Legal Assistance Referral Scheme

Manager
Heather Sare
Administrative Assistant
Julia Sharp

Library

Librarian
Lisa Allen B App Sc(Info)
M Inf Stud
Assistant Librarian
Jennifer Hughes BA DIM
Technical Services Librarian
Larissa Reid BA MIM
Technical Services Librarian
Leanne Drew MA
Library Assistant
Antje Dun

Professional Conduct Department

Director
Terrie Gibson BA LLM
Professional Affairs Deputy Director
Helen Barrett LLB
Professional Affairs Deputy Director
Elizabeth Maconachie
BA Dip Ed LLB
Assistant to the Director, Professional Conduct
Lorraine Haycock
Assistant
Barbara Stahl
Assistant
Denisha Govender

Membership statistics

as at 30 June 2002

Ordinary members

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

Total:		1959
Male:	86.7%	1698
Female:	13.3%	261

Number of senior counsel (QC or SC)†:

Total:		270
Male:	96.7%	261
Female:	3.3%	9

Number of 'junior' barristers‡:

Total:		1689
Male:	85.2%	1439
Female:	14.8%	250

† Senior counsel (QC and SC are commonly called 'silks'. Senior counsel have been appointed since 1993 and replaced the appointment of Queen's counsel. ‡ The term 'junior' barrister means all barristers except those who have been appointed senior counsel (QC or SC). A 'junior barrister' does not necessarily indicate the ability or number of years at the Bar; for example, some 'juniors' have been practising for 30 years.

Practising address of ordinary members - class A and B(i)

New South Wales	1832
Victoria	2
ACT	35
Queensland	64
South Australia	6
Western Australia	2
Northern Territory	1
Tasmania	0
Overseas	17

Number of honorary life member members and ordinary members - class B(ii) and B(iii)* (including members interstate & overseas):

Total:		447
Male:	86.8%	388
Female:	13.2%	59

of these, 24 are honorary life members

Occupation of ordinary members - class B(ii) and B(iii)

Judge	167
Magistrate	9
Statutory/government officer	4
Members of Parliament	1
Academics (non-practising)	9
Interstate barrister	99
Former barrister	75
Former judge	59
Total:	2406

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

Practitioners statistics

as at 30 June 2002

Practitioners holding NSW practising certificates (including practitioners based interstate & overseas):

Total:		2035
Male	86.7%	1765
Female	13.3%	270

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

Total:		270
Male	96.7%	261
Female	3.7%	9

Number of junior barristers

Total:		1765
Male	84.6%	1494
Female	15.4%	271

Practitioners holding NSW practising certificates

	Juniors		Silks		Total
	Male	Female	Male	Female	
New South Wales	1380	250	237	7	1874
Victoria	2	0	0	0	2
ACT	32	4	2	0	38
Queensland	68	4	14	1	87
South Australia	6	1	2	0	9
Western Australia	4	0	0	0	4
Northern Territory	1	0	0	0	1
Tasmania	0	0	0	0	0
Overseas	11	3	7	0	21

Overseas practitioners by country of residence

	Juniors		Silks		Total
	Male	Female	Male	Female	
USA	1	0	0	0	1
UK	3	1	4	0	8
Hong Kong	1	0	3	0	4
NZ	4	2	0	0	6
Fiji	1	0	0	0	1
Vanuatu	1	0	0	0	1
Totals	11	3	7	0	21

President's report

Some of the problems facing the Bar are perennial, and some are new. I suppose every President feels this to be so after a year in the office. Ruth McColl SC, my predecessor, dealt in inimitable fashion with the scandal of barristers' failing to pay tax and resorting to bankruptcy. This year's Council has continued to grapple with this peculiar difficulty, building on the solid foundation laid under Ruth's leadership. The exercise is not completed, and my comments below are necessarily general because particular cases remain pending including in court.

By far the most important challenge to the Bar arises because of the changes made last year by the Parliament of New South Wales to personal injuries litigation in relation to motor vehicle accidents and workplace injuries (as well as workers' compensation). I think this is the single greatest detraction from the work of the Bar in living memory, and probably therefore since there was something like a Bar, say from the shadowy period around about 1824.

Judging from the very high level of practising certificate renewals, these changes have not yet had the dire effect on careers which some have predicted. I do not want to suggest that those predictions are unduly pessimistic: on any view, the removal of such a large portion of litigious work from the legal profession is bound to change the world for a number of us.

This is not the place to repeat the cogent arguments advanced last year, in vain, against the abolition of common law and related statutory rights to compensation, especially in the case of negligence. It suffices to say that the Bar Council continues to doubt the beneficial public policy urged by supporters of these changes - unfortunately found on both sides of the Houses of Parliament.

A complacent approach would regard the removal of barristers' work in this area as another small bump in a broad highway of forensic enterprise: people advancing that view often refer to the rise and fall of protected tenancy and other work in relation to residential leaseholds after the Second World War as an illustration. Clichés such as 'One door closes, another opens' are reassuringly uttered. I wish I could be so confident.

Hopes of better times will not suffice. Anna Katzmann SC has championed an excellent scheme to encourage and foster an expansion into other jurisdictions by middle juniors who may be apprehensive that the imminent truncation of personal injuries litigation will damage their practices. Please take advantage of this

special opportunity. The scheme has now been expanded to counsel of all seniority. The Bar Association looks forward to receiving further applications. I am very grateful to Chris Gee QC for undertaking the supervisory position in relation to this mentoring scheme.

The *Civil Liability Act 2002* has now been in force for a couple of months. In particular, its amendments to the *Legal Profession Act 1987* are important, as they represent the most explicit statutory stipulation of standards of litigious conduct that New South Wales has ever seen. I hope that my remarks in the September 2002, Special Issue of *Bar Brief* on the new Division 5C of Part 11 will be useful. The Bar Council welcomes comments upon, responses to and criticisms of that article. We need to use lively discussion in order best to meet these new requirements (and to refine suggestions for improvement).

The next round of tort law reform has just been proposed, by the *Civil Liability Amendment (Personal Responsibility) Bill 2002*. The Personal Injuries Litigation Committee has already assembled a critique of some of its provisions, as have a number of individual barristers. The Bar Council is very grateful for this assistance, and we will be making detailed textual suggestions in response to the consultation draft bill.

This is not the place to expound the enormous breadth of subject matter covered by this second round of tort law reform by the New South Wales Parliament. It ranges from bold attempts to wrench the common law back to a position that it might be thought to have occupied several decades ago, through a number of substantive areas where liability is intended to be abolished or greatly restricted, to some very detailed provisions about particular problems for government such as the liability of public authorities. The consultation draft Bill is available through the Association's web site - members should read and consider it, given the Opposition's indication (as I write this) that it will most likely support these proposals.

There are quite large national political, economic and social issues in which these New South Wales reforms play an important role. The first Report of the *Review of the Law of Negligence* carried out for the Commonwealth Government by the committee chaired by Justice Ipp is extremely revealing as to the breadth of current issue in this area. It too may be accessed via the Association's web site.

Because we have not yet worked through the aftermath of the revelation that some barristers were repeat offenders in terms of tax convictions, with the added complication of bankruptcy (sometimes multiple), it is not appropriate that I provide any detailed survey of this unhappy episode. There is reason to believe that it will be an episode, rather than a continuing defect. On behalf of the Bar Councils of last year and this year, I wish to recognise and praise the extraordinary efforts of the special Professional Conduct Committee #5, chaired by Bernard Coles QC, which reported to the hardworking Councils about the many

By far the most important challenge to the Bar arises because of the changes made last year by the Parliament of New South Wales to personal injuries litigation in relation to motor vehicle accidents and workplace injuries (as well as workers' compensation).

President's report - continued

notifications and (fortunately) fewer serious cases. This was emergency assistance to the profession, in the public interest, of a very high order: we all owe the barrister and lay members of that Committee deep thanks. The Hon Jim Macken provided invaluable and much appreciated expert support during this exercise.

One generalisation can safely be made at this stage. There is no serious political possibility that barristers can excuse less thorough, slower or less complete meeting of their taxation obligations than other people, especially including wage and salary earners. Experience suggests that difficulties start small, and snowball with neglect or embarrassment. Timely lodging of tax returns and Business Activity Statements is probably the key to decent administration of the financial side of our practices. A virtually essential expense of practice at the Bar should be a good accountant. Understanding the elementary fact that we cannot spend all the revenue we receive, without earmarking some for tax, would have avoided practically all the difficulties now facing the Bar in this area.

This year, on a positive and optimistic note, is the first year for Continuing Professional Development - Dr Hayes' report 'Education, training and professional development' noted on page ###. The aim, if I may be forgiven a frivolous slogan, is to enhance the real meaning of both words in our mutual description of each other as 'learned friend'. An important practical consequence of a vigorous CPD scheme is the possibility of obtaining coverage for the Bar under the *Professional Standards Act 1994* under which a form of limited liability may be achieved. The Bar Council has this as a priority, albeit one which requires a good deal of work. Linking with the national tort law reform activity, of course, is the great need to render the PSA advantage useful for most of us most of the time, by extending it to personal injuries litigation and to liability under the *Trade Practices Act 1974 (Cth)*.

The first blowfly of summer is not yet here, but the first exchange of law-and-order electoral bids has happened. Unfortunately, at one level the campaign towards March 2003 is supposed to be between the Government seeking compulsory sentencing with discretion and an Opposition which wants compulsory sentencing without discretion. This is a great pity. The Bar Association has made its disappointment known to both sides, but holds no real expectation that enlightened penological or criminological debate will dominate the present broadcasting discourse before the election.

Considerably more successful was the contribution of a small group at the Bar in preparing the bulk of the powerful submissions made by the Law Council of Australia in relation to the package of legislation passed and still pending in the Commonwealth Parliament concerning counter-terrorism measures. Deserved praise has been received from disparate quarters for the submission's clarity, balance and scholarship. It is clear that it had a real

effect in improving the legislative product as well as the debate.

The Law Council of Australia is, unfortunately, undergoing another internal self-examination with a serious attempt to adjust the constant tension between a federation of different groups of different size with a modern representative body funded unequally from those same groups. It may well be that for this Bar the importance of the Australian Bar Association will become more pressing.

Were even the persons who were most deserving of special thanks listed, to note their services to the Association and its projects, this Report would be too long. And the fact is that there are many of our colleagues who willingly assist, perhaps intermittently when requested, in even greater number. I can only say that the Bar Council, and especially the Executive, are humbled by the intelligence, application and public spiritedness of all those who have represented the Bar and assisted us and the Association generally. It is in the essence of a profession that we continue in that vein.

It is nonetheless proper, and a pleasure, to thank Ian Harrison SC and Philip Selth, without whose mighty efforts as Senior Vice President and Executive Director respectively the Association could not have operated as well as it has. Their support for me personally, as President, has been vital.

Members may have noted that there was no designated Bar charity this year. This was deliberate. First, in my opinion charitable donation is intensely personal, whether it is religiously or humanistically motivated. Second, I'm not sure that the Bar nowadays needs guidance in selecting deserving charities. Third, whether it does or not, there has been such a decline in recorded donations to recent Bar charities that it was felt better not to raise expectations which would not be realised. One thing is clear, and that is that the Bar does respond generously to specific appeals, for which the Council thanks the members: the most recent example being The Indigenous Barristers' Trust Fund - The Mum Shirl Fund.



Bret Walker SC
President

Executive Director's report

The purpose of this annual report is to provide in considerable detail a picture of the Bar Association's activities during 2001-2002.

However, there is little direct detailed reference to one of the Association's most important Objects, namely 'to make recommendations with respect to legislation, law reform, Rules of Court and the business and procedure of courts' (see cl.3.1.3, 'Statement of Objects', Constitution of The New South Wales Bar Association).

Some of the work the Bar Association does in respect of these Objects, for example that done by members of court rule committees, user groups and working parties is occasionally noted in the Bar Council minutes published in *Bar Brief*. The work of committees is sometimes noted in *Bar Brief*; in particular that of the History Committee and the Criminal Law Committee (by way of the Chair's regular 'Criminal law update'). The membership of the Association's committees and working parties, and the names of its representatives on various bodies, is set out on the Association's web site and in this report.

But what is not detailed is the very considerable amount of work the Association does working with governments, parliaments, the public sector and various community groups.

The major submissions made this financial year by the Association to, for example, Justice Sheahan's Commission of Inquiry into Workers Compensation Common Law Matters, were published on the Association's web site, and a summary was published in *Bar Brief*. The NSW Law Reform Commission's *Issues paper 18, Complaints against lawyers: Review of Part 10* (October 2000) and the subsequent *Report 99, Complaints against lawyers: An interim report* (April 2001) refers extensively to submissions made by the Association, as does the Attorney General's Department's *A further review of complaints against lawyers: Issues paper* (November 2001) which was issued as a consequence of the Law Reform Commission's report. (The Department's report on its review had not been published as of 30 June 2002.) The Law Council of Australia's recent submission to the federal parliamentary inquiry into proposed anti-terrorism legislation, much of which was drafted by members of the Association, was published on the LCA's web site. (Members of the Bar Association, a constituent member of the Law Council of Australia, regularly assist in the preparation of LCA submissions to the federal government, parliament and federal agencies.)

It has become quite common for the President and other members of the Bar Council, along with committee chairs, to give interviews to the media and to participate in on-air/on-camera interviews, and to give evidence to parliamentary inquiries. A record of these interviews is now being published in *Bar Brief*, with the transcript available in the Bar Library.

Subjects have included

- proposed changes to tort law,
- proposed and enacted changes to workers compensation legislation,
- discovery and the destruction of documents,
- mandatory life sentences for the murder of police officers,
- mandatory detention for juveniles,
- the misuse of bankruptcy and taxation laws by barristers, and
- sentencing generally.

Similarly, media releases by the President are both published on the Association's web site and noted in *Bar Brief*.

This wealth of information is available to anyone who wishes to be informed about the Association's contribution to the broad area of 'law reform'.

However, this is only the tip of the iceberg. Much of the work that can be loosely characterised as 'law reform' and 'lobbying' (to use a crude but well-understood term) is done quietly out of the public spotlight.

The President and senior members of the Bar Council meet regularly with the state Attorney General. The wide ranging discussions cover matters such as proposed legislative changes problems with legal aid, court sittings in country areas and the legal profession's disciplinary regime. As the Attorney General recently told a group of readers, 'We do not always agree, but our disagreements are intellectually stimulating'. But even more importantly, these discussions (as with discussions with other ministers, parliamentarians and government officials) are confidential. This is not because the subject matter is always confidential - often it is not - but rather because all concerned must feel able to frankly - and at times bluntly - put their view, and to argue that point of view without there being any suggestion that they will read about that discussion in next morning's newspapers. The Association's work in this area is thereby very much more effective, and of benefit to the Bar and to the community more generally.

Similarly, there are meetings with heads of state and federal jurisdictions and other senior state and federal ministers and Opposition spokespersons. The Bar Association makes dozens of submissions to governments each year on as many pieces of legislation, as well as responding to countless requests for advice and assistance from government agencies, both state and federal. The Association is regularly given draft legislation on which comment is sought. The response to these requests, which can number half a dozen a week, are almost always prepared by one of the Association's committees. That response is always either endorsed by the Bar Council before being despatched, or if there is insufficient time for the Bar Council to consider the matter in advance, the Council reviews the letter or submission at the earliest

Executive Director's report - continued

opportunity thereafter. All submissions are signed by the President or by someone authorised by the Bar Council to do so. In this way, through the committees and Bar Council, hundreds of members of the Association have the opportunity to - and do - make a positive contribution to the administration of justice and to law reform, both in New South Wales and federally.

The Bar Association's position on an issue in the public arena can be readily ascertained - the many dozens of media releases and interviews by officers of the Association over the past year are testament to that. The Association's position is arrived at only after discussion with, if time is of the essence, senior members of the Bar (usually committee chairs) and members of the Bar Council. If there is time to do so, the relevant committee is asked for a detailed submission.

The Association does not keep a formal record of its 'wins' where recommendations it has made or proposals advances are adopted. But the 'success rate' is extraordinarily high. This is very much due to the consistent, and timely, high quality of the Association's submissions. It is not uncommon for the authors to be asked by the recipient to discuss the submission - and at times to be asked to assist with the drafting of relevant legislation.

The Association provides the Opposition and cross-benchers in the state parliament with advice on request - and on occasions seeks to persuade them of the merits of a position not supported by the government. While the discussions with non-government parties, as with government members, is always treated as being in confidence, the Association advises the government when it is endeavouring to persuade the opposition parties and cross benchers to vote against government legislation. This is both a courtesy and common sense - the fact that the Association is putting a view contrary to that of the government is usually public - and in any event, the fact that it is putting this contrary view is often known to the government before the Association's representatives have left Parliament House.

This assistance is not always acknowledged by the recipients, but nor should it be. It is given in confidence; the parties asking for it need to be able to trust the Association's objectivity and skills. Party politics *per se* are irrelevant. While there are times it would be nice for the Association to be given credit for a particular piece of legislation or proposal, if only so that its members were more aware of all the expertise and effort that has gone in to a particular Bill or report, boasting achieves nothing - other than to damage, possibly irreparably, the confidence various parties place in the Association that

has taken many years to develop.

It is for this reason that members do not see in the Association's publications and on its web site details of the raft of submissions and the like it makes each year to governments, parliaments and various other agencies and individuals. But the work is being done - and done extremely well. A substantial contribution is being made to law reform and the administration of justice. As the person who coordinates much of this activity, I should like to thank very sincerely the hundreds of members who have given so generously of their time and expertise in the preparation of written material and in making of oral submissions.

The Bar Association staff

It is traditional in annual reports for chief executive officers to thank their staff for all they have done in the preceding twelve months. But whatever the true sentiments of some CEOs, my thanks to the Bar Association's staff are given unreservedly. The Bar Association has achieved much in the past year that could not have been achieved without the loyal, unstinting support given by its staff, often under very stressful conditions. As I said last year, few outside the Association's office know of the inordinate amount of work and long (often unremunerated) hours staff put in to provide a quality service to members and others.

I also wish to acknowledge personally the support I have received from the presidents whose terms are covered by this report, McColl SC and Walker SC, and the Bar Council Executive with whom I deal on a daily basis. Their encouragement in times of adversity - and their sharing of the pleasure gained in the Association's many achievements - is very much appreciated.

P.A. Selth
Executive Director

A substantial contribution is being made to law reform and the administration of justice.



Appointments

Committees of the Bar Association

for the year ended 30 June 2002

Bar History

Geoff Lindsay SC (Chair)
Master John McLaughlin
Jim Macken
Wendy Robinson QC
Tony Hewitt SC
Peter Kennedy-Smith
Richard Taperell
Robert Harper
Robert Lovas
Francois Kunc
Carol Webster
Prof. Ros Atherton
Prof. Bruce Kercher
**Bar Association
staff member**
Chris Winslow

Bar News Committee

Justin Gleeson SC (Chair)
Rodney Brender
Rena Sofroniou
Chris O'Donnell
Andrew Bell
Ingmar Taylor
**Bar Association
staff member**
Chris Winslow

Criminal Law Committee

Stephen Odgers SC (Chair)
Peter Bodor QC
Malcolm Ramage QC
Paul Byrne SC
Tim Game SC
Peter Johnson SC
Peter Berman SC
Glenn Bartley
Patrick Barrett
Virginia Lydiard
Peter Miller
Daniel Howard
Phillip Boulten
Chris Hoy
Richard Button
Chrissa Loukas
Peter McGrath
Lloyd Babb
Mark Buscombe
Matthew Johnston
Committee Secretary
Gaby Bashir
**Bar Association
staff member**
Kim Nichols

Continuing Professional Development Committee

Bret Walker SC
Clarrie Stevens QC
Peter Hastings QC
Justin Gleeson SC
**Bar Association
staff member**
Robert Hayes

Education Committee

Clarrie Stevens QC (Chair)
Peter Hastings QC
Peter Taylor SC
Geoff Lindsay SC
David Nock SC
David Davies SC
Richard White SC
Philip Bates
Greg Laughton
Simon Harben
Bernard Sharpe
Michael McAuley
Andrew McSpedden
Robert Harper
Kerrie Leotta
Robert Newlinds
Janet Oakley
Ian Davidson
David Jordan
Rashda Rana
Peter Russell
Ingmar Taylor
Richard Lancaster
Rachel Pepper
Bill Washington
Maria Tzannes
**Bar Association
staff member**
Robert Hayes

Equal Opportunity Committee

Michael Slattery QC (Chair)
Steven Rares SC
David Davies SC
Mullenjaiwakka
Sylvia Emmett
Chris Ronalds
Hugh Marshall
Michael Barr
Chrissa Loukas
Rashda Rana
Susan Phillips
Dominique Hogan-Doran
Angela Pearman
Philippa Gormly
Ingmar Taylor
Rachel Pepper
John Bowers
Louise Byrne
Michelle Painter
Kate Eastman
Tony McAvoy
Penelope Sibtain
**Bar Association
staff member**
Denise Fleming

Family Law Committee

Grahame Richardson SC (Chair)
Robert Lethbridge SC
Raoul Wilson
Christopher Simpson
Margaret Cleary
Greg Johnston
Brian Knox
Richard Schonell
Neill Macpherson
Neil Jackson
**Bar Association
staff member**
Kim Nicholls

Information Technology Committee

Peter Kite SC (Chair)
Jeremy Gormly SC
Rena Sofroniou
Stuart Bell
Michael Lawler
Michael McHugh
Bar Association member
Lisa Allen

Committees of the Bar Association - continued

for the year ended 30 June 2002

Legal Aid Committee

Ian Temby QC (Chair)
 Peter Bodor QC
 Geoff Lindsay SC
 Tim Game SC
 Paul Blacket SC
 Kenneth Earl
 Chrissa Loukas
 Peter McGrath
 Chris Whitelaw
 Paul King
 Dean Jordan
 Mark Buscombe
**Bar Association
 staff member**
 Kim Nichols

Mediation Committee

Robert Angyal (Chair)
 Jeff Shaw QC
 Steven Rares SC
 Richard Bell
 Ian Bailey
 Mary Walker
 Geraldine Hoeben
 Ian Davidson
 Katherine Johnson
 Susan Phillips
 David Knoll
 Hugh Stowe
**Bar Association
 staff member**
 Kim Nichols

Personal Injuries

Litigation Committee

Anna Katzmann SC (Chair)
 Andrew Morrison RFD SC
 Raymond McLoughlin SC
 Desmond Kennedy SC
 Phillip Perry
 Brian Ferrari
 Peter Maiden
 Richard Seton
 Stuart Torrington
 Phillip Mahony
 Michael Fordham
 Andrew Stone
**Bar Association
 staff member**
 Kim Nichols

Professional Conduct Committee #1

Anna Katzmann SC (Chair)
 Stephen Robb QC
 Alexander Street SC
 Robin Margo SC
 Stephen Rushton SC
 Robert Quickenden
 Elizabeth Cohen
 Josephine Kelly
 John Fernon
 Mark Speakman
 Lucy McCallum
 Richard McHugh
 Victoria Hartstein
 Susanne Weress
 (Community member)
 Kate Nacard (Community member)
 Paul Walker (Community member)
 Associate Professor Jill Hunter
 (Academic member)
**Bar Association
 staff member**
 Liz Machonachie

Professional Conduct Committee #2

Michael Slattery QC (Chair)
 Ian Temby QC
 William Dawe QC
 Robert McDougall QC
 Murray Aldridge SC
 Anastasia Seeto
 Hugh Marshall
 Robert Kaye
 Lindsay Ellison
 Kate Traill
 Andrew Colefax
 Mark Lynch
 Fred Curtis
 Terry Ower
 Valerie Heath
 Sheila Kaur-Bains
 John Hennessy
 Michael McHugh
 John Blount (Community member)
 Anna Fader (Community member)
 Matthew Smith
 (Community member)
 Sue Thaler (Community member)
 Professor David Barker
 (Academic member)
**Bar Association
 staff member**
 Liz Machonachie

Professional Conduct Committee #3

Tom Bathurst QC (Chair)
 Martin Einfeld QC
 Peter Hastings QC
 Steven Rares SC
 David Davies SC
 Peter McEwen SC
 John Sheahan SC
 Hayden Kelly
 Philip Dowdy
 Brian Skinner
 Alison Stenmark
 James Stevenson
 Simon Kerr
 Peter Brereton
 Ingmar Taylor
 Paul Bolster
 Helen Steptoe (Community member)
 Robert Nakhla
 (Community member)
 John White (Community member)
 Nicholle Nobel
 (Community member)
 Bernard Dunne (Academic member)
**Bar Association
 staff member**
 Helen Barrett

Professional Conduct Committee #4

Bernard Coles QC (Chair)
 Peter Graham QC
 Philip Hallen SC
 Bill Kearns SC
 Elizabeth Fullerton SC
 David J Russell
 Chris Leahy
 Phillip Mahony
 Daniel Howard
 Brian Knox
 Chris Hoy
 Robert Newlinds
 Patrick Griffin
 Carol Webster
 Kate Eastman
 Prof. Derek Anderson
 (Community member)
 Phil Marchionni
 (Community member)
 Carol Randell (Community member)
 Francine Feld (Academic member)
**Bar Association
 staff member**
 Helen Barrett

Committees of the Bar Association - continued

for the year ended 30 June 2002

Professional Indemnity Committee

Tony Meagher SC (Chair)
 Peter Garling SC
 Noel Hutley SC
 Rodney Brender
 David Pritchard
 Rena Sofroniou
 Andrew Bell
**Bar Association
 staff member**
 Philip Selth

Senior Counsel Selection Committee

Bret Walker SC
 Ian Harrison SC
 Barry Toomey QC
 Annabelle Bennett SC
 Richard Cogswell SC
**Bar Association
 staff member**
 Lisa Allen

Taxation Committee

Anthony Slater QC (Chair)
 Holger Sorensen
 Peter Fraser
 Mark Richmond
 Narelle Butler
**Bar Association
 staff member**
 Philip Selth

Young Barristers Committee

Rachel Pepper (Chair)
 Andrew Stone
 Henry Silvester
 Kelly Rees
 David Ash
 Rhonda Bell
 Cameron Jackson
 Hugh Stowe
 Stephanie Fendekian
**Bar Association
 staff member**
 Denise Fleming

Working parties

Defamation Working Party

Steven Rares SC (Chair)
 Robert Stitt QC
 Tim Hale SC
 Justin Gleeson SC
 Tom Blackburn
 Alistair Henskens

Co-ordinators

Human Rights Co-ordinator

Nicholas Cowdery QC

Industrial Relations Commission Duty Barrister Scheme Co-ordinator

Ingmar Taylor

Downing Centre Duty Barrister Scheme Co-ordinator

Kate Traill

Discontinued committees and working parties

The following committees were discontinued in December 2001.

Details of their membership may be obtained from the Bar Association's web site.

Arbitration Committee

Bar Association District Court Circuit Committee

Professional Conduct Committee #5

Supreme Court Equity Working Party

Workers Compensation Working Party

Sections of the Bar Association

for the year ended 30 June 2002

Administrative Law

Convenor: Alan Robertson SC
 Secretary: Stephen Lloyd

Family Law

Convenor: Grahame Richardson SC
 Secretary: Greg Watkins

Common Law

Convenor: Anna Katzmann SC
 Secretary: Andrew Stone

Maritime, Air & Transport Law

Convenor: Brian Rayment QC
 Secretary: Gregory Nell

Corporations, Securities & Insolvency Law

Convenor: Tom Bathurst QC
 Secretary: Rodney Smith SC

Intellectual Property Law

Convenor: David Yates SC
 Secretary: Richard Cobden

Constitutional Law

Convenor: Stephen Gageler SC
 Secretary: David Knoll

Construction Law

Convenor: Glen Miller QC
 Secretary: Geoff Underwood

Trade Practices

& Consumer Protection Law

Convenor: Jeffrey Hilton SC
 Secretary: Andrew Ogborne

Criminal Law

Convenor: Peter Johnson SC
 Secretary: Glenn Bartley

Environmental, Local Government & Valuation

Convenor: Malcolm Craig QC
 Secretary: Josephine Kelly

New South Wales members appointed to the Bench

for the year ended 30 June 2002

Supreme Court of New South Wales

The Hon Justice Joseph Campbell
The Hon Justice Terence Buddin
The Hon Justice Ian Gzell

Industrial Relations Commission of New South Wales

Deputy President Wayne Haylen QC

District Court of New South Wales

His Hon John Nicholson SC
His Hon Stephen Walmsley SC
His Hon Nigel Rein SC
His Hon Anthony Blackmore SC
His Hon Judge Colin O'Connor QC

New South Wales Local Court

John Andrews
Howard Hamilton
Sylvia Emmett

Federal Court

The Hon Justice Garry Downes AM*
The Hon Justice Peter Jacobson

Family Court

The Hon Justice Mark Le Poer Trench

* Also appointed Acting President of the Administrative Appeals Tribunal

Bar Association representatives on educational bodies

for the year ended 30 June 2002

Centre for Legal Education, Advisory Board

Clarence Stevens QC

College of Law, Board of Directors

Richard White SC

Legal Practitioners Admission Board

Peter Taylor SC
Jeremy Gormly SC

Legal Practitioners Admission Board, Legal Qualifications Committee

Clarence Stevens QC
Caroline Needham SC
Janet Oakley

Legal Practitioners Admission Board, Law Extension Committee

David Nock SC
Anthony O'Brien

University of Sydney, Faculty of Law

Carolyn Davenport

University of Technology, Sydney, Faculty Board

Geoff Lindsay SC

University of NSW, Faculty of Law

Rachel Pepper

University of Western Sydney, Faculty of Law Advisory Committee

Igor Mescher
Robert O'Neill
Peter Dooley

University of Wollongong, PLT Course Advisory Committee

Stuart Hill

University of Wollongong, Faculty of Law, Visiting Committee

Bruce Collins QC



Court committees and working parties

for the year ended 30 June 2002

Compensation Court Rules Committee

Brian Ferrari
Gregory Beauchamp

Court of Appeal Users Committee

Russell McIlwaine SC
Guy Reynolds SC

District Court Civil Business Committee

Brian Murray QC
Larry King SC

District Court Users Committee

Richard Bell

District Court Criminal Listings Review Committee

Matthew Johnston

District Court Technology in the Courtroom Project

Michael Lawler

District Court Rule Committee

Ross Letherbarrow SC

Dust Diseases Tribunal Rules Committee

Brian Ferrari

Family Court Case Management Committee

Grahame Richardson SC

Fair Trading Tribunal - Home Building Division Consultation Group

Simon Kerr

Federal Court Electronic Filing Working Party

Michael McHugh

Industrial Relations Commission Users Group

Maxwell Kimber SC
Trish McDonald

Land & Environment Court Users Group

Jeffrey Kildea

Land & Environment Court Information Technology Implementation Group

Jeff Kildea

Local Court (Civil Claims) Rule Committee

Andrew Kostopoulos

Local Court (Civil Claims) Court Users Forum

Jeremy Gruzman

St James Local Court Users Forum

Kevin Laphorn

Supreme Court Commercial Users Committee

Robert Macfarlan QC
Steven Rares SC
Noel Hutley SC
Glen Miller QC
Michael Rudge SC
David Hammerschlag

Supreme Court Common Law Division Criminal Users Committee

Tim Game SC
Phillip Boulten

Supreme Court Common Law Division Civil Users Committee

Brian Murray QC
Henric Nicholas QC

Supreme Court Company List Users Group

Malcolm Oakes SC
James Thomson
Robert Newlinds
James Johnson

Supreme Court Probate Users Group

Michael Willmott

Supreme Court Rule Committee

Ruth McColl SC
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 SC

Supreme Court Registry Users Group

Mr John Hennessy
Mr Michael Meek

Statutory appointments

for the year ended 30 June 2002

Administrative Decisions Tribunal

Legal Services Division

Caroline Needham SC
(Deputy President and Divisional Head)
Annabel Bennett SC
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 SC
Penelope Goode
Peter King
Chrissa Loukas

Retail Leases Division

Caroline Needham SC
Ronald Davidson
Geraldine Hoeben
General Division
Caroline Needham SC
Ronald Davidson
Geraldine Hoeben
Mark Robinson
Peter Skinner
Matthew Smith

Council of Law Reporting

Tim Castle

Motor Accidents Authority

Senior Assessors Service

Brian Murray QC
Peter Capelin QC
Larry King SC
Ross Letherbarrow SC

Claims Assessment and Resolution Service

Ian Cullen
Geoffrey Charteris
Raymond McLoughlin SC
David Russell

Statutory appointments - continued

for the year ended 30 June 2002

Legal Aid Commission

Legal Aid Review Committees

Committee No.1

John McCarthy QC

Committee No.2

David Higgs SC

Family Law Legal Aid Review

Committee No.1

Gregory Moore

Family Law Legal Aid Review

Committee No.2

Bradley Richards

NSW Cancer Council

Garry Downes QC

National Native Title Tribunal

Jennifer Stuckey-Clarke

Legal Profession Advisory Council

Philip Greenwood SC

Jeremy Gormly SC

Law and Justice Foundation

Bret Walker SC

Law Week Board

Philip Selth

Other appointments

for the year ended 30 June 2002

Australian Advocacy Institute

Elizabeth Fullerton SC

Australasian Dispute Resolution Centre

Richard Bell

NSW Attorney General's Department Evidence Act Working Party

Stephen Odgers SC

Law Council of Australia committees

Access to Justice Committee

Jane Needham

ALRC Working Group

Bret Walker SC

Accident Compensation Committee

Anna Katzmann SC

Australian Young Lawyers Committee

Rachel Pepper

Advisory Committee on Indigenous Legal Issues

Ruth McColl SC (Chair)

Michael Slattery QC

Tony McAvoy

Criminal Law National Liaison Committee

Tim Game SC

Equalising Opportunities in the Law Committee

Chrissa Loukas

Cross-vesting Working Group

Stephen Gageler SC

Healthcare Liability Committee

Michael Slattery QC

Legal Technology Reference Group

Jeff Kildea

National Profession Reference Group

Bret Walker SC

Law Society of New South Wales committees

Criminal Law Committee

Tim Game SC

Personal Injury Committee

Andrew Stone

NSW Council of Professions

Phil Greenwood SC

Andrew Stone

Public Interest Law Clearing House

Peter Maiden

Rachel Pepper

Trustees of the Pro Bono Disbursement Fund

Philip Selth

Court liaison members 2002

for the year ended 30 June 2002

High Court

David Jackson QC

NSW Court of Appeal

Donald Grieve QC

Supreme Court of NSW - Common Law Division

Richard Burbidge QC

Supreme Court of NSW - Equity Division

Robert Forster SC

Supreme Court of NSW - Possessions List

James Stevenson

Supreme Court of NSW - Defamation List

Steven Rares SC

Supreme Court of NSW - Criminal Matters

Tim Game SC

Supreme Court of NSW - Admiralty List

Sandy Street SC

Industrial Relations Commission of NSW

Max Kimber SC

Land and Environment Court

Malcolm Craig QC

Local Court

Kate Traill

Federal Court

Malcolm Oakes SC

Family Court

Grahame Richardson SC

Reports

Promoting the interests of local practising barristers

BarCare

for the year ended 30 June 2002

BarCare is a professional counselling service run by qualified professionals as a service to members of the New South Wales Bar Association. The counsellors have a variety of expertise to cover different needs of members and their families. Barristers and their families seeking assistance initially contact a BarCare counsellor and make an appointment for consultation. The consultation takes place at the counsellor's professional rooms or by telephone. The Bar Association covers the costs associated with the initial consultation with the BarCare counsellor.

During the initial consultation the counsellor seeks to identify the nature and extent of the problem. With the client's permission, the counsellor may formally consult with a medical practitioner or other health professional of the member's choice to assess the treatment options available – both therapeutic and medical – prior to discussing a treatment program.

The treatment program may involve further counselling sessions with the BarCare counsellor, and or a referral to a specialist in a particular discipline, or to a specific support program for appropriate treatment.

The BarCare counsellors have access to a wide network of professionals from different disciplines for referral purposes or to discuss aspects of treatment. These include both general and specialist medical practitioners, social workers, psychologists, stress management consultants, dependency counsellors, as well as qualified people in other professional services.

Participation in any part of the BarCare service is voluntary. This service is confidential.

The history of BarCare

In July 2000 the Executive recommended to the Bar Council that an independent counselling service be established along the same lines as LawCare, the Law Society's system of providing counselling and medical treatment to solicitors.

After a series of meetings with the New South Wales Medical Board, medical practitioners and members of the Bar, the structure of the scheme (four panel members, with the initial consultation paid by the Association) was agreed. In May 2001 a brochure describing the new scheme was distributed to members. A formal announcement of the introduction of the scheme was made in the May/June 2001 edition of *Bar Brief*.

The panel members

David Goldman BSc Hons, MA Hons (Clin), MAPS, AFAIM. Mr Goldman is a clinical and forensic psychologist. He has experience in many areas, including trauma and bereavement counselling, critical incident stress, preventative education and treatment for high risk individuals, pain, anxiety and depression management. He has personal knowledge of the legal profession and its associated pressures.

Helen Churven BSW, BA. Ms Churven is a social worker in private practice in Balmain. She has extensive experience with professionals from many fields, dealing with depression, alcoholism, marriage breakdown and teenage related problems in families.

Doctors Alan Skapinker and Nici Leonard. Both are general practitioners practising in George Street, Sydney. They have considerable experience in counselling, with a wide network of professionals to whom they refer patients on a needs basis. These include psychologists, psychiatrists and drug and alcohol advisers.



Photo: Tanya Lake/The Australian Financial Review

BarCare - continued

for the year ended 30 June 2002

Promoting BarCare in 2001-2002

BarCare fridge magnets, advertising the scheme, were distributed to members of the Bar in December 2001. A telephone helpline was also introduced (02) 9230 0433.

Approximately 30 members and clerks attended a seminar held at the Association on 18 February 2002. Two members of the panel addressed the seminar and allowed ample opportunity for interaction with the attendees.

Statistics

A small number have been dealt with by a designated member of the Bar Association staff. One of these calls involved an emergency situation which was resolved with the assistance of one of the panel members.

A questionnaire was sent recently to the members of the panel.

An analysis of the replies received as at 30 June 2002 is as follows:

Total:	19
Female:	5
Male:	14
Most common age bracket (yrs)	45-54
Most common length of time practice (yrs)	11+
Most common locality of practice	CBD
Most common types of problem	Overwork, financial & alcohol
Number of family members seen	5
Number of members who continued with treatment after the initial consultation	15

All panel members said they were pleased with the way the scheme was working and were keen to promote the scheme by speaking at seminars and contributing articles to be published in either *Bar Brief* or *Bar News*.

Barristers' Benevolent Association

for the year ended 30 June 2002

Every year there are barristers who encounter personal misfortune or require some form of assistance from the Benevolent Association in order to overcome a major problem.

Sudden deaths, serious illness, accident, mental illness, cancers, suicides, HIV/AIDS, alcoholism, families of deceased members who have some need and serious financial misfortune are all problems which have been addressed by the Barristers' Benevolent Association over the last few years.

The Association responds to calls for assistance without formality and without delays. There are no formal applications, forms, waiting periods, means tests or other predetermined administrative requirements. There have been times when assistance has been provided on the same day as information about a problem became known..

The assistance given is generally financial, but it is not limited to money. Arrangements have been made for legal assistance, for independent psychiatric assessment, for negotiating housing, negotiating with banks, preparing financial position statements, or dealing with other aspects of members' financial problems and intervening with creditors where that becomes necessary.

Every aspect of the operation of the Benevolent Association, from the donations made to the Association through notification that a member is in difficulty, assessing and providing assistance is an expression of the collegiate nature of the life of a group of independent individuals collectively operating as the Bar.

In the financial year 2001 - 2002 the Management Committee approved nine grants (totalling \$88,900) and two loans (totalling \$24,337).

Information that a member is in difficulty can come from any source. The most common source of information is from barristers who are aware that a floor member is in difficulty. Very often clerks will make contact, but sometimes family members will make an approach, either directly to a member of the Bar Council or to the Executive Director. This contact can take the form of a telephone call or letter to the Executive Director or a Bar Councillor, and is treated with the utmost confidentiality.



Contributors to the Barristers' Benevolent Fund of New South Wales

Contributions for the year ended 30 June 2002

Contributions \$5,000 and above

Francis Douglas QC
Bret Walker SC

Contributions \$2,000 to \$3,000

Philip Doherty
John Murphy
Christopher Murtough
Clive Steirn SC

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

Paul Byrne SC
James Dupree
John Durack SC
Simon Kerr
Ruth McColl SC
Tim McKenzie
Brian Murray QC
Steven Rares SC
Clarence Stevens QC
Murray Tobias QC
John West QC

Contributions \$500 to \$999

Tom Bathurst QC
Peter Bodor QC
Paul Brereton SC
Campbell Bridge SC
Peter Capelin QC
Jeremy Clarke
Bruce Collins QC
Ian Cullen
Sandra Duggan
Richard Edmonds SC
The Hon Robert Ellicott QC
John Garnsey QC
John Gooley
John Hislop QC
Clifton Hoeben AM SC
Chris Hoy
Michael Inglis
Gregory Jones
Anna Katzmam SC
William Kearns SC
Larry King SC
Terrence Lynch
Robert McDougall QC
Ian McGillicuddy
Raymond McLoughlin SC
David Nock SC
David Officer QC
Bruce Oslington QC
Dennis Ronzani
Stephen Rothman SC
Richard Royle
Frank Santisi
Julian Sexton SC
Richard Smith
John Tancred
Winston Terracini SC
Barry Toomey QC
John Trew QC

Contributions \$100 to \$499

Michael Abdul-Karim
Philip Adams
Neil Adams
Damien Allen
John Amor-Smith
Kelvin Andrews
David Ash
Her Hon Judge Cecily Backhouse QC
His Hon Richard Barbour QC
Philip Bates
Richard Battley
Richard Beasley
Richard Bell
His Hon Hubert Bell
Rhonda Bell
Annabelle Bennett SC
Peter Biscoe QC
His Hon Judge Alan Bishop
Paul Blackburn-Hart
Mark Brabazon
The Hon Justice John Brownie
George Brzostowski
David Buchanan SC
Gregory Burton
Ian Butcher
Peter Callaghan SC
Robert Cameron
Stephen Campbell
Andrew Campbell
David Caspersonn
David Catterns QC
Paul Cattini
John Cauchi
Richard Cavanagh
Stephen Climpson
Bernard Coles QC
Nicholas Confos
Peter Cook
John Coombs QC
Roderick Cordara SC
David Cowan
Gerard Craddock
Malcolm Craig QC
Gregory Curtin
William Dalley
Ian Davidson
David Davies SC
Alan Davis
John Davis
Hament Dhanji
Peter Dooley
Ronald Driels
The Hon Justice John Dunford
Philip Durack
Grahame Edwards
Martin Einfeld QC
Lindsay Ellison
Anthony Enright
Mary Falloon
John Fernon
Brian Ferrari
His Hon Judge
Michael Finnane QC
Stephen Flett
Robert Forster SC
Reno Gambi

Christopher Gee QC
Antonio Gidaro
Mark Gilbert
Madeleine Gilmour
Jeremy Gormly SC
Martin Gorrick
Geoffrey Graham
Michael Green
Robert Greenhill SC
The Hon Justice Roger Gyles AO
Peter Hall QC
G Barry Hall QC
Roger Hamilton
Stephen Hanley
Peter Hastings QC
Terrence Healey
John Heazlewood
The Hon Geoffrey Herkes
Geraldine Hoeben
Raymond Hood
David Hooke
His Hon Judge
Gregory Hosking SC
Tom Hughes
Brendan Hull
Robert Hunt
George Iknors
Anthony Jamieson
Richard Johnson
Geoffrey Johnson
Peter Johnson SC
James Kearney
David Kell
Roland Keller
Desmond Kennedy SC
Gregory Kenny
Stuart Kettle
Jeffrey Kildea
Michael King
Peter Kintominas
The Hon Justice David Kirby
Peter Kite SC
Allen Lakeman
Ian Lawry
Christopher Leahy
Patrick Leary
Leonard Levy SC
Mark Lynch
Robert Macfarlan QC
The Hon Justice Rodney
Madgwick
Phillip Mahony
Janet Manuell
Robin Margo SC
Hugh Marshall
Paul Mason
Roderick Mater
Michael McAuley
Bruce McClintock SC
Mark McDermott
John McDonald
Gordon McGrath
Garry McIlwaine
Russell McIlwaine SC
Adrian McInnes QC
Master John McLaughlin
Gregory McNally
Aziz Melick SC
Paul Menary
Terese Messner

Glen Miller QC
Anthony Monaghan
Cameron Moore
His Hon Judge Joseph Moore
Linton Morris QC
Judith Munday
Peter Neil SC
Trevor Neill
David Nelson
Peter Newton
Henric Nicholas QC
Paul Nolan
His Hon Judge Stephen Norrish QC
Peter O'Connor
Bruce Odling
Kevin O'Grady
Elizabeth Olsson
Robert O'Neill
Rodney Parker QC
Michael Perry
His Hon Judge Joseph Phelan
Jeffrey Phillips
Kevin Pierce
Borys Pluznyk
James Poulos QC
Dominic Priestley
Jonathon Priestley
Robert Quickenden
Malcolm Ramage QC
Anthony Renshaw
James Renwick
David Rickard
Gary Roberts
Michael Robinson
Jonathon Robson
Eugene Romaniuk
Terence Rowles
Geoffrey Rundle
Peter Russell
John Ryan
James Sainty
Chandra Sandrasegara
Gregory Seragg
The Hon David Selby AM QC
Ian Serisier
Jeffrey Sewell
Bernard Sharpe
The Hon Justice Charles Sheller
Anthony Slater QC
The Hon John Slattery AO QC
Michael Slattery QC
The Hon Justice Rex Smart
Rena Sofroniou
The Hon Justice Harold Sperling
Alison Stenmark
Craig Stewart
Kenneth Stewart
John Stowe QC
Wendy Strathdee
Sandy Street SC
The Hon Justice Timothy
Studdert
Alexandra Sullivan
Garry Sundstrom
Ingmar Taylor
Gerard Thistleton
John Thompson
Austin Thompson
David Thorley

Barristers' Benevolent Fund of New South Wales - continued

Contributions for the year ended 30 June 2002

Alexander Todd
Iain Todd
Warwick Tregilgas
Her Hon Judge Robyn Tupman
Christopher Twomey
Gus Van Der Vlag
William Walsh
Ralph Warren
John Waters
Gregory Watkins
Geoffrey Watson
Oswald Watt
Carol Webster
Christopher Whitelaw
David Williams
Michael Williams QC
John Wilson
(4 Selborne Chambers)
John Wilson
(Hargrave Chambers)
John Wilson
(Lachlan Macquarie Chambers)
Dennis Wilson
The Hon Justice Peter Young
Malcolm Young

Contributions \$25 to \$99

David Andrews
The Hon Charles Bannon QC
Paul Barnes
Graham Barter
John Bartos
Jenny Baxter
Robert Beech-Jones
Peter Callaghan
The Hon Justice Michael
Campbell
Grant Carolan
Keith Chapple
David Cochrane
The Hon Brian Cohen
Alyn Doig
Peter Dwyer
Michael Elkaim
Clive Evatt
Maureen Fanning
John Fernan
George Giagios
The Hon Justice Leone Glynn
David Godfrey-Smith QC
Richard Grady
His Hon Judge Geoffrey Graham
Trevor Hall
Malcolm Hardwick QC
John Harris
Michael Heath
Robert Hewson
His Hon Judge
William Hosking QC
John Ibbotson
The Hon Justice Bruce James
His Hon Judge
Hugh Johnston QC
John Jones
David Jordan
Paul Joseph
Leonard Karp
James Kearney
John Keogh

The Hon Jack Lee QC
The Hon Justice John Lehane
Ross Letherbarrow SC
James Loxton
George Lucarelli
Peter Lyons QC
The Hon Dr James Macken
His Hon Judge
Barry Mahoney QC
John McKenzie
Stephen McMillan
The Hon Justice Jeffrey Miles AO
Robert Montgomery
Aldo Monzo
Peter Mooney
The Hon Patrick Moran
Douglas Murphy
Robert Newton
Neil Newton
Robert Nicholls
His Hon Judge John Nield
Gregory Niven
David O'Neil
Richard Page
John Papayanni
The Hon Justice Russell Peterson
John Purnell SC
John Reading SC
Denise Reid
John Ringrose
Michael Rollinson
Kim Roser
David Russell
The Hon Justice Donnell Ryan
Ben Salmon QC
Alexander Shand QC
Rodney Skiller
Mark Southwick
Michael Spartalis
The Hon Justice Paul Stein
Peter Stitz
Alan Sullivan QC
Garry Sundstrom
His Hon Judge
Paul Urquhart QC
Mark Vincent
Christian Vindin
James Viney
The Hon Justice Lloyd Waddy
The Hon Frederick Watson QC
The Hon Raymond
Watson AM QC
Richard Weinstein
The Hon Justice Murray Wilcox
Dudley Williams
John Wynyard

Contributions under \$25

Edgar Baskerville
Michael Bateman
Malcolm Beveridge
Diana Black
Malcolm Broun OAM QC
Steven Carrington
Justin Clyne
His Hon Judge
Thomas Davidson QC
Jonathan de Vere Tyndall
His Hon Judge David Freeman
Geoffrey Gemmell
Garry Gillett
Melissa Gillies
Evgenios Gramelis
Jeremy Gruzman
John Henness
Thomas Howard
Lynette Judge
Gemunu Kumarasinhe
Bruce Levet
Mary Lilienthal
Marcia Osterberg-Olsen
Gregory Poole
Kathryn Poulos
The Hon Sir
William Prentice MBE
The Hon Justice John Purdy
Garry Rich
Paul Schroder
Richard Sergi
Dominic Toomey
John Tuckfield QC
Nicholas Ulrick
Anthony Wilmshurst
Leslie Wolf
Christopher Wood
Justin Young

Note: The contributions list is made up of all amounts processed from 1 July 2001 to 30 June 2002. Contributions processed after 30 June 2002 will be acknowledged in next year's annual report



Equal Opportunity Committee

During 2002, the work of the Equal Opportunity Committee consolidated and expanded the achievements of 2001. This year the Committee has continued to focus its work on three principal issues: women at the Bar, Indigenous lawyers and law students, and disability.

To manage the Committee's workload as efficiently as possible, Steven Rares SC 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

The amendment to the protocol for the appointment of Senior Counsel to add the criteria for appointment the demonstration of leadership in promoting the community and diversity of the Bar became operative in January 2002 and applies to the applicants to the Inner Bar from then. The criteria is designed to ensure that an important ingredient for success at the Bar is to demonstrate an active involvement in the promotion of the interests of less-advantaged groups at the Bar.

The Committee has implemented a pilot 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. Eight women barristers are being mentored by eight senior juniors. An evaluation will occur later in 2002.

A child care initiative continues to be developed and was a major focus of the Committee's work in the last 12 months.

Bernadette Dunn from McArthur Management Services assisted the Committee in developing a model for emergency in-home care for children of barrister parents to allow barristers to meet their professional commitments when their usual support services fail. A pilot scheme will be implemented in 2003.

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 two days 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 attend court and observe a female judge and then to meet them. The students were from the University of New South Wales and Macquarie University. Further visits are being planned.

Angela Pearman on behalf of the Committee hosted a well attended seminar aimed principally at women barristers on how to succeed in business. The Honourable Justice Branson and Carla Zampatti AM shared their

experiences as women who had attained many remarkable achievements during their successful careers with the audience in an open and honest manner, while identifying some of the barriers they had personally confronted and overcome.

Work continued on a model briefing policy and developing a proposal for its introduction in firms and government agencies. The Bar Association's 'Find a Barrister' database on its web page was adapted to permit searches by gender.

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. The Committee has contacted some owners where there are inaccessible buildings with chambers in them and are working co-operatively to encourage the alterations to these buildings. While overall progress is slow, there are some changes planned for 2003 in relation to 53 Martin Place, Sydney.

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. Implementation of the Strategy continues to be a major focus of the Committee and the Subcommittee.

A special trust fund, The Indigenous Barristers' Trust – the MumShirl Fund, was established to create a pool of funds to provide financial assistance to Indigenous barristers especially in their first few years of practice. The Australian Taxation Office declined to grant the Trust deductible gift recipient as a public benevolent institution under the *Income Tax Assessment Act 1936 (Cth)*. That decision is now the subject of review in the Federal Court, initiated by the Trustees. John Durack SC and David Charles have provided the necessary expert legal advice and representation to the Trustees in preparation for the proceedings.

The students participating in the University of NSW Indigenous Pre-Law Program attended the Bar Association for a day during their course in January 2002 and were taken to chambers and introduced to the work of a barrister. They visited courts and spoke with judges who shared their experiences as both barristers and judges. This visit is an annual event and is important in exposing new Indigenous law students to the career opportunities available at the Bar.

Both the Public Defenders and Prosecutors were able to secure funding assistance from the NSW Government to help an Indigenous barrister to commence practice in each of their chambers. One Indigenous lawyer worked at the Public Defenders for a period of six months as part of the Strategy. Employment opportunities were found for other recent graduates as associates to District Court judges and as a researcher in the Federal Court. Law students were assisted in finding part-time employment at the Bar

A child care initiative continues to be developed and was a major focus of the Committee's work in the last 12 months.

Equal Opportunity Committee - continued

Association and with individual barristers during the year. The Committee thanks Ebsworth & Ebsworth Lawyers and Gilbert+Tobin Lawyers for providing employment opportunities to Indigenous law students and graduates and working closely with the Committee in specifically creating these opportunities.

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

Sydney Regional Aboriginal Corporation Legal Service Pro Bono Scheme

Members of the Committee has have establish a scheme to provide pro bono legal services to the Sydney Regional Aboriginal Corporation Legal Service. In excess of 25 barristers have volunteered to provide pro bono assistance, including conducting short District Court trials.

Other issues

The Committee commenced looking this year more closely at other areas. These included the composition of the Bar and law students in NSW in relation to non-English speaking background to develop a profile of the Bar itself and to identify any emerging changes in the composition of the group of young lawyers to reflect the general community in race and culture.

The Committee is also looking at issues of special importance to gay and lesbian members of the Bar. In this regard, the Committee continues to review the changes to superannuation at a federal level.

The Committee wishes to specially thank its assistants, Shanthini Govindasamy and then Denise Fleming, for the invaluable work that they have done throughout the year in helping the Committee to keep track of, and implement, its challenging agenda.

Young Barristers Committee

Two years have passed since the Young Barristers Committee was reinstated. Its principal function is to act as a conduit between young barristers – that is, barristers who have been called to the Bar within the last seven years – and the Bar Council. In doing so, the Committee assists junior barristers to overcome difficulties encountered in their early years at the Bar and keeps Bar Council informed of relevant issues.

During 2001-2002, the Committee has overseen the completion of projects initiated last year and made progress in the development of a number of new proposals.

The Committee has made as a priority the issue of fee recovery. Non-payment of fees, or at the very least tardy payment thereof, is a significant matter of concern amongst young barristers. A paper on the topic written by the Committee during the year, together with some recommendations for improvement in this area, will be presented to Bar Council. A continuing professional development seminar in the practice management stream will be presented by several Committee members in September 2002, outlining various strategies for effective fee recovery.

In addition to the above seminar, Committee members have made short presentations to the Bar practice courses held this year on the work of the Committee and on the common experiences and perils of a barrister's initial years in practice.

Notwithstanding that the dominant focus of the Young Barristers Committee cannot be described as social, this year's Committee has recognised the merit of social gatherings as means of meeting fellow young barristers and of fostering collegiality. To this end, the Committee has

instituted a number of social functions to be held over the year in the Bar Association's Common Room. At the first such occasion the President of the Bar Association, Bret Walker SC, and the Executive Director, Philip Selth, both gave talks and an outline of the Association's BarCare programme was presented. Further events are scheduled for the remainder of the year.

As many members will recollect, the first half of 2002 was dominated by speculation about the likely quantum of increases in professional indemnity insurance premiums. Anticipating the worst, the Young Barristers Committee negotiated on behalf its members a number of short term lending facilities with some of the major financial institutions for those members who may have been unable, in the short term, to meet any appreciable augmentation in professional indemnity insurance premiums. It is anticipated that a similar exercise will be performed next year if necessary.

This year has also seen a continuation, if not strengthening, of the liaison between the Young Barristers Committee and other committees of the Bar Association, most notably the Education Committee, the Continuing Professional Development Committee and the Equal Opportunity

The Young Barristers Committee negotiated on behalf its members a number of short term lending facilities with some of the major financial institutions for those members who may have been unable, in the short term, to meet any appreciable augmentation in professional indemnity insurance] premiums.

Young Barristers Committee - continued

Committee. For example, upon the completion of the August Bar Readers Course, the Young Barristers Committee will host a joint function with the Equal Opportunity Committee to welcome and meet the new Bar readers. Likewise, the Young Barristers Committee has maintained its close association with other young lawyer bodies, with a member of the Committee also acting as the

NSW Bar Association's representative on the Young Lawyers Committee of the Law Council of Australia and a member of the Committee attending the annual NSW Young Lawyers Conference. To this end, this year saw participation by members of the NSW Bar in the Golden Gavel competition organised by NSW Young Lawyers.

Information Technology Committee

The terms of reference for the Committee, set out in last year's report, were reviewed and confirmed.

The Committee's main focus this year has been on developing and implementing an information technology survey of the New South Wales Bar.

The survey was designed to gather information to inform issues such as legal research cost, communications within the Bar and the use of electronic transfer of documents between solicitors, barristers and the courts.

With the assistance of chambers clerks in following up the respondents, an impressive 544 responses, a rate in excess of 28 per cent of the practising Bar, was achieved.

Amongst the significant information that emerged included the following:

- nine per cent of members do not have a computer in their room;
- 80 per cent use their computers for professional e-mail and research;
- 25 per cent personally subscribe to electronic research services;
- 50 per cent use only free research services;
- 45 per cent would subscribe if services were cheaper;
- 25 per cent have attended an electronic legal research course;
- 50 per cent would attend an electronic research course if they were available;

Commercially valuable details concerning individual and floor library budgets were also obtained (to be used anonymously). The responses can be broken down into senior and junior counsel and, in the case of junior counsel, their years at the Bar.

It is clear from these results that a significant unrealised market exists for electronic research services and the market is price sensitive. The challenge now facing the Committee is to persuade the publishers of the force of this information and encourage a reduction in the costs of such services.

Members of the Committee also had discussions with the Bar Association's Director of Studies, Robert Hayes, about the provision of courses in electronic legal research and received an enthusiastic response. At the time of writing, the original sessions programmed for legal research online have been fully booked. These sessions have been organised by the Library and the Professional Development Department. Further programmed sessions have been organised to meet the ongoing demand.



Photo: Phil Carrick/The Australian Financial Review

Bar History Committee



A principal aim of the Bar History Committee is to obtain, preserve and publish material relating to the history of the New South Wales Bar for the benefit of its members and the public. This year has been one of achievement for the Committee, with the commencement or successful completion of a number of important projects in support of that aim.

In May 2002 the Bar Association celebrated the centenary of its foundation as a voluntary association with public interest functions. To mark this important and historic occasion, the Association published a collection of essays entitled *No mere mouthpiece: Servants of all yet of none*. More than three decades had passed since the publication of the last book about the history of the Bar - Dr Bennett's *A history of the New South Wales Bar*, published in 1969. Included in the collection of essays was a list of names of all those who had supported the project by financial contributions. All funds raised will go towards further study of legal history.

Another significant event for the year was the formation, under the sponsorship of the Association, of the Francis Forbes Society for Australian Legal History. Modelled on the Selden Society and Canada's Osgoode Society, it will (in conjunction with the Bar History Committee, Macquarie University, professional associations throughout Australia and local members of the Selden Society) promote the study of Australian legal history through publications and seminars. The Society is registered as a company limited by guarantee and has been endorsed as an income tax exempt charity. The Francis Forbes Fund, of which the Society is Trustee, has been endorsed both as an income exempt charity and a deductible gift recipient.

The first major project to be undertaken by the Society will be the inaugural Forbes Society Lecture. Ian Barker QC has agreed to deliver a lecture on 'The history of trial by jury in NSW'. The lecture, to be held on 28 November 2002, will be held the Banco Court, Queen's Square.

Another project undertaken by the Committee is the production of essays on the history of the equity jurisdiction in New South Wales. The Hon Justice J D Heydon has agreed to act as Consultant Editor and will work in conjunction with the Project Secretary, Hugh Stowe and others. Work on that project is progressing.

Macquarie University with a scholarship agreement was signed in August 2001 and a small ceremony marking the occasion was held in the Bar Association's Board Room. 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, for three years for those doing a PhD. Advertisements were placed by Macquarie University on campus and in the print media. In early 2002, the selection committee awarded the scholarship to Catherine Hutchins, from Adelaide.

It was noted in the 2001 Annual Report that Dr John Bennett had been engaged by the Committee to transcribe and edit the diary of John Callaghan, a 19th century New South Wales District Court judge. Work progressed steadily throughout the year. The edited manuscript is due to be delivered to the Association in September 2002. The Committee hopes to be able to publish the diary in 2003.

Bar Association Human Rights Coordinator

The role of the Human Rights Coordinator 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 Coordinator 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, most of the work is in the preparation for the President of comments or advice, 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 Coordinator, Cowdery QC, 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.

From time to time it is suggested that the Coordinator should become more actively involved in the monitoring of human rights abuses domestically and internationally and in active intervention (by missions and observations) when they occur. The present role of the Coordinator is more narrow, reflecting the state jurisdiction of the Bar Association itself. There are also significant resource implications (human and financial) for a wider role.

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.)

Reports

Arranging and promoting continuing professional development

Education, training and professional development programmes

The Education Department restructured and renamed

In early 2002, the Bar Association's Education Department was restructured and renamed the Professional Development Department. The direction of core programmes by the Education Committee is being phased out. In its place will be a series of working parties comprised of members who will work with the Director of Studies to develop and implement the various programmes.

Bar Council and all members of the Association are indebted to those who have given dedicated service on the Education Committee over many years.

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The Association's legal education programmes

The Association provides a series of structured programmes for legal education, training, and professional development. They primarily address the needs of practising barristers in New South Wales, but also groups in society who seek information about the role an independent Bar plays in maintaining the rule of law and a legal system which is independent, fair, transparent and accessible.

A wide range of individuals and organisations are involved in the development and delivery of these programmes. They include:

- judges and magistrates;
- court registrars;
- professions providing expertise in the context of the legal system - including psychiatrists, psychologists, social workers, accountants, architects and engineers;
- disability councils;
- Indigenous communities;
- women's organisations;
- human rights groups;
- community groups; and
- public servants.

There is a considerable and growing contact between the Bar Association, as a provider of professional development programmes, with secondary schools, universities, and other providers of legal education. The programmes also provide education and training for a wide range of community and professional groups. For example, New South Wales barristers are significant contributors to the professional development of solicitors.

The core education programmes provided by the Association are:

- Bar Exams;
- Bar Practice Course;
- Reading Programme; and
- Continuing Professional Development Programme.

In addition, the Association facilitates initiatives and endeavours by chambers, committees, sections and forums which conduct seminars and lectures focused on the professional development needs of barristers with particular sectional interests, for example criminal law, administrative law, constitutional law and mediation.

The Bar exams

The Bar exams may be sat by any person who is qualified to be admitted as a legal practitioner in New South Wales. The knowledge and experience of a 45 – strong working party of barristers is harnessed for the purposes of this programme.

Biannual exams are set in ethics, practice and procedure, and evidence. Candidates are required to achieve a 75 per cent mark in each of the exams in order to be entitled to register for the Bar Practice Course, which is the induction programme for legal practitioners wishing to receive an unrestricted barristers' practising certificates in New South Wales.

The prospect of achieving what is effectively a distinction standard may seem daunting. However, candidates receive considerable support throughout the process from the Bar Association's library, from reading lists and other materials developed by the Bar Exams Working Party, from the tutorials and 'hypotheticals' which the working party conducts for candidates prior to the exams, and through the viva voce examination and moderating processes which are available to candidates who do not achieve the 75 per cent mark required in each subject.

There were 71 exam candidates for the November 2001 Bar Exams and 67 for the exams in June 2002. Not all candidates take the three exams in the one sitting. Following the June 2001 exams, 29 readers entered the Bar Practice Course 2/01. Following the November 2001 exams, 42 readers entered the 1/02 Bar Practice Course.

The Bar Practice Course

The Bar Practice Course consists of a five week, full-time, intensive programme, which must be completed satisfactorily by legal practitioners who wish to practice with an unrestricted barrister's practising certificate in New South Wales. The course was developed by barristers, and runs in eight modules, using a format predominantly based on a series of realistic, rigorously monitored and evaluated applications, trials, mediations, and other exercises, many involving members of the judiciary and magistracy.

The Bar Practice Course is conducted twice per year, with some 300 barristers devoting their time and energy, as well as practical skills and experience, to the delivery of the

Education, training and professional development programmes - continued

course as lecturers, discussion leaders, instructors, moot court judges and advocacy instructors.

The foreshadowed review of the Bar Practice Course will extend to the goals, curriculum, materials and implementation strategies. Readers who have recently completed the Bar Practice Course will be actively engaged in the reviewing process.

The Reading Programme

Legal practitioners who come to the Bar with a restricted practising certificate enter into a 12 month readership with two barristers of at least seven years experience. This includes the five weeks of the Bar Practice Course. The barrister/tutors are required to certify their barrister/readers' attainment of a satisfactory standard after the initial three months of reading; after the full 12 months of reading, the tutors are required to certify their readers' fitness to practice without restriction as a barrister in New South Wales. Such assessments and certifications are required in order for the barrister/reader to become eligible for an unrestricted practising certificate.

The Reading Programme is now also managed and supervised by a working party of barristers. With the assistance and advice of the Reading Working Party, the Professional Development Department maintains an ongoing dialogue with tutors regarding the progress or otherwise of their readers. In addition, the Department convenes each year a tutors and readers dinner, reflecting the collegiality of the Bar, particularly with respect to its more junior and less experienced members. Dinner speakers at the tutors and readers dinners over the reporting period were Mr David Bennett AO QC, Solicitor General of the Commonwealth and the Hon Justice Margaret Stone of the Federal Court of Australia.

Continuing Professional Development (CPD)

Bar Council has determined that, as of 1 July 2002, all barristers who hold New South Wales practising certificates must undertake a continuing programme of professional development. The programme runs in four strands, reflecting and developing the conceptual infrastructure of the Bar Practice Course, namely:

- ethics and regulation of the profession;
- advocacy, mediation and other barristers' skills;
- management (risk, practice and personal); and
- substantive law, practice and procedure, and evidence.

The goals of the CPD programme include providing barristers with a practical and accessible means of raising and maintaining their professional standards at a very high level. The CPD programme is a statement by the Bar, both to itself and to governments and the community generally, that it is serious about raising and maintaining professional standards. Continuing Professional Development is the most obvious and direct means of achieving that end.

The Professional Development Department is developing and implementing the CPD programme with the assistance and active involvement of 'discipline teams' of barristers, led by those at the most senior levels of the Bar. Details of the evolving programme are maintained on the Association's web site. The programme includes a series of conferences to be conducted each year in Canberra and key regional centres, including Wollongong, Newcastle, Orange-Dubbo, and Lismore, and in the downtown Sydney CBD.

The CPD programme was launched in June 2002 at a conference in the Hunter Valley, where the practical intensity, intellectual depth, and diversity of that which is planned for the CPD programme in the long term, was amply displayed.

All holders of a NSW practising certificate should consider maintaining a detailed record of CPD seminars, conferences and other activities which they have attended. When practising certificates are renewed in May/June of each year, a statutory declaration attesting to attendance at CPD events will be required.

Other activities

The advent of CPD has provided the impetus for an increased focus by the Association on its engagement with law schools and law students, particularly with respect to our professional development programmes for sponsorship of academic prizes; providing information to law students about a career at the Bar; and concerning the Bar Association's equal opportunity and affirmative action initiatives.

The Department is progressively transferring teaching material, course handbooks, information guides and publications generally from paper to CD-ROM, and digitally recording the delivery of the unfolding CPD curriculum. This will build up a valuable information and teaching resource for the Bar Association. Increasing and enhancing the scope and quality of its part of the Bar Association web site is also a high priority for the Professional Development Department.

Details of the Bar Association's education, training, and Professional Development programmes are maintained on the Bar Association's web site at www.nswbar.asn.au.

When practising certificates are renewed in May/June of each year, a statutory declaration attesting to attendance at CPD events will be required.

Reports

Making recommendations and promoting the administration of justice

Criminal Law Committee

As in previous years, the Committee has had to respond to a large volume of amending legislation and reform proposals deriving from the NSW Government. Submissions have been made on such diverse topics as:

- the draft *Law Enforcement (Powers and Responsibilities) Bill 2001*;
- the introduction of 'General Sentencing Principles' into the *Crimes (Sentencing Procedure) Act 1999*;
- amendments to the *Evidence Act 1995*;
- a review of the *Police Integrity Commission Act 1996*; and
- Commonwealth legislation, such as the *Proceeds of Crime Bill 2001*.

Some of the Committee's submissions to Government have been accepted. Others have not. The *Bail Amendment (Repeat Offenders) Act 2002* removed the presumption in favour of bail for a large number of persons, despite a Bar Association submission opposing this legislation. The NSW Government has amended Part 7 of the *Criminal Procedure Act 1986* in order to overcome the decision in *R v Norman Lee* [2000] NSWCCA 444 relating to the sexual assault communications privilege and rejected the Bar

Association's submission that the amendments went too far. The government also rejected a proposal that a system of limited disclosure of the contents of counselling communications be introduced, so as to permit full argument before the privilege issue is determined. The Association continues to press the Government to amend sec 102 of the *Evidence Act 1995*, so as to overcome the literal interpretation of that provision by the High Court in *Adam v R* (2001) 75 ALJR 1537.

On occasion, an initiative of the Committee has borne fruit. When consulted in 1999 about possible changes to the defence of provocation, the Bar Association suggested that the government create a statutory partial defence to murder of excessive self-defence. In the *Crimes Amendment (Self Defence) Act 2001* the *Crimes Act 1900* was amended to create such a partial defence, thereby reversing the High Court judgment in *Zecevic* (1987) 162 CLR 645.

Other areas where the Committee has played an active role are the development of new procedures for appeals to the Court of Criminal Appeal, proposals for expert witness conferences and lobbying in respect of prison conditions, particularly in terms of overcrowding, access to basic services and effective legal assistance.

Family Law Committee

In 2001-2002 the Committee continued to liaise with the Family Court of Australia regarding case management directions. It was reported last year that the Committee represented the Association on a Case Management Committee in the Family Court's Sydney Registry. The Registry introduced new case management directions, adopting a strict approach to compliance with timetables for the filing of affidavit material in respect to final hearings listed before the Court.

The Court's new national case management direction policy is due to be implemented early in the 2002-2003 financial year. Among the consequential matters associated with these directions, are amendments to the Family Court Rules ensuring consistency between the Rules and the directions.

In late December 2002, it is expected that the *Family Law Legislation Amendment (Superannuation) Act 2001* will be fully implemented. Thereafter, parties to the Court will be able to rely on the legislation. Primarily, the aim of the legislation is to ensure that superannuation is subject to a property division between parties.

Before the implementation of this legislation, any final property orders made by the Family Court cannot include superannuation as part of the property division. As a result, during 2002 parties in Family Court property proceedings have on occasions had to consider seeking an adjournment of their case until the legislation is implemented.

During 2001 – 2002, the Committee also:

- made submissions about the Family Court's discussion paper in relation to future expert evidence in the Court and its use and access;
- provided a representative to a Legal Aid Commission select committee investigating the appointment of lawyers to a panel for children's crime in specialist children's courts; and
- provided submissions to the Family Court concerning its discussion paper in relation to the review of family violence policy.

Personal Injuries Litigation Committee

The Personal Injuries Litigation Committee was constituted at the beginning of 2002. It replaced the Common Law Committee, which was considered to be a misnomer, partly because it included workers compensation practitioners but predominantly because of the spate of legislation that covers the area of litigation for damages at common law for personal injuries.

The Committee is comprised of barristers with an interest in, and practice encompassing, various aspects of the law concerning damages or compensation for personal injuries -- from employers' liability, to motor accidents, occupiers' liability, medical and other professional negligence and workers compensation.

A representative of the Law Society, currently Justine Hall of Dibbs Barker Gosling, Lawyers, routinely attends meetings. The Committee values her input and welcomes the exchange of information and views. Andrew Stone has a similar role on the corresponding Law Society committee.

The Committee assists Bar Council in formulating its position on issues that affect the substantive law and procedure in these areas and, in preparing submissions and correspondence on those issues to government and non-government bodies. It also operates as a vehicle through which the concerns of members practising in the field can be brought to the attention of the Council and through which the Council and members of the Association can be informed.

The Committee contributed ideas and information to the President, Bret Walker SC, during the period of consultation on the *Civil Liability Bill 2002*. In the period since the passage of the Bill and during the community debate on tort law, the Committee has provided valuable information to Bar Council and directly to the President. It is

expected that it will continue to do so. The Association supports the work of the Law Council in the areas of public liability and medical negligence and in respect of its submissions to the Ipp Committee on tort law reform.

The Committee held a dinner for (what used to be known as) the common law Bar at which the President was the guest speaker. It was very well attended and the opportunity it presented for both convivial discussion and good food was warmly received. Ray McLoughlin was responsible for most of the organisation and the success of the dinner is due in no small measure to his work.

The Committee has also prepared submissions for Bar Council and made recommendations for changes to rules and procedures in the District Court where most personal injuries litigation is now conducted.

The Committee is also undertaking a review of loadings in workers compensation cases.

Legislative changes have already seen the erosion of work for the junior Bar in personal injuries litigation. Further changes are inevitable. In response, the Committee initiated a pilot programme to mentor barristers of five to ten years standing who practice predominantly in personal injuries litigation to assist them to expand their practices into other areas of the law. The senior Bar has demonstrated considerable support for the programme, which is shortly to commence.

The Committee is especially grateful for the continuing tireless efforts that Andrew Stone has made to its work and the interests of the Bar, particularly in the areas of motor accidents and insurance. As always, the Committee is indebted to Kim Nichols, the Projects Officer with the Bar Association, for her hard work and for her relentless endeavours to ensure we meet our deadlines.

The Committee contributed ideas and information to the President, Bret Walker SC, during the period of consultation on the Civil Liability Bill 2002.



Mediation Committee

for the year ended 30 June 2002

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 2002 are:

- 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;
- liaison with, and development of good relations with, the Law Society of NSW;
- observing compulsory mediation under *Practice note 118* (the Supreme Court's practice note describing how it will exercise its power to order proceedings into mediation); 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 SC and with Hugh Stowe as its secretary. The Mediation Forum had a very successful meeting, chaired by Mr Rares and addressed by David Bennett QC, Solicitor-General of Australia and by Sylvia Emmett.

The Mediation Forum is now planning a meeting to address the role of judges in mediation.

As noted in last year's report, the Mediation Committee is of the view that, before it can be effective in its efforts to promote barristers as mediators and as advocates at mediation, more barristers need to be trained in mediation skills. It is hoped that the introduction of the Bar's Continuing Professional Development Scheme will provide opportunities for such training. After consultation with the Bar's Director of Studies, the Committee agreed to provide a two-hour CPD seminar on mediation on 5 March 2003.

Members of the Committee have agreed to prepare a series of articles for *Bar Brief* on different aspects of mediation and a publishing timetable has been agreed on.

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 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.

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.

Last year, 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 was prepared, largely drafted by the Mediation Committee. It has now been approved by Bar Council and by the Council of the Law Society. A revised draft was prepared by the Chair on the request of the Supreme Court's committee and further revised by the Court. The Court's committee requested the Mediation Committee to obtain comment on the draft protocol from three ADR organisations. These comments were obtained and it now seems likely that the Supreme Court will adopt the protocol.

If the Court adopts the protocol, it probably will dispense with its existing (long) list of mediators and, instead, when referring proceedings to mediation, will refer the selection of the mediator to the Bar Association, the Law Society or one of several ADR organisations. Bar Council has authorised the President to propose the same arrangement to the Chief Judge of the District Court.

Work to be done

All courts in New South Wales now have power to order proceedings into mediation, whether or not the parties consent. Some orders have already been made, e.g. *Albarran & anor (liquidators of Internova Travel Pty Ltd) v Envirostar Energy Limited* (unreported, Austin J, 29 July 2002). It is likely that the Committee will include among its activities the education of the Bar in making and resisting applications for mediation orders.

Before it can be effective in its efforts to promote barristers as mediators and as advocates at mediation, more barristers need to be trained in mediation skills.

Professional Indemnity Insurance Committee

The major activity of the Professional Indemnity Insurance Committee during 2001-2002 has been to negotiate on behalf of the Bar PII policies for 2002-2003. Indemnity insurance was offered by three brokers, Willis Australia Limited, Aon Risk Services Australia Limited, Heath Lambert Professional Indemnity Pty Limited and one insurer, Suncorp Metway Insurance Limited. With the exception of the Heath Lambert insurance which was quoted and available from mid-May, the other insurances were not quoted and available until mid to late June. This was caused by indecision on the part of insurers as to whether they would participate in our market. That indecision was due in part to the limits on their capacity because of a more difficult reinsurance market and more stringent Australian Prudential Regulation Authority requirements. As members are aware, these delays caused considerable difficulties in the context of the renewal of practising certificates from 1 July.

The Executive Director of the Association and the Professional Indemnity Insurance Committee began discussions with the brokers in February concerning the policy wordings for 2002-2003. Those discussions and negotiations proceeded for some time in view of unsatisfactory aspects of the wordings proposed. Final wordings were not available to submit to the Attorney General for his approval under sec 38R of the *Legal Profession Act 1987* until early May. The Willis and Heath Lambert policy wordings were approved on 14 May. A Suncorp wording was also approved on 14 May. Each of these approvals was conditional upon the insurer agreeing to provide information to the Executive Director of the Bar Association on an anonymised basis concerning the insurance placed and claims experience.

Heath Lambert quoted rates in mid-May. Willis did not quote rates until mid-June because it was not able to secure a market until then. Aon did not produce a policy for approval until early June and did not secure an insurer and quote rates until late June. In late May Suncorp offered insurance to members of the New South Wales Bar who were members of the Queensland Bar Association. In late June, it extended that offer to members who were members of the Victorian Bar Association.

Looking forward, it is obvious that the approved insurances must be available to members well before 30 June 2003. With that in mind, the Committee and the Executive Director of the Association will seek to ensure that next year wordings and rates are available by early May. This should enable members to have sufficient time to arrange their insurance before the renewal of practising certificates.



Reports

Promoting access to justice

Legal Assistance Referral Scheme

for the year ended 30 June 2002

Overview

The Legal Assistance Referral Scheme (LARS) embodies and reflects the strongly held view of the legal profession that a person's rights and access to justice should not be diminished because of impecuniosity. 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. Since the Scheme's inception, barristers have contributed approximately 18,500 work hours. The quality of service is high. To date, there have been no complaints made by applicants dissatisfied with the manner in which the Scheme dealt with their matters.

Eligibility

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).

A Review of the Scheme's activities in 2001 - 2002

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

For the period 1 July 2001 to 30 June 2002, 302 formal applications for assistance were received and processed. Of these applications, 190 were referred to barristers, as those applications came within the guidelines of our Scheme. As at 30 June 2002, there are 30 ongoing matters and two pending referral. All applications, whether ultimately referred or not, involve considerable time and resources in their assessment. The breakdown of those applications not referred to barristers is set out in the statistics below. Since last year, the Scheme's guidelines have been amended to exclude personal injury, medical negligence and apprehended violence orders.

For the first time in six years, compared to the previous year's figures, there was a decrease of approximately 15 per cent in the number of applications received. This may be attributed to the introduction of more court appointed pro bono schemes, especially in the lower courts, together with the Federal Court's Refugee Legal Advice Scheme.

Other points to note from an analysis of the activities of the Scheme's activities include:

- approximately 250 per cent increase in the number of matters applications received in the Supreme Court jurisdictions, in spite of the existence of the court-appointed pro bono scheme.
- approximately 250 per cent increase in the number of applications received from country areas

The Legal Assistance Department does not expect the number of members of the public seeking legal assistance to decrease. Indeed, we anticipate the number will increase, given the high profile of LawAccess as a one-stop referral service.

Case studies

- The Immigration and Rights Advice Centre referred an elderly Iranian woman who had been refused renewal of her permanent residency application on the basis that she had stayed out of Australia too long on a visit to Iran. She appealed the decision of the Migration Review Tribunal to the Federal Court where the barrister assisting her submitted that the Tribunal had not considered the special circumstance which was the cause of her absence from Australia. The applicant had returned to Iran to sell property which was one of the matters which the Minister's policy guidelines specified as being a relevant circumstance for the purposes of such an application. The application was granted by consent and the matter remitted to the Tribunal for reconsideration.
- A member of the public, whose brother had been bashed and critically injured in an armed robbery,

Legal Assistance Referral Scheme - continued

requested the Scheme for assistance to apply to the Supreme Court for an injunction to stop a large public hospital from pressuring the family for permission to turn off the life support system. A barrister provided detailed advice, at times on a daily basis, as to what procedures the hospital had to follow before a decision could be made, without the family having to resort to litigation. Over this period of time, the patient's condition improved. He has now been transferred out of intensive care and is able to be taken home on weekend visits.

- A Victorian legal centre referred a woman with two children, on a sole parent pension, whose ex-husband was appealing a Child Support Agency decision not to credit two cheques he paid in 1999 to her towards his liability. The husband asserted the two cheques should be credited towards his obligations under the Child Support Agency arrangements. The wife asserted the cheques should be credited to arrears of maintenance before the collection period commenced. There had

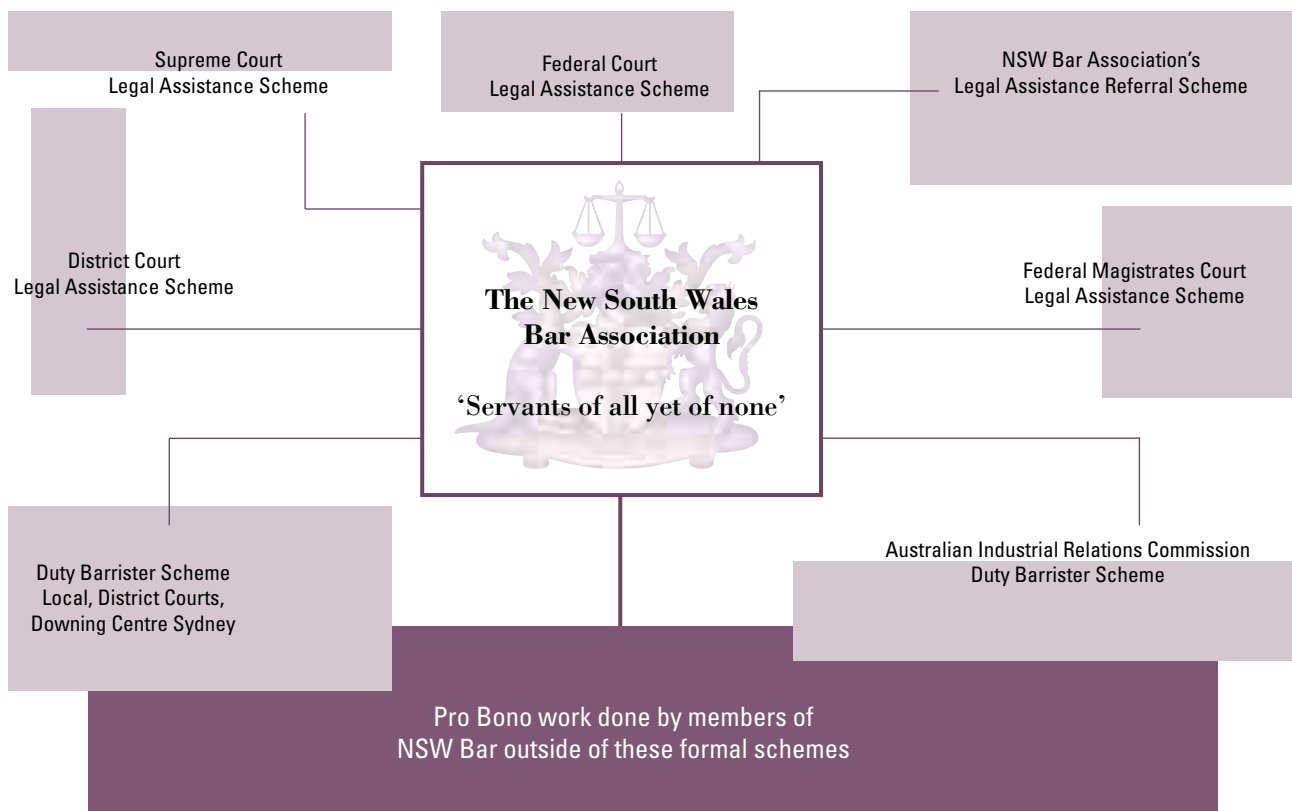
been a long history of dispute between the parties which necessitated the wife relocating to Victoria and travelling to Sydney by train for the hearing. The matter was set down for hearing in the Local Court St James Centre. A barrister appeared at the hearing where, after the Magistrate reserved her decision, the appeal was dismissed.

Volunteers encouraged

In February 2002 through the *Bar Brief* publication, the President exhorted members of the Bar to volunteer their services to the Scheme. Once again, the results showed that the majority of barristers prepared to volunteer chose the Legal Assistance Referral Scheme as first preference over the court appointed pro bono schemes.

The Legal Assistance Referral Scheme Manager spoke to readers at the biannual Bar Practice courses; over half the Readers in the courses volunteered their services to both the Legal Assistance Referral Scheme and the Duty Barrister schemes.

Pro bono schemes



Legal Assistance Referral Scheme statistics

for the year ended 30 June 2002

Barristers' Referral Service

The Barristers' Referral Service is aimed at addressing the increasing number of requests to the Association for assistance in obtaining the services of a barrister. These requests have been directed to the Association's web site address under 'Find a Barrister'. The facility has been visited approximately 84,000 times over the last twelve months. This category of assistance is invaluable for many applicants who have not qualified for assistance through LARS on financial grounds and can be referred to this service by staff of LARS.

Duty barrister schemes

The Manager and staff of the Legal Assistance Referral Scheme manage the operation of the duty barrister schemes which operate at the Local and District Courts at the Downing Centre and the Australian Industrial Relations Commission.

Barristers are rostered to attend each day at the courts. In March 2002, the Executive Director asked all participating barristers to reconfirm their commitment to the schemes, with pleasing results.

Court appointed pro bono schemes

In April 2002, at the request of the Chief Magistrate of the Federal Magistrates Service, the Association 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, Supreme and District courts' legal assistance schemes. Following the President's article in the February 2002 *Bar Brief*, updated lists of barristers who agreed to volunteer were forwarded to the Federal Court, Federal Magistrates Service, Supreme Court and District Court. These schemes are a significant imposition on the good will of the Bar, and at times aggrieved applicants threaten (and on occasion) implement a discipline complaint or negligence action.

An informal referral protocol is in place with the Administrative Decisions Tribunal for unrepresented litigants to receive assistance.

The Manager of LARS is involved in the administrative monitoring of the court appointed legal assistance schemes in terms of day to day queries which may arise.

Interaction with other pro bono service providers

LARS works closely with the Law Society Pro Bono Scheme. There is almost daily contact between the two schemes. Not only does the Law Society refer matters requesting a barrister's involvement, but also it is not uncommon for LARS to ask for the Society's help in obtaining the services of a solicitor on behalf of applicants where legal merit has been established.

LARS provided placements for Public Interest Advocacy Centre Summer & Winter Schools where two students spent time at the Association's offices, going to court and

meeting with barristers who have done work through LARS.

LawAccess NSW

New South Wales has a new 'one stop shop' providing access to legal services and assistance. LawAccess NSW was launched by the Attorney General of NSW, the Hon Bob Debus MP, on 17 June 2002. The Bar Association is one of the founding partners in the initiative, together with the NSW Attorney General's Department, the NSW Legal Aid Commission and the Law Society of NSW.

LawAccess NSW is tasked with:

- providing legal information, referral and advice
- developing and distributing legal information resources; and
- working with other legal assistance services in NSW to streamline the provision of services.

Services will be provided to people who either live in New South Wales or who have a legal problem in this State.

Incorporation of LARS into LawAccess NSW

In March 2002, further amendments were made to the LARS guidelines to facilitate the incorporation of the Scheme into LawAccess. Administrative changes incorporated into the day-to-day running of LARS as a result of the detailed review of a management consultant engaged by the Association have been consolidated during 2001 -2002. These changes were made with a view to ensuring that work practices are capable of properly dealing with the anticipated increase in workload due to LARS' involvement with LawAccess.

As at 30 June 2002 there have been no referrals from LawAccess. The terms of the Memorandum of Understanding and Referral Agreement is currently being considered with a view to our Scheme receiving appropriate referrals. The Association anticipates an increase in the number of applications received by the Scheme. Further, LawAccess will not be the sole referring body of applications to the Scheme.



Court	2000/2001	2001/2002
High Court		
Application for Special Leave	5	7
Federal Court		
Full Bench appeals	6	7
Immigration	53	35
Veterans & Social Security Entitlements	-	-
Industrial Relations	11	2
Trade Practices	5	3
Native Title	1	-
Bankruptcy	6	3
Total	87	57

Legal Assistance Referral Scheme statistics - continued

for the year ended 30 June 2002

Supreme Court	2000/2001	2001/2002
Court of Appeal	2	8
Court of Criminal Appeal	4	7
Common Law	7	32
Equity	10	18
Commercial	2	-
Family provisions	2	2
Administrative	2	5
Defamation	-	3
Professional negligence	-	4
Total	29	79

Family Court of Australia	2000/2001	2001/2002
Access	14	9
Residency	12	11
Child Support	8	6
Spousal maintenance	2	3
Total	36	29

District Court	2000/2001	2001/2002
Criminal	21	11
Civil	15	25
Defamation	2	-
Professional negligence	-	-
Total	38	36

Land & Environment Court	2000/2001	2001/2002
Total	2	4

NSW Industrial Relations Commission	2000/2001	2001/2002
Total	17	2

Local Court	2000/2001	2001/2002
Criminal	24	16
Civil	19	19
Total	43	35

Children's Court	2000/2001	2001/2002
Total	2	-

Coroner's Court	2000/2001	2001/2002
Total	2	2

Tribunals	2000/2001	2001/2002
AAT	8	5
ADT	1	12
Medical Tribunal	2	1
Fair Trading Tribunal / CT & TT	-	3
Total	11	21

Referral source	2000/2001	2001/2002
Law Society Pro Bono Scheme	32	28
Instructing solicitor	31	30
Non-instructing solicitor	21	1
Judge	30	26
Member of the Bar	29	14
Member of the public	38	67
Registrar	5	12
Community legal centres	35	53
Members of Parliament	3	11
Legal aid	20	13
A-G's Department	10	5
Publicity	2	2
Welfare / community groups	10	8
Web site (approx visits)	1000	-
Unknown	12	10

Client location	2000/2001	2001/2002
West	75	66
North	29	37
South	34	20
East	32	23
Country	20	49
Inner City	no data	15
Central Coast	no data	5
ACT	no data	-
Interstate	no data	11
Villawood Detention Centre	48	21
Prison	35	22
Overseas	1	1

Type of Work Done	2000/2001	2001/2002
Merit assessment	110	150
Advice	62	46
Conferences	132	115
Appearances	79	53
Appearance at hearing	62	48
Mediation	-	-
Second opinion	4	3
Other	37	4

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

Rejection/No action	2000-2001	2001-2002
Outside guidelines	15	35
Too late notification	17	5
No further information received	20	31
Referred to Law Society	-	-
Pro Bono Scheme	20	15
Funded by legal aid	2	5
Referred to Community legal centre	2	-
Matter discontinued	4	8
Matter settled	-	4
Subject to Federal Court	-	-
Pilot Refugee Scheme	9	10
Subject to Federal Court	-	-
Pro Bono Scheme	2	-

Turnaround time	2000/2001	2001/2002
Same day	24	23
Less than one week	105	52
1-2 weeks	49	41
2 weeks plus	35	38

Basis brief accepted	2000/2001	2001/2002
Speculative	48	23
Reduced fee	44	27
Negotiated at market rates	-	-
No fee	118	107

Refused legal aid on basis of	2000/2001	2001/2002
Merit	11	31
Financial	122	82
Outside guidelines	145	157

Legal merit	2000/2001	2001/2002
Yes	136	97
No	93	60

Reports

Questions as to professional conduct

Professional Conduct Department

for the year ended 30 June 2002

The role of the Department

The Department facilitates the investigation and reporting to Bar Council of conduct complaints either referred to the Bar Council (the Council) by the Legal Services Commissioner (the Commissioner) or initiated by the Council itself. The Department provides advice and policy support to the Council in respect of both the administration and carrying out of the Bar Council functions under Parts 3 and 10 of the *Legal Profession Act 1987*, and the preparation of submissions to governments on the disciplinary regime of the profession. One of the key objectives of the Department is to promote a better understanding of good client service and communication on the part of the Association's members. Such an understanding has become imperative if the Bar is to continue to flourish as a respected and efficient provider of legal service to the public. The Department also facilitates the provision of advice to members on ethical issues and responds, on a daily basis, to numerous inquiries from the public about the Bar and conduct of barristers.

It is important to appreciate that the Council has a statutory obligation to deal with, usually by investigating them, all complaints made against barristers. This statutory role is monitored by the Commissioner, an independent statutory overseer of the Council's statutory duties, and then, ultimately by the Attorney General. This investigative and prosecutorial role of the Council is a fact of life at the Bar without which we would lose an essential element of being a profession.

Changes in the public's expectations combined with a failure, particularly over the preceding eighteen months, of some barristers to act in accordance with their professional standing has brought barristers under close scrutiny by the government, the profession and the community. Currently, the Association and the Commissioner work cooperatively in the referral, investigation and review of disciplinary matters. Should the current co-regulatory system not satisfy either the consumers of legal services or the government, the only alternative will be a completely government regulated profession. It is therefore in members' interest to work with the Department in the investigation of any complaint and to assist their colleagues in practising their craft in such a way as to maintain the integrity of, and the public's respect in, the profession.

Changes in the Department's staffing structure

The financial year ended 30 June 2002 saw a significant increase in the work of the Department. The introduction of Part 3 Div 1AA of the *Legal Profession Act 1987* brought with it the onerous task (imposed by statute) for the Council to investigate the facts and circumstances surrounding any notifiable event of which barristers were

required to disclose. The Department has also given extensive support, particularly in the past six months, to the Executive Director and Council in the development of submissions to the government relating to the change of legislation of the profession.

The augmentation of the Department's responsibilities required additional staff. The previous Director, Helen Barrett, also wished to pare down her responsibilities and reduce her working hours for family reasons. In February 2002 Terrie Gibson was appointed as the Director, Professional Conduct. The Association expresses its gratitude and appreciation to Helen for her many years of commitment and dedication as previous Director. Helen and Liz Maconachie now hold positions as Deputy Directors, Professional Conduct.

In the financial year 30 June 2002 60 complaints were referred by the Commissioner to the Association for investigation. Sixteen complaints were made by Council pursuant to sec 134 (2) of the Act. These figures compare with 55 complaints referred by the Commissioner and 14 made by Council in the same period for the previous year. These figures do not include any notification matters dealt with under Part 3 Div 1AA of the Act.

Four professional conduct committees met either fortnightly or monthly throughout the year to investigate complaints about conduct.

Notification matters

A fifth professional conduct committee (PCC#5) was constituted in February 2001 to investigate and report on those notifiable events which barristers were required to notify under the *Legal Profession Amendment (Notification) Regulation 2001* (gazetted 9 March 2001) and the *Legal Profession Amendment (Disciplinary Provision) Act 2001* and the *Legal Profession Amendment (Disciplinary Provision) Regulation 2001* (gazetted 27 July 2001). PCC#5 was dissolved in December 2001 as it had become possible for the investigation of the then diminishing number of notification matters to be absorbed by the remaining four professional conduct committees.

The outstanding industry, diligence and understanding devoted by members of PCC#5 to their unpleasant task

One of the key objectives of the Department is to promote a better understanding of good client service and communication on the part of the Association's members. Such an understanding has become imperative if the Bar is to flourish as a respected and efficient provider of legal service to the public.

Professional Conduct Department - continued

for the year ended 30 June 2002

earned them the heart-felt thanks and commendation of the Bar Council as they deserve from the profession and public generally.

In the financial year ending 30 June 2002 60 barristers notified the Association of notifiable events. The categories of those notifiable events and other statistical information are set out at the foot of this report. Further disclosures were made by barristers to the Association although they did not fall within the statutory definition of those events which the Act or Regulations required notification of. These ranged from confessions of selling chokos on the street at the age of 10 to speeding fines.

Significant cases

Unfortunately, the conduct of some former barristers led to public condemnation. The decisions of *Cummins* and *Somosi* in particular are relevant. Failure by a barrister to lodge tax returns for income derived from a system funded by the very payment of income tax was seen by the Court of Appeal as rank hypocrisy. Both *Cummins*' and *Somosi*'s names were removed from the Roll of Legal Practitioners and the Court declared that each was guilty of professional misconduct.

Four barristers appealed to the Supreme Court against the Council's decision to cancel their practising certificates. The Council's view was that the facts of the act of bankruptcy and tax offences and surrounding circumstances were such as to render the barrister not fit and proper to hold a practising certificate. The Council's decisions were made pursuant to Part 3 Div 1AA of the Act. The Court upheld Council's decision in *Wardell* but did not uphold Council's decision in *Murphy*. Both decisions, however, have provided some guidance to the Council and, indeed, the Commissioner in the operation of Part 3 Div 1AA of the Act.

These and other important decisions are available on the Association's web site through a hotlink to the judgments under the heading 'Professional Conduct Department'. Decisions of the Legal Services Division of the Administrative Decisions Tribunal are also hotlinked. Some decisions relating to unsatisfactory professional conduct (as opposed to professional misconduct) are heard by the tribunal in camera and therefore not subject to public record. Hearings in relation to professional conduct matters are held in public and copies of those decisions can be obtained via the website.

Listing on the web site of recent Council and court decisions

Some members of the Bar have expressed reservations about the listing on the website of recent decisions, cancellations and suspensions of practising certificates. The listing of such matters is in the public interest. In June 2002 the *Legal Profession Amendment (National Competition Policy Review) Bill 2002* was introduced. When proclaimed, it will empower the Commissioner to list the details of any disciplinary action taken against a legal practitioner. Disciplinary action includes any decision of the Tribunal to suspend, cancel or refuse to issue a

practising certificate. The Association therefore does no more than that which was anticipated by the Attorney General earlier in the year.

Ethical advice for members

The Council neither provides 'rulings' nor ethical advice to members. Rather, it facilitates the provision of assistance to members on such matters by referral of the inquiring member to a silk on one of the four professional conduct committees. Should the member require a record of the advice to be kept, that member should record back to the silk, in writing, the facts and circumstances which led to the giving of advice. A copy of that letter should also be provided to the Director, Professional Conduct. The Department's staff are able to provide the names and telephone numbers of senior members of committees who are able to give ethical advice and guidance.

Responding to complaints

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

The policy of the Council is to require a barrister to personally sign any correspondence responding to enquiries from the Department. Extensions of time will be granted for replies to complaints if need is established.

Responses to complaints should be made in a timely fashion and confined to the issues the subject of the complaint. Engaging in unjustified or intemperate attack upon the complainant, the process, the conduct committee or Council does not assist in having the matter dealt with expeditiously, and may ultimately lead to the making of further complaints by a complainant about the content of the barrister's reply.

Recommended reading for any barrister who receives a complaint against them are set out in two articles which are on the Association's web site, namely, *Conduct of complaints against barristers*, by Jeremy Gormly SC, republished in the February 1998 edition of *Stop Press* and *Disciplinary proceedings affecting barristers*, by Bob Stitt QC and Geoff Lindsay SC.

Community and academic members

Each of the four investigating conduct committees has been privileged to have as participants both academic and community representative members.

The Bar Council and the Association expresses its gratitude to all community and academic members. Their contribution is very important to maintaining the quality of the Bar's complaint process. All have been enthusiastic participants in its deliberations and their insight is greatly appreciated.

PCC#1 community members are Susanne Weress and Kate

Professional Conduct Department - continued

for the year ended 30 June 2002

Nacard. Associate Professor Jill Hunter from the University of New South Wales also joined PCC#1 during the year and her valuable contribution is also appreciated.

Professor David Barker, Dean of the Faculty of Law at the University of Technology, continues to serve on PCC#2 as has John Blount in his capacity as a community representative and Matthew Smith continues as a community representative having transferred from PCC#5. This year Anna Fader and Sue Thaler have joined PCC#2 as community members.

This year PCC#3 welcomed a number of new community representatives. John White transferred from PCC#5 in February 2002, following the dissolution of that committee. Nicholle Nobel also joined in February 2002. The other community representatives of PCC#3 are Helen Steptoe and Robert Nakhla, who continued to serve. Bernard Dunne from the Faculty of Law at the University of Sydney joined the committee in February 2002.

In February 2002 PCC#4 welcomed Carol Randell as a new community member. Professor Derek Anderson and Phil Marchionni continued as community members. Francine Feld from the Faculty of Law, University of Western Sydney continued as PCC#4's academic member.

Barrister members

The Council and the Department again express their appreciation to all the barrister members of the conduct committees. All have devoted many hours of their time on a voluntary basis and their commitment to fulfilling the committees' responsibilities is highly valued. Their service is one of the best demonstrations that professional traditions remain the method of choice for contemporary professional discipline and regulation.

Committee workload

Seventy-six new matters were referred to the committees for investigation from 1 July 2001 to 30 June 2002. Thirty-six complaints remained from previous years. Of the matters allocated to the committees, 17 complaints were dismissed pursuant to sec 155(4) of the Act on the basis that there was no reasonable likelihood that the Tribunal would make a finding of unsatisfactory professional conduct or professional misconduct. One matter was the subject of a direction by the Commissioner to close a file, six matters (involving the same complainant and one set of proceedings) were referred back to the Commissioner at the Council's request so that the complaint could be investigated by an independent investigator appointed pursuant to sec 151 of the Act. Four complaints were withdrawn. None of the new complaints have yet been referred to the Tribunal. Out of the 17 dismissed complaints only two complaints have been the subject of an application for review. The Commissioner has upheld the Council's decisions in one. The other was not determined as at 30 June 2002. Forty-eight matters remain under investigation as at the date of writing this report. Six matters were referred to the Tribunal arising out of complaints received before 1 July 2001 and in relation to

which the investigations were concluded between 1 July 2001 and 30 June 2002.

It should be noted that PCC#2 alone considers admission or re-admission of legal practitioners which are usually made by way of an application to the Legal Practitioners' Admission Board (LPAB) under sec 13 of the Act. The committee, having investigated the application, makes a recommendation to Council to oppose or not oppose the application. The LPAB is advised of the Council's resolution which it considers prior to coming to its own conclusion as to whether the applicant should be admitted as a legal practitioner. The Councils of the Bar Association and the Law Society make recommendations regarding the admissions of all legal practitioners.

Statistical information collated from the Council's investigation of complaints is set out in tables at the foot of this report. The information is provided in accordance with sec 171MB of the Act.

The educative value of the Committee's work

This section highlights some (although not all) aspects of a barrister's practice which have been identified via the complaints investigation process in the year 2001-2002 as recurring problem areas. They are as follows:

- **Direct access matters**

New South Wales Barristers' Rules 74, 75, 76, 77 and 80 are particularly relevant in direct access brief matters. The absence of a solicitor to file and serve documents necessitates more vigilance on the part of the barrister to ensure that the client or some other person files and serves court documents. The *New South Wales Barristers' Rules* are on the Association's web site.

Related to Rule 80 are the fee disclosure requirements for barristers. Sections 176 and 175 of the Act proscribe the different disclosures required to be made to an instructing solicitor and those required for direct briefs respectively.

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

Some members of the Bar have expressed reservations about the listing on the website of recent decisions, cancellations and suspensions of practising certificates. The listing of such matters is to the public interest.

Professional Conduct Department - continued

for the year ended 30 June 2002

- **Practising without a practising certificate**

Secs 25, 48B and 48C of the Act provide that barristers must not practise as or hold themselves out as a barrister without being the holder of a current practising certificate. The word 'practise' includes any of the activities referred to in *New South Wales Barristers' Rule 74*. The meaning of 'practise' is not limited to advocacy and includes negotiation, representing a client in a mediation, giving legal advice (chamber work), advising on documents, acting as a referee/arbitrator/mediator and carrying out work properly incidental to the type of work referred to above. Nearly every instance of practising without a practising certificate which has come to attention arose because a barrister either made a late application for renewal of a practising certificate or overlooked renewing his or her practising certificate.

- **Communication with clients**

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

- ***New South Wales Barristers' Rule 103***

On 17 October 2001 the Tribunal found a barrister to be guilty of unsatisfactory professional conduct for disclosing confidential information without the permission of the former client. The proceedings arose out of a Bar Council complaint that such conduct was in breach of *New South Wales Barristers' Rule 103*. The Tribunal ordered that the barrister be publicly reprimanded, pay the Council's costs on an indemnity basis and attend all components of the Bar Readers' Course which relates to Ethics and complete a range of Ethics courses to the equivalent of six CLE points. The matter was heard in camera. The Bar Council has applied to the Tribunal to have its findings and orders made public. The application is yet to be determined.

- **Conduct outside the practice of law**

On 9 April 2002 the Tribunal delivered a finding of professional misconduct against Richard Mitry (who is not presently the holder of a practising certificate as a barrister). The Tribunal is yet to publish its written reasons or its decision on penalty. The Tribunal's finding followed an earlier decision of the Tribunal adverse to Mitry which became the subject of appeal to the Court of Appeal. The Court of Appeal ordered that the matter be remitted back to the Tribunal for hearing in accordance with the law. While a full report on the proceedings will appear in next year's annual report, following delivery of reasons and orders, members should note that the finding of professional misconduct followed on a conviction in 1996. Mitry was found guilty of being knowingly concerned in a company purchasing its own shares, contrary to (then) sub-para 129(I)(i)(A) of the *Companies (NSW) Code*.

- **Acts of bankruptcy and tax offences**

Investigation of notifiable events has occupied much of the Department's time during this financial year. On some occasions members have failed to cooperate with the Council in its investigation of their notified event. This has included a failure to respond to statutory notices issued by the Council requiring information from the barrister as to the facts and circumstances surrounding the commission of the event(s). On a few occasions this has resulted in the Council being unable to make the necessary determination within the required three month period. In such cases a statutory suspension of the practising certificate arises under sec 38FH of the Act pending certain avenues for re-issue.

The Act empowers the Council to cancel, suspend, refuse to issue or attach conditions to practising certificates. Twenty barristers are subject to conditions which require quarterly reports to Council from approved accountants (in whose hands they have placed control of their financial affairs) and/or have medical practitioners. The Council has resolved, in such cases, that adequate provisioning is a necessary component of satisfactory control of financial affairs.

Fees Committee

During the year the Association received thirty-five requests to assist in the recovery from solicitors of unpaid fees, compared to forty-three requests in the previous year. A total of **\$85,267.75** was recovered on behalf of members for the financial year ended 30 June 2002.

The basis upon which the Association can assist in members' fee recovery was set out in the article published in *Bar Brief*, March 2002 entitled 'Changes in fee recovery assistance for members'. Familiarity with the costs disclosure provisions of Part 11 of the Act and the *Legal Profession Regulation 1994* are an essential part of a barrister's tools of trade. A CPD seminar is to be held in October 2002 on these provisions.

The Association has this year established a panel of solicitors to which members can be referred should the Association's efforts be unsuccessful in recovering fees from solicitors. The panel undertakes the fee recovery work for barristers at reduced rates. Enquiries can be made through Liz Maconachie of the Professional Conduct Department.

Any enquiries about fee recovery or the operation of Part 11 of the Act should be made in the first instance to Ms Maconachie. Greg McNally as the Fees Convenor, is consulted about difficult matters. The Association is, as always, indebted to Mr McNally for his continued assistance in this area.

Professional conduct statistics

for the year ended 30 June 2002

Table 1 Notifications of offences and acts of bankruptcy made by barristers between 1 July 2001 and 30 June

	No.	Total	%
Tax offences	27*	65	41.54%
Bankruptcy	16	65	24.62%
Prescribed concentration of alcohol	4	65	6.15%
Traffic offences	5	65	7.69%
Other	3	65	4.62%
Indictable offence	2	65	3.08%
Fare evasion	4	65	6.15%
Non-notifiable event	4	65	6.15%

* NB 60 Barristers notified the Bar Council of offences. Of the 60 barristers, three barristers notified the Council of two offences and one barrister notified the Council of three offences.

Table 2 Number of complaints received by complaint type between 1 July 2001 and 30 June 2002 (compared to previous year)

Complaint type	2001/2002			2000/2001		
	No.	Total	%	No.	Total	%
Acting contrary to/failure to carry out instructions	3	76	3.95%	4	69	5.80%
Acting without instructions	1	76	1.32%	1	69	1.45%
Breach of sec152 Legal Profession Act 1987	2	76	2.63%	1	69	1.45%
Breach of undertaking	0	76	0.00%	1	69	1.45%
Breach of Barristers' Rule 35 (Clyne case)	2	76	2.63%	2	69	2.90%
Breach of Barristers' Rule 36 or 37	1	76	1.32%	0	69	0.00%
Breach of Barristers' Rule 74/75 (Barrister's work)	2	76	2.63%	1	69	1.45%
Breach of Barristers' Rule (other)	2	76	2.63%	0	69	0.00%
Breach of confidentiality	1	76	1.32%	0	69	0.00%
Conflict of interest	3	76	3.95%	1	69	1.45%
Conspiracy to pervert course of justice	2	76	2.63%	0	69	0.00%
Delay/failure to provide chamber work	1	76	1.32%	1	69	1.45%
Failure to account	2	76	2.63%	2	69	2.90%
Failure to adduce available evidence	0	76	0.00%	4	69	5.80%
Failure to advise properly or at all	3	76	3.95%	2	69	2.90%
Failure to appear	5	76	6.58%	2	69	2.90%
Failure to communicate	2	76	2.63%	1	69	1.45%
Failure to conduct a fair hearing	1	76	1.32%	2	69	2.90%
Failure to cross examine competently	1	76	1.32%	1	69	1.45%
Failure to explain terms of settlement (properly or at all)	0	76	0.00%	1	69	1.45%
Failure to prepare competently	2	76	2.63%	2	69	2.90%
Failure to return briefs/client or other documents	5	76	6.58%	0	69	0.00%
Other incompetence in legal practice	8	76	10.53%	5	69	7.25%
Intoxicated when appearing or seeking to appear	2	76	2.63%	0	69	0.00%
Misleading conduct	1	76	1.32%	0	69	0.00%
Dishonest conduct	4	76	5.26%	7	69	10.14%
Obstruct/delay proceedings	0	76	0.00%	2	69	2.90%
Other unethical conduct	3	76	3.95%	4	69	5.80%
Over zealous cross-examination (harranging a witness)	0	76	0.00%	2	69	2.90%
Overcharging and/or overservicing	4	76	5.26%	1	69	1.45%
Personal conduct	4	76	5.26%	7	69	10.14%
Praactising without a practising certificate	5	76	6.58%	5	69	7.25%
Pressure to change plea/plead guilty	0	76	0.00%	2	69	2.90%
Pressure to settle	3	76	3.95%	1	69	1.45%
Rudeness/discourtesy	1	76	1.32%	1	69	1.45%

Note – Please note that the complaint types have been re-categorised to provide further clarity and avoid any possible duplication

Professional conduct statistics - continued

for the year ended 30 June 2002

Table 3 Complaint received between 1 July 2001 and 30 June 2002 by complainant type (compared to previous year)

	2001/2002			2000/2001		
	No.	Total	%	No.	Total	%
Bar Council	16	76	43.24%	14	69	20.29%
Barrister	2	76	5.41%	3	69	4.35%
Client/former client	36	76	97.30%	28	69	40.58%
Government department/statutory law body	1	76	2.70%	1	69	1.45%
Instructing Solicitor	4	76	10.81%	2	69	2.90%
Judge/Magistrate	0	76	0.00%	1	69	1.45%
Legal Services Commissioner	2	76	5.41%	2	69	2.90%
Opposing client	10	76	27.03%	6	69	8.70%
Opposing solicitor	3	76	8.11%	8	69	11.59%
Other	1	76	2.70%	2	69	2.90%
Relative/friend	1	76	2.70%	0	69	0.00%
Witness	0	76	0.00%	2	69	2.90%

Table 4 Length of time matters commenced between 1 July 2001 and 30 June 2002 have been and remain under investigation (compared to previous year)

	2001/2002			2000/2001		
	No.	Total	%	No.	Total	%
Less than six months	35	48	72.92%	25	35	71.43%
Between six and nine months	9	48	18.75%	4	35	11.43%
Between nine and twelve months	4	48	8.33%	6	35	17.14%

Table 5 Result of investigations under the Legal Profession Act 1987 commenced and completed between 1 July 2002 and 30 June 2002 (compared to previous year)

Result of investigation	2001/2002			2000/2001		
	No.	Total	%	No.	Total	%
Complaint under investigation	48	76	63.16%	36	69	52.17%
Discontinued	0	76	0.00%	2	69	2.90%
Withdrawn	4	76	5.26%	4	69	5.80%
Dismiss - sec155(4)	17*	76	22.37%	19	69	27.54%
Dismiss - sec155A	0	76	0.00%	0	69	0.00%
Refer to Tribunal (Professional misconduct) - sec155(2)	0	76	0.00%	4	69	5.80%
Refer to Tribunal (Unsats prof conduct/prof misconduct) - sec155(2)	0	76	0.00%	2	69	2.90%
Reprimand - sec155(3)(a)	0	76	0.00%	1	69	1.45%
Cancel practising certificate - sec37(1)(a) & (f)	0	76	0.00%	1	69	1.45%
Appointment of independent investigator - sec151	6	76	7.89%	0	69	0.00%
LSC close file	1	76	1.32%	0	69	0.00%

* One decision by Bar Council to dismiss a complaint pursuant to sec155(4) was reviewed by the Legal Services Commissioner. The Bar Council decision was upheld by the Commissioner under sec160(1)(a).

Table 6 Result of investigations under the Legal Profession Act 1987 completed between 1 July 2001 and 30 June 2002 (compared to previous year)

Result of investigation	2001/2002			2000/2001		
	No.	Total	%	No.	Total	%
Discontinued	0	78	0.00%	3	84	3.57%
Withdrawn	9	78	11.54%	4	84	4.76%
Dismiss - sec139(1)(a)	0	78	0.00%	1	84	1.19%
Dismiss - sec155(3)(b)	0	78	0.00%	1	84	1.19%
Dismiss - sec155(4)	49*	78	62.82%	41	84	48.81%
Dismiss - sec155A	2	78	2.56%	0	84	0.00%
Refer to Tribunal (professional misconduct) - sec155(2)	1	78	1.28%	7	84	8.33%
Refer to Tribunal (unsatisfactory professional misconduct) - sec155(2)	0	78	0.00%	2	84	2.38%
Refer to Tribunal (unsats. prof. conduct/prof misconduct) - sec155(2)	5	78	6.41%	13	84	15.48%
Reprimand - sec155(3)(a)	4	78	5.13%	11	84	13.10%
Cancel practising certificate - sec37(1)(a) & (f)	0	78	0.00%	1	84	1.19%
Suspended investigation - sec150	1	78	1.28%	0	84	0.00%
Appointment of independent investigator - sec151	6	78	7.69%	0	84	0.00%
LSC close file	1	78	1.28%	0	84	0.00%

* Four decisions by Bar Council to dismiss a complaint pursuant to sec155(4) were reviewed by the Legal Services Commissioner. All 4 Bar Council decisions were upheld by the Commissioner under sec160(1)(a).