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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.

History of the Bar Association

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

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

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

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

In 2003 there were 17 standing committees. A considerable number of barristers are appointed as members of court liaison committees, government working parties and statutory authorities, providing their skills and expertise for the public benefit.

Thirty two presidents and one hundred Bar councils later, the association has grown from strength to strength. In 1961 Bowen QC, then president of the Bar Association commented:

The Bar as a community has entered upon a period unlike anything experienced before...We have not been afraid to speak out, if need be publicly, on matters of general concern on which the community might fairly look to the Bar as an experienced professional body for guidance.

The statement remains true today.

Bar Association office bearers

As at 30 June 2003



Bar Council, Back row, left to right:

Kate Traill, Dominic Toomey, Michael McHugh, Anna Katzmann SC, John Fernon, Stuart Torrington, Hugh Marshall, Larry King SC, Geoff Lindsay SC, Robert Toner SC, Richard Cavanagh, James Stevenson

Front row, left to right:

Andrew Bell, Virginia Lydiard, Tom Bathurst QC, Ian Harrison SC, Bret Walker SC, Michael Slattery QC, Chrissa Loukas, Philip Selth, Bernie Coles QC, Hayden Kelly



Bar Council Executive

left to right:

Tom Bathurst QC (Treasurer),
Ian Harrison SC
(Senior Vice President),
Bret Walker SC (President),
Michael Slattery QC
(Junior Vice President),
Chrissa Loukas (Secretary),
Philip Selth
(Executive Director)

Bar Association staff

As at 30 June 2003

Office of the Executive Director

Executive Director

Philip Selth BA (Hons) LLB

Executive Assistant

Kathy O'Neill

Projects Officer

Kim Nichols LLB

Administration Department

**Administrative Services
Manager**

Anita McInally LLB

**Administrative Officer
(Records)**

Kim Ellis

Reception Officer

Barbara Coorey

Administrative Officer

Patrina Malouf

**Administrative Officer
(Facilities and Events)**

Travis Drummond

Bar Manager

Tony Mitchell

IT Consultants

Darren Covell

Matthew Vickers

Library

Librarian

Lisa Allen B App Sc(Info) M Inf Stud

Assistant Librarian

Jennifer Hughes BA DIM

Technical Services Librarian

Leanne Drew MA

Library Technician

Jeanine Metcalf BA

Finance Department

Finance Manager

Basil Catsaros B Comm ACA

Deputy Finance Manager

Tess Santos B Sc (Bus Admin)

Certification Officer

Barrie Anthony JP

Legal Assistance Referral Scheme

Legal Assistance Manager

Heather Sare

Administrative Assistant

Julia Sharp

Professional Conduct Department

**Director, Professional
Conduct**

Anne Sinclair BA MLM

**Deputy Director,
Professional Conduct**

Helen Barrett LLB

**Deputy Director,
Professional Conduct**

Adele Connor BA LLB MPS

**Assistant to the Director,
Professional Conduct**

Lorraine Haycock

Assistant

Barbara Stahl

Assistant

Denisha Govender

Professional Development Department

Director of Studies

Robert Hayes LLB PhD

Deputy Director of Studies

Chris D'Aeth LLB (Hons) MBA

Education Officer

Meagan Phillips

Education Assistant

Irene Puntillo

Public Affairs

Public Affairs Officer

Chris Winslow BA (Hons) DIM

Statistics

As at 30 June 2003

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

Membership statistics

There are 2565 members of the New South Wales Bar Association.

Ordinary members

Class A and B(i)* holding NSW practising certificates (including members based interstate & overseas and life members who have a current NSW PC)

Male	1799
Female	284
Total	2083

Number of senior counsel (QC or SC)†:

Male	287
Female	7
Total	294

Number of 'junior' barristers‡:

Male	1512
Female	277
Total	1789

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

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

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

Practising address of ordinary members

Class A and B(i)

New South Wales	1918
Victoria	3
ACT	36
Queensland	96
South Australia	6
Western Australia	4
Northern Territory	1
Tasmania	0
Overseas	19
Total	2083

Number of honorary life members & ordinary members

Class B(ii) and B(iii)*

(including members interstate & overseas)

Male:	409
Female:	73
Total	482

(Includes 26 honorary life members who do not have a current NSW PC)

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

Occupation of ordinary members

Class B(ii) and B(iii)

Judge	161
Magistrate	11
Statutory/government officer	2
Judicial officers	11
Member of parliament	0
Academic (non practising)	14
Interstate barrister	94
Overseas barrister	2
Former barrister	107
Former judge	71
Law student	1
Miscellaneous	8

Practitioner statistics

Practitioners holding NSW practising certificates

(including practitioners based interstate & overseas)

Male	1842
Female	287
Total	2129

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

Male	290
Female	7
Total senior counsel	297

Number of junior barristers

Male	1552
Female	280
Total junior barristers	1832

Practitioners holding NSW practising certificates

By location

	Juniors		Silks		Total
	Male	Female	Male	Female	
New South Wales	1411	265	255	6	1937
ACT	30	5	4	0	39
Victoria	3	0	0	0	3
Queensland	89	7	21	0	117
South Australia	3	1	2	0	6
Western Australia	4	0	0	0	4
Northern Territory	1	0	0	0	1
Tasmania	0	0	0	0	0
Overseas	11	2	8	1	22

Overseas practitioners by country of residence

	Juniors		Silks		Total
	Male	Female	Male	Female	
USA	2				2
UK	2	1	5	1	9
Hong Kong	0	0	3	0	3
New Zealand	5	1	0	0	6
Fiji	1	0	0	0	1
Vanuatu	1	0	0	0	1
Total					22

President's report

The year past had its peculiarities so far as the Bar Association's tasks were concerned. Some were familiar, others were unprecedented. Only too familiar was the quadrennial law-and-order auction before the election of state parliament. Gratifyingly, the public interests suffered less than may have been feared, and a very considerable scope for proper judicial discretion in sentencing was preserved. On behalf of the members of the Bar Association, I record our appreciation for those members of council and committees who assisted in attending those political bushfires. And we should also appreciate the continued willingness of government and opposition party representatives to receive our deputations and arguments.

The shock of 11 September 2001 has been followed by the pains of arguing against ill-directed or excessive diminution of present liberties as part of the so-called 'War on Terror'. The Bar Association has been prominent, both individually and as part of the team constituting the Law Council of Australia effort, in proposing improvements to both major political parties' draft legislation designed to permit and regulate the virtually unprecedented detention of non-suspect possible offenders. This has been, I think, one of the most important occasions for our public-spirited participation in parliamentary government. Although many people - not just lawyers - are unhappy with the resultant legislation, it is certain that it could have been a lot worse. Striking the balance between liberty and laxness is less easy than many apparently suppose. I hope there will be very few occasions in the future for the Bar to confront these kinds of issues. In the present context, I suspect that our professional involvement as advocates on one side or other is the next stage.

In that connexion, I can report that, thanks to the good offices of the Secretary of the Commonwealth Attorney-General's Department, Mr Robert Cornall, the Bar Association is being kept informed and has the opportunity to contribute to the devising of safeguards in relation to national security information and the clearance of counsel involved in terrorism criminal proceedings. This is a very vexed area, and is being closely monitored by the Australian Bar Association. The Australian Law Reform Commission is working on a reference directly related to this topic. Legal aid conditions already require clearances. The potential for prejudice to defences, and also to appropriate prosecution charges, looms large in our considerations. As an issue, it will continue for quite some time to come.

One could safely estimate that members of the Bar Association have as many different views on the merits of intervention in Iraq as there are in society generally. The Bar Association confined its efforts to matters of legality, and sought to be no more than a forum for the different and sometimes hotly opposed views. I hope we will continue to provide a civil, thorough and unafraid setting in which legal issues important to society can be examined. One question raised, not for the first time, in this regard was the extent to which asserted government reliance on legal advice rendered it appropriate for the terms of that advice to be made public. In the event, publication ensued - but the merit of seeking its release remained an open question, upon which, I know, reasonable minds do differ. In my personal view, it is in the interests of a representative democracy attached to the rule of law that the government of the day should feel comfortable and relaxed about sharing with the people the legal reasoning upon which it justifies the lawfulness of its conduct affecting them.

No-one on the Bar Council was complacent about the introduction of continuing professional development on a compulsory basis now enshrined in standard conditions

imposed on our local practising certificates. Our experience of its first full year's operation is, on the whole, a solid basis for optimism. I wish to pay tribute to Dr Robert Hayes, our Director of Studies, and his inestimable staff, for this achievement. They have managed to set themselves a high standard to emulate in the years to come. It is clear to me that the major rationales for this radical change of policy, none of which apparently occurred to the Editor of the *Australian Law Journal* (77 ALJ 204-205), remain good, and even more so in the present insurance and liability climate. Underwriters require demonstration of steps towards risk management somewhat beyond a protestation of being a learned profession and a repetition of platitudes concerning voluntary diligence. Taking advantage of statutory schemes to cap liability, whether under the current *Professional Standards Act 1994* or the hoped-for national improvement of that scheme, unquestionably mandates a compulsory scheme. And, by way of riposte to the same editor in his judicial role, one proper response by an organised profession to perennial judicial regrets about declining standards of advocacy is to take them sufficiently seriously as to try something new in the way of professional inculcation of skills and awareness. I hope the ambition that CPD will enhance the real content of our mutual description as 'learned friends' will prove to be more than a slogan.

I am pleased to acknowledge the generous efforts of Brian Rayment QC in co-ordinating our very important preparation to gain approval of a scheme to grant New South Wales barristers these limitations, or cap, on our liability for professional negligence. An outstanding issue remains the current anomalous statutory exclusion of that possibility with respect to liability stemming from personal injury claims.

Insurance has now become a critical annual exercise. It is impossible to overstate the debt we all owe to Tony Meagher SC for his masterly efforts as our shepherd (and, perhaps, sheepdog for the underwriters) in a savagely cyclical market. There are other ways apart from encouraging several competitors in this market, such as that attempted in Victoria. So far, from the point of view of timely availability, choice and price levels, as well as approved terms, the New South Wales approach is probably the most successful. This is a diffident and relative statement, given the sky-rocketing of premiums and the extreme tightening of availability of cover at the higher levels of indemnity. But the Bar in New South Wales has, believe it or not, suffered less than quite a few other professional indemnity sectors.

The capacity of the New South Wales Bar to influence, however slightly in absolute terms, its own destiny in the matter of its professional indemnity insurance is just one aspect of the advantages, and virtues, of the self-governance element in the New South Wales mixed model for the regulation of the legal profession. Significantly, a comprehensive review in Victoria will probably produce a near approach to the principal features of the balance between external and internal governance and discipline of the profession under the current version of the *Legal Profession Act 1987*. I was pleased to meet with the Hon Rob Hulls MP, the Attorney-General for Victoria, during his consideration of those changes.

This essential federal approach must continue. I do not mean the composition (or division) of our country into constituent states (with the territories as a quirky addition). Rather, I mean sensibly local and functional groupings of the practising legal profession, rather than as a job-lot in one massive national association. The historic moves - the closest approach yet to success - towards a national legal profession have been successful, in my view, precisely because the

President's report - continued

profession has (I hope) persuaded governments not to attempt the Quixotic end of exactly uniform nation-wide legislation governing every aspect of all lawyers' practices. Rather, generous scope should be preserved for local people (lawyers, voters and governments) to adjust to local conditions. A metaphor I repeatedly used in representing the Bar Association in this project was that our sole aim should be to flatten all bumps in the road. The road is the one that we tread in travelling around Australia to practise law. Gradually, since the *Blueprint for a national legal service market* was released by the Law Council of Australia in the mid 1990s, we (ie Australian lawyers, rather than Australian governments) have carried the project of persuading state governments, one by one, that full faith and credit should be given by each of them for all the others' admission of legal practitioners. There is, of course, much more troublesome detail to be addressed, especially for solicitors with fidelity funds and trust accounts, but the work is mostly done. I commend in particular the culminating efforts of Ron Heinrich as President of the Law Council of Australia in fostering what in my experience were the most co-operative and least divided sessions of discussion amongst representatives of the national profession that I have ever been privileged to observe.

On the other hand, the New South Wales Bar - and, I strongly believe, all the Bars - should adamantly oppose any attempt to de-federalise the legal profession by any move to centralising registration, admission, discipline, education or any other aspect of regulation in Canberra, or in one body vainly homogenising all Australian private practitioners. The fact is that legal practices, in business structure, style and even aspirational ideals, are diverging rather than converging. The mercantilism of the largest solicitors' firms much more closely resembles that of their cousin merchant banks and 'business services' (i.e. accounting) firms than it does the local and personal service roles of suburban practitioners or country firms. And, I believe, practically all serious litigators, by which I mean solicitors engaged in litigation, have much more in common with the Bar than with a number of other segments of solicitors' practice when it comes to the daily ministering to justice, in its distinct pervasive ethical element manifest in practical action.

My experience of a decade involved in rule making for the profession leads me to the tentative view that any move towards centralisation would be a disaster. It would reduce desirable flexibility. There would be no competitive federalism, with its useful experiments. The least co-operative, the most conservative or the heavily moneyed components of the profession would dictate rates and directions of change. The administration of justice could not possibly be the first priority of a massive body most of whose members never appear in court and rarely instruct as an officer of the court.

Ironically, in my view the best antidote to what may be a threat of a centralising ambition on the part of some involved in the Law Council of Australia, or even the Commonwealth government, is to press with vigour for the admission into the Law Council of Australia of even more voices representing different segments of the legal profession. It is probably a pipedream to consider the judiciary as one of those segments. But it is entirely practical to count in each and every Bar in the country, as soon as they wish to be included. As a matter of principle, I would regard the Australian Corporate Lawyers Association as a natural and very deserving recipient of another seat at the table. Appropriate bodies representing law teachers and scholars, and perhaps government lawyers as well, also deserve immediate consideration. We are all Australian lawyers. The Law Council of Australia cannot

afford for long to proceed as if the number of our colleagues practising as private solicitors suffices to characterise its political composition and its agenda.

An intensely important issue for the Bar Association locally will arrive next July, when the fee for membership is likely to be considerably higher than the \$2.20 we all presently pay. To reflect the observance of national competition policy, practising certificate fees will, by and large, be restricted to a form of cost-recovery in relation to those activities and facilities presently provided by the Bar Association which are, so to speak, in the public interest as opposed to for the private benefit of members. The calculation of various heads of expenditure is being negotiated with government. membership of the Bar Association has always been voluntary, but since the introduction of practising certificates in 1987 the revenue of the association has largely been underwritten by statutory compulsion. It will be a testing time for the next Bar Council, and I fervently hope that members of the Bar will continue to have good reason to consider that, precisely because they are members of the Bar, they will also be members of the Bar Association.

It will probably be one of my last missions as a member of the Bar Council to report back in October on the threats or challenges (according to taste) posed to the Bar by competition regulators, as assessed by the predicaments presently faced by our cousin Bars in England and Wales, Scotland and the Republic of Ireland. There is no doubt that the regulators themselves share intelligence. We should too. We have done so with some success nationally in the face of what might be described as a chronic curiosity evinced by the Australian Competition and Consumer Commission over the last decade or so. Believe it or not, the matter continues. It does appear that the only issue for the New South Wales Bar is what is unaccountably regarded as our quaint attachment to the sole-practitioner rule. My mantra against such barbarism is that it cannot be anti-competitive to forbid the combination of competitors. And no-one seriously suggests that combines (great or small) of barristers will harness such greater resources than we are severally capable of employing as to promise an improvement in advocacy and related advisory skills offered to the public, were the sole-practitioner rule removed. In this state, holders of a practising certificate '*as a solicitor and barrister*' can compete with us in everything we do, whereby practitioners minded to operate in combines or as employees with respect to their services as advocates may do so with complete freedom of choice. I only regret that I cannot report to you all now that this controversy has passed into legal history.

The Bar Council is, as always, honoured to be entrusted by the members of the Bar Association with its governance. The Executive appreciates the trust reposed in it, and I am grateful for the opportunity to serve as President. The efforts of the elected officers, however, would be futile without the two cardinal resources of the association. First, the volunteers on committees, working parties and ad-hoc projects are many in number and quite central to the profession's deserving the name of a profession. Second, the entire staff but particularly its executives under Philip Selth deserve the repeated accolades of my predecessors and me. Members of the Bar Association directly and the public interest focused on the courts, parliament and executive government indirectly, are greatly in the debt of our staff's calm, intelligent and energetic work.



BW Walker
President

Executive Director's report

In my report for 2001-2002 I outlined some of the work undertaken in that year by the Bar Association in respect of one of the most important objects in its Constitution (cl. 3.1.3), 'to make recommendations with respect to legislation, law reform, Rules of Court and the business and procedure of courts'. In 2002 - 2003 the Bar Association again devoted many hundreds of hours to this object. Some of that work is noted elsewhere in this annual report. However, three projects which are of immediate - and direct - relevance to the legal profession warrant separate notice.

These projects are:

- the national practice model laws project;
- proposed changes to the way in which the Bar Council (and the Council of the Law Society of New South Wales) are involved in the investigation of taxation and other 'notifiable' offences (Part 3, Division 1AA and Part 10 of the *Legal Profession Act 1987*); and
- proposed amendments to the *Legal Profession Act 1987* and the *Legal Profession Regulation 2002* to 'tidy up' this legislation.

The national practice model laws project

Since the mid 1990s the Law Council of Australia, of which the Bar Association is a constituent body, has been working towards removing 'bumps in the road' that are an impediment to practitioners practising across Australia, unhindered by a raft of unnecessary statutory and administrative procedures that differ in each state and territory. It has been the legal profession, and in particular the Law Council (including under Walker SC's presidency in 1997 - 1998) that has led the way in these reforms. Unfortunately, some politicians and elements of the media seem to be unaware or have forgotten this fact.

In 1994 the fundamental tenet of the Law Council's *Blueprint for a national legal services market* was that a lawyer admitted to practice in any state or territory should be able to practise law throughout Australia without any further restrictions. The NLSM Blueprint was a direct response to the decision by the Council of Australian Governments in February 1994 to develop detailed proposals for the reform of the legal profession 'with the objective of removing constraints on the development of a national market in legal services and developing other efficiency-enhancing reforms'. The travelling practising certificate that now operates in all states and territories other than Western Australia and Queensland (where legislation has been promised) grew out of the *NLSM Blueprint*.

In October 2001 the Law Council put its *Towards national practice* submission to the Standing Committee of [federal and state] Attorneys-General (SCAG). This submission pressed for full implementation of the *NLSM Blueprint*, the removal of barriers to national practice in areas such as professional indemnity insurance and fidelity funds, uniform cost disclosure requirements, and a cooperative approach between states and territories to the regulation of the legal profession to allow a viable national practising certificate regime

The matter of a 'national legal profession' had been on SCAG's agenda for some time. (New South Wales had already made major moves in this direction by the reforms enacted in the *Legal Profession Act 1987*, which commenced in 1988.) In early 2002 SCAG tasked officers to produce various papers on aspects of achieving a fully functioning regulatory regime for national legal practice. The Law Council established expert working groups to work with the SCAG officers. Senior Bar Association staff were appointed to the groups considering 'Admission of local legal practitioners'; 'Legal practice: Australian lawyers'; 'Complaints and discipline'; and 'Legal profession rules'. The President was a prominent member of the Law Council's reference group that painstakingly reviewed the various reports on which the working parties expended so much time and effort.

A significant problem that had to be overcome was the enthusiasm of some SCAG officers, unhampered by not having practised or been directly involved in the administration of the relevant legislation, to produce an extraordinarily prescriptive 'one size fits all' Bill that regulated in the finest detail every conceivable aspect of the work and regulation of the Australian legal profession. This guaranteed the project would fail - and, ironically, provide mountains of work for the profession for years to come sorting out the inevitable litigation nightmare that would follow should the prescriptive approach be adopted by SCAG. The President, Senior Vice President and senior members of the Bar Association spent many hours seeking to persuade the State Attorney General, the Secretary to SCAG (the Director-General of the NSW Attorney General's Department), the legislative draftsman and Commonwealth officers of the futility of this prescriptive approach. (The Law Council and other Bars and law societies, too, made submissions to relevant persons on this issue.)

Fortunately, sanity eventually prevailed. It became accepted that regulation of the legal profession is a state/territory responsibility and that the state supreme courts have and should continue to retain their inherent supervisory role over the practise of the law. The position of state and territory governments to set the regulatory regime applying in their jurisdiction remains. The project is not aimed (as some apparently wished) at 'nationalising' regulation of the legal profession in a way that the national companies scheme saw the enactment of the Corporations Act and the creation of the national regulatory bodies which accompany that scheme. Rather, it is intended that the project produce harmonised outcomes and the minimisation of barriers which can result from separate state regulations. An important concept is that self-regulation of the legal profession remains an important element of the overall regulatory mix

Some *hundreds* of hours later, and after an interminable number of telephone and face to face conferences, the Law Council and its constituent bodies, and SCAG officers, produced a hefty draft Bill and comment for the consideration of SCAG at its August 2003 meeting. At that meeting SCAG agreed to endorse the proposed model

Executive Director's report - continued

provisions as a basis for consistent laws to facilitate a truly national profession. The Law Council, and so the Bar Association, will be consulted in the finalisation of the model legislation.

A giant step towards the harmonisation and consistency in the national regulation of the Australian legal profession has been made.

Part 3, Division 1AA (Special powers in relation to practising certificates) and Part 10 (Complaints and discipline) of the Legal Profession Act 1987

Since their enactment nearly two years ago, the Bar Council has had concerns about the provisions in the *Legal Profession Act 1987* (Part 3, Division 1AA) which govern the cancellation and suspension of, refusal to issue, and attachment of conditions to, a practitioner's practising certificate following the notification by the practitioner that he or she has committed an indictable or tax offence, or an act of bankruptcy. Accordingly, in October 2002, after the President had discussed the issue with the Attorney General, the Bar Council put a submission to the Attorney General proposing that the Part 3 regime be brought more into line with that of Part 10. Discussions with the Attorney General, Legal Services Commissioner and the Law Society followed.

In April the Bar Council put a revised submission to the Attorney General proposing legislative 'cures' to operating under Part 3, Division 1AA of the Legal Profession Act. This submission was supported by the Law Society and, for the most part, the Legal Services Commissioner.

The submission set out the objectives of the proposal as being:

- To give appropriate primacy to a council's original decision to cancel a practising certificate while

preserving a limited right of appeal (not on a *de novo* basis) and maintain the Legal Services Commissioner's monitoring role.

- Retain the powers of the councils to grant the 'licences' to practitioners, i.e. issue and cancel practising certificates in relation to its investigations which arise out of notifiable events.
- Empower the councils with coercive powers (as is the case for Part 10 matters) to obtain information during their investigations, together with effective sanctions for non compliance. This will go some way towards ensuring that the council is equipped with such information and material as is available prior to making its decision.
- Eliminate the Supreme Court's confusing distinction between the operation of secs 38FC and 38FE of the *Legal Profession Act 1987*.
- Protect the public interest by having challenges to the suspension or cancellation of practising certificates determined in a timely, transparent and cost effective manner.
- Avoid matters being litigated in the Supreme Court at great expense to the Public Purpose Fund and establish just, quick and cheap 'review' type procedures of the tribunal.
- Give the Administrative Decisions Tribunal the primary review of council decisions but retain the Legal Service Commissioner's current power to take over determinations.
- Shift the onus in any appeal in the tribunal to be borne by the practitioner.
- Empower the councils to impose conditions without the consent of the legal practitioner if it is in the public interest to do so.

- Empower the tribunal to impose conditions after seeking submissions on those conditions from the relevant council, given that the council will have to monitor those conditions.

The practical consequences of the proposed new regime would be:

- Reduced cost, as there will no longer be
 - (a) expensive applications for interlocutory relief;
 - (b) *de novo* appeals before the Court of Appeal; and
 - (c) Senior and junior counsel routinely appearing at such lengthy appeals.
- Effective implementation of the intention of the legislation - i.e. efficient, simple and clean process of dealing with notifiable events for the purpose of protecting the public.



Photo: Nick Moir / Sydney Morning Herald

Executive Director's report - continued

- Minimise the perception that the 'club' is adjudicating its own whilst at the same time increase the perception of independent third parties providing a transparent regulation of the profession.

The Attorney General, while in discussion indicating his general support for the thrust of this submission, had at the end of the reporting year yet to determine his position on the proposed new regime.

Miscellaneous amendments to the Legal Profession Act 1987 and Legal Profession Regulation 2000

The legislation that governs the practice of law in New South Wales must be one of the most reviewed - and amended - in Australia. In 2001 the Law Reform Commission published its Report 99, *Complaints against lawyers: An interim report*. That report led the Attorney General to direct his department to undertake another inquiry, the results of which were published in November 2002, *A further review of complaints against lawyers*. In addition to the submissions made to these two inquiries, the Bar Association, Law Society and the Legal Services Commissioner had over several years sought a raft of amendments to the Act and Regulation. The Attorney General's Department, too, was also seeking amendments. The Bar Council was also concerned that the department's public report did not accurately reflect the association's position on a range of issues.

Some of the requested amendments overlapped. The need for some was urgent. There was no unanimity of view on all issues. The national practice model laws project meant some changes to the NSW legislation would need to be considered. While the Attorney General had agreed to legislation in respect of some of the proposals, for various reasons that legislation had not been introduced into the parliament. The department's priorities were such that its officers were unable to give the attention to the various reports and submissions that the Bar Council thought was necessary. Accordingly, the President proposed to the Attorney General that the Bar Association convene a working party comprising representatives of the Bar Association, Law Society, Office of the Legal Services Commission, his department and his private office to prepare a consolidated list of *all* the recommendations and submissions made in the two published reports and those put forward by the bodies represented on the working party. That list was to show the views of the various bodies and set out suggested priorities.

This was to be primarily a secretariat exercise, rather than a policy exercise, because the views of the various bodies had been well thrashed out over the past few years. The working party was not intended to be a vehicle to reopen debates that had dragged on in some cases for years. Nonetheless, if unanimity of view could be achieved, so much the better.

The Attorney General endorsed the President's suggestion, and in February asked that I convene the working party. The working party's report was delivered to the Attorney General in early May. The report covered 94 different proposals for changes to the Act and 14 to the

Regulation. There was a very high level of agreement between the various parties involved. Where there were differences of view, some could be easily accommodated in the drafting of the legislation should the Attorney General agree to the recommended amendments. There were only a very few substantive issues where there was strong disagreement between the parties.

A number of the proposed amendments are very important. Many will simplify procedures, and so enable quicker resolution of matters - which will be of benefit to the practitioner, complainant, and lessen the burden on the Public Purpose Fund which meets the financial cost of the investigation of complaints and action in the Administrative Decisions Tribunal and Supreme Court.

The proposed amendments included enhancing the ability of the councils to tell other bodies of the disciplinary action that had been taken against a practitioner. Problems in the legislation identified by the Supreme Court and tribunal in judgments were addressed, as was the question of what material should be made available to the practitioner and complainant during the investigation of a complaint. Issues concerning how a council could better handle a complaint against a practitioner who had an incapacity that had led to the complaint were addressed, as was the extent to which compensation can be awarded to complainants and costs awarded against the practitioner. The desirability of a council being able to reprimand a practitioner without their consent was discussed. The duty of the councils and the commissioner to refer conduct that may constitute an offence to the relevant authority and extending the ability of the councils to attach conditions to a practising certificate (so on occasion avoiding the need to cancel the certificate) were canvassed.

The Attorney General acknowledged the 'considerable effort' of the working party in preparing the report, and the 'significant role' played by the Bar Association's then Director, Professional Conduct, Terrie Gibson, who did most of the work in preparing the submission and negotiating with the various contributors. The Attorney General has indicated that he will be agreeing to most to the proposed amendments. It is anticipated that the necessary Bill will be introduced into the parliament later this calendar year.

The Bar Association staff

Only a few of the Bar Association's staff were involved in the projects noted above. The rest of the staff were doing what I noted in last year's report: putting in long hours of very competent, dedicated effort to provide a quality service to members and others.

The fact that the Bar Library staff can at a few minutes notice provide a barrister about to enter court miles from Phillip Street with material just found to be essential to their case is now taken for granted. The Professional Development staff have built from scratch a programme of which not only the Bar Association can be justifiably proud, but it is already being copied by other Bars. The Professional Conduct staff, unfortunately only too busy in the past couple of years, are now doing work that

Executive Director's report - continued

was previously briefed out to solicitors. The Reception staff continue to handle dozens of telephone and in person inquiries each day, not all of which have anything to do with the legal profession. They, and the Legal Assistance staff, continue to see many, often agitated, unrepresented litigants who believe it the responsibility of the Bar to provide pro bono representation in their (at times unmeritorious) matter.

The Administrative staff continue to provide secretariat support for the Bar Association's many committees, producing minutes and correspondence out of sometimes cryptic remarks by barristers discussing aspects of the law the staff member has not previous encountered. The Bench and Bar Dinner and 15 bobbers run smoothly, the attendees not realising that only minutes before the function the sound system had failed or some had enthusiastically sought to rearrange the settled seating plan. The staff processing the practising certificate renewals, who worked late into the night and at weekends to enable the certificates to be issued before 30 June, particularly appreciated the letters of thanks they received; they were not so appreciative of the few calls and letters from barristers who believed neither the statutory timetable nor fee structure applied in respect of their late applications. The Public Affairs staff continue to respond to numerous calls from the media (not infrequently at hours when most of us are asleep or endeavouring to enjoy the weekend) seeking a Bar Association comment or someone willing to go on the air at a few minutes notice. Often these callers want comment on a judgment they have not thought necessary to read. The Records, Accounts and IT staff quietly support the work of the other staff.

Many thanks

The Bar Association has achieved much this past year of which it can be justifiably proud. None of this could have been done without the work of hundreds of members who give so generously of their time, expertise (and tolerance) in the preparation of written submissions and oral submissions to parliaments, governments and other instrumentalities, and to individual members of the public.

I thank all of these members, and the staff, for all that they have done on behalf of the Bar Association.

I also wish to acknowledge personally the support I have received from the Bar Council and its Executive, and in particular Walker SC and Harrison SC, with whom I have contact most days of the year, often at very unsociable hours. Their unstinting support when needed, and their care not to intervene in matters when that support or direction is not necessary, is very much appreciated.



PA Selth
Executive Director

Appointments

Committees of the Bar Association

As at 30 June 2003

The Bar Association's committees regularly advise and assist the Bar Council in the preparation of detailed submissions regarding draft legislation and current issues in the administration of justice. The expert commentaries of Bar Association committees are sought by governments and opposition political parties, as well as law reform agencies.

The committees are comprised of Bar Association members, who volunteer for service and give generously of their time. Some committees include members of the community in their ranks. An indication of their hard work may be seen in the committee reports, beginning on page 25.

Bar History Committee

Geoff Lindsay SC (Chair)
 Master John McLaughlin
 Wendy Robinson QC
 Jim Macken
 Geoff Kildea
 Richard Taperell
 Robert Lovas
 Francois Kunc
 Carol Webster
 Chris Ward
 Lawrence Ma
 Simon Ioannou
 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)
 Malcolm Ramage QC
 Paul Byrne SC
 Peter Johnson SC
 Tim Game SC
 Brian Knox SC
 Glenn Bartley
 Patrick Barrett
 Roy Ellis
 Greg Scragg
 Virginia Lydiard
 Peter Miller
 Carolyn Davenport
 Daniel Howard
 Phillip Boulten
 Chris Hoy
 Richard Button
 Chrissa Loukas
 Mark Buscombe
 Matthew Johnston
 Gaby Bashir
 Michael Coroneos
Bar Association staff member
 Anita McNally

Equal Opportunity Committee

Michael Slattery QC (Chair)
 Mullenjaiwakka
 Chris Ronalds
 Virginia Lydiard
 Hugh Marshall
 Robert Kaye
 Angela Bowne
 Michael Barr
 Chrissa Loukas
 Robert Newlinds
 Rashda Rana
 Sandra Duggan
 Dominique Hogan-Doran
 Ingmar Taylor
 Rachel Pepper
 Julia Lonergan
 Kate Eastman
 Louise Byrne
 Michelle Painter
Bar Association staff member
 Travis Drummond

Committees of the Bar Association - continued

As at 30 June 2003

Family Law Committee

Grahame Richardson SC (Chair)
 Robert Lethbridge SC
 John Berry
 Christopher Simpson
 Margaret Cleary
 Andrew Givney
 Greg Johnston
 Paul Sansom
 Richard Schonell
 Judith Housego
 Neil Jackson
Bar Association staff member
 Anita McNally

Legal Publications Working Party

Peter Kite SC
 Rena Sofroniou
 Michael McHugh
 Lisa Allen (Bar Association)
 Chris D'Aeth (Bar Association)

Legal Aid Committee

Tim Game SC (Chair)
 Geoff Lindsay SC
 Peter Zahra SC
 Angela Bowne
 Phillip Boulten
 Chrissa Loukas
 Paul King
 Dean Jordan
 Mark Buscombe
Bar Association staff member
 Anita McNally

Mediation Committee

Robert Angyal (Chair)
 Steven Rares SC
 Richard Bell
 Ian Bailey
 Paul Blackburn-Hart
 Mary Walker
 Geraldine Hoeben
 Ian Davidson
 Katherine Johnson
 Susan Phillips
 David Knoll
 Hugh Stowe
Bar Association staff member
 Kim Nichols

Personal Injuries Litigation Committee

Larry King SC (Chair)
 John Maconachie QC
 Andrew Morrison RFD SC
 Richard Seton SC
 Ian Cullen
 Brian Ferrari
 Stuart Torrington
 Phillip Mahony
 Jim Gracie
 Julia Lonergan
 Andrew Stone
 Justine Hall (Law Society representative)
Bar Association staff member
 Kim Nichols

Professional Conduct Committee #1

Anna Katzmann SC (Chair)
 Stephen Robb QC
 Steven Rares SC
 Michael Bozic SC
 Roy Ellis
 Elizabeth Cohen
 John Fernon
 Mark Speakman
 Richard McHugh
 Vicki Hartstein
 Frank Veltro
 Philippe Gray-Grzeszkiewicz
Community members
 Susanne Weress
 Kate Nacard
Academic members
 Assoc. Prof. Jill Hunter
Committee Secretary
 Adele Connor

Professional Conduct Committee #2

Michael Slattery QC (Chair)
 Ian Temby QC
 William Dawe QC
 Robert McDougall QC
 Hugh Marshall
 Robert Kaye
 Kate Traill
 Andrew Colefax
 Fred Curtis
 Christopher Millard
 Rachael Pepper
 Rhonda Bell
 Sigrid Higgins
 Michael McHugh
 Vahan Bedrossian
Community members
 John Blount
 Anna Fader
 Sue Thaler
 Matthew Smith
Academic members
 Prof. David Barker
Committee Secretary
 Helen Barrett

Committees of the Bar Association - continued

As at 30 June 2003

Professional Conduct Committee #3

Tom Bathurst QC (Chair)
 Martin Einfeld QC
 John Maconachie QC
 David Davies SC
 Peter McEwen SC
 John Sheahan SC
 Hayden Kelly
 Luigi Lamprati
 Brian Skinner
 Josephine Kelly
 James Stevenson
 Ingmar Taylor
 Peter Brereton
 Louise Byrne
 Paul Bolster
Community members
 Helen Steptoe
 Robert Nakhla
 John White
 Nicholle Nobel
Academic members
 Bernard Dunne
Committee Secretary
 Adele Connor

Professional Conduct Committee #4

Bernie Coles QC (Chair)
 Peter Graham QC
 Philip Hallen SC
 Elizabeth Fullerton SC
 David J Russell SC
 Brian Knox SC
 Phillip Mahony
 Daniel Howard
 Chris Hoy
 Patrick Griffin
 Carol Webster
 Kate Eastman
Community members
 Prof. Derek Anderson
 Phil Marchionni
 Carol Randell
Academic members
 Francine Feld
Committee Secretary
 Helen Barrett

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

Professional Standards Scheme Committee

Brian Rayment QC
 Tom Bathurst QC
 Andrew Bell
Bar Association staff member
 Kim Nichols

Taxation Committee

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

Young Barristers Committee

Hugh Stowe (Chair)
 David Ash
 Rhonda Bell
 Cameron Jackson
 Lawrence Ma
 Vahan Bedrossian
 Stephen Loughnan
 Stephanie Fendekian
 John Pickering
 Alastair Vincent
Bar Association staff member
 Travis Drummond

Co-ordinators

Human Rights Co-ordinator

Nicholas Cowdery AM QC

Industrial Relations Commission Duty Barrister Scheme Co-ordinator

Ingmar Taylor

Downing Centre Duty Barrister Scheme Co-ordinator

Dominic Toomey



Sections of the Bar Association

As at 30 June 2003

Administrative law

Convenor: Alan Robertson SC
Secretary: Stephen Lloyd

Common law

Convenor: Anna Katzmann SC
Secretary: Andrew Stone

Constitutional law

Convenor: Stephen Gageler SC
Secretary: David Knoll

Construction law

Convenor: Glen Miller QC
Secretary: Geoff Underwood

Corporations, securities & insolvency law

Convenor: Tom Bathurst QC
Secretary: Rodney Smith SC

Criminal law

Convenor: Peter Johnson SC
Secretary: Glenn Bartley

Environmental, local government & valuation

Convenor: Malcolm Craig QC
Secretary: Josephine Kelly

Family law

Convenor: Grahame Richardson SC
Secretary: Greg Watkins

Intellectual property law

Convenor: David Yates SC
Secretary: Richard Cobden

Maritime, air & transport law

Convenor: Brian Rayment QC
Secretary: Gregory Nell

Trade practices & consumer protection law

Convenor: Jeffrey Hilton SC
Secretary: Andrew Ogborne

News South Wales members appointed to the Bench

For the year ended 30 June 2003

High Court of Australia

The Hon JD Heydon

Federal Court of Australia

The Hon Justice A Bennett

Supreme Court of New South Wales

The Hon Justice JW Shaw
The Hon Justice WH Nicholas
The Hon Justice MH Tobias
The Hon Justice RS McColl

Land and Environment Court of New South Wales

Commissioner Tim Moore
4 November 2002 - 3 November 2009

District Court of New South Wales

His Hon Judge PG Berman SC
His Hon Judge RP McLoughlin SC
His Hon Judge CD Charteris SC

Local Court of New South Wales

Magistrate JA Coombs
Magistrate GB Curran
Magistrate JM Baptie

Australian Industrial Relations Commission

Vice President MJ Lawler

Bar Association representatives on educational bodies

As at 30 June 2003

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

John Fernon

Janet Oakley

Rachel Pepper

Legal Practitioners Admission Board, Law Examinations Committee

Michael Christie

University of Sydney, Faculty of Law

Peter Garling SC

University of Technology, Sydney, Faculty Board

Geoff Lindsay SC

University of NSW, Faculty of Law

Rachel Pepper

University of Wollongong Faculty of Law, Visiting Committee

Bruce Collins QC

University of Sydney, Law Extension Committee

Chrissa Loukas

Anthony O'Brien

Court committees and working parties

As at 30 June 2003

Commonwealth courts and tribunals

Federal Court of Australia Court User Committee

Malcolm Oakes SC

Federal Court Electronic Filing Working Party

Michael McHugh

Family Court Case Management Committee

Grahame Richardson SC

Migration Review Tribunal/Refugee Review Tribunal Liaison Committee

Nick Poynder

State courts and tribunals

Court of Appeal Users Committee

Russell McIlwaine SC

Guy Reynolds SC

Supreme Court Rule Committee

Michael Slattery QC

Jeremy Gormly SC

Supreme Court Commercial Users Committee

Robert Macfarlan QC

Steven Rares SC

Noel Hutley SC

Glen Miller QC

Michael Rudge SC

Rodney Smith SC

David Hammerschlag SC

James Stevenson

Supreme Court Common Law Division Criminal Users Committee

Tim Game SC

Stephen Odgers SC

Supreme Court Common Law Division Civil Users Committee

Brian Murray QC

Cliff Hoeben AM SC

Supreme Court Company List User's Group

Malcolm Oakes SC

James Thomson

Robert Newlinds

James Johnson

Supreme Court Probate User's Group

Michael Willmott

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

Supreme Court Working Party for Expert Witnesses in Criminal Trials

Ian McClintock

Court committees and working parties - continued

As at 30 June 2003

Land & Environment Court Users Group

Jeffrey Kildea

Land & Environment Court Information Technology Implementation Group

Jeffrey Kildea

Industrial Relations Commission Users Group

Maxwell Kimber SC
Trish McDonald

District Court Rule Committee

Ross Letherbarrow SC

District Court Civil Business Committee

Brian Murray QC
Larry King SC

District Court Criminal Listings Review Committee

Matthew Johnston

Compensation Court Rules Committee

Brian Ferrari
Gregory Beauchamp

Dust Diseases Tribunal Rules Committee

Brian Ferrari

Local Court (Civil Claims) Rule Committee

Andrew Kostopoulos

Local Courts (Civil Claims) Court Users Forum

Jeremy Gruzman

St James Local Court Users Forum

Kevin Laphorn

Local Courts Rule Committee

Kate Traill

Children's Court Advisory Committee

Matthew Johnston

Statutory appointments

As at 30 June 2003

Administrative Decisions Tribunal

Legal Services Division

Robert Macfarlan QC
John McCarthy QC
Sharron Norton SC
David Officer QC
Lionel Robberds QC
Wendy Robinson QC
John West QC

Equal Opportunities Division

Penelope Goode
Phillipa Gormly
Chrissa Loukas
Jane Needham

General Division

Penelope Goode
Sigrid Higgins
Jane Needham
Mark Robinson

Community Services Division

Phillipa Gormly

Legal Aid Commission

Board members

Geoff Lindsay SC
Alternate: Ian Temby QC

Legal Aid Review committees

Committee No.1

John McCarthy QC
1st alternate: Paul Menzies QC
2nd alternate: Paul Blacket SC

Committee No.2

David Higgs SC
1st alternate: Winston Terracini SC
2nd alternate: Anne Healey

Family Law Legal Aid Review Committee No.1

Gregory Moore
1st alternate: Richard Schonell
2nd alternate: Anne Rees

Council of Law Reporting

Naida Haxton (Editor)
Lee Aitken (Consulting Editor)
Francis Douglas QC
Bret Walker SC
Christopher Birch SC
Noel Hutley SC
Christine Adamson
Timothy Castle

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

Motor Accidents Council

Andrew Stone

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
Raymond McLoughlin SC

Other appointments

For the year ended 30 June 2003

NSW Attorney General's Department working parties

Evidence Act working party

Stephen Odgers SC

Civil procedure working party

Michael McHugh

Greg George

Australasian Dispute Resolution Centre

Richard Bell

Public Interest Law Clearing House

Peter Maiden

Rachel Pepper

Hugh Marshall

Trustees of the Pro Bono Disbursement Fund

Philip Selth

Australian Advocacy Institute

Elizabeth Fullerton SC

Fair Trading Tribunal - Home Building Division Consultation Group

Simon Kerr

NSW AGs Department, Legal Technology Reference Group

Jeffrey Kildea

Motor Accidents Assessment Service Users Group (MAAS)

Ross Letherbarrow SC

Hugh Marshall

Andrew Stone

Law Society of New South Wales committees

Criminal Law Committee

Tim Game SC

Personal Injury Committee

Andrew Stone

Law Council of Australia committees

Access to Justice Committee

Christopher Whitelaw

ALRC Working Group

Bret Walker SC

Public Liability Reference Group

Ian Harrison SC

Australian Young Lawyers Committee

Hugh Stowe

Advisory Committee on Indigenous Legal Issues

Michael Slattery QC

Sarah Pritchard

Anthony McAvoy

Criminal Law National Liaison Committee

Tim Game SC (Chair)

Bret Walker SC

Stephen Odgers SC

Equalising Opportunities in the Law Committee

Chrissa Loukas

Healthcare Liability Committee

Michael Slattery QC

Colin O'Connor QC

National Profession Reference Group

Bret Walker SC

Australian Bar Association

Vice-President

Ian Harrison SC

Court liaison members 2003

As at 30 June 2003

Federal courts and tribunals

High Court

David Jackson QC

Federal Court

Malcolm Oakes SC

Family Court

Grahame Richardson SC

Migration & Refugee Review tribunals

Nick Poynder

State courts and tribunals

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

Land and Environment Court

Malcolm Craig QC

Industrial Relations Commission of NSW

Max Kimber SC

Local Court

Kate Traill

Reports

Promoting the interests of local practising barristers

BarCare

For the year ended 30 June 2003

BarCare is a professional counselling service for members of the New South Wales Bar Association. The panel of medical practitioners and counsellors includes a variety of specialists with the expertise to cover the different needs of members and their families.

In 2002-2003, the major administrative change to BarCare has been the addition of three new counsellors, bringing to seven the number on the panel. The three new members are:

Susie Danos.

Susie is a psychologist with specialised training and experience in loss and grief, depression, anxiety, panic disorder, drug, alcohol and gambling addiction, parenting/blended families, separation/divorce, and sex therapy. Over many years, her work with the Family Court of Australia has brought her into frequent contact with members of the legal profession.

Ross and Dawn Colquhoun

Ross is a clinical psychologist and the Clinical Director of Addiction Treatment & Psychology Services. Dawn is a psychotherapist. Both have extensive experience in the treatment of addictions and specialise in a number of areas including depression, anxiety disorders, post traumatic stress disorder, eating disorders, relationship, family and group counselling, psychological assessment and counselling for forensic, personal injury and occupational rehabilitation.

Survey of BarCare consultations

A questionnaire was sent recently to the members of the panel with a view to obtaining a profile of consultations.

Number of members seen	18
Female:	5
Male:	13
Most common age bracket	45-54
Most common length of time in practice	11 years +
Most common locality of practice	Sydney CBD
Most common types of problem	overwork, leading to depression and anxiety
Number of family members seen	1
Number of members who continued with treatment after the initial consultation	12

All panel members said they were pleased with the way the scheme was working.

Some of the general observations made by members of the panel as listed below.

- One member of the panel noted that, having counselled a number of barristers since BarCare's inception, 'there is no doubt just how stressful the job of being a barrister almost universally is, particularly for those with emotional/personality vulnerability'.
- Confidentiality is important for most clients.
- The issues arising from dual-career marriages and excessive working hours are common.
 - Two couples found out important information about BarCare from the Bar Association's web site – Another couple by 'word of mouth' from colleagues already attending.
- The importance of BarCare can be gauged from the fact that, even though clients may have a family doctor, they do not always seem comfortable with discussing or disclosing these issues to their local GP.
- Some clients come for a 'look see' at what therapy might have to offer (i.e. the initial consultation). Some are satisfied after one session that they need to 'take stock' and rebalance their lives.

The history of BarCare

In July 2000 the Bar Council Executive recommended to 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.

BarCare - continued

For the year ended 30 June 2003

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 Bar 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*.

How it works

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 arising from 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 programme.

The treatment programme 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 programme 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. Confidentiality is assured.

BarCare helpline: (02) 9230 0433

www.nswbar.asn.au/barcare

Report of the Management Committee of the Barristers' Benevolent Association

For the year ended 30 June 2003

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

The assistance given is generally financial, but it is not limited to money. Arrangements have been made for legal assistance, for independent psychiatric assessment, for negotiating housing, negotiating with banks, preparing

financial position statements, or dealing with other aspects of members' financial problems and intervening with creditors where that becomes necessary.

Every aspect of the operation of the Benevolent Association, from the donations made to it, through to notification that a member is in difficulty 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 2002-2003 the Management Committee approved eight grants (totalling \$106,655) and three loans (totalling \$52,523).

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

Contributions to the Barristers' Benevolent Fund of New South Wales

Contributions for the year ended 30 June 2003

Contributions \$5,000 and above

Francis Douglas QC
Bret Walker SC

Contributions \$2,000 to \$3000

Great Bar Boat Race Entry Fees 2002
Craig Leggat
Tim McKenzie

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

Anthony Bartley SC
Paul Byrne SC
Bernie Coles QC
Philip Doherty
James Dupree
John Durack SC
Richard Edmonds SC
Estate of the late Hon Michael Helsham AO DFC QC
Simon Kerr
Andrew Martin
John Murphy
Richard Royle
Frank Santisi
John Webster SC
John West QC

Justin Gleeson SC
G Barry Hall QC
Simon Harben
Ian Harrison SC
John Hislop QC
Clifton Hoeben AM RFD SC
Christopher Hoy
David Jackson QC
Gregory Jones
Anna Katzmann SC
William Kearns SC
Larry King SC
Leonard Levy SC
Terrence Lynch
John Machonachie QC
Ian McGillicuddy
Aziz Melick SC
Geoffrey Nicholson QC
David Nock SC
David Officer QC
Bruce Oslington QC
James Poulos QC
Steven Rares SC
Dennis Ronzani
Michael Slattery QC
Clive Steirn SC
John Timbs QC
The Hon Justice MH Tobias
Carol Webster
John Wilson

Thomas Bathurst QC
Richard Battley
Philip Beale
Richard Beasley
Nicholas Beaumont
Richard Bell
Robert Bellamy
Peter Biscoe QC
His Honour Judge AD Bishop
Paul Blackburn-Hart
Phillip Boulten
Mark Boulton
Michael Bozic SC
Mark Brabazon
The Hon Justice JE Brownie
The Hon Justice JP Bryson
George Brzostowski
David Buchanan SC
Stephen Burley
Gregory Burton
Peter Callaghan SC
Andrew Campbell
The Hon Justice MW Campbell
Peter Capelin QC
David Caspersenn
Keith Chapple
Warren Chipchase
Stephen Climpson
Nicholas Confos
Peter Cook
Roderick Cordara SC
John Costigan
David Cowan
Gerard Craddock
Malcolm Craig QC
Gregory Curtin
Ian Davidson
David Davies SC
Francis Davis
Hament Dhanji
Geoffrey Digby QC
Stephen Dixon
Simon Doctor

Brian Donovan QC
Peter Dooley
Ronald Driels
James Duncan
The Hon Justice JR Dunford
John Philip Durack
Peter Dwyer
Martin Einfeld QC
Michael Elkaim SC
Anthony Enright
Clive Evatt
The Hon Elizabeth A Evatt AC
Dorothea Falloon
John Fernan
John Fernon
Brian Ferrari
Steven Flanigan
Robert Forster SC
David Galpin
Antonio Gidaro
James Glissan QC
John Gooley
Jeremy Gormly SC
Martin Gorrick
Glenn Gould
His Honour Judge GJ Graham
Michael Green
Robert Greenhill SC
Roger Hamilton
John Harris
Anthony Hatzis
Terrence Healey
John Heazlewood
Alister Henskens
The Hon Geoffrey Herkes
Geraldine Hoeben
David Hooke
Gregory Hosking SC
Thomas Hughes
Brendan Hull
John Ibbotson
George Ikners
Bennett Ingram
Anthony Jamieson

Contributions \$500 to \$999

Peter Bodor QC
Paul Le Gay Brereton SC
Campbell Bridge SC
Stephen Campbell SC
Richard Cavanagh
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Bruce Collins QC
Ian Cullen
Sandra Duggan
The Hon RJ Ellicott QC
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Stephen Flett
Mark Gilbert

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Michael Abdul Karim
The Hon Justice MF Adams
Kelvin Andrews
Her Honour Judge CE Backhouse QC
Robert Anthony Baker
The Hon Charles Bannon QC
The Hon Richard Barbour QC
Paul Barnes
Graham Barter
John Bartos

Barristers' Benevolent Fund of New South Wales - continued

Contributions for the year ended 30 June 2003

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The Hon Justice PM Kavanagh	Cameron Moore	Michael Rollinson	Gus Van Der Vlag
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Ian Lawry	Neil Newton	Bernard John Sharpe	Michael Williams SC
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The Hon Justice DD Levine	His Honour Judge JC Nicholson SC	Christopher Simpson	The Hon Justice FL Wright
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Janet Manuell	Elizabeth Olsson	Alison Stenmark SC	David Ash
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Terese Messner		Robyn Tupman	
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Barristers' Benevolent Fund of New South Wales - continued

Contributions for the year ended 30 June 2003

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 David Weinberger
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 Justin Young

Equal Opportunity Committee

During 2003 the Equal Opportunity Committee has continued to expand a number of programmes that have been trialled in the last two years and is piloting a major initiative to assist barristers who also have primary caring responsibility for children. This year the committee has maintained its principal focus on assisting Indigenous lawyers and law students who wish to come to the Bar and promoting the interests of the women at the Bar.

The Indigenous Lawyer's Strategy

The strategy, adopted by the Bar in 2000, is designed to assist Indigenous lawyers and law students with aspirations of coming to the Bar to achieve that objective and to build sound practices at the Bar. The Indigenous Lawyer's Strategy Subcommittee is a special committee set up to implement the strategy. Implementation of the strategy continues to be a major focus of the committee and the subcommittee.

Another Indigenous barrister, Lincoln Crowley, started as a reader in February 2003 and he demonstrates some early success with the strategy. He is reading in part with Andrew Haesler of Carl Shannon Chambers and Chris Lonergan of Seventh Floor Garfield Barwick Chambers, as part of the strategy as well as having another tutor from the non-criminal Bar. Joining Mullenjaiwakka and Anthony McAvoy at the NSW Bar, his arrival increases to three the number of Indigenous barristers practising at the Bar.

A special trust fund, The Indigenous Barristers' Trust - the MumShirl Fund, was established in 2002 to create a pool of funds to provide financial assistance to Indigenous barristers especially in their first few years of practice. After the Australian Taxation Office declined to grant the Trust deductible gift recipient status under the *Income Tax Assessment Act 1936 (Cth)*, the trustees initiated a review of the ATO's decision in the Federal Court. The Hon. Justice Gyles determined that the Trust could claim deductible gift recipient status as the Trust was established for the benefit of the Indigenous community: *Trustees of the Indigenous Barristers' Trust v Commissioner of Taxation* [2002] FCA 1474. John Durack SC and David Charles volunteered their legal advice and their time to represent the Trustees in the Federal Court for the proceedings.

The students participating in the University of NSW Indigenous Pre-Law Programme attended the Bar Association for a day during their course late in January 2003. They were taken to chambers and introduced to the working lives of barristers. They then visited and were given an insight into the career path and professional experience of a judge by The Hon. Justice Sully. This visit is an annual event and is important in introducing new Indigenous law students to the career opportunities available at the Bar.

An important part of the Indigenous lawyers' strategy is increasing the contacts between barristers and Indigenous law students, to

increase the students' direct understanding of work at the Bar. Employment opportunities were found for three recent graduates as associates to District Court judges and assistance was given to one who became a research assistant in the Federal Court. Five law students were assisted in finding part-time employment either at the Bar Association or with groups of barristers during the year. Principally through the work of the EO Committee's Deputy Chair, Chris Ronalds, the sub-committee continues to seek out part-time work opportunities for Indigenous law students with barristers, to develop their skills, experience and contacts within the law during their university studies.

Women at the Bar

During the past 18 months the EO Committee looked at the issue of assisting barristers who have primary caring responsibilities for children. The committee has investigated whether the Bar could develop an initiative to assist in the provision of urgently needed back-up emergency childcare services to cover situations where the existing support network failed for such barristers.

The initiative that was finally proposed by the committee as a result of this investigation can best be described as an 'in-home care scheme'. A pilot for the scheme commenced in May 2003 and will run for six months. During and at the end of the six months pilot the scheme is being assessed by



Murray Harris Photography

Equal Opportunity Committee - continued

Jane Smythe & Associates, an independent work and family consultancy, for its feasibility to be offered more widely to the Bar. Some nine barrister families have participated in the initiative, which is being trialled through the winter months when childhood sicknesses are at their highest levels. Anecdotal reports as to the working of the scheme are very encouraging so far.

The scheme is being operated by a service provider with extensive experience in the childcare industry, McArthur Management Services ('McArthur'). The scheme enables a barrister facing children's sickness or any other emergency, or just when normal childcare arrangements unexpectedly fail, to make one telephone call to McArthur for help. McArthur then makes all the necessary arrangements for a carer to arrive at the barrister's home or collect the child as is required. The children, through regular periodic contact in a general caring role, already know the carer. The centralised telephone system operated by McArthur is a 24-hour service. McArthur will have a comprehensive database supporting the facility.

The committee's informal research indicates that many barristers would readily use this facility if it existed. The good take up rate for the pilot now being run also indicates this. The idea of the scheme arose from a number of complaints by barristers that they lacked this kind of support. This practical response is now underway. So far as the Bar is aware this is the first scheme of its type in Australia for professionals with primary caring responsibilities for children. Detailed work on the initiative and in launching the pilot has been undertaken by Rashda Rana.

In 2003 the committee continued its highly successful series of 'Welcome to the Bar' days for female law students in their final and penultimate year of university studies. This programme aims to ensure equality of opportunity for all qualified people who wish to pursue a career at the Bar. The programme seeks to ensure that female law students consider the Bar as a viable career option. The appreciative comments from the many law students who have participated in the programme since its inception in 2001 have supported its continuation as part of the permanent work of the committee.

This year the Equal Opportunity Committee has hosted visits from students at Macquarie University and the University of Wollongong and the University of Western Sydney. The Welcome to the Bar days commence with the students attending for half a day in which they attend court and chambers and have the opportunity to observe closely the daily work of a female barrister. The female judges of the Federal and Supreme courts have supported the programme. The judges make themselves available to speak to the students in small groups accompanied by one of the many female barristers who volunteer to assist. The programme is arranged for a Friday when the High Court is hearing Special Leave applications in Sydney to enable the students also to observe a sitting of the High Court. This is a particularly valuable experience for those students from universities not in close proximity to the Queens Square Law Courts Building. The success of this programme owes much to Louise Byrne's detailed work in organizing the visit days.

The committee's mentoring scheme is now assisting the third group of women since its inception. The mentoring scheme is administered on an ongoing basis by a subcommittee of the EO Committee, comprised of Rachel Pepper, Michelle Painter and Sandra Duggan. The mentoring scheme is offered to female barristers at the end of their first year of practice. Eligible barristers are written to each March and in September. These months coincide with the conclusion of the first year of practice of the barristers being offered the opportunity to be mentored.

Participation in the scheme - either as a mentor or as a mentored barrister is voluntary. Each scheme participant is assigned a mentor. Mentors are drawn from senior practitioners. A mentor may be a silk or a senior junior. The committee seeks to ensure that the mentor practices in the practice area identified by the participating barrister as of interest to her. Both current and aspirational work areas are considered by the committee, in consultation with the barrister, in assigning a mentor. The scheme now works so effectively that female barristers who have been mentored in the past now speak to those joining the scheme about its value for them.

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. The 2002-2003 reporting 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.

It was noted in the 2002 annual report that the Forbes Society was formed under the sponsorship of the Bar Association and is intended to promote the study of Australian legal history. The Forbes 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 foremost achievement of the year was the successful launch of the Forbes Society's ongoing programme of public lectures and publications.

The inaugural Francis Forbes lecture on Australian legal history was delivered by Ian Barker QC on 28 November 2002 regarding 'The history of trial by jury in New South Wales'.

Barker QC, a former president of the Bar Association, analysed the way in which a penal colony, governed by the

military, and with deep social divisions, was able to implement a system of trial by jury and gradually broaden eligibility for jury service. He concluded with an overview of more recent legislation that has served to gradually restrict the right of an accused to a trial by jury for all but the most serious of crimes. By the end of the reporting period, the lecture was being prepared for publication later in 2003.

During 2002-2003, preparations were also finalised for the 2003 Forbes Lecture, to be delivered by The Hon PE Powell AM on Wednesday 15 October 2003, on the topic of 'The origins and development of the Protective Jurisdiction of the Supreme Court of NSW'.

A web site was also created for the Forbes Society at www.forbessociety.org.au, which contains details of upcoming events, links to other legal history pages on the Internet and membership application forms.

In 2001 Dr John Bennett was engaged by the History Committee to transcribe and edit the diary of John Callaghan, a nineteenth-century NSW District Court judge. After a considerable effort by Dr Bennett a completed manuscript was delivered to the committee in early 2003. Preparations are under way for publication later in the year.



Photo: Michelle Mossop / Australian Financial Review

Professional Standards Scheme Committee

The Professional Standards Scheme Committee was established to assist the Bar Council in the preparation of a submission to the Professional Standards Council for recognition of a barristers' scheme under the *Professional Standards Act 1994*.

Only barristers who hold a New South Wales practising certificate and who are members of the Bar Association with the required level of insurance will benefit from the scheme once it is in force. The scheme will have the effect of limiting the amount of damages payable for harm caused by a practising member of the association in the course of their practice.

Information regarding claims made against barristers for the last ten years is required to accompany the Bar Association's application. This information has recently been acquired from all of the insurers and has been put into aggregated form so that the individual insurers cannot be identified. The committee will decide on the 'cap' for the level of liability for the scheme based on the claims information.

The committee is hopeful that the draft scheme it submits to Bar Council will be approved and lodged with the Professional Standards Council before the end of 2003.

The committee will continue to work closely with the Bar Council over the next few months to formulate submissions to the Attorney General in relation to possible amendments to the Act to improve its operation.

There have been positive moves over the last twelve months regarding the introduction of federal professional standards legislation. Reports have been received that the insurance ministers from all states and territories have confirmed their commitment to implementing professional standards legislation on a nationally consistent basis. This development is welcomed by the Professional Standards Scheme Committee.



Photo: Phil Carrick / Australian Financial Review

Reports

Arranging and promoting continuing professional development

Education, training and professional development programmes

Continuing professional development in 2002-03

The Bar Association provided 172.5 hours of CPD in the 2002/03 practising certificate year. CPD seminars and events were conducted at a variety of locations including: the June 2002 Peppers conference; the Bar Association Common Room; Carl Shannon Chambers; Parramatta CBD; University of Technology, Sydney Law School; Australian National University; and at the law schools in Newcastle, Parramatta and Lismore.

Effective alliances have been established with UTS and law schools in each of the regional areas and the ACT, to allow CPD to be delivered in the region and Downtown Sydney on a low-cost basis. The Bar Association's interest in partnership with regional law schools has been warmly and positively received by law students, and the law schools themselves. Regional solicitors are paying registration fees and attending these CPD mini-conferences for MCLE purposes. In 2003-2004, it is hoped the Bar Council Executive's visits to regional areas can be timed to coincide with the regional mini-conference programme.

A development which has emerged is the interest of small study groups of barristers, floors, and chambers, in developing their own CPD. A protocol to be followed by groups of barristers who wish to provide their own group CPD has been developed. The Professional Development Department has been proactive in the facilitation of this process. The Bar Association has also been active in its support for the ACT and regional Bars to provide their own CPD independently of the resources of the Bar Association, pursuant to an ongoing dialogue with the Director of Studies.

Working parties convened by senior barristers for each of the programmes, and for each of the four strands of CPD, determine the goals, curriculum and strategies, the materials to be used, and the instructors to be engaged in the delivery of the programmes. Under the aegis of these working parties, strong measures will continue through 2003-2004 to ensure that overlap and repetition is avoided, that full integration is achieved, and that quality and economies continue to improve.

Working parties

Reading, education, training and professional development programmes

Continuing Professional Development

Bret Walker SC (Convenor)
Peter Hastings QC
Justin Gleeson SC
Alison Stenmark SC
Luigi Lamprati
Mary Walker

Bar Practice Course

Peter Taylor SC
Phil Greenwood SC (Convenor)
Rachel Pepper
Kelly Rees

Reading

David Nock SC (Convenor)
John Maconachie QC
Larry King SC
Kate Traill

Bar exams

David Davies SC (Convenor)
Bret Walker SC
Bernard Sharpe
Carolyn Davenport
Gordon Lerve
Janet Oakley
Rashda Rana
Rachel Pepper
Sigrid Higgins
Grant Carolan

Education, training and professional development programmes – continued

Working parties - strands

Advocacy, mediation and other barristers' skills

Peter Taylor SC (Convenor)
 Christopher Gee QC
 David Jackson QC
 Steven Rares SC
 Philip Greenwood SC
 Peter Maiden
 Greg Laughton
 Chris Ronalds
 Carolyn Davenport
 Robert Angyal
 David Jordan

Substantive law

Richard White SC (Convenor)
 Brian Rayment QC
 Thomas Bathurst QC
 Glen Miller QC
 Malcolm Craig QC
 Anthony Slater QC
 Jeffrey Hilton SC
 Steven Rares SC
 Geoff Lindsay SC
 Alan Robertson SC
 Anna Katzmann SC
 Peter Johnson SC
 David Yates SC
 Grahame Richardson SC
 Stephen Odgers SC
 Stephen Gageler SC

Ethics and regulation of the profession

Tom Hughes QC (Convenor)
 Bernie Coles QC
 Peter Garling SC
 David Davies SC
 Peter McEwen SC
 Greg Laughton
 Chris Ronalds
 David Jordan

Management (risk, practice & personal)

Peter Kite SC (Convenor)
 Julian Van Aalst
 Chris Ronalds
 John Levingston
 Paul Daley
 Anne Sinclair

The Reading Programme: including Bar exams, Bar Practice Course and reading period

There has been an increase in the number of practitioners entering the Bar Association's reading programmes during 2002-2003. Seventy-three candidates registered for one or more of the June 2002 Bar exams; 87 registered for one or more of the November 2002 Bar exams; and 91 candidates registered for one or more of the June 2003 exams.

The August 2002 Bar Practice Course numbered 27 readers. The February 2003 BPC contained 42 readers. It is anticipated that the August 2003 course will contain approximately 36 readers, with an additional 12 readers choosing to defer and undertake the first course in 2004.

A working party of 40 barristers, convened by David Davies SC, now provides the Professional Development Department with the necessary support for implementation of Bar Council policy in relation to the Bar exams. The 40 barristers involved in the Bar Exams Programme each have particular tasks and responsibilities, and the outcome is that the entire programme is now being much more expeditiously and effectively administered than was previously the case. Particular barristers have been assigned key responsibilities, such as maintenance of the required reading lists in each of the three areas for examination. Details of the responsibilities are maintained on the Bar Association's web site, and barristers with questions about the syllabus to be pursued in areas of concern, such as ethics, may communicate directly with the barrister who is designated on the web site as having the relevant responsibility.

In 2003/04 in relation to the Bar Practice Course the Professional Development Department's emphasis will be on:

- attaining a higher level of commitment from the senior Bar to the role of instructing in the Bar Practice Course;
- strengthening the content relating to practice management, and to ethics and regulation of the profession;
- developing materials, particularly with respect to the latter, which would enable basic principles to be inculcated in transactional contexts;
- place emphasis on a range of skills wider than curial advocacy in Supreme Court civil matters;
- providing fresh moot transactions capable of reinvigorating the interest of barristers and members of the judiciary who have been engaged routinely in the Bar Practice Course for over a decade; and
- participation by the state judiciary in the Bar Practice Course.

Education, training and professional development programmes – continued

Plans for 2003/04 and beyond

- Progress has been made in the development of a core curriculum in each of the four CPD strands, to be presented in a series separate from the general Wednesday evening Common Room series, commencing from September 2003.

A core curriculum has been developed by working parties for practice management and advocacy, convened respectively by Peter Kite SC and Peter Taylor SC. A core curriculum for ethics and regulation of the profession is close to finalisation. Particular subject areas within the substantive law, practice and procedure, and evidence strand of CPD have been reduced to a core curriculum, namely, trade practices, administrative law, criminal law, and intellectual property.

The core curriculum will be presented only in the Common Room, on a regular Tuesday evening basis. As with the general Wednesday evening series, seminars will be recorded, and papers made available on the Bar Association's web site, for use by study groups, floors, chambers, the ACT Bar and the regional Bars and other groupings of barristers, in their in-house CPD programmes.

- The annual Tutors and Readers Dinner will be upgraded to serve as a model in every relevant respect for tutor/reader functions, which previously involved tutors and readers in a series of casual lunches, drinks, and post-Bar Practice Course excursions, spread over the entire practice year. The plan, to be implemented from the annual Tutors and Readers Dinner, on 25 July 2003, is for one prestige, high quality function to be conducted each year in late July.
- There has been a complete revision of the reading conditions on practising certificates, aimed at strengthening the controls on barristers in their initial practice year.
- The purchase of additional audio equipment and a demountable dais for the Bar Association Common Room, to allow presentation of interactive advocacy demonstrations to large groups. Lighting will be addressed in 2003-2004.
- The Professional Development Department has benefited from the reconfiguration and rededication of the basement premises and is now able to conduct the entire Bar Exams Programme, and more of the Bar Practice Course on site, on a basis free of the cost of routinely hiring the Sydney University Assembly Hall, and the National Dispute Centre facilities.
- It is hoped that with the advent of the members-only restricted access section of the Bar Association's web site, members will have even greater access to CPD material, including papers, at any time.

Reports

Making recommendations and promoting the administration of justice

Family Law Committee

The Commonwealth Government's perennial attempts to find solutions for the problematic family law jurisdiction have made 2002-2003 yet another busy year for the Family Law Committee. Nevertheless, significant progress has been made towards reform of both legislation and daily practice and procedure in the Family Court.

Submissions

During the course of the year the committee prepared submissions on a number of issues, including:

- the Government's *Family Law Amendment Bill 2003*, which the committee considered and supported;
- the Family Court's Case Management Directions;
- the draft Children's Services Regulations;
- the proposed service agreements and practice standards to be implemented by the NSW Legal Aid Commission in respect of children's care and protection panels; and
- a discussion paper issued by Legal Aid NSW regarding the implementation of a Family Court Child Representation Panel of legal representatives, including counsel.

At the time of writing, the committee was preparing submissions in response to the Commonwealth Government's inquiry into child custody arrangements. That inquiry will consider the controversial topic of whether residence disputes should be resolved under the *Family Law Act* from a starting point that involves a rebuttable presumption of parents sharing residence of a child.

The committee has also participated in submissions made by the Law Council's Family Law Section, regarding the new draft rules under consideration by the Family Court. This formidable task involves the revision of practice and procedure contained in more than 600 pages of text.

Throughout 2002-2003 the Family Law Committee has provided delegates to serve on committees and to represent the Bar Association at conferences. Some of these included:

- The NSW Legal Aid Commission's Care and Protection Panel Selection Committee; and
- The Family Court's ongoing Case Management Committee.

Robert Lethbridge SC also represented the Bar at a two-day forum convened by the Attorney-General in Canberra entitled 'Out of the maze: Steps towards an integrated family law system'.

As this report was being prepared, the committee was working with the Professional Development Department in convening a seminar on 6 August 2003 'Advocacy in the Family Court, Practical Aspects' at which justices O'Ryan and Rose are to speak.

Regardless of the reforms being considered, the Family Court remains grossly under resourced, resulting in unacceptable delays nationally. At the time this report was written, the Sydney Registry was without a senior registrar and without funding to replace that officer. The senior registrar in recent years has had a significant caseload of urgent and interim hearings dealing with parenting and maintenance matters. Experience has demonstrated that often the need for expeditious access to a duty judicial officer of the Family Court is at its highest when families initially break up. Children are otherwise subjected to all the unsatisfactory risks of parents who cannot agree on arrangements for their care or finances.

It is regrettable that government does not recognise the need for funding of this important role in circumstances where the Family Court's judicial resources simply cannot provide for this duty work without further delays in the defended hearings list. This is particularly so in Sydney, where the Federal Magistrates Court does not have any magistrates sitting in the jurisdiction.

It is to be hoped that the Commonwealth will recognise an imperative to act promptly in making appointments as judges retire and maintain a commitment to appointing judges as required.



Photo: Peter Braig / Australian Financial Review

Criminal Law Committee

During 2002-2003 the Criminal Law Committee has made a particular effort to take a more proactive role when responding to proposed changes in the criminal law, at both the state and federal level.

Between August 2002 and early 2003, the committee was active in making representations to the Department of Corrective Services regarding such issues as prison conditions, availability of services, legal access, security clearances and mobile phones.

In October, representations were made to the New South Wales Government regarding the *Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Bill*. Changes were made to the legislation to meet some, but not all, of the concerns of the legal profession.

In December 2002, a detailed submission was prepared in respect of the *Report on child sexual assault prosecutions* by the NSW Legislative Council's Standing Committee on Law and Justice. The Bar Association supported the establishment of a pilot project to trial

special procedures for such prosecutions, but opposed a number of recommendations for substantial amendment of the Evidence Act. The government has proceeded with a pilot project, but without any statutory changes.

In February 2003, an extensive submission, written by Mark Buscombe and Richard Button, was prepared in respect of the review of the law of manslaughter, particularly in relation to unborn children.

A lengthy submission was prepared by Peter Johnson SC in respect of possible amendments to sec 128 of the *Evidence Act 1995* and sec 33AA of the *Coroners Act 1980*.

Since the state election, legislative activity has diminished in the area of criminal justice, although the committee has made submissions on a number of changes in respect of bail law.

Personal Injuries Litigation Committee

The Personal Injuries Litigation Committee remained active on many fronts during another busy and difficult year. The introduction of the *Civil Liability Amendment (Personal Responsibility) Bill 2002* brought with it the need for urgent consideration of its restrictive provisions. The committee, as it did when the earlier *Civil Liability Bill* was pending, assembled arguments and points for discussion, which were drawn upon by the President in negotiations with, and submissions to, the state government.

Against the backdrop of the 2002 civil liability legislation, consideration was given to the Ipp Committee's recommendations. The Personal Injuries Litigation Committee considered that if legislation is to be uniform throughout Australia, as it should be, the New South Wales example of excepting personal injury cases from the concept of proportionate judgments (in line with the Ipp Committee recommendations) should be followed. The Bar Association made a submission to the Law Council of Australia to consider while it was finalising its policy paper on proportionate liability. This paper was subsequently sent by the Law Council to a meeting of the Insurance Ministers Council held on 4 April 2003 and the State-Commonwealth Attorneys-General (SCAG) meeting on 10 April 2003.

The committee liaised with the Law Council with respect to Australian Taxation Office Draft Taxation Ruling TR 2002/D13. The ruling proposed to make personal injury compensation scheme payments more comprehensively taxable. Given that the taxation of statutory compensation payments does not seem open to much change, this led on to a larger and more important issue: namely, the work of the Productivity Commission, which is in effect revisiting the idea of a national compensation scheme. A detailed draft submission prepared by the committee (substantially by Jim Gracie) was approved by the Bar Council and sent to the Productivity Commission.

In the area of workers compensation, the committee finalised a submission in respect of loadings on counsels' fees in the Compensation Court. It also monitored the progress of the two appeals (*Carey* and *Fuentes*) in the Court of Appeal, with approaches to Allen Robertson SC who initially agreed to appear for the appellants and assisted with the early stages of the preparation of the written submissions (ultimately finalised by the President when Robertson was forced out of the appeals through conflicting commitments) and Stephen Gaegler SC who led Ross Goodridge and Jeremy Kirk upon the appeals. Although the appeals were not successful, a substantial effort was made and a debt of gratitude is owed particularly

Personal Injuries Litigation Committee - continued

to Robertson SC, the President, Gaegler SC and Kirk. Most recently it came to the attention of the committee that the Hon MJR Clarke QC has been appointed to chair meetings involving representatives of the WorkCover Authority and the Law Society to consider the undoubtedly unsatisfactory present arrangements in respect of legal fees in the Workers Compensation Commission, which as of 19 December 2003 will be the sole tribunal for workers compensation litigation. The existing arrangements make no provision for counsel's fees as a separate item and the stark reality is that if counsel are to be retained, the limited remuneration that is available must be shared between counsel and solicitor. The far-reaching difficulties and potential difficulties here are obvious. The Personal Injuries Litigation Committee prepared a submission about the desirability of fees for counsel in a reform of the costs structure, which was approved by the Bar Council and has been submitted.

In the area of motor vehicle accidents, detailed discussion at committee meetings took place about the list of Claims Assessment and Resolution Service (CARS) assessors to be appointed or re-appointed. Andrew Stone, the Bar Association's representative on the Motor Accidents Council, took up those issues. The chief concerns are of course delay in the provision of certificates, a matter to which the efficiency of assessors in getting out their reports and certificates is very relevant, and uniformity and reasonableness of approach in the formulation of opinions in that regard. A submission was prepared seeking parallel amendments to the Supreme and District Court Acts in relation to interim damages, which would allow them to be awarded in motor accident cases. This was essentially the work of Phillip Mahony and Andrew Morrison SC. The submission was approved by the Bar Council and has been put in. Consideration was also given to ways to overcome the unsatisfactory situation created by the decision in *Fender v Power Coal*, but final deliberations in that regard were deferred in the hope that the decision of

the Court of Appeal in *State of New South Wales v Riley* might solve the problem. It was noted, however, that the argument in that case was such that it might well be decided on grounds that made it unnecessary to deal with the question of whether the need to give notices under the motor accidents legislation – whereupon the facts the claim involves a 'motor accident' – is really jurisdictional. So it turned out: the Court of Appeal decided *Riley* without the need to consider this point. See [2003] NSWCA 208. The committee will return to the *Fender* problem, but with the passage of time it may recede in importance.

The above is a brief account of the activities of the committee during the preceding year in respect of the major items of business. A number of lesser items were discussed and attended to.

Throughout 2002/2003 the Personal Injuries Litigation Committee met regularly, as it has done in the past. The committee is a busy one and regrettably operates in an area in which successes on behalf of the Bar Association as a whole are few, given the nature of prevailing government policy. Nonetheless, members may be assured that the committee will continue its efforts and will welcome enquiries, submissions and information from members of the association and respond to them. In this connection it is of course through the efforts of individual members of the committee that it functions and the performance of the members has been significant. Justine Hall of Dibbs Barker Gosling remains a valued member representing the Law Society and Andrew Stone has continued in the corresponding role, but has also spread his wings as the Bar's representative on the Motor Accidents Council.

The committee has been ably assisted and complemented by Kim Nichols, who as always attended every meeting, took the minutes, and prepared advance agendas as well as circulating a large number of documents to members of the committee, the contents of which she was always familiar with. Once more the committee is greatly indebted to her.

Legal Aid Committee

The Legal Aid Committee held no formal meetings during the 2002-2003 reporting year. Nevertheless, the committee continues to enjoy an excellent ongoing relationship with the NSW Legal Aid Commission; a factor that is only reinforced by the presence of Geoff Lindsay SC on the Board of the Legal Aid Commission.

Consultations between the Chairman of the Legal Aid Committee and the commission have been both informal and productive, with many concerns, such as fee rises for counsel, being addressed in 2002-2003.

Mediation Committee

The Mediation Committee is responsible for aspects of mediation of interest and importance to the Bar. The Mediation Committee's objectives for 2002-2003 were:

- 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 Association's panel of mediators;
- liaison with, and development of good relations with, the Dispute Resolution Committee of 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

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. This year - perhaps appropriately for the first year of continuing professional development - the focus of the committee's activities has been on education of the Bar.

Members of the committee have agreed to prepare a series of articles for *Bar Brief* on different aspects of mediation; a publishing timetable has been agreed on; and several articles have been published. In addition, the Chair published an article in *Bar News* (Winter 2003) discussing whether court-ordered mediation is desirable.

The highlight of the year probably was the committee's presentation of two successful CPD seminars, 'Representing clients at mediation' (5 March 2003) and 'Court-ordered mediation: An oxymoron?' (11 June 2003). Both seminars were very well-attended.

Nomination to Bar Council of barristers for the Bar Association'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 has been a matter of concern to the committee.

For the last two years, the committee has been leading the Bar Association's efforts to assist in the preparation of a draft protocol for the appointment of mediators by the Supreme Court. The protocol now forms part of a package of proposals in relation to mediation referral, including legislative amendments. The court advises that the Bill should be presented to parliament by the end of September.

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.

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

The Committee hosted a successful informal get-together with members of the Law Society's Dispute Resolution Committee. Further liaison with this committee and with other organisations involved in mediation are being planned.

Professional Indemnity Committee

Since its formation in May 2000, the major activity of the Professional Indemnity Insurance Committee has been to negotiate on behalf of the Bar the professional indemnity policies.

For 2003-2004 indemnity insurance has been offered by four brokers:

- Aon Risk Services Australia Limited;
- Heath Lambert Professional Indemnity Pty Limited;
- Suncorp Metway Insurance Limited; and
- Willis Australia Limited.

The committee is pleased that it now has four players in the market creating increased competition, which should result in competitive premiums being offered.

With the exception of the Aon insurance, which was quoted and available from mid-June, the other insurances were approved in mid-April and were quoted and available from May. This was a vast improvement from last year when the policies in the main were not quoted and available until mid June. That was largely due to indecision on the part of insurers as to whether they would participate in our market. That indecision seems to have dissipated. Because of arrangements put in place earlier in 2002, the Executive Director of the Bar Association and the Professional Indemnity Insurance Committee were able to begin discussions with the brokers in late 2002 concerning the policy wordings for 2003-2004.

The final wordings for all but one insurer were submitted to the Attorney General for his approval under sec 38R of *the Legal Profession Act 1987* in early April which was a month earlier than in 2002. The Heath Lambert policy wording was approved on 13 April and the Suncorp and Willis policies were approved on 22 April. The delay with the Aon policy was due to discussions concerning its wording. It was finally approved by the Attorney General on 6 June. The early approval of the policies gave members sufficient time to arrange their insurance well before the renewal of practising certificates.

As with last year's policies, each of the approvals was conditional upon the insurer agreeing to provide information to the Executive Director on an anonymised basis concerning the insurance placed and claims experience. The Bar Association has since received data from each insurer which is being collated. This data (in a form which does not identify barristers, claimants or insurers) will be made available to the insurance market and it is expected that this will enable insurers to make more informed and realistic risk and premium assessments. The Bar Association now has reliable statistics available concerning the claims experience of NSW barristers which goes back to the date when professional indemnity insurance became compulsory in NSW for barristers (1 July 1995). This is a significant achievement and will also assist greatly with the Bar Association's ongoing risk management strategies.

Bar Association Human Rights Coordinator

Nicholas Cowdery AM QC is the Bar Association's Human Rights Coordinator. His role is to advise the Bar Council - with the assistance, where appropriate, of others who have volunteered to help - on issues that have human rights implications. He 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.

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.

From time to time it is suggested that the Human Rights 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 Bar 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

Promoting access to justice

Legal Assistance Referral Scheme

For the year ended 30 June 2003

The scheme

The New South Wales Bar Association's Legal Assistance Referral Scheme (LARS) aims to provide 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. As such, it embodies and reflects the strongly held view of the profession that a person's rights and access to justice should not be diminished because of indigence.

Despite the considerable amount of assistance provided through LARS, the scheme represents only a portion of the pro bono work customarily carried out on an informal basis by members of the Bar (see diagram below).

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 20,000 work hours.

Eligibility

The scheme has in place a set of strict criteria for determining an applicant's eligibility for assistance. For example, 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.

Further information about applicants' obligations, as well as the nature and criteria for grants of assistance may be obtained from the Bar Association's web site under 'Legal Assistance'.

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 nearly 600 enquiries about legal assistance and related matters. Many enquiries were made by persons visiting (unannounced) the Bar Association's office.

During the reporting year, 358 formal applications for assistance were received and processed. This is a 32 per cent increase over the previous year. Of these applications, 189 were eligible under the scheme's guidelines for referral to a barrister. 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 accompanying tables.

Analysis of the 2002-2003 statistics reveals the following points:

- Applications in the High Court increased by 600 per cent. The majority of these matters were in the court's original jurisdiction relating to immigration.
- Applications in the Supreme Court of New South Wales increased by 30 per cent, despite the existence of a court-appointed pro bono scheme. This follows on from the 250 per cent increase in last year's figures.
- 290 of the 358 applications to the scheme were refused by Legal Aid as being outside its guidelines.
- At the time this report was prepared, there were 32 ongoing matters and 36 pending referral, awaiting further information.
- There were two complaints made by applicants dissatisfied with the manner in which the scheme dealt with their matters. Each of these complaints was satisfactorily resolved.

Case studies

- A judge in the Industrial Relations Commission of New South Wales referred a young man to the scheme in relation to his action in constructive dismissal. He was also claiming that the firm had breached his copyright on a book he had written and published. The matter was referred to a retired judge who attempted to settle the matter. Before agreement could be reached, the company was placed in receivership. The matter was then referred to a barrister specialising in company law. As a result of that advice, the retired judge accompanied the applicant (who lived in Albury) to a meeting with the receiver in Sydney. Settlement negotiations were successful.
- The Shopfront Legal Centre at Kings Cross referred a young mother who was appealing a decision of a magistrate in the Local Court (Family Matters). After a contested hearing, a residence order for her four year old daughter, with a speech disability, was made in favour of the child's father and paternal grandmother.

Legal Assistance Referral Scheme - continued

The father and paternal grandmother lived in northern New South Wales, making access for the mother and daughter very difficult. The Salvation Army supported the young mother in coping with the separation from her child. Legal Aid was refused on merit but the solicitor at the legal centre was committed to the merits of the case. The matter was referred to a barrister who represented the mother in a five day hearing in the Family Court for no fee. A decision was handed down overturning the decision of the magistrate.

- A solicitor from mid-north Queensland contacted the scheme in relation to a young woman, who, after separation, had not seen her three children for two years. The children were living with their father in central New South Wales.

There were also property settlement complications. Legal Aid Queensland would not assist in the contact issues until the property settlement had been dealt with in New South Wales. Legal aid in New South Wales was also refused for contact for the same reason. The matter was referred to a barrister who made an application before a federal magistrate at Parramatta for contact on an interim basis. The application was successful and the mother travelled from Queensland for a four-day stay with the children in central NSW. Subsequently a different barrister continued in the matter and was successful in obtaining consent orders giving the mother more regular contact, taking into account the geographical difficulties.

- A small businessman, in financial difficulty, from country New South Wales contacted the scheme regarding to charges which had been laid against him by WorkCover in relation to an employee who had been stabbed with a syringe in a robbery at the businessman's shop. A barrister appeared on his behalf in a two day hearing in the Chief Industrial Magistrate's Court. The magistrate convicted the company but accepted the barrister's submissions that to convict the owner personally would be double jeopardy. The magistrate imposed the minimum penalty.
- A distressed member of the public contacted the scheme in relation to a forthcoming coronial inquest into the death of her brother. After significant preparation, the barrister appeared in a four day hearing. The inquest was able to explain the circumstances of the death, which had occurred at a psychiatric hospital in Sydney. The coroner made recommendations, which have been accepted by the Department of Health, as to procedures to be followed in similar circumstances. In his verdict, the coroner noted that he was grateful for the assistance he had received from the scheme.

Volunteers encouraged

The Manager of the scheme spoke to readers at the bi-annual Bar Practice courses. The President and the Executive Director, by circular and personal representation, have also encouraged members to participate in all schemes administered by the Bar Association.

Barristers' Referral Service

The Barristers' Referral Service is aimed at addressing the increasing number of requests to the Bar Association for assistance in obtaining the services of a barrister. These requests have been directed to the association's web site under 'Find a barrister.' The facility has been visited approximately 50,000 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. If access through the web site is not possible, staff fax or post a list of barristers in the relevant area of practice.

Duty Barrister schemes

The Manager and staff of LARS manage the operation of the Duty Barrister 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 May 2003 the President of the Bar Association called for further volunteers for the Duty Barrister Scheme, with pleasing results.

Court appointed pro bono schemes

The Manager of LARS is involved in the monitoring of the court appointed legal assistance schemes in terms of day to day queries which may arise. Barristers now support pro bono schemes in the Federal Court, Federal Magistrates Court, Supreme Court, and District Court. Before her retirement, the Chief Judge of the Land and Environment Court of NSW, contacted the Executive Director of the Bar Association with a view to setting up a pro bono scheme. The Executive Director has ongoing discussions with members of the judiciary and court staff in relation to these schemes, which impose a significant burden on members of the Bar and Bar Association staff.

Interaction with other pro bono service providers

LARS works closely with the Law Society Pro Bono Scheme. There is almost daily contact between the two schemes. 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 a placement for the Public Interest Advocacy Centre Summer School where a student spent time at the Bar Association's office and met with a barrister who had done work through the scheme.

Together with the Pro Bono Solicitor from the Law Society, the Manager of the scheme attended at LawAccess at Parramatta and spoke to the enquiry officers about the guidelines of the scheme. The scheme's Manager is also a member of the LawAccess NSW Operations Committee. The Executive Director of the Bar Association has also visited the LawAccess Parramatta office for familiarisation purposes.

LawAccess NSW

An overview of the strategic and administrative changes being effected to facilitate the incorporation of the scheme into LawAccess

The number of formal referrals from LawAccess was not high. However, there was approximately a 32 per cent increase in the overall number of applications for assistance received by the scheme, which may be attributed to referrals not being specified as coming from LawAccess. Administrative systems introduced by the Bar Association to cope with the increase in demand, such as the TRIM filing system, have been effective.



There have been many difficult phone calls, which may be multiple calls from the one person, or from different individuals, which are dealt with by staff of the Bar Association and LARS. Reception staff of the association also have to deal with the large increase in the number of unrepresented litigants who are referred to the scheme by a court (in spite of the existence of the court appointed pro bono schemes). There have been several unpleasant scenes where senior staff or security had to be involved.

The Bar Association continues to bear a significant portion of the costs for the administrative infrastructure needed to support the operation of the scheme. The staffing component of this support, in terms of time and salary, is significant.

Pro bono schemes



Legal Assistance Referral Scheme statistics

High Court	2001-2002	2002-2003
Application for special leave	7	12
Original jurisdiction	No data	29
Total	7	41

Federal Court	2001-2002	2002-2003
Full Bench appeals	7	8
Immigration	35	43
Veterans & Social Security entitlements	-	-
Industrial relations	2	-
Trade practices	3	6
Native title	-	1
Bankruptcy	3	2
Total	50	60

Federal Magistrates Service	2001-2002	2002-2003
Discrimination	n/a	1
Family law - access	n/a	1
Family law - child support	n/a	1
Family law - residency	n/a	1
Total	n/a	4

Supreme Court	2001-2002	2002-2003
Court of Appeal	8	4
Court of Criminal Appeal	7	11
Common Law	32	30
Equity	18	38
Criminal	-	5
Commercial	-	-
Family provisions	2	3
Administrative	5	4
Defamation	3	1
Professional negligence	4	8
Total	79	104

Family Court of Australia	2001-2002	2002-2003
Full Bench appeals	-	1
Access	9	4
Residence	11	17
Child support	4	1
Spousal maintenance	3	-
Property settlement	-	8
Total	27	31

District Court	2001-2002	2002-2003
Criminal	11	8
Civil	25	30
Defamation	-	2
Professional negligence	-	1
De facto relationships	-	2
Total	36	43

Local Court	2001-2002	2002-2003
Criminal	14	15
Civil	19	21
Family matters - access	1	
Residency	1	
Spousal maintenance	1	
Prop. settlement	1	
Child support	1	5
Total	38	41

Children's Court	4	4
Coroner's Court	2	2

Other courts	2001-2002	2002-2003
Land & Environment Court	4	6
NSW Industrial Relations Commission	7	6

Tribunal	2001-2002	2002-2003
AAT	5	6
ADT	11	2
Medical Tribunal	1	1
CTTT	3	7
Total	20	16

Referral source	2001-2002	2002-2003
Law Society Pro Bono Scheme	28	58
LawAccess		7
Instructing solicitor	30	51
Non-instructing solicitor	1	13
Judge	26	32
Member of Bar	14	19
Member of public	67	68
Registrar	12	9
Community legal centres	43	64
Member of Parliament	1	4
Legal Aid	13	20
A-G's Department	3	2
Welfare/community groups	8	10
Web site	approximately 1,500 visits	

Legal Assistance Referral Scheme Statistics - continued

Client location	2001-2002	2002-2003
West	66	117
North	37	33
South	20	24
East	23	22
Country	49	58
Inner City	15	22
Central Coast	5	9
ACT		
Interstate	11	11
Villawood Detention Centre	19	32
Port Hedland Detention Centre		3
Prison	35	27
Overseas	1	

Type of work done	2001-2002	2002-2003
Merit assessment	150	153
Advice	46	61
Conferences	115	120
Appearances	53	60
Appearance @ hearing	48	62
Mediation	-	-
Other (including preparation of submissions)	4	6

Rejection / no action	2001-2002	2002-2003
Outside guidelines	35	62
Too late notification	5	8
No further information received	31	38
Referred to Law Society Pro Bono Scheme	15	27
Funded by Legal Aid	5	4
Referred to Community Legal Centre	-	8
Briefed barrister privately	-	7
Briefed solicitor privately	-	5
Conflict of interest	-	1
Matter settled	4	3
Subject to Federal Court Immigration Scheme	10	2
Subject to Federal Court Pro Bono Scheme	2	-
Required a migration agent	-	1
Refused on a discretionary basis	-	3

Turnaround time	2001-2002	2002-2003
Same day	23	11
Less than a week	49	33
1-2 weeks	42	52
2 weeks plus	38	57

Basis brief accepted	2001-2002	2001-2002
No fee - merit assessment	105	153
No fee - continuing involvement		67
Speculative	23	7
Reduced fee	24	25
Negotiated @ market rates		2

Refused legal aid on basis of	2001-2002	2001-2002
Merit	32	22
Financial	75	46
Outside guidelines	157	290
Legal merit		
Yes	92	101
No	58	52

Reports

Questions as to professional conduct

Professional Conduct Department

The role of the department

The Professional Conduct Department facilitates the investigation and reporting to the Bar Council (the council) of conduct complaints against barristers referred to the council by the Legal Services Commissioner or made by the council itself. The department also performs this role in respect of indictable offences, tax offences, acts of bankruptcy and other notifiable events required to be disclosed to the council under the Legal Profession Regulation 2002 (notification matters). The department provides advice and policy support to the council in respect of the administration and carrying out of the council's functions under Parts 3 and 10 of the Legal Profession Act 1987 (the Act), 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 Bar Association's members. Such an understanding has become imperative if the Bar is to flourish as a respected and efficient provider of legal services 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 the conduct of barristers.

It is important to appreciate that the Bar Council has a statutory obligation to deal with all complaints and notification matters regarding barristers. This statutory role is monitored by the Legal Services Commissioner, an independent statutory overseer of the council's statutory duties, and ultimately by the Attorney General.

Changes in the public's expectations, combined with a failure by some barristers to act in accordance with their professional standing, has brought barristers under particularly close scrutiny by the government, the profession and the community in the last few years. Currently, the Bar Association and the Legal Services 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 alternative will be a completely government regulated profession. It is therefore in the members' interest to work with the department in the investigation of any complaint or notification matter and to assist colleagues in practising as barristers in such a way as to maintain the integrity of and public's respect in the profession.

Workload and restructure of the Professional Conduct Department

The financial year ended 30 June 2003 saw a continued increase in the work of the department. Although there has been a pleasing reduction in the number of conduct complaints and notification matters compared to the previous year, the time spent by the department in handling

complaints against barristers referred by the Bar Council to the Administrative Decisions Tribunal, arising from conduct complaints made in previous years as well as in the current year, and defending appeals made by barristers against decisions of the council to cancel or refuse to issue a practising certificate has greatly increased.

The Professional Conduct Department has been restructured to cater for this increase in its workload, particularly in the handling of tribunal matters and Supreme Court litigation. Two new staff appointments were made during the year. Anne Sinclair was appointed Deputy Director, Professional Conduct in January 2003. Anne brings with her extensive litigation experience and strong management skills gained in private practice and as in-house counsel. In June 2003 Anne was appointed Director, Professional Conduct following Terrie Gibson's departure to Dublin. Adele Connor, formerly a senior litigation lawyer with the Australian Government Solicitor, was appointed Deputy Director, Professional Conduct in March 2003. Adele replaced Liz Maconachie who left the Bar Association in December 2002. The association is grateful to Liz for her work and dedication during her time with the association. During the year, Helen Barrett (formerly Director, Professional Conduct) resumed full time work with the department and continues in her position as Deputy Director, Professional Conduct.

The restructure of the department and significant changes implemented to its procedures and policies reflect a move towards the department undertaking work previously briefed out to external solicitors, particularly in regard to complaints referred by the Bar Council to the Administrative Decisions Tribunal. This is subject to retaining external solicitors as and when required, depending on the status of matters and other commitments of the department.

The department reviewed all applications for renewal of practising certificates to identify any issues relating to conduct or discipline and to ensure these were actioned. Further, in some cases where barristers had failed to complete 10 points of continuing professional development, practising certificates were issued subject to conditions requiring the outstanding points be completed by a certain date and that a statutory declaration be submitted. The department monitors compliance with these conditions as well as compliance by barristers who have financial management and in some cases medical reporting conditions attached to their practising certificates.

The department has also given extensive support to the Executive Director and the Bar Council in the development of and submissions on policy relating to the change of legislation of the profession. During the year, the Director, Professional Conduct, Terrie Gibson played a key role in projects of critical importance to the New South Wales complaints and discipline regime and the proposed national practice regime. The council express their gratitude and

Professional Conduct Department – continued

appreciation to Terrie Gibson for her hard work, commitment and dedication. Terrie also implemented significant changes to procedures and policies regulating the work of the department as well as the professional conduct committees and these have proved highly beneficial.

In the financial year 30 June 2002, 40 conduct complaints were referred by the Legal Services Commissioner to the council for investigation, and 15 complaints were made by the council pursuant to sec 134 of the Act. Thirty-two notifications were made to the council pursuant to the requirements for disclosure of notifiable events under the Legal Profession Regulation 2002 (Regulation). Of the 32 notifications, 24 related to indictable offences, tax offences and acts of bankruptcy in relation to which the council is required to make a determination as to a barrister's fitness and propriety to hold a practising certificate under Part 3 Div1AA of the Act. The categories of conduct complaints and notifications and other statistical information are set out at the end of this report.

In the 12 months to June 2003, four professional conduct committees met either fortnightly or monthly throughout the year to investigate complaints about conduct and notification matters.

Significant cases

The conduct of some former barristers, particularly in relation to tax and bankruptcy matters, has continued to raise public concerns regarding the integrity of the profession.

On 10 October 2002, the Bar Council resolved pursuant to sec 39FC and sec 38FD of the Act to cancel the practising certificate of Clarence James Stevens QC. The council considered that the two tax offences notified by Stevens of failing to lodge tax returns for 1999 and 2000 were committed in circumstances that show he is not a fit and proper person to hold a practising certificate. In making its determination, the council had regard to the fact that Stevens had failed to lodge returns and pay tax over 20 years between 1976 and 1996.

Stevens appealed against this decision to the Supreme Court. On 2 December 2002, Justice Greg James granted a stay of the cancellation of Stevens' practising certificate. On 24 April 2003, the Court of Appeal allowed an appeal by the Bar Council against the stay granted by Justice Greg James. A subsequent application by Stevens for special leave to appeal to the High Court was refused on 9 May 2003 and his practising certificate was cancelled from 5 pm that day.

In *New South Wales Bar Association v Stevens* [2003] NSWCA 95, it was argued on behalf of Stevens in the Court of Appeal that the Bar Council, in deciding to cancel Stevens' practising certificate, should have confined its consideration to the specific circumstances in which the two tax offences were committed. The court referred to the determination the council must make under sec 38FC(1)(b) as to fitness and propriety and noted this

necessarily requires consideration of the 'full range of relevant circumstances'.

The Court of Appeal found that the protection of the public and the maintenance of the reputation of the legal profession are entitled to determinative weight in the exercise of the court's discretion to grant a stay, finding it of significance that the council has instituted proceedings to have Stevens' name removed from the Roll of Legal Practitioners. Where such proceedings can be seen to have substantial prospects of success, the court found it should be slow to exercise its discretion in such a way as to permit Stevens to continue in practice pending the determination of those proceedings. The court emphasised the scheme of regulation imposed by Part 3 Division 1AA of the Act is designed to protect the public and that this is of central significance. The court further noted that the very seniority of Stevens exacerbates the adverse effect of his conduct on the reputation of the profession.

The Bar Council's application to have Stevens' name removed from the Roll of Legal Practitioners is listed for hearing from 9 to 12 September 2003.

In another important recent decision involving failure to lodge tax returns and pay tax, the Court of Appeal delivered its judgment in *NSW Bar Association v Young* [2003] NSWCA 228 on 19 August 2003. Andrew Hamilton Young did not file income tax returns from 1980 to 1996 and did not pay any income tax from 1980 to 2000. The court referred to a submission put on behalf of Young that he was not involved in any professional misconduct and to various other matters put in his favour, but found that those matters do not derogate from the fact that Young's failure to file income tax returns for years is incompatible with that degree of integrity which the public has the right to expect in a barrister. The court declared that Young is not a fit and proper person to remain on the Roll of Legal Practitioners and ordered his name be removed from the Roll.

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'.

During the course of the year, the Administrative Decisions Tribunal delivered decisions in 13 matters involving barristers. In two separate decisions in *Howen*, the tribunal found Alexander Stanislaw Howen guilty of professional misconduct for failure to comply with a notice issued pursuant to sec 152 of the Act without reasonable cause. The importance of responding to sec 152 notices is referred to in the section 'Responding to complaints' below.

Decisions of the Legal Services Division of the tribunal are also hotlinked on the association's web site. Hearings in relation to professional misconduct matters are held in public. Any decisions relating to unsatisfactory professional conduct (as opposed to professional misconduct) are heard in camera but are generally published on the making of an adverse finding against the barrister by the tribunal.

Professional Conduct Department – continued

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

Pursuant to amendments to the Act which came into force on 4 October 2002, under sec 171LB the Bar Council must publicise disciplinary action taken against a barrister including the name and other identifying details of the person against whom the disciplinary action was taken. Under sec 171LC of the Act, the Legal Services Commissioner must keep a register of disciplinary action taken against barristers which is to be made available for public inspection on the Internet. The commissioner is required to identify the name of the person against whom disciplinary action was taken and to provide particulars of the action taken. Disciplinary action includes any decision to suspend, cancel or refuse to issue a practising certificate and any orders of the Administrative Decisions Tribunal following a finding of unprofessional conduct or professional misconduct.

Ethical advice for members

The Bar Council neither provides 'ethical rulings' nor advice to members. Rather, it facilitates the provision of assistance to members on ethical matters by referring the inquiring member to a silk on one of the professional conduct committees. Should the member require a record of the advice to be kept, that member should record 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 name and telephone numbers of senior members of committees who are able to give ethical advice and guidance.

Responding to complaints

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

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

Members served with a notice pursuant to sec 152 of the Act to provide information and furnish documents necessary for the investigation of a conduct complaint made against them must respond to such notices promptly. A barrister who fails to comply with a sec 152 notice, without reasonable cause, is guilty of professional misconduct under sec 152(4) of the Act. Such failure can lead to the Bar

Council making a further complaint against the barrister which may ultimately be referred to the Administrative Decisions Tribunal. A number of decisions of the tribunal available on the association's web site concern failure to respond to sec 152 notices.

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

Community and academic members

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

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

PCC#1 community members are Susanne Weress and Kate Nacard. Associate Professor Jill Hunter from the University of New South Wales is the academic representative on that committee.

Professor David Barker, Dean of the Faculty of Law at the University of Technology, is the academic representative on PCC#2. John Blount, Matthew Smith, Anna Fader and Sue Thaler all continued to serve as community representatives on PCC#2.

This year the community representatives on PCC#3 were John White, Nicholle Nobel, Helen Steptoe and Robert Nakhla. Bernard Dunne from the Faculty of Law at the University of Sydney is the academic representative on that committee.

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

Barrister members

The Bar Council and the Professional Conduct Department again express their appreciation to all the barrister members of the professional conduct committees. All have devoted many hours of their time on a voluntary basis. Their service demonstrates the continued commitment of the profession to ensuring complaints regarding the conduct of barristers are fully investigated and appropriate disciplinary action taken in the interests of maintaining public confidence in the profession. The participation of the barrister members in this process is vital to setting and maintaining appropriate standards. The work of barrister members in this area is highly valued.

Committee workload

Notification matters

In the financial year to 30 June 2003, a total of 32 notifications were made by 29 barristers. Twenty-four

Professional Conduct Department – continued

notifications related to indictable offences, tax offences and acts of bankruptcy requiring the Bar Council to make a determination under Part 3 Div 1AA of the Act. A determination under sec 38FC of the Act must be made by the council within three months of the date on which notification is given to the council. An extension of one month can be sought from the Legal Services Commissioner. The professional conduct committees reported to the council on a total of 28 notifications, eight of which were given to the council late in the previous year.

Conduct complaints

Fifty-five new conduct complaints were referred to the professional conduct committees for investigation from 1 July 2002 to 30 June 2003. During the year, the committees investigated and reported to the Bar Council in respect of 21 of the new conduct complaints, in addition to a further 40 complaints carried forward from the previous year. Of the total of 61 complaints dealt with by the council during the year, 33 complaints were dismissed pursuant to sec 155(4) of the Act on the basis that there was no reasonable likelihood that the Administrative Decisions Tribunal would make a finding of unsatisfactory professional conduct or professional misconduct. Six complaints were withdrawn but the council made a fresh complaint in relation to one of these. Six complaints have been referred to the tribunal for hearing and determination. Of the 33 dismissed complaints, six complaints have been the subject of an application for review. The Legal Services Commissioner has upheld the council's decisions in four matters. No determination has yet been made in relation to the other two matters under review.

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

It should also be noted that PCC#2 alone considers applications for 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 considered the application, makes a recommendation to the Bar 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. Both the Bar Council and the Law Society Council make recommendations to the LPAB about certain classes of applications.

The educative value of the committee's work

The following aspects of a barrister's practice have been identified, via the complaints investigation process, as recurring problem areas.

- *Direct access matters*

Rules 74, 75, 76, 77 and 80 of the New South Wales Barristers' Rules are particularly relevant in direct access brief matters. The 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.

Sections 175 and 176 of the Act prescribe the different disclosure relating to costs required to be made to clients in direct access matters and to an instructing solicitor.

Direct access matters demand direct, effective and timely communication with clients about the nature of the work the barrister is able to perform, and what work might be better performed by a solicitor in light of the client's expectations. The Bar Council urges barristers undertaking direct access work 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.

- *Practising without a practising certificate*

Sections 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 Rule 74 of the New South Wales Barristers' Rules. 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.

It is important that barristers ensure applications for renewal of practising certificates are lodged in a timely fashion. As clearly stated in the material accompanying renewal forms, applications can (and should) be lodged prior to securing professional indemnity insurance cover although a practising certificate will not issue until insurance is secured.

- *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. One area of particular concern is failure to ensure terms of settlement accurately reflect the agreement reached between parties. Another is failure to ensure that the effect of the terms of settlement is properly explained to clients.

- *Courtesy*

Barristers should remain courteous at all times in their dealings with others including clients, other barristers, solicitors, mediators, arbitrators and judicial officers.

Professional Conduct Department – continued

- *Conduct outside the practice of law*

Last year's annual report referred to a finding of professional misconduct made by the Administrative Decisions Tribunal on 9 April 2002 against Richard Mitry, who does not presently hold a practising certificate as a barrister. The finding of professional misconduct followed on a conviction in 1996 when Mitry was found guilty of being knowingly concerned in a company purchasing its own shares, contrary to (then) sub-para 129(1)(i)(A) of the Companies (NSW) Code. On 26 September 2002, the tribunal made orders that Mitry be publicly reprimanded, that the association not issue a practising certificate to Mitry until he has satisfactorily completed the Bar Association Reading Programme and Bar Practice Course and that over the next two years, Mitry complete 20 hours in each year of continuing legal education courses.

Two other cases investigated this year concerned the making of multiple applications for shares in the public float of a company. One of these has been referred to the tribunal and will be reported on in due course. The majority of other cases relating to conduct outside the practice of law involve the commission of tax offences and acts of bankruptcy.

- *Acts of bankruptcy and tax offences*

Investigation of notification matters has again continued to occupy much of the department's time. On some occasions barristers have failed to cooperate with the Bar Council in its investigation. 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 two occasions this 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. At the beginning of August 2003, 18 barristers held practising certificates which are subject to financial reporting conditions requiring the provision to the council of quarterly reports from approved accountants in whose hands barristers have placed control of their financial affairs, or reports from medical practitioners. The council has resolved, in such cases, that adequate provisioning for the payment of tax (including GST) is a necessary component of satisfactory control of financial affairs.

Fees Committee

During the year the Bar Association received 48 requests to assist in the recovery from solicitors of unpaid fees, compared to 35 requests in the previous year. A total of \$115,832 was recovered on behalf of members for the financial year ended 30 June 2003.

The basis upon which the association can assist in members' fee recovery has been set out in an article entitled 'Changes in fee recovery assistance for members' which is available on the association's web site. 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.

The Bar Association has a panel of solicitors to which members can be referred should the association's efforts be unsuccessful in recovering fees from solicitors. The panel undertakes the fee recovery work for barristers at reduced rates. Enquiries can be made through Ms Adele Connor, Deputy Director, Professional Conduct.

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

Professional conduct statistics

TABLE 1 Notifications of offences and acts of bankruptcy made by barristers between 1 July 2002 and 30 June 2003 (compared to previous year)

	2002-2003	2001-2002
Tax offences	8 ⁿ	22*
Acts of bankruptcy	14 [∞]	16
Indictable offences	2	2
Prescribed concentration of alcohol	4	4
Traffic offences	0	5
Other	4	3
Fare evasion	0	4
Non-notifiable events	0	4
Total	32#	60

ⁿ Of the eight notifications of tax offences, four barristers notified the Council of two tax offences. These have been treated as one notification of tax offences in each case.

* Of the 22 notifications of tax offences, 3 barristers notified the Council of two tax offences and one barrister notified the Council of three tax offences. These have been treated as one notification of tax offences in each case.

[∞] Of the 14 notifications of acts of bankruptcy, one notified the Council of two acts of bankruptcy and four tax offences. This has been treated as one notification of an act of bankruptcy. Two barristers made two separate notifications on different dates each regarding a Creditor's Petition and a Debtor's Petition, one of whom also made a separate notification of a tax offence. These have been treated as separate notifications.

In the 2002-2003 period, 29 barristers notified the Bar Council of offences and acts of bankruptcy. Of the 29 barristers, one barrister made two notifications on different dates and one barrister made three notifications on different dates. These have been treated as separate notifications.

Table 2: Number of complaints received by complaint type between 1 July 2002 and 30 June 2003 (compared to previous year)

Complaint type	2002-2003	2001-2002
Acting contrary to/failure to carry out instructions	4	3
Acting without instructions	1	1
Breach of sec152 <i>Legal Profession Act 1987</i> (LPA)	3	2
Breach of undertaking	1	0
Breach costs disclosure provisions Part 11 LPA	1	0
Breach of Barristers' Rule 35 (Clyne case)	0	2
Breach of Barristers' Rules 36 or 37	2	1
Breach of Barristers' Rule 74/75 (Barrister's work)	0	2
Breach of Barristers' Rule (Other)	2	2
Breach of confidentiality	1	1
Conflict of interest	3	3
Conspiracy to pervert course of justice	2	2
Delay/failure to provide chamber work	3	1
Failure to account	0	2
Failure to advise properly or at all	1	3
Failure to appear	1	5
Failure to communicate	0	2
Failure to conduct a fair hearing	2	1
Failure to cross examine competently	0	1
Failure to explain terms of settlement (properly or at all)	1	0
Failure to prepare competently	0	2
Failure to return briefs/client or other documents	0	5
Other incompetence in legal practice	3	8
Intoxicated when appearing or seeking to appear	0	2
Misleading conduct/dishonesty	5	5
Other unethical conduct	3	3
Over zealous cross-examination (harranging a witness)	1	0
Overcharging and/or over servicing	4	4
Personal conduct	4	4
Practising without a practising certificate	5	5
Pressure to change plea/plead guilty	1	0
Pressure to settle	0	3
Rudeness/discourtesy	1	1
Total	55	76

Professional conduct statistics - continued

Table 3 Complaint received between 1 July 2002 and 30 June 2003 by complainant type (compared to previous year)

	2002-2003	2001-2002
Bar Council	15	16
Barrister	0	2
Client/former client	17	36
Government department/statutory law body	2	1
Instructing solicitor	2	4
Judicial/quasi judicial officer	1	0
Legal Services Commissioner	4	2
Opposing client	8	10
Opposing solicitor	3	3
Other	2	1
Relative/friend	1	1
Total	55	76

Table 4 Length of time complaints commenced between 1 July 2002 and 30 June 2003 have been and remain under investigation (compared to previous year)

	2002-2003	2001-2002
Less than six months	22	35
Between six and less than nine months	4	9
Between nine and less than twelve months	8	4
Total	34	48

Table 5 Result of investigations of complaints under Part 10 of the Legal Profession Act 1987 commenced and completed between 1 July 2002 and 30 June 2003 (compared to previous year)

	2002-2003	2001-2002	
Result of investigation			
Complaint under investigation	34	48	# In the period 2002/2003, one decision by the Bar Council to dismiss a complaint pursuant to sec 155(4) was the subject of an application for review by the Legal Services Commissioner. This was not determined as at 30 June 2003 and remains under review.
Discontinued	0	0	
Withdrawn	3	4	
Dismiss - sec139(1)(a)	1	0	
Dismiss - sec155(4)	7#	17*	
Dismiss - sec155A	0	0	
Dismiss - sec155(3)(b)	4	0	* In the period 2001-2002, one decision by the Bar Council to dismiss a complaint pursuant to sec 155(4) was reviewed by the Legal Services Commissioner. The Bar Council decision was upheld by the commissioner under sec160(1)(a).
Refer to tribunal (prof misconduct) - sec155(2)	2	0	
Refer to tribunal (unsatis prof conduct/prof misconduct) - sec155(2)	0	0	
Reprimand - sec155(3)(a)	4	0	
Cancel practising certificate - sec37(1)(a) & (f)	0	0	
Appointment of independent investigator - sec151	0	6	
LSC close file	0	1 ⁿ	ⁿ The LSC directed the Bar Council to close the file as there was no basis for the complaint.
Total	55	76	

Table 6 Result of investigations of complaints under Part 10 of the Legal Profession Act 1987 carried forward or commenced and completed between 1 July 2002 and 30 June 2003 (compared to previous year)

	2002-2003	2001-2002	
Result of investigation			
Withdrawn	5	9	# In the period 2002/2003, four decisions by the Bar Council to dismiss a complaint pursuant to sec 155(4) were reviewed by the Legal Services Commissioner. All four Bar Council decisions were upheld by the commissioner under sec 160(1)(a). Two further decisions remain under review by the Legal Services Commissioner.
Withdrawn but council initiated complaint under sec134(2)	1	0	
Dismiss - sec139(1)(a)	1	0	
Dismiss - sec155(3)(b)	4	0	
Dismiss - sec155(4)	33#	49*	
Dismissed with conditions attached to practising certificate - sec155(4)	1	0	
Dismiss - sec155A	0	2	
Refer to tribunal (professional misconduct) - sec155(2)	4	1	
Refer to tribunal (unsatisfactory professional conduct) - sec155(2)	0	0	* In the period 2001/2002, four decisions by the Bar Council to dismiss a complaint pursuant to sec155(4) were reviewed by the Legal Services Commissioner. All four Bar Council decisions were upheld by the commissioner under sec 160(1)(a).
Refer to tribunal (unsats prof conduct/prof misconduct) - sec155(2)	2	5	
Reprimand - sec155(3)(a)	6	4	
Reprimand plus conditions on practising certificate - sec155(3)(a)	3	0	
No action required as barrister's name removed from roll	1	0	
Suspended investigation - sec150	0	1	
Appointment of independent investigator - sec151	0	6	
LSC close file	0	1 ⁿ	ⁿ The LSC directed the Bar Council to close the file as there was no basis for the complaint.
Total	61	78	

New South Wales Bar Association financial statements

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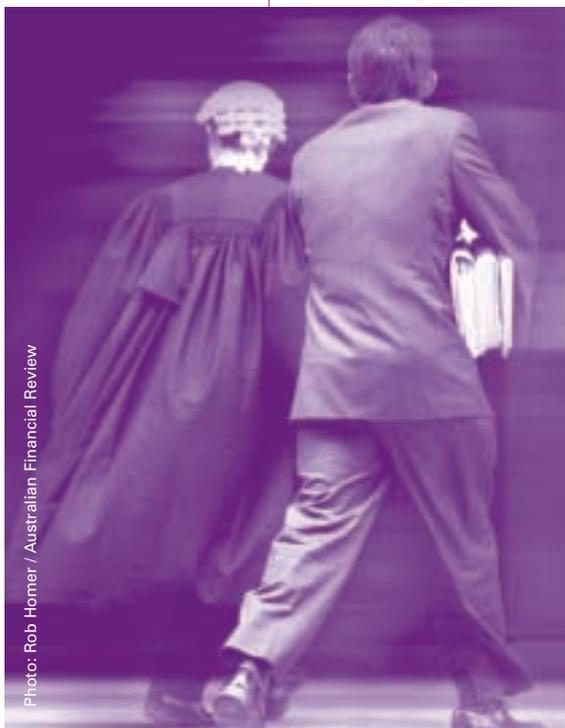


Photo: Rob Homer / Australian Financial Review

Directors' report

The directors present their report together with the financial report of The New South Wales Bar Association ('the company') for the year ended 30 June 2003 and the auditors' report thereon.

Directors

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

	Period as director	
B W Walker SC	18 November 1992	to present
I G Harrison SC	3 December 1997	to present
T Bathurst QC	8 November 2001	to present
M J Slattery QC	25 November 1999	to present
A J Katzmann SC	25 November 1993	to present
B A Coles QC	7 November 2000	to present
J T Gleeson SC	25 November 1999	to 14 November 2002
J P Gormly SC	28 November 1996	to 14 November 2002
L King SC	8 November 2001	to present
G C Lindsay SC	14 November 2002	to present
J J Fernon	25 November 1999	to present
K M Traill	3 December 1997	to present
H J Marshall	7 November 2000	to present
A P Stenmark	7 November 2000	to 14 November 2002
R Sofroniou	7 November 2000	to 14 November 2002
R Pepper	7 November 2000	to 14 November 2002
H Kelly	8 November 2001	to present
M Elkaim	8 November 2001	to 14 November 2002
S Torrington	8 November 2001	to present
C Loukas	8 November 2001	to present
M McHugh	8 November 2001	to present
D Toomey	8 November 2001	to present
A S Bell	14 November 2002	to present
R A Cavanagh	14 November 2002	to present
V J Lydiard	14 November 2002	to present
J W J Stevenson	14 November 2002	to present
R S Toner	14 November 2002	to present

Principal activities

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

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

Review and results of operations

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

The net profit of the company for the year ended 30 June 2003 was \$316,146 (2002: net loss \$166,956). This result represents a \$483,102 increase in net profit from the prior year and is chiefly attributable to increasing revenues from ordinary activities.

Dividends

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

State of affairs

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

Directors' report - continued

Events subsequent to balance date

No matters or circumstances have arisen since the end of the financial year which significantly affect the operations of the company, the results of those operations, or the state of affairs of the company in financial years subsequent to the financial year ended 30 June 2003.

Likely developments

The company will endeavour to pursue its principal activities at a surplus. Its ability to do so may be adversely affected by regulatory changes, including changes to the practising certificate fee structure, and a decline in subscriptions from an anticipated diminution in the number of practising barristers.

Information on directors

Name	Position	Attendance at council meetings	Number of meetings while director held office
Walker SC Bret William	President	22	23
Harrison SC Ian Gordon	Senior Vice President	22	23
Slattery QC, Michael John	Junior Vice President	20	23
Bathurst QC, Tom	Treasurer	18	23
Loukas, Chrissa	Secretary (from 14.11.02)	18	23
Gormly, Jeremy Patrick	Secretary (until 14.11.02)	3	10
Coles QC, Bernard Anthony John	Director	20	23
King SC Larry	Director	18	23
Katzmann SC Anna Judith	Director	20	23
Gleeson SC Justin Thomas	Director	8	10
Lindsay SC Geoffrey Charles	Director	13	13
Kelly, Hayden	Director	18	23
Elkaim, Michael	Director	10	10
Torrington, Stuart	Director	14	23
Stenmark, Alison Patricia	Director	7	10
Fernon, John	Director	18	23
Marshall, Hugh Joseph	Director	18	23
Traill, Kate	Director	20	23
Sofroniou, Rena	Director	7	10
Pepper, Rachel	Director	7	10
McHugh, Michael	Director	20	23
Toomey, Dominic	Director	22	23
Bell, Andrew Scott	Director	8	13
Cavanagh, Richard Austin	Director	9	13
Lydiard, Virginia Joan	Director	13	13
Stevenson, James William John	Director	11	13
Toner, Robert Stephen	Director	12	13

From 1 July 2002 to 30 June 2003 there were 23 meetings.

Environmental regulation

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

Signed in accordance with a resolution of the directors



BW Walker
President



T Bathurst
Treasurer

Dated at Sydney this 28th day of August 2003

Independent auditors' report to the members of The New South Wales Bar Association

Scope

We have audited the financial report of The New South Wales Bar Association for the financial year ended 30 June 2003 set out on pages 53 to 67. The company's directors are responsible for the financial report. We have conducted an independent audit of this financial report in order to express an opinion to the members of the company.

Our audit has been conducted in accordance with Australian Auditing Standards to provide reasonable assurance whether the financial report is free of material misstatement. Our procedures included examination, on a test basis, of evidence supporting the amounts and other disclosures in the financial report, and the evaluation of accounting policies and significant accounting estimates. These procedures have been undertaken to form an opinion whether, in all material respects, the financial report is presented fairly in accordance with Accounting Standards and other mandatory professional reporting requirements and statutory requirements in Australia so as to present a view which is consistent with our understanding of the company's financial position, and performance as represented by the results of its operations and its cash flows.

The audit opinion expressed in this report has been formed on the above basis.

Audit opinion

In our opinion, the financial report of The New South Wales Bar Association is in accordance with:

- a the *Corporations Act 2001*, including:
 - i giving a true and fair view of the company's financial position as at 30 June 2003 and of its performance for the year ended on that date; and
 - ii complying with Accounting Standards and the *Corporations Regulations 2001*; and
- b other mandatory professional reporting requirements in Australia.



Court & Co
Chartered Accountants

Stuart H Cameron
Partner

Dated at Sydney this 28th day of August 2003

Directors' declaration

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

- a the financial statements and notes set out on pages 54 to 67 are in accordance with the *Corporations Act 2001*, including:
 - i giving a true and fair view of the financial position of the company as at 30 June 2003 and of its performance, as represented by the results of its operations and its cash flows, for the year ended on that date; and
 - ii complying with Accounting Standards and the *Corporations Regulations 2001*; and
- b there are reasonable grounds to believe that the company will be able to pay its debts as and when they become due and payable.

Signed in accordance with a resolution of the directors:



B W Walker
President



T Bathurst
Treasurer

Dated at Sydney this 28th day of August 2003

Statement of financial performance

For the year ended 30 June 2003

	Note	2003 \$	2002 \$
Revenue from sale of goods	3	129,536	156,183
Other revenue from ordinary activities	3	5,654,799	5,075,538
TOTAL REVENUE	3	5,784,335	5,231,721
Purchases		97,000	115,217
Employee expenses		2,352,243	2,029,535
Legal and professional fees		1,168,421	1,208,447
Subscriptions		377,280	343,038
Communications and information technology expenses		220,354	202,990
Depreciation and amortisation expenses	4	220,631	312,390
Occupancy expenses		295,164	272,267
Advertising and marketing expenses		157,665	260,328
Financial expenses		100,778	97,011
Borrowing costs		859	-
Other expenses from ordinary activities		477,794	557,454
Profit/(Loss) from ordinary activities before related income tax expense		316,146	(166,956)
Income tax expense relating to ordinary activities	5	-	-
NET PROFIT/(LOSS)	14	316,146	(166,956)
TOTAL CHANGE IN MEMBER FUNDS	14	316,146	(166,956)

The accompanying notes form part of these financial statements.

Statement of financial position

For the year ended 30 June 2003

	Note	2003 \$	2002 \$
CURRENT ASSETS			
Cash assets	17(i)	6,206,402	5,183,823
Receivables	7	375,397	727,276
Inventories		25,089	26,195
Other assets	8	174,447	135,516
TOTAL CURRENT ASSETS		<u>6,781,335</u>	<u>6,072,810</u>
NON-CURRENT ASSETS			
Other financial assets	6	183,539	214,949
Plant and equipment	9	626,050	706,144
TOTAL NON-CURRENT ASSETS		<u>809,589</u>	<u>921,093</u>
TOTAL ASSETS		<u>7,590,924</u>	<u>6,993,903</u>
CURRENT LIABILITIES			
Payables	10	589,252	794,467
Provisions	11	182,918	104,642
Interest bearing liabilities	12	12,252	-
Other liabilities	13	3,443,622	3,095,581
TOTAL CURRENT LIABILITIES		<u>4,228,044</u>	<u>3,994,690</u>
NON-CURRENT LIABILITIES			
Provisions	11	272,240	247,262
Interest bearing liabilities	12	22,543	-
TOTAL NON-CURRENT LIABILITIES		<u>294,783</u>	<u>247,262</u>
TOTAL LIABILITIES		<u>4,522,827</u>	<u>4,241,952</u>
NET ASSETS		<u>3,068,097</u>	<u>2,751,951</u>
MEMBERS' FUNDS			
Retained surplus	14	3,068,097	2,751,951
TOTAL MEMBERS' FUNDS		<u>3,068,097</u>	<u>2,751,951</u>

The accompanying notes form part of these financial statements.

Statement of cash flows

For the year ended 30 June 2003

	Note	2003 \$	2002 \$
CASH FLOWS FROM OPERATING ACTIVITIES			
Cash receipts in the course of operations		6,586,782	5,838,184
Cash payments in the course of operations		(5,701,027)	(5,530,374)
Dividends received		4,941	4,366
Interest received		206,638	135,045
Borrowing costs		(64)	-
		<hr/>	<hr/>
Net cash provided by operating activities	17(ii)	1,097,270	447,221
CASH FLOWS FROM INVESTING ACTIVITIES			
Payment for plant and equipment		(108,323)	(115,090)
Proceeds from sale of plant and equipment		2,455	200
Payment for marketable securities		(2,115)	(1,924)
Proceeds from the sale of shares		292	4,583
Proceeds on redemption of investments		33,000	33,000
		<hr/>	<hr/>
Net cash used in investing activities		(74,691)	(79,231)
NET INCREASE IN CASH HELD		1,022,579	367,990
Cash at the beginning of the financial year		5,183,823	4,815,833
		<hr/>	<hr/>
CASH AT THE END OF THE FINANCIAL YEAR	17(i)	6,206,402	5,183,823

The accompanying notes form part of these financial statements.

Notes for the financial statements

For the year ended 30 June 2003

1. STATEMENT OF ACCOUNTING POLICIES

The significant policies which have been adopted in the preparation of this financial report are:

a Basis of preparation

The financial report is a general purpose financial report which has been prepared in accordance with Accounting Standards, Urgent Issues Group Consensus Views, other authoritative pronouncements of the Australian Accounting Standards Board and the Corporations Act 2001.

It has been prepared on the basis of historical costs and except where stated, does not take into account changing money values or current valuations of non-current assets.

These accounting policies have been consistently applied by the company and, except where there is a change in accounting policy, are consistent with those of the previous year.

b Income tax

The company has adopted the liability method of tax effect accounting.

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

c Inventories

Inventories are valued at the lower of cost or net realisable value. Cost is determined on a weighted average basis.

d Acquisitions of assets

All assets acquired including plant and equipment are initially recorded at their cost of acquisition at the date of acquisition, being the fair value of the consideration provided plus incidental costs directly attributable to the acquisition.

e Operating leases

Payments made under operating leases are expensed on a straight line basis over the term of the lease except where an alternative basis is more representative of the pattern of benefits to be derived from the leased property.

f Receivables

Receivables to be settled within 30 days are carried at amounts due. The collectibility of debts is assessed at balance date and specific provision is made for any doubtful accounts.

g Payables

Liabilities are recognised for amounts to be paid in the future for goods or services received. Trade accounts payable are normally settled within 30 days.

h Employee benefits

Wages, salaries and annual leave

Liabilities for employee benefits for wages and salaries, and annual leave expected to be settled within 12 months of the reporting date representing present obligations resulting from employees' services provided up to reporting date, and are calculated at undiscounted amounts based on remuneration wage and salary rates that the company expects to pay as at reporting date including related on-costs.

Superannuation plan

The company contributes to a number of defined contribution employee superannuation plans. Contributions are charged against income as they are made.

i Investments

Investments are carried in the company's financial statements at the lower of cost or recoverable amount.

Notes for the financial statements - continued

For the year ended 30 June 2003

j Revenue recognition

Revenues are recognised at fair value of the consideration received net of the amount of goods and services tax (GST). Exchanges of goods or services of the same nature and value without any cash consideration are not recognised as revenues.

Subscriptions and practising certificate fees

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

Sales of goods

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

Proceeds on sale of plant and equipment

The gross proceeds of asset sales are included as revenue of the company. The profit or loss on sale of assets is brought to account at the date an unconditional contract of sale is agreed.

Administration charge

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

Dividends received

Revenue from dividends is recognised when the dividend is receivable.

Interest income

Interest income is recognised as it accrues.

Grants

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

Other income

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

k Goods and Services Tax

Revenues, expenses and assets are recognised net of the amount of goods and services tax (GST), except where the amount of GST incurred is not recoverable from the Australian Taxation Office (ATO). In these circumstances the GST is recognised as part of the cost of acquisition of the asset or as part of an item of the expense.

Receivables and payables are stated with the amount of GST included.

The net amount of GST recoverable from, or payable to, the ATO is included as a current asset or liability in the statement of financial position.

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

l Recoverable amount of non-current assets valued on cost basis

The carrying amounts of non-current assets valued on the cost basis are reviewed to determine whether they are in excess of their recoverable amount at balance date. If the carrying amount of a non-current assets exceeds its recoverable amount, the asset is written down to the lower amount. The write-down is recognised as an expense in the net profit or loss in the reporting period in which it occurs.

Notes for the financial statements - continued

For the year ended 30 June 2003

m Depreciation and amortisation

Useful lives

All plant and equipment have limited useful lives and are depreciated/amortised using the straight line method over their estimated useful lives.

Assets are depreciated or amortised from the date of acquisition.

Depreciation and amortisation rates and methods are reviewed annually for appropriateness. When changes are made, adjustments are reflected prospectively in current and future periods only. Depreciation and amortisation are expensed.

The depreciation/amortisation rates used for each class of asset are as follows:

	Depreciation rate		Depreciation method
	2003	2002	
Library	5%	5%	Straight line
Refurbishment	10-34%	10-34%	Straight line
Furniture, computers, office machines and equipment	10-33%	10-33%	Straight line
Glasses, bar and kitchen equipment	20%	20-33%	Straight line

2. MEMBERS' GUARANTEE

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

Notes for the financial statements - continued

For the year ended 30 June 2003

	2003 \$	2002 \$
3. REVENUE FROM ORDINARY ACTIVITIES		
Sale of goods revenue from operating activities	129,536	156,183
Other revenues		
<i>From operating activities</i>		
Subscriptions and practising certificate fees	3,332,463	2,950,320
Reading programme	240,092	183,853
Interest and dividends	209,539	179,681
Seminars	26,918	53,080
Administration charge	85,150	75,200
External funding	1,580,176	1,400,866
Proceeds on sale of fixed assets	2,455	200
Proceeds on sale of investments	292	-
Other revenue	164,024	203,238
<i>From outside operating activities</i>		
Rent	13,690	29,100
Total revenue from ordinary activities	<u>5,784,335</u>	<u>5,231,721</u>

	2003 \$	2002 \$
4. PROFIT/(LOSS) FROM ORDINARY ACTIVITIES BEFORE INCOME TAX EXPENSE		
Profit/(Loss) from ordinary activities before income tax expense has been arrived at after charging/(crediting) the following items.		
Amortisation	88,963	146,432
Depreciation of plant and equipment	131,668	165,958
Auditors' remuneration:		
. Audit	23,379	22,000
. Other services	7,081	11,754
Net expense from movements in provision for:		
. Employee benefits	103,254	31,637
. Bad debts	-	(7,247)
Profit on sale of plant and equipment	(669)	(200)
Cost of goods sold	96,999	115,217
Dividends received - other parties	(4,941)	(4,366)
Interest received - other parties	(204,598)	(175,315)
Rent	(13,690)	(29,100)
(Profit)/Loss on sale of investments	<u>(233)</u>	<u>36</u>

Notes for the financial statements - continued

For the year ended 30 June 2003

	2003 \$	2002 \$
5. INCOME TAX EXPENSE		
Prima facie income tax expense/(benefit) calculated at 30% on the profit/(loss) from ordinary activities	94,844	(50,087)
Increase/decrease in income tax expense/(benefit) due to:		
. Net mutual income	(103,263)	(47,361)
	(8,419)	(97,448)
Deferred tax asset not brought to account	8,419	97,448
Income tax expense relating to ordinary activities	-	-

A deferred tax asset arising from tax losses of \$54,885 (2002: \$48,250) has not been recognised as an asset because recovery is not virtually certain. The benefit for tax losses will only be obtained of:

- i. the company derives future assessable income of a nature and an amount sufficient to enable the benefit from the deductions for the losses to be realised.
- ii. the company continues to comply with the conditions for deductibility imposed by tax legislation; and
- iii. no changes in tax legislation adversely affect the company in realising the benefit from the deductions for the losses.

6. OTHER FINANCIAL ASSETS

	2003 \$	2002 \$
Non-current		
Investments in other entities		
Listed shares and notes at cost (Market value: \$217,663, 2002: \$247,666)	183,535	214,945
Investments in associates		
Unlisted at cost	4	4
	183,539	214,949

7. RECEIVABLES

Current		
Debtors	320,866	649,141
Net GST receivable	54,531	78,135
	375,397	727,276

8. OTHER ASSETS

Current		
Prepayments	136,217	95,246
Accrued interest	38,230	40,270
	174,447	135,516

Notes for the financial statements - continued

For the year ended 30 June 2003

	2003	2002
	\$	\$
9. PLANT AND EQUIPMENT		
Non-current		
<i>Owned assets</i>		
Library - at cost	469,043	469,043
<i>Less: Accumulated depreciation</i>	<u>(46,906)</u>	<u>(23,454)</u>
	422,137	445,589
Refurbishment - at cost	1,251,542	1,207,930
<i>Less: Accumulated amortisation</i>	<u>(1,211,639)</u>	<u>(1,122,675)</u>
	39,903	85,255
Furniture, computers, office machines and equipment - at cost	1,113,614	1,014,903
<i>Less: accumulated depreciation</i>	<u>(951,311)</u>	<u>(844,848)</u>
	162,303	170,055
Glasses, bar and kitchen equipment - at cost	12,984	33,877
<i>Less: accumulated depreciation</i>	<u>(11,277)</u>	<u>(28,632)</u>
	1,707	5,245
	<u>626,050</u>	<u>706,144</u>
<i>Reconciliations</i>		
Reconciliations of the carrying amounts for each class of plant and equipment are set out below:		
Library		
Carrying amount at beginning of year	445,589	469,043
Additions	-	-
Disposals	-	-
Depreciation	<u>(23,452)</u>	<u>(23,454)</u>
Carrying amount at end of year	<u>422,137</u>	<u>445,589</u>
Refurbishment		
Carrying amount at beginning of year	85,255	231,687
Additions	43,611	-
Disposals	-	-
Amortisation	<u>(88,963)</u>	<u>(146,432)</u>
Carrying amount at end of year	<u>39,903</u>	<u>85,255</u>
Furniture, computers, office machines and equipment		
Carrying amount at beginning of year	170,055	192,985
Additions	98,712	119,072
Disposals	-	(3,982)
Depreciation	<u>(106,464)</u>	<u>(138,020)</u>
Carrying amount at end of year	<u>162,303</u>	<u>170,055</u>
Glasses, bar and kitchen equipment		
Carrying amount at beginning of year	5,245	9,729
Additions	-	-
Disposals	(1,786)	-
Depreciation	<u>(1,752)</u>	<u>(4,484)</u>
Carrying amount at end of year	<u>1,707</u>	<u>5,245</u>

Notes for the financial statements- continued

For the year ended 30 June 2003

	2003	2002
	\$	\$
10. PAYABLES		
Current		
Sundry creditors and accrued charges	589,252	794,467
	<u>589,252</u>	<u>794,467</u>
11. PROVISIONS		
Current		
Employee benefits provision	182,918	104,642
	<u>182,918</u>	<u>104,642</u>
Non-current		
Employee benefits provision	97,221	72,243
Contingencies	175,019	175,019
	<u>175,019</u>	<u>175,019</u>
	<u>272,240</u>	<u>247,262</u>
Number of employees	No.	No.
Number of employees at year end	29	29
	<u>29</u>	<u>29</u>
12. INTEREST BEARING LIABILITIES		
Current		
Loan liability	12,252	-
	<u>12,252</u>	<u>-</u>
Non-current		
Loan liability	22,543	-
	<u>22,543</u>	<u>-</u>
	<u>34,795</u>	<u>-</u>
13. OTHER LIABILITIES		
Current		
Subscriptions and practising certificate fees received in advance	3,443,622	3,095,581
	<u>3,443,622</u>	<u>3,095,581</u>
14. RETAINED SURPLUS		
Retained surplus at beginning of year	2,751,951	2,918,907
Net profit/(loss)	316,146	(166,956)
	<u>316,146</u>	<u>(166,956)</u>
Retained surplus at end of year	<u>3,068,097</u>	<u>2,751,951</u>

Notes for the financial statements - continued

For the year ended 30 June 2003

	2003	2002
	\$	\$
15. LEASE COMMITMENTS		
Lease of premises		
Current year rent expense	166,176	150,000
Operating lease commitments payable		
Not later than one year	231,051	83,496
Later than one year but not later than five years	400,800	19,824
	<u>631,851</u>	<u>103,320</u>

16. RELATED PARTY DISCLOSURES

- a. The New South Wales Bar Association has a receivable, being an administration fee from the Barristers' Sickness and Accident Fund 1961 of \$70,000 on normal commercial terms and conditions.
The company paid rent of \$166,176 to Counsel's Chambers Limited for its office space on normal commercial terms and conditions.

During the year, some members of the Bar Council attended conferences and meetings on behalf of The New South Wales Bar Association held overseas, as well as in New South Wales regional centres and interstate. Certain travel and accommodation expenses were paid by the company.

Pursuant to a Bar Council resolution, part of the President's secretarial and other sundry expenses are borne by the association.

- b. The names of the persons who were directors of the company during the financial year were as follows:

B W Walker SC	D Toomey
I G Harrison SC	J Fernon
H J Marshall	G C Lindsay SC
A P Stenmark	A S Bell
T Bathurst QC	H Kelly
R Sofroniou	R A Cavanagh
M J Slattery QC	M McHugh
R Pepper	V J Lydiard
A J Katzmann SC	J P Gormly
M Elkaim	J W J Stevenson
B A Coles QC	K M Traill
J T Gleeson SC	R S Toner
L King SC	C T Loukas
S Torrington	

Notes for the financial statements – continued

For the year ended 30 June 2003

17. NOTES TO THE STATEMENT OF CASH FLOWS

- i For the purposes of the statement of cash flows, cash includes cash on hand and in banks. Cash at the end of the financial year as shown in the statement of cash flows is reconciled to the related items in the statement of financial position as follows:

	2003 \$	2002 \$
Current account	6,166,075	5,134,456
Barristers' fighting fund	39,077	48,267
Petty cash	1,250	1,100
	<u>6,206,402</u>	<u>5,183,823</u>

- ii Reconciliation of net profit/(loss) to net cash provided by operating activities

Net profit/(loss)	316,146	(166,956)
Amortisation	88,963	146,432
Depreciation	131,668	165,958
Profit on sale of plant and equipment	(669)	(200)
Loss on sale of investments	233	36

<i>Net cash provided by operating activities before changes in assets and liabilities</i>	<u>536,341</u>	<u>145,270</u>
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Changes in assets and liabilities:

Decrease/(increase) in receivables	328,275	(468,065)
Decrease in inventories	1,106	4,100
Increase in prepayments	(40,971)	(62,840)
Increase in accrued interest	2,040	-
(Decrease)/increase in sundry creditors	(205,215)	293,355
Increase in provisions	103,254	31,637
Increase in subscriptions and practising certificate fees received in advance	348,041	532,502
Decrease/(increase) in net GST receivable	23,604	(28,738)
Increase in interest bearing liabilities	795	-

Net cash provided by operating activities	<u>1,097,270</u>	<u>447,221</u>
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Note (iii) - Non-cash financing activities

During the financial year, the Association acquired plant and equipment with an aggregate fair value of \$34,000 by means of entering into a loan. The acquisition is not reflected in the statement of cash flows.

18. SUPERANNUATION

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

Notes for the financial statements - continued

For the year ended 30 June 2003

19. ADDITIONAL FINANCIAL INSTRUMENTS DISCLOSURE

a Interest rate risk

Interest rate risk exposures

The company's exposure to interest rate risk and the effective weighted average interest rate for classes of financial assets and financial liabilities is set out below:

	Note	Weighted average interest rate	FIXED INTEREST MATURING IN				Total
			Floating interest rate \$	1 Year or less \$	Over 1 to 5 years \$	Non-interest bearing \$	
2003							
Financial assets							
Cash assets	17(i)	4.10%	6,205,152	-	-	1,250	6,206,402
Receivables	7	-	-	-	-	375,397	375,397
Other financial assets	6	-	-	-	-	183,539	183,539
Financial liabilities							
Payables	10	-	-	-	-	589,252	589,252
Interest bearing liabilities	12	5.00%	-	12,252	22,543	-	34,795
Financial assets							
Cash assets	17(i)	4.21%	5,182,723	-	-	1,100	5,183,823
Receivables	7	-	-	-	-	727,276	727,276
Other financial assets	6	-	-	-	-	214,949	214,949
Financial liabilities							
Payables	10	-	-	-	-	794,467	794,467
Interest bearing liabilities	12	-	-	-	-	-	-

b Net fair values of financial assets and liabilities

The carrying amounts and net fair values of financial assets and liabilities as at the reporting date are as follows:

	2003 Carrying amount \$	2003 Net fair value \$	2002 Carrying amount \$	2002 Net fair value \$
Financial assets				
Cash assets	6,206,402	6,206,402	5,183,823	5,183,823
Receivables	375,397	375,397	727,276	727,276
Other financial assets				
Shares in other corporations				
- listed	183,535	217,663	214,945	247,666
- unlisted	4	4	4	4
Financial liabilities				
Payables	589,252	589,252	794,467	794,467
Interest bearing liabilities	34,795	34,795	-	-

The listed shares in other corporations are readily traded on organised markets in a standardised form. All other financial assets and liabilities are not readily traded on organised markets in a standardised form.

Emerton Endowment Fund

Statement of financial position

as at 30 June 2003

	2003	2002
	\$	\$
CURRENT ASSETS		
Cash assets	119,376	103,836
Other assets	-	21
TOTAL CURRENT ASSETS	<u>119,376</u>	<u>103,857</u>
NON-CURRENT ASSETS		
Investments - Shares in companies listed on a prescribed stock exchange (Market value \$175,572; 2002 \$180,470):		
- at cost	122,216	117,995
TOTAL NON-CURRENT ASSETS	<u>122,216</u>	<u>117,995</u>
TOTAL ASSETS	<u>241,592</u>	<u>221,852</u>
CURRENT LIABILITIES		
Payables - related party	9,071	-
TOTAL CURRENT LIABILITIES	<u>9,071</u>	<u>-</u>
TOTAL LIABILITIES	<u>9,071</u>	<u>-</u>
NET ASSETS	<u>232,521</u>	<u>221,852</u>
CAPITAL	204,374	204,374
RESERVES		
Retained surplus	28,147	17,478
TOTAL DEFICIT IN FUNDS	<u>232,521</u>	<u>221,852</u>
INCOME		
Dividends received - other parties	7,046	6,604
Interest received - other parties	3,623	6,962
Profit on sale of investments	-	3,912
TOTAL INCOME	<u>10,669</u>	<u>17,478</u>
NET PROFIT	<u>10,669</u>	<u>17,478</u>
Retained surplus at the beginning of the financial year	17,478	-
RETAINED SURPLUS AT THE END OF THE FINANCIAL YEAR	<u>28,147</u>	<u>17,478</u>

Barristers' Benevolent Association of NSW

ABN: 18 466 736 745

Financial report for the year ended 30 June 2003

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Statement from the Committee of Management

For the year ended 30 June 2003

In the opinion of the trustees the financial statements set out on pages 70 to 74 are drawn up so as to present fairly the results of the Barristers' Benevolent Association for the year ended 30 June 2003 and the state of affairs of the association as at that date.



BW Walker
For the Committee of Management



T Bathurst
For the Committee of Management

Dated at Sydney this 28th day of August 2003

Independent auditors' report to the members of Barristers' Benevolent Association of NSW

Scope

I have audited the financial report of the Barristers Benevolent Association of NSW for the year ended 30 June 2003 set out on pages 70 to 74. The association's officers are responsible for the financial report. I have conducted an independent audit of this financial report in order to express an opinion on them to the members of the association.

My audit has been conducted in accordance with Australian Auditing Standards to provide reasonable assurance as to whether the financial report is free of material misstatement. My procedures included examination, on a test basis, of evidence supporting the amounts and other disclosures in the financial report, and the evaluation of accounting policies and significant accounting estimates. These procedures have been undertaken to form an opinion as to whether, in all material respects, the financial report is presented fairly in accordance with Accounting Standards and other mandatory professional reporting requirements and statutory requirements in Australia so as to present a view which is consistent with my understanding of the association's financial position and its performance, as represented by the results of its operations.

The audit opinion expressed in this report has been formed on the above basis.

Audit opinion

In our opinion the financial statements, consisting of the statement of financial performance, the statement of financial position and notes to the financial statements present fairly the financial position of the association and its performance for the year ended 30 June 2003 in accordance with Accounting Standards and other mandatory professional reporting requirements in Australia.



Court & Co
Chartered Accountants

Stuart H Cameron
Partner

Dated at Sydney this 28th day of August 2003

Detailed statement of financial performance

For the year ended 30 June 2003

	2003	2002
	\$	\$
INCOME		
Contributions	109,890	95,971
Distribution income	43,877	53,543
Interest income	11,469	13,166
Sundry income	-	2,597
	<u>165,236</u>	<u>165,277</u>
EXPENDITURE		
Audit and accountancy	5,437	5,500
Debt waiver	15,000	50,000
Bank charges	-	71
Gifts	106,655	88,900
Legal fees	-	18,302
BarCare costs	1,878	3,093
Diminution in value of investments	89,739	98,785
	<u>218,709</u>	<u>264,651</u>
LOSS FROM ORDINARY ACTIVITIES	<u>(53,473)</u>	<u>(99,374)</u>

Statement of financial performance

For the year ended 30 June 2003

	Note	2003	2002
		\$	\$
Other revenues from ordinary activities		<u>165,236</u>	<u>165,277</u>
Total revenue		<u>165,236</u>	<u>165,277</u>
Other expenses from ordinary activities		<u>218,709</u>	<u>264,651</u>
NET LOSS		<u>(53,473)</u>	<u>(99,374)</u>
TOTAL CHANGE IN EQUITY	6	<u>(53,473)</u>	<u>(99,374)</u>

The accompanying notes form part of these financial statements.

Statement of financial position

as at 30 June 2003

	Note	2003 \$	2002 \$
MEMBERS FUNDS			
Trust funds		1,061,760	1,061,760
Capital profits reserve	2	1,006,432	962,555
Accumulated surplus	6	<u>(182,620)</u>	<u>(85,270)</u>
		<u>1,885,572</u>	<u>1,939,045</u>
CURRENT ASSETS			
Cash assets	3	207,133	241,969
Receivables	4	<u>233,623</u>	<u>205,899</u>
TOTAL CURRENT ASSETS		<u>440,756</u>	<u>447,868</u>
NON-CURRENT ASSETS			
Investments	5	<u>1,449,316</u>	<u>1,495,177</u>
TOTAL NON-CURRENT ASSETS		<u>1,449,316</u>	<u>1,495,177</u>
TOTAL ASSETS		<u>1,890,072</u>	<u>1,943,045</u>
NET ASSETS		<u>1,885,572</u>	<u>1,939,045</u>
CURRENT LIABILITIES			
Provisions		<u>4,500</u>	<u>4,000</u>
TOTAL LIABILITIES		<u>4,500</u>	<u>4,000</u>

The accompanying notes form part of these financial statements.

Statement of cash flows

For the year ended 30 June 2003

	Note	2003 \$	2002 \$
CASH FLOWS FROM OPERATING ACTIVITIES			
Cash receipts		148,746	151,108
Interest received		11,469	13,166
Cash payments		<u>(119,151)</u>	<u>(116,893)</u>
Net cash provided by operating activities	7(ii)	<u>41,064</u>	<u>47,381</u>
CASH FLOWS FROM INVESTING ACTIVITIES			
Advances repaid during year		20,500	24,600
Loans advanced during year		(52,523)	(24,337)
Payments for units in investment fund		<u>(43,877)</u>	<u>(113,543)</u>
Net cash used in investing activities		<u>(75,900)</u>	<u>(113,280)</u>
NET DECREASE IN CASH HELD		(34,836)	(65,899)
Cash at the beginning of the financial year		<u>241,969</u>	<u>307,868</u>
CASH AT THE END OF THE FINANCIAL YEAR	7(i)	<u>207,133</u>	<u>241,969</u>

Notes to the financial statements

For the year ended 30 June 2003

1. STATEMENT OF SIGNIFICANT ACCOUNTING POLICIES

a Basis of preparation

The financial report is a general purpose financial report which has been prepared in accordance with Accounting Standards, Urgent Issues Group Consensus Views and other authoritative pronouncements of the Australian Accounting Standards Board.

It has been prepared on an accruals basis. It is based on historical costs and does not take into account changing money values, or, except where specifically stated, current valuations of non-current assets.

The accounting policies have been consistently applied by the Barristers' Benevolent Association and, except where there is a change in accounting policy, are consistent with those of the previous year.

Where necessary, comparative information has been reclassified to achieve consistency in disclosure with current financial year amounts and other disclosures.

b Measurement of investments

Investments are brought to account at the lower of cost or recoverable amount. The carrying amount of investments is reviewed annually by directors to ensure they are not in excess of the recoverable amount of these investments.

c Income tax

The association is exempt from income tax.

d Receivables

Receivables to be settled within 30 days are carried at amounts due. The collectibility of debts is assessed at balance date and specific provision is made for any doubtful accounts.

e Revenue recognition

Contributions

Revenue from contributions is recognised when the contribution is received.

Distribution income

Revenue from distributions is recognised when the distribution is receivable.

Interest income

Interest income is recognised as it accrues.

Other income

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

f Goods and Services Tax

Revenues, expenses and assets are recognised net of the amount of goods and services tax (GST), except where the amount of GST incurred is not recoverable from the Australian Taxation Office (ATO). In these circumstances, the GST is recognised as part of the cost of acquisition of the asset or as part of an item of the expense.

Receivables and payables are stated with the amount of GST included.

The net amount of GST recoverable from, or payable to, the ATO is included as a current asset or liability in the statement of financial position.

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

2. MOVEMENT IN RESERVES

	2003 \$	2002 \$
Capital profits reserve		
Opening balance for the year	962,555	909,012
Transfer from accumulated surplus	43,877	53,543
	<hr/>	<hr/>
Balance as at 30 June 2003	1,006,432	962,555

Notes to the financial statements - continued

For the year ended 30 June 2003

	2003	2002
	\$	\$
3. CASH ASSETS		
Current		
Cash at bank	24,400	4,896
Cash on deposit	182,733	237,073
	<u>207,133</u>	<u>241,969</u>
4. RECEIVABLES		
Current		
NSW Bar Association	87,822	76,690
Interest free loans	145,710	128,688
GST receivable	91	521
	<u>233,623</u>	<u>205,899</u>
5. INVESTMENTS		
Non-current		
Investments in unit trusts and commonfunds (Market value does not differ from cost)	1,449,316	1,495,177
6. ACCUMULATED SURPLUS		
Accumulated (deficit)/surplus at the beginning of the year	(85,270)	67,647
Net loss	(53,473)	(99,374)
Amount transferred to reserves	(43,877)	(53,543)
	<u>(182,620)</u>	<u>(85,270)</u>
7. NOTES TO THE STATEMENT OF CASH FLOWS		
i. For the purposes of the statement of cash flows, cash includes cash at bank and cash on deposit. Cash at the end of the financial year as shown in the statement of cash flows is reconciled to the related items in the statement of financial position as follows:		
	2003	2002
	\$	\$
Cash at bank	24,400	4,896
Cash on deposit	182,733	237,073
	<u>207,133</u>	<u>241,969</u>
ii. Reconciliation of net loss to net cash provided by operating activities		
Net loss	(53,473)	(99,374)
Bad debts	10,000	50,000
Donations received	5,000	-
Changes in assets and liabilities:		
Decrease in investments	89,738	98,785
Increase in amounts owing from NSW Bar Association	(11,132)	(4,441)
Increase in other receivables	431	911
Increase in provision	500	1,500
	<u>41,064</u>	<u>47,381</u>

The Barristers' Superannuation Fund

The Barristers' Superannuation Fund is a public offer superannuation fund governed by a Trust Deed dated 24 May 1957 (as amended from time to time) under which the Trustee of the fund holds the assets in trust for the members and their dependants. The fund is also regulated by the *Superannuation Industry (SIS) Act 1993*. The fund's ABN is 23 921 476 227.

The fund is an accumulation style fund which also offers members choice of four investment options, Growth, Balanced, Conservative Balanced or Cash. The lump sum benefit a member is entitled to receive at any given time is based on the number of units standing to his or her credit in the relevant investment option and the unit price applicable to that option at the time.

Membership of the fund is open to barristers practising in New South Wales and the spouses of current members.

The Trustee of the fund is Permanent Trustee Company Limited (ACN 000 000 993) and Aon Consulting Pty Limited is responsible for the administration of the fund.

Features of the Fund

- Costs are spread over a membership of 255 NSW barristers and the fund's assets are in excess of \$30 million
- Low administration costs - under 0.48 per cent of assets
- Convenient, efficient service, with the administrator in attendance in Counsels' Chambers on the last few days of the financial year to accept contributions, membership applications and investment choice switches
- Choice of four investment options, Growth, Balanced, Conservative Balanced or Cash
- Member's individual investment in the fund can be split between the four options, in any proportion.
- Flexible death and total and permanent disablement insurance inside the Fund is both tax effective and cost effective at group rates
- Direct representation through the Policy Committee representing members.
- Security of a professional, independent Trustee, Permanent Trustee Company Limited, and Trust Deed amendments requiring the approval of the Council of the New South Wales Bar Association.

Highlights for the Year Ended 30 June 2003

Membership as at 30 June 2003	255	
Total contributions received for the year	1,980,391	
Net assets as at 30 June 2003	\$30,328,000	
	Fund	Benchmark*
Growth earning rate	-2.9%	-4.0%
Balanced earning rate	0.5%	-2.2%
Conservative balanced earning rate	0.6%	0.9%
Cash earning rate	3.6%	5%

*Please note: benchmark returns are based on underlying asset class relevant index returns, gross of fees and tax.

Fund accounts as at 30 June 2003

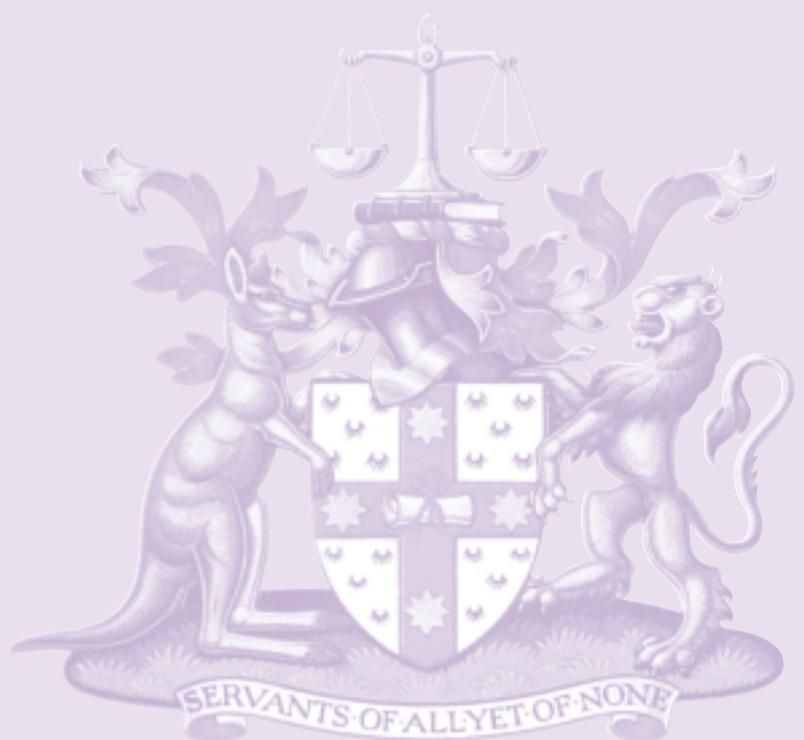
Each year a general purpose financial report is prepared by the Trustee and audited by the fund's auditor. Abridged financial information consistent with the draft unaudited accounts for the year ended 30 June 2003 is included below. The draft accounts have been reviewed by the auditor and no material changes are expected.

Statement of financial position

	2002	2003
INVESTMENTS		
MLC Growth Fund	13,877,742	12,998,554
Maple-Brown Abbott PST	4,550,965	4,584,224
MLC Managed Cash Fund	6,184,674	6,090,345
Invesco Growth Fund	3,551,519	4,376,146
MLC Balanced Fund	1,203,913	940,389
Total investments	29,368,813	28,989,658
OTHER ASSETS		
Cash at bank	1,817,203	1,168,067
Contributions receivable	106,405	214,000
Other assets	10,494	353,016
Total assets	31,302,915	30,724,741
LIABILITIES		
Benefits payable	0	186,758
Other amounts payable	29,390	214,328
Provision for income tax	190,049	(4,477)
TOTAL LIABILITIES	219,439	396,609
Net assets available to pay benefits	31,083,476	30,328,132

Operating statement for the year ended 30 June

	2002	2003
Opening balance at 1 July	31,504,891	31,083,476
Net investment revenue	(985,034)	(212,559)
Contributions	2,213,486	1,980,391
Transfers	3,445	108,638
Total income	1,231,897	1,876,470
Benefits paid	1,085,667	2,128,470
Administrative costs	119,915	137,551
Insurance premiums	30,934	18,017
Surcharge tax	178,888	132,103
Income tax expense	237,908	215,673
Total expenditure	1,653,312	2,631,814
Net assets at 30 June	31,083,476	30,328,132





The New South Wales Bar Association

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