

ISSUE 175 WINTER 2024

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ISSUE 175 WINTER 2024 VICTORIAN BAR NEWS



Editorial

Editors' message 4

EDITORS

President's message 6

GEORGINA SCHOFF

Around Town

Opening of the 2024 legal year 8

VBN

Barbara Hocking portrait unveiling 10

SIOBHÁN RYAN

CommBar annual cocktail party 12

VBN

Family Law Bar Association lawn bowls 13

JEANETTE SWANN

Open Justice Project and 14

Pro Bono Committee

Community Drinks

LAURA HILLY AND TIM FARHALL

All Bar None: a groundbreaking 15

initiative for barrister wellbeing

DR MICHELLE SHARPE

The tunnel guy: a conversation 16

with Arnold Dix

JOHANN OLLQUIST

The Hon John Middleton AM KC 18

portrait unveiling

SIOBHÁN RYAN

Chambers reimagined 22

KOIKI MABO CHAMBERS

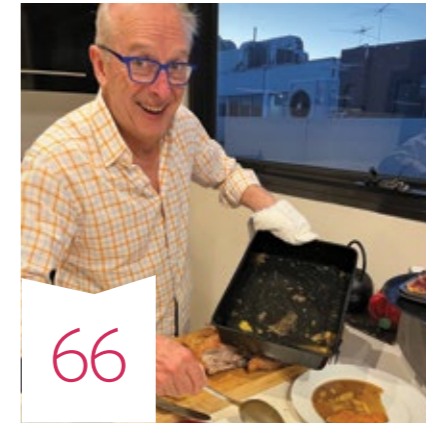
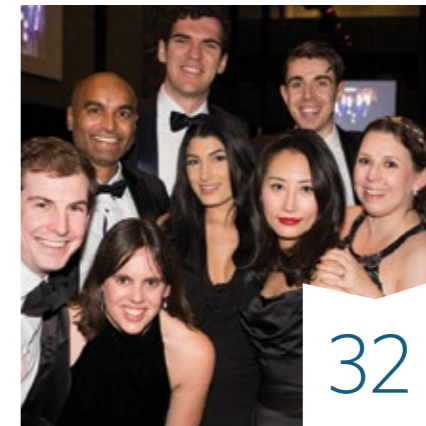
Candid Camera 24

VBN EDITORS

Readers' Digest 26

2024 Victorian Bar Dinner 32

VBN



News and Views

38 Health and wellbeing at the Bar

FIONA ELLIS AND MICHAEL STANTON

40 Promoting wellbeing and preventing severe stress: the need for awareness, reflection and connection

BERNADETTE HEALY

43 The power of a pause

MOYA O'BRIEN

46 Wellbeing tips for new barristers

CHRIS BRYDON AND ASHLEA PATTERSON

48 Barristers embrace video games to level up self-care

ANNABELLE BALLARD

51 State of the Bar overview

VBN

52 Immersive wellness: health and lifestyle retreats provide a restorative escape for time poor barristers

JULIA NIKOLIC

58 The delicate question of (apprehended) judicial bias

DAN STAR AND GLYN AYRES

62 Lighting the way: a Torch artist's journey

JASMINE STILL AND CANDICE JACKSON

66 Secret chefs of the Victorian Bar

JOEL SILVER

70 Life So Full of Promise: further biographies of Australia's lost generation book by Ross McMullin,

MICHAEL MCKERNAN

71 Supporting inclusive and accessible justice at VCAT

SENIOR MEMBER REYNAH TANG AM AND

SENIOR MEMBER SILVANA WILSON

Back of the Lift

72 Adjourned Sine Die

77 Silence All Stand

83 Vale

Boilerplate

91 A bit about words

JULIAN BURNSIDE

93 Language matters

PETER GRAY

95 Mystery beats

ED HEEREY

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Editorial



The art and science of balance

EDITORS

Barristers, by their nature, are a studious bunch. The profession demands as much. The pressures and responsibilities of work can at times feel unforgiving and all-consuming. And that's before you even get to the many hats we wear *outside* work—parents, carers, siblings, friends, volunteers, citizens... Sometimes it call all feel a bit much – as has been brilliantly captured in the recently released *Bar None* video.

Work/life balance is a concept that forms part of our cultural zeitgeist, but what does it look like in a demanding and high-stakes profession? Is it a realistic aim or just another item to add to the list of targets we feel we are failing to hit? These are some of the questions that have gone through our minds when preparing this edition of *VBN*. We editors do not have all the answers – and could be accused of hypocrisy as we set our alarm clocks for ungodly hours to get up and proof the “Wellbeing Issue” – but we have endeavoured to gather together some perspectives on the various ways that we can, realistically, balance work with the rest that life demands and has to offer.

Long-time Bar psychologist, Bernadette Healy – possibly the person with the greatest understanding of barristerial life whose name does *not* appear on the Bar Roll – offers insight into simple practices that can help us disengage from work and re-engage with the world around us.

Health and Wellbeing Committee Chairs Fiona Ellis and Michael Stanton provide an update on the work of their committee and the many services and initiatives that are available to members of the Bar in need of support.

Special thanks go to Moya O'Brien, for her generous account of the personal and professional pressures that she has experienced. Moya writes candidly about how those pressures caused her to take a sabbatical from practice a few years ago, what she gained from some time away from the Bar, and why her first sabbatical may not be her last.

But this edition is not just about how to cope when the going gets tough – it is also about the benefit of making space for colour and light in our everyday lives. The aphorism “all work and no play” should never be far from our minds. If we endeavour to lead a rich and varied life, we are likely to bring a broader array of skills to work, as well as a capacity for resilience even when the frantic pace of our days calls to mind the Benny Hill theme tune.

Indeed, when our colleagues achieve success – be it a promotion to silk or elevation to the Bench – we often marvel at their ability to excel at work whilst making time for family and friends and pursuing various hobbies, sports and other recreational activities. How do they do it? Aside from a lot of paddling hard underwater, the answer seems to be this: find something you love doing and do it. With that in mind, it has been interesting to peel back the robes (so to speak) and learn a bit about what some of our members are doing in their “down time”, whether it be honing their skills as Cordon



STANDING: Jasmine Still, Sandip Mukerjea, Jesse Rudd, Banjo McLachlan, Emma Poole
SITTING: Liz Main, Joel Silver, Annabelle Ballard, Angelo Germano, Alexander Di Stefano
(ABSENT) – Luke Merrick SC, Maree Norton, Lana Collaris, Julia Nikolic, Sam Blashki

Bleu chefs, growing vegetables for a village, exploring *Baldur's Gate* with video control in hand, or finding inner peace at a five star retreat. Whatever your jam, get inspired.

Elsewhere, we have our usual features, including a comprehensive wrap of recent events, replete with plenty of shiny photographs. We hope you will enjoy spotting friends and colleagues, while keeping up to date with all the goings on since our last issue. And even if you know nothing about drummers, don't miss Ed

Heerey KC's “Mystery Beats” article, which chronicles the on-stage brilliance and off-stage struggles of the “three greatest drummers you have probably never heard of, but definitely have heard”.

Thanks as always to all who have contributed to this edition, particularly the committee, Yola Beaini and the indefatigable Sharni Doherty from the Bar Office, Pete Barrett and Guy Shield.

Happy reading and stay warm.

—The Editors

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VICTORIAN BAR

PRESIDENT'S MESSAGE

A big year so far

GEORGINA SCHOFF



So far this year Bar Council has made a number of significant decisions affecting the Bar exam and the readers' course, approved a new Strategic Plan for 2024–2028 and continued a number of important projects commenced under the previous Bar Council. This work has been driven by our determination to ensure that our Bar remains open to all and that our members thrive.

And whilst the work of Bar Council has felt a little relentless at times, the decisions that we have made have been guided by the recommendations of working groups who have consulted extensively and provided considered and practical advice to Bar Council.

We were able to confidently reform the exam and readers' course thanks to the work of the Honourable Peter Riordan KC and his 5-Year Exam Review Panel. They provided us with a well-reasoned report outlining 17 recommendations

and four suggestions for substantial revisions to the Bar exam and readers' course. Anecdotal evidence had suggested that the exam was erecting unnecessary barriers to entry to our Bar. The panel's findings underscored those concerns, with a survey of exam candidates revealing that a majority had dedicated nine weeks or more to studying, with many investing even longer periods, some up to 17 weeks, and nearly all necessitating time off from work. Additionally, over half had undergone costly and privately-run courses. Commencing in 2025, the Bar exam will be held biannually and will encompass three papers designed to evaluate candidates' foundational understanding of ethics, evidence, and procedure. To gain admission to the readers' course, candidates will need to successfully pass all three papers, with the option to choose between civil or criminal procedure papers, either concurrently or separately. No doubt this will mean that there is perhaps a greater demand for places in the readers' course. We have accordingly resolved to increase the numbers in each course and to shorten the course by two weeks so that we can occasionally run three courses, if necessary. There will not, however, be three courses next year and the intention is certainly not to have three courses every year.

On behalf of the Bar Council, I extend our profound gratitude to the Honourable Peter Riordan KC and the other members of his panel for their invaluable contributions and comprehensive guidance throughout this process. The changes have also required considerable input and planning by the Readers' Course Committee, chaired by Anthony Strahan KC and the Bar's Education Team, especially Michelle James and Nikki Walker. We have also established an Exam Committee chaired by Christopher Archibald KC that is currently overseeing the work of the two new Chief Examiners, Nadia Stojanova and Nadia Del Tondo, who are designing the new exam which will be offered in October this year. I thank them all for their dedication to the Bar.

The other significant work undertaken this year has been to approve the Bar's Strategic Plan for 2024–2028. The Strategic Plan is a key part of the Bar's governance framework and guides the Bar Council's decision-making process. Again, the work of Bar Council was made easy by the carefully considered Report of the Strategic Plan Working Group chaired by Philip Crutchfield KC. The Working Group consulted widely both within and externally to the Bar, meeting with members, the judiciary, clerks, the regulator and other interested stakeholders to better understand what our immediate and long-term objective should be.

Bar Council has approved the draft Strategic Plan presented by the Working Group and I encourage all members to read the Report and the Strategic Plan that are available on the member's section of the website. The new Strategic Plan includes collegiality as part of our vision:

Collegiality—VicBar is one Bar, united by respect for (a) the administration of justice, (b) the rule of law and (c) each other, as

frank and fearless advocates who play an integral role in the legal system.

To my mind, collegiality together with the new strategic objective of supporting a strong and independent VicBar, will be the key to our future strength. The Bar is of course made up of people with diverse backgrounds, opinions and experiences and the Strategic Plan has as one of its objectives that the diversity of the Bar will reflect the community that it serves. But whilst we celebrate our differences, it is our shared professional standards, common values of decency, respect and dedication to professional excellence that will always bind us as a college.

Another key focus this year, as last, has been the health and wellbeing of our members. Practice at the Bar is demanding and often highly stressful. Whilst the State of the Bar Survey conducted in October last year (and the subject of a Report in this issue) suggests that on the whole, our members are coping well and find their work rewarding, it also points up the need for further work. This issue of *Victorian Bar News* is one way we can help our members by sharing individual and collective experiences and wellbeing strategies. But the work continues all year round driven in large part by our Health and Wellbeing Committee. Its groundbreaking initiatives, such as the film *Bar None*, launched in April, have honed in on the nexus between health and wellbeing, and the demanding nature of our profession and are supporting us all as we navigate the intricate balance between our professional obligations and personal lives.

The State of the Bar Survey revealed other positive trends such as a welcome reduction in the gender pay gap, a notable increase in the representation of women at the Bar, and a marked decline in incidents of discrimination and harassment. Of course, none of us can afford to be complacent and the work continues, but we can all be hopeful that there

has been a shift in the culture of our workplaces. The Bar will continue to provide essential resources, including professional education and training as well as access to free 24-hour counselling services, to help members deal with their professional obligations in this regard.

The Bar Council has continued to carefully monitor the impact from last year's repricing of chambers by BCL. In addition to the repricing, tough economic times on the back of the pandemic, have seen land taxes and other State Government levys as well as landlord outgoings increase dramatically. It has been a difficult environment to manage, and we have learnt that the BCL model works best when we own the buildings that house our chambers. The Chairman of BCL, the Honourable John Digby KC, and CEO Paul Clark have provided quarterly updates to the Bar Council. The increasing number of chamber vacancies is also being managed. The BCL model, which affords barristers the opportunity to practise without the heavy financial commitments required in other States, and supports our technology and other chamber needs, accommodating us in close proximity to each other, has not only cultivated a culture of collegiality but has supported us to thrive as independent specialist advocates. As the new Strategic Plan attests, the Bar Council firmly believes that the success of the Bar and the achievement of a number of its strategic objectives is in no small measure reliant upon the success of BCL.

I am very pleased to provide an update on Bar's IT Project. In March, we celebrated the successful launch of the Mediation Centre's new booking system, which enables clients to manage their bookings online and has relieved our staff from those tasks. Looking towards the future, we eagerly anticipate the upcoming launch of our new website in August and the accompanying infrastructure upgrades that will streamline subscription payments and enhance members' experience across all platforms.

Our annual Bar Dinner 2024, hosted at the National Gallery of Victoria, was an outstanding success. And of course, no Bar dinner is a success without a great guest speaker and the Honourable Justice Robert Beech-Jones certainly delivered. He was warm and funny and his tribute to our Bar was enthusiastically received. He put a very good argument for the proposition that the composition of the Victorian Bar is a matter of public interest and that we should do what we can to ensure that it reflects the community that it serves. His Honour complimented the Victorian Bar for the structures and policies that it has in place, which are designed to ensure as much as possible that it does.

One of the best things about being president of this Bar is the opportunity to see how it all works. There are so many moving parts, overseen by our conscientious Bar Council and driven by an efficient Bar Office under the stewardship of the Executive Director, Amanda Utt. Feeding into all of that is the tireless voluntary work of our members who contribute to our committees, associations, education programs and other Bar activities. I thank them all for their dedication and their professionalism. I also thank the Executive of the Bar Council, Vice-Presidents Colin Mandy SC and Elizabeth Bennett SC, Honorary Treasurer Sarah Keating and Assistant Honorary Treasurer Raini Zambelli. They have all been of enormous assistance to me and the work is easy and fun when shared with such a crack team. Last, but not least, I thank Kai Li Zhu our Senior In-house Legal Counsel and Sharni Doherty our Executive Assistant with whom I have worked closely and for whom nothing is too much trouble.

Finally, I congratulate the Editors of the *Victorian Bar News* and their Committee on another excellent issue. As you read these pages, spare a thought for the hours they have spent planning, writing, cajoling and proof reading and all in their spare time. ■

AROUND Town

Opening of the 2024 legal year

VBN

Justice Quigley noted that the ceremony for the Opening of the Legal Year has “ancient antecedents” with similar ceremonies dating back to the 13th century in England and Europe. In Victoria, the tradition of lawyers seeking guidance in preparing for the new legal year continues to reflect the diversity of faith and culture in our State.

This year’s ceremonies included a morning tea after Mass at St Patrick’s Cathedral, East Melbourne, a service at the East Melbourne Hebrew Congregation, a collaborative service involving the Greek, Antiochian, Russian, Serbian and Romanian Orthodox Churches at St Eustathios Greek Orthodox Church in South Melbourne, an ecumenical service at St Paul’s Cathedral in the CBD, and a community-based event at Deakin Law School’s Waterfront campus in Geelong. ■

Photos of Red Mass courtesy of Catholic Archdiocese of Melbourne. Photos of Geelong from the Law Institute of Victoria. Photos of the East Melbourne Synagogue were provided by the Synagogue itself.



RED MASS: Back row: The Hon Tim Ginnane, Associate Justice Gobbo, Justice Cosgrave, Justice Wheelahan. Front row: Justice Forbes, Justice Croucher



RED MASS: Judge Ginnane, Roisin Annesley KC, David O'Brien



GEELONG: Magistrate Guthrie, Jaz Goddard, Jenni Lightowlers, Judge Tran, Justice Quigley, Patrick Emerton, Magistrate McGarvey, Justin Hannebery KC, Magistrate FitzGerald, Adam Awty



East Melbourne Synagogue



Naomi Lenga, Danielle Meyer, Rebecca Preston, Adele Katzew



Georgina Schoff KC and Robert Richter KC

Barbara Hocking portrait unveiling

SIOBHÁN RYAN, ART & COLLECTIONS COMMITTEE

It took some time, but the Bar has secured a brilliant portrait of Barbara Hocking (Bar Roll No 1256, 1976), which was unveiled by her daughter, Emeritus Professor Jenny Hocking on 27 February 2024.

Recognition of Barbara also took time. She was the first barrister briefed in the *Mabo* case and has been acknowledged as its intellectual architect; yet her name is frequently overlooked in connection with it.

It is fitting that after a lengthy search for a suitable portrait, the Art & Collections Committee secured this wonderful photo taken on a fact-finding mission to Mer Island in 1983. It shows Barbara in the company of Father Dave Passi (*Mabo* co-applicant) and Mrs Flo Kennedy, also a land rights activist. The photographer is the Bar's own Dr Bryan Keon-Cohen AM KC, who was at that time the junior barrister to Ron Castan QC. Bryan could hardly have imagined that it would one day hang in the Peter O'Callaghan QC Gallery. Yet, when we look at this photograph now, we can appreciate how well it sits among the Bar's portraits; how well it captures Barbara Hocking and Father Passi and Mrs Kennedy and the Mer Islanders; how the red flowers and the peeling red paint of the dray just pop! How it captures a time when a tractor and dray were used to convey important visitors from the air strip; a time when the falsity of terra nullius prevailed.

In this edited extract from her lecture, Jenny describes how 10 years of academic and legal work

underpinned the paper delivered by Barbara to the 1981 Townsville conference, *Land Rights and the Future of Australian Race Relations*, which was the genesis of *Mabo*.

Barbara Hocking: "Putting the law to rights"—a lecture by Emeritus Professor Jenny Hocking

Warning: this paper contains names of deceased persons of Aboriginal and Torres Strait Islander descent.

Since time immemorial the Torres Strait Islands of the Mer (known as Murray), Danar and Waier and their surrounding seas, seabeds, fringing reefs and adjacent islets have been continuously inhabited by people called the Meriam people—Statement of Claim, *Mabo* (No. 2).

Barbara Hocking was admitted to practice in Victoria in November 1975 and in the ACT in December 1975. She signed the Victorian Bar Roll in March 1976 and read with Leonard Ostrowski, later QC and a judge of the County Court.

In 1981 she commenced work as the first barrister briefed by Eddie Koiki Mabo and Father Passi, later joined by plaintiffs Sam Passi, James Rice and Celuia Mapo Salee, in the case that would lead a decade later to the High Court of Australia and one of the most important judgments in this nation's history in *Mabo v Queensland (No 2)*.

My mother's work on the *Mabo* case grew out of a decade of legal argument she had developed on the recognition of native title in the common law: from her 1970 Master of Law thesis at Monash University called *Native Land Rights*, her 1974

Master of Arts qualifying thesis (also at Monash), called *Aboriginal Land Rights: An Australian Injustice*, her 1988 edited collection *International Law and Aboriginal Human Rights* and numerous speeches and articles. The best known of these was her robust, rigorous, legal shake-down of the *Milirrpum* or Gove case in the *Federal Law Review* in 1979, "Does Aboriginal law now run in Australia?"

But without a doubt the most important of these public contributions was the paper Barbara delivered at the famous 1981 Townsville conference, *Land Rights and the Future of Australian Race Relations*. The conference was co-chaired by Eddie Koiki Mabo and historian Dr Noel Loos, and organised by the Townsville Treaty Committee and the James Cook University Student Union.

Although the Townsville Conference is widely seen as the formal beginning of the *Mabo* case, the conceptual development for my mother had begun a decade earlier. For "nearly 10 years before the conference," as Dr Nonie Sharp describes, Barbara "had raised the issue of whether prior titles did exist in Australia despite official denial; if so, what was their nature, and were these titles part of the common law?" The renowned Canadian legal and political theorist, Professor Peter Russell, has similarly reflected on the centrality of Barbara's work at this formative stage, describing her as "very much, the intellectual architect of the *Mabo* case".

In her paper, "Is might right? An argument for the recognition of traditional Aboriginal title to land in



the Australian courts", Barbara argued that a "test case [should be] brought by a group of Queensland Aboriginals who still live on their tribal lands", to determine whether they had a "just and legal" claim to their lands and thereby overturn the specious notion of "terra nullius" still embedded in Australian law. Even if this case was not successful, she told the conference, it would serve as a catalyst for political action; it "could influence the attitudes of white Australians [she said] ... It might for example lead to the establishment of a Court of Claims and an Aboriginal Claims Commission and a Treaty [Makarata]".

Dr Noel Loos has described the sequence that followed:

Barbara Hocking delivered a paper proposing that an aboriginal group should consider a High Court challenge

and detailed the international and Australian legal history which she believed would support such a claim ... The Murray Islanders returned from a group discussion determined to take up the challenge.

As the conference ended, Eddie Koiki Mabo and Father Passi briefed Barbara as barrister and Greg MacIntyre, who would be the solicitor throughout the case, to commence work on their claim in the High Court. Ron Castan QC soon joined with Bryan Keon-Cohen. In May 1982, the statement of claim initiating the case was issued in the Brisbane Registry of the High Court on behalf of the now five plaintiffs.

For the next eight years the *Mabo* case was the central goal of Barbara's legal work and the highest priority in her practice at the Bar.

The *Mabo* case was the end of the legal fiction of "terra nullius", and the beginning of the political struggle to turn the High Court's landmark decision into action. Barbara never stopped working to achieve that. Shortly before she died she wrote:

The *Mabo* decision achieved a balance on the scales of legal justice of which we can all, especially those of us who care about the rule of law, be extremely proud. Political justice then is the next step: when a Reconciliation Compensation Commission is set up, and the change of sovereignty is embodied in a formal Treaty Agreement.

She called this the "unfinished constitutional business" of the High Court's decision in the *Mabo* case. ■



Justice Attiwill, Justice Waller



Daniel Preston, Angelo Germano, Alexander di Stefano, Simone Kipen, Jesse Rudd

CommBar annual cocktail party

VBN

The commencement of the 2024 legal year saw CommBar host its annual drinks party at the Owen Dixon Commonwealth Law Courts Building on 8 February 2024.

A large turn-out of CommBar members, commercial judges and the many solicitors who work with the commercial bar and practise in the commercial courts in Melbourne was an encouraging way to commence the new legal year and to mark CommBar's 30th anniversary.

CommBar continues to deeply appreciate the support of the commercial judges and, in particular, thanks Chief Justice Ferguson of the Supreme Court, Chief Justice Mortimer of the Federal Court, and Chief Justice Alstergren of the Federal Circuit and Family Court for generously agreeing to host the event, which will be back again next February. CommBar also thanks Raini Zambelli for her exceptional event organisation. ■



Chief Justice Ferguson



Jane Lindgren, Gayann Walker



Sam Hay KC, Justice Cosgrave



Paul Hayes KC, Justice Attiwill, Justice Clayton



Willem Drent, Christopher Lum



Paul Hayes KC, Raini Zambelli, Chief Justice Mortimer, Chief Justice Ferguson, Chief Justice Alstergren



Harry Higgs, Georgia Maiorana, Natasha Mastoianni, Jason Glass



(L-R) Jeanette Swann, Caroline Paterson, Jeff Stanley

Family Law Bar Association lawn bowls

JEANETTE SWANN

On 16 February 2024, the Family Law Bar Association held its now traditional annual lawn bowls event at the City of Melbourne Bowls Club in Flagstaff Gardens. It was another great night with 210 tickets sold! In the Bar & Bench versus Solicitors competition, the Bar & Bench were unfortunately trounced by the Solicitors in the

grand final, but it was a close-run thing, with the winning margin measured with scientific precision in bare feet. Thanks to Judge Bender for enthusiastically captaining the competition. The spirited rounds of bowls were paused for a meal of spit roast and salads—perfect for a balmy evening.

The lawn bowls function is always a great opportunity for those

members of our Bar practising in family law to socialise in an informal atmosphere over a meal and a few drinks with instructing solicitors, and judges of the Federal Circuit and Family Court and their associates. Despite the fierce competition on the green, a good time was had by all. Next year the Bar & Bench side will need to lift its game and bring the trophy back home! ■



Judge Evelyn Bender



Matt O'Grady, Rhiannon Saint, Laurence Fudim, Judge Alison Burt, Harriet Geddes

Open Justice Project and Pro Bono Committee Community Drinks

LAURA HILLY AND TIM FARHALL

On 26 February 2024, the Victorian Bar Pro Bono Committee hosted a successful Pro Bono Community Drinks event at the Essoign Club, sponsored by the Victorian Bar and Svenson Barristers.

Almost 100 members of the Victorian pro bono community, including judges, solicitors from the community legal sector and private practice, representatives from Justice Connect, the Australian Pro Bono Centre, and law students gathered to celebrate the commencement of the new year.

Justice Claire Harris of the Supreme Court and Professor Jeff Giddings of the Monash Faculty of Law spoke to the audience about the value and importance of pro bono work.

Justice Harris reflected on the valuable assistance pro bono legal

representation provides to not only those who appear before the court, but the court itself. Her Honour also reflected upon the importance of pro bono work, and the professional opportunities it provided during her time in practice to make a substantial difference in the lives of help seekers.

Professor Giddings spoke of the value of experiential legal education in providing opportunities for students to engage in real life legal practice, enabling them to make a contribution today and providing invaluable experience for their future careers. Professor Giddings spoke of the particular contribution that the Open Justice Project plays in providing this opportunity to students.

The Open Justice Project is a collaboration between the Victorian Bar and the Monash Faculty of Law. The program assembles a pool of latter-year law students who are trained and ready to assist barristers

who are themselves working on a pro bono, or "low bono", basis. In its three years of operation, the Open Justice Project has consistently received extremely positive feedback from those who use the service. Barristers report that the Open Justice Program enabled them to do more pro bono work than they otherwise would have been able to do, with colleagues describing the program as providing "invaluable assistance", "an absolute asset to the pro bono bar", and even as a "godsend". Student participants have been described as "diligent and committed" with barristers consistently reporting that the standard of work is excellent.

Barristers are encouraged to think of engaging a student from the Open Justice Project to assist them on their next pro bono brief. If you would like read more about the Open Justice Project, or request the assistance of a student on a pro bono matter, please visit the Victorian Bar website. ■



L-R: Professor Jeff Giddings, Dr Laura Hilly, Geraldine Gray, Willem Drent, Justice Harris, Tim Farhall, Melissa Fletcher, Sally Andersen

Dr Michelle Sharpe, Abi Richardson, Darren Mort



All Bar None: a groundbreaking initiative for barrister wellbeing

DR MICHELLE SHARPE

The Victorian Bar recently released a groundbreaking film focused on barrister wellbeing. This initiative comes at a crucial time when the legal profession is increasingly recognising the importance of mental health and self-care for practitioners. The film, titled *Bar None*, aims to raise awareness about the unique wellbeing challenges faced by barristers.

The film is an initiative of the Bar's Health and Wellbeing Committee, which I was proud to chair in 2023. The film was produced by Darren Mort and Abi Richardson. The Supreme Court made one of its court rooms available for filming and Ludlows Legal Regalia supported the film by loaning judicial robes. The costs of the film were otherwise met by a grant from the Legal Services Board. The film has been posted to the Wellbeing Portal on the Bar's website.

A portion of the film was screened at the Wellbeing for Law Network national conference in February 2024. The conference provides a forum for lawyers, regulators, and academics around Australia to discuss the latest research on wellbeing in the legal profession and in legal education. The film was very well-received, and it is likely to be played further afield to law students and lawyers across the country.

One of the key messages of the film is the importance of self-care and work-life balance for barristers. Long hours, high-pressure cases, and the emotional toll of legal work can take a significant toll on mental health. By prioritising self-care practices such as exercise and mindfulness, and setting boundaries around work, barristers can better cope with the demands of the profession and maintain a healthy work-life balance.

The film also highlights the role of the legal profession in supporting barrister wellbeing. The courts, chambers, and professional associations can play a crucial role in creating a culture that values mental health and provides resources and support for barristers. By implementing policies that promote work-life balance, offering access to mental health services, and fostering a supportive and inclusive work environment, organisations can help barristers thrive in their careers while prioritising their wellbeing.

Overall, the Bar's film on barrister wellbeing is a significant step forward in promoting mental health awareness and support in the legal profession. By starting a conversation about mental health, the film empowers barristers to take control of their mental health and seek help when needed. Initiatives like *Bar None* are essential in creating healthier and more resilient barristers who can continue to serve their clients with excellence and compassion. ■



The tunnel guy: a conversation with Arnold Dix

JOHANN OLLQUIST

On 28 February 2024, the Bar hosted “A conversation with Arnold Dix”. Those who attended were treated to the cracking account of how a mild-mannered barrister at the Victorian Bar leads a remarkable double life as a genuine superhero.

Arnold was called to the Bar in 1990, reading with Justice Robert Osborn, but has maintained a dual-practice as a barrister and a renowned engineer. Since 2008, he has been the Australian delegate to the Permanent International Association of Road Congresses (PIARC); he holds a chair as a visiting professor of engineering at the post-graduate University of Tokyo; as well as chairs at the Queensland University of Technology and the University of Western Sydney.

Arnold has given legal advice and appeared in numerous disputes relating to tunnels and other engineered spaces, both as an advocate and an arbitrator. He holds appointments on dispute



avoidance boards and tender evaluation panels around the world. He is a committee member of a series of United States standards committees relating to road tunnels and underground risk assessment. Arnold has developed a new standard form contract for underground work on behalf of FIDIC—the world tunnelling organisation based in France. This has been adopted by the United Nations for international use and has received widespread acclaim for the clarity of its apportionment of risk.

In March 2011, Arnold was awarded the Alan Neyland Australian Tunnelling Society Biannual Award for excellence in tunnelling (tunnel fire safety) and his contribution to fire safety around the world. This is the highest honour for tunnelling professionals in Australia.

Justice Osborn introduced Arnold to the audience and, in his opening remarks (an excerpt of which follows), gave those in attendance a flavour of Arnold’s fascinating professional history and a taste of what was to come in Arnold’s address:

Some months ago one of my daughters selected a t-shirt for me bearing the legend, “You don’t scare me ... I have two daughters.” If I were to select a t-shirt motto for this evening it might read, “You don’t scare me ... I had Arnold Dix as a reader.”

Although I have nine ex-associates practising at the Bar, Arnold is one of only two remaining readers still in practice. The other is Chris Townsend and I am proud of both of them. In Arnold’s case, it is because he has the scientist’s love of truth and the good barrister’s love of justice.

It is my role tonight to give you some brief background facts about Arnold and he will then give you a presentation with respect to the Himalayan tunnel rescue which has brought him to international prominence.

Arnold grew up for part of his childhood in the Snowy Mountains at Jindabyne and this led to a fascination with tunnels and engineered spaces which has run through his life ever since. His first undergraduate degree was in Earth Sciences at Monash University. And he went on from there to post-graduate work at the

Ranger uranium mine in the Northern Territory, where he investigated the consequences of the transport of yellowcake for the surrounding environment. The results of his findings caused some controversy and led to his giving evidence before a Senate enquiry into the effects of the mining on Kakadu. In turn the controversy led to an awareness that he would like to engage in a different way with the social and environmental consequences of underground projects by completing a law degree.

He did this at Monash [University] and then did articles with Blake & Riggall before reading with me immediately after admission.

[He] gradually became involved in environmental cases of increasing complexity and importance, including cases relating to the Queenscliff marina redevelopment, the Mukhatar basin (in which he was junior to Stuart Morris KC), and the environmental impacts of Citylink. I should interpolate that much of his initial environmental work was done pro bono as has most of his international work since that time.

The Citylink environmental impacts work required the organisation and assembly of international opinion evidence with respect to tunnelling practice and in turn work done in the UK led to him being invited to join the PIARC, and to the development of specialist expertise relating to environmental risks, fire and life safety issues arising from underground engineering.

Following the Burnley Tunnel tragedy, Arnold was retained by the Crown to report independently as to its cause and related safety issues. His report formed the basis of a coronial enquiry and related criminal prosecutions undertaken by Paul Willey KC.

Since then he has had expert involvement in the investigation of tunnelling and related issues in a whole range of circumstances including: the use of tunnels under [the World

Trade Centre’s] “Twin Towers” for evacuation purposes after their collapse; underground terrorist attacks in London and Madrid; and rescue operations involving people trapped in collapsed buildings in Saudi Arabia, Qatar, Australia, Ireland, the United Kingdom and India.

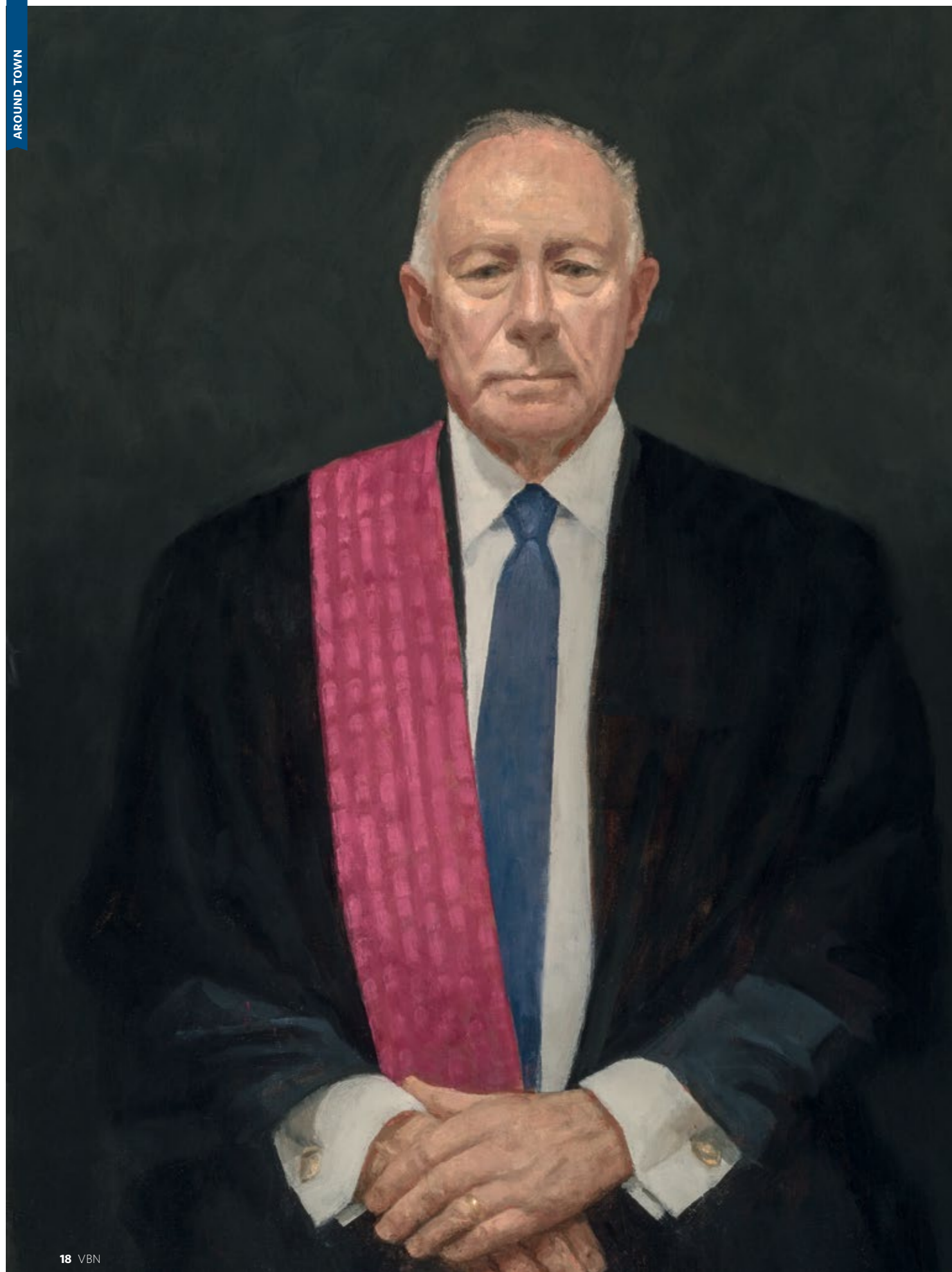
Since 2022, Arnold has been the President of the International Tunnel and Underground Space Association—a United Nations NGO based in Geneva. This is the world peak independent scientific and engineering association focussed on the underground. It is in that honorary role that he was contacted by the Indian Government in relation to the Himalayan tunnel collapse—first for preliminary advice and then for assistance on the ground.

As Justice Osborn indicated, Arnold had been called upon by the Indian government to assist with the rescue of 41 trapped miners high in the Himalayan mountains. Arnold made the promise upon his arrival at the collapse site that everybody would get out alive and that all would be home by Christmas, and through skill and calm endeavour, that is what eventuated.

Arnold hosted an extraordinary evening explaining the feat. Technical hurdles were overcome, including by a “softly softly” approach, removing the rock by hand, one bucket at a time. The success of the rescue was made possible by Arnold’s nuanced advocacy and skilful management of villagers, who believe the anger of the mountain gods caused the collapse, rescuers, the Indian government, the media, and those being rescued.

Australian Story, who were present at the event, aired a show on the ABC featuring Arnold on 15 April 2024. He can also be found in a viral YouTube video dancing for joy with other members of the rescue team.

And if you are ever visiting India, you can pick up an Arnold Dix doll or purchase an Arnold Dix costume. He is truly an exceptional member of our Bar. ■



The Hon John Middleton AM KC portrait unveiling

SIOBHÁN RYAN, ART & COLLECTIONS COMMITTEE

The unveiling of the portrait of the Hon John Middleton AM KC by Rick Amor on a warm evening last November was a gathering of family, friends and fans. Middleton is universally admired as a lawyer, judge and family man and the admiration was definitely on show. Philip Crutchfield KC “did the honours” noting John’s academic achievements (First Class Honours at University of Melbourne and Oxford University) and his illustrious career, from being an associate to Sir Ninian Stephen in the High Court to dazzling in the Federal Court. The artist, Rick Amor, was an appropriate choice since he had painted Sir Ninian for the Bar in 2006. Their portraits hang alongside each other, with Amor’s 2017 portrait of the late Peter O’Callaghan QC completing the triptych.

Perhaps against popular expectations, Amor’s portrait captures Middleton in a pensive moment. It is a side of him which the former Chief Justice James Allsop also captured in this word portrait on Middleton’s retirement from the Federal Court in 2022:

John has been a superb judge; wise, scholarly, calm and generous in spirit, with a gift for finding the solution to the central issues at hand. He has been an invaluable and kind colleague, with never an unkind word to say of anyone.

Both portraits are apt.

Crutchfield has kindly allowed the *Victorian Bar News* to reprint his very entertaining speech. ■



Speech delivered by Philip Crutchfield KC

This gallery celebrates distinguished people in our profession, and it is appropriate that John joins that group.

Not only is it appropriate that John joins this gallery, but it’s also appropriate that his portrait hangs next to Sir Ninian Stephen, and just down the corridor there is a portrait of Chief Justice Michael Black, with whom John read.

Michael Pelly of the AFR is a lawyer and a well-known chronicler of our industry. He has amongst other things written the biography of Murray Gleeson. As Pelly said, and I quote: “Middleton is regarded as one of the best judges in the history of the Federal court, someone who was unlucky not to be tapped for the High Court.”

And Chief Justice James Allsop said: “John has been a superb judge; wise, scholarly, calm and generous in spirit, with a gift for finding the solution to the central issues at hand. He has been an invaluable and kind colleague, with never an unkind word to say of anyone.”

John graduated from the University of Melbourne with First Class Honours and a BCL from Oxford with First Class Honours. He was admitted to practice in 1976 and, after serving as an Associate to Sir Ninian Stephen in the High Court, was called to the Bar in 1979.



Banjo McLachlan,
Luke Merrick SC,
Oliver Lloyd



The Hon John Middleton AM KC

He was appointed Senior Counsel in 1991 and was Chair of our Bar for 18 months in 1996 and 1997. In that regard, on the way here I had a look at the photo of John which is in the entrance to Owen Dixon along with all the other past Chairs and Presidents of the Bar. I took a photo, which I can show you later. Underneath the photo of John there is a caption: "Chairman 1995-1997". Now, although Ken Hayne famously and correctly has observed that there is nothing more dangerous than a lawyer with a calculator, even I can work out that it is mathematically possible for a person to be Chair of the Bar for 18 months and for that period to span three years.

However, I think we can all agree that the caption gilds the lily somewhat and suggests John reigned for three full years. In the more tolerant days of the 1990s, the statement would perhaps be regarded as mere puffery, but by today's more unforgiving standards, it is seriously misleading. An offended viewer of the photo would be perfectly entitled to write to the Bar Council asking for

the offending photo to be burnt to a cinder, torn down, or at least ask for the offensive caption to be redacted. Then it occurred to me that perhaps in John's head he was Chair of the Bar for three years, and the caption is just a statement of his opinion.

John's extra curial activities include being a former member of the University of Melbourne Council, Chairman of School Council at Camberwell Grammar, President of the Oxford Society in Victoria, a Fellow of the Australian Academy of Law and a member of the American Law Institute. He was awarded the Centenary Medal in 2003 for services to the Bar, to the community and to education and is a Member of the Order of Australia.

I had the privilege of sitting on the Bar Foundation Board with John, until he resigned. Prior to his resignation, a Federal Court judgment had decided that it was not possible for a director to delegate the task of reading and understanding financial statements, at least as they relate to the financial health of the company. This was apparently now the law notwithstanding the

existence in the *Corporations Act* of a specific section that had been understood to mean that directors did not have to personally audit or cross check the accounts themselves.

At every board meeting I would repeatedly ask John if he had read and understood the financial statements, had read the footnotes thereto and had stayed up to date with any changes to Generally Accepted Accounting Principles. Being a very busy Chapter III Judge, I think John might have found it hard to think about strategies for the Foundation, such as how we could increase equity and opportunities for children from disadvantaged areas to be able to have careers like ours, when I was constantly in his ear reminding him that he needed to be buried in the minutiae of numbers. Anyway, John resigned. I'm not sure why. Perhaps it was a response to my relentless teasing, or perhaps he was concerned about personal liability for breach of duty.

Sir Ninian and John have many things in common.

They both met their wives at University. Sir Ninian often claimed

that the greatest gift Melbourne University gave him was his wife Val, and I know John feels the same about Judith. I don't propose to ask Judith publicly whether she feels that John also represents a gift.

Both Sir Ninian and John have scholarships at the university in their name.

Their portraits are also by the same painter, Rick Amor.

Both had a similar understanding of the judicial role.

At the welcome many years ago of Justice Julie Dodds Streeton, her Honour quoted from the literature of the Egyptians a passage which has stuck in my mind ever since. It starts: "*If you are a man who Judges, listen patiently to one who pleads.*" And concludes; "*Not all one pleads for can be granted but a good hearing soothes the heart.*"

John has always understood that what litigants want is what we all want: to be listened to.

John also understands Einstein's rule: make everything as simple as possible but not simpler. John can reduce complexity and identify the issues, producing reasons of great

clarity and in a timely manner.

He is not self-indulgent or sanctimonious, and he has a sense of proportion. He also knows that respect for the legal system depends upon judgments being produced in a timely manner. That is what the community reasonably expects.

John is also not a life draining pessimist who sees difficulty in every opportunity. John is an optimist who sees the opportunity in every difficulty. He is unfailingly kind, happy and generous. Happiness and enthusiasm is infectious and is important in a job and profession that comes with considerable stress.

John is a genius at bringing people together. Talent can identify difference, but it takes genius to identify the things that bring us together. I think the quote from Maya Angelou sums up what a lot of people think about John:

"People will forget what you did, they will forget what you said, but they won't forget how you made them feel."

There are many stories about John. I will finish with two.

When John was appointed to the court, he told me that he understood that there was a convention that after an appellate hearing the three judges would discuss the appeal and if there was agreement between the judges it would fall to the most junior judge to write the judgment. John didn't think this was such a brilliant system for him. So, he was going to modify it. At the end of each hearing, he would listen to the other judges' views and politely explain that he couldn't agree. The other more senior judges would then head off to draft their reasons which they would email to John in due course. He would then email back saying, "You know what, having read your judgment, you've convinced me".

John taught me the "three As". Availability, Affability and Ability, *in that order*. As these things go, John learnt them from Allan Myers, who learnt them from Ron Castan.

Engaging in nonsense revisionist thinking of which we can all be guilty, yesterday John told me he would now add "Affordability". If that were included, John would never have been briefed! ■

Chambers reimaged

KOIKI MABO CHAMBERS

In February 2023, Koiki Mabo Chambers opened its doors as an independent chambers. Located on the lands of the Wurundjeri People of the Kulin Nation at 66–68 Dudley Street West Melbourne, it overlooks Flagstaff Gardens and is currently home to 20 barristers. After a period of operations while renovations were underway, we held our formal opening on 15 March 2024.

Our chambers is named after Koiki Mabo, known to many as Eddie Mabo, with the permission of his daughter, the celebrated artist and curator Gail Mabo. We sought Gail's permission to name our chambers after her father as a way of honouring him and his work in advocating for the land rights of First Nations people within Australia's colonial legal system. Gail Mabo's "star maps"—a representation of her father's maps of his ancestral lands—hang in the common area of Koiki Mabo Chambers, overlooking Flagstaff Gardens. We hope that the name also encourages contemplation of how lawyers and the broader community can work together to develop a legal environment to serve us all.

Koiki Mabo Chambers seeks to create a diverse chambers with a strong sense of community. Our emphasis on diversity is reflected not only in those who have come together to create our chambers, and the processes we have put in place to choose members, but also in the culture we are seeking to build. We want it to be a place where each member feels comfortable and can be themselves, recognising that barristers come from all walks of life, and every barrister should feel comfortable to bring their whole self to work.

In order to build community in our chambers, most of our barristers choose to work in group work spaces of varying size, with easy access to private space, online hearing rooms and meeting rooms as needed. The design of the chambers (which spans three levels of a stand-alone building) also promotes interaction and collaboration through the prioritisation of welcoming communal space, where members are encouraged to come together. The design of our chambers also reflects an intention to work as barristers in a less hierarchical way.

In creating our chambers, we have been conscious of the stresses faced by barristers in their working lives (and in juggling their personal lives with their working lives). Opportunities to connect are, as a result, particularly

important. Taking the time in chambers to de-brief with a colleague or to ask a question of another barrister can really help ease the load. The physical design of our chambers is aimed at increasing these opportunities.

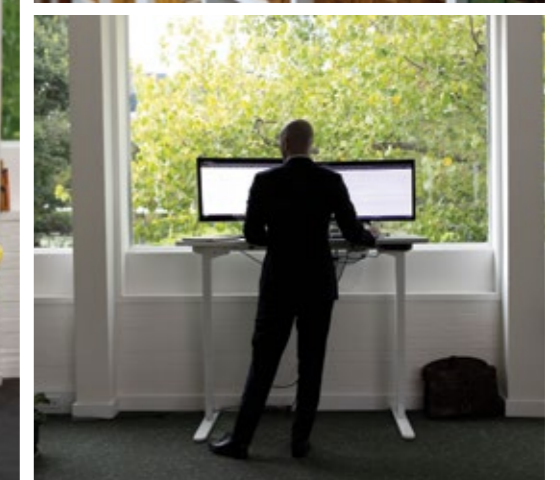
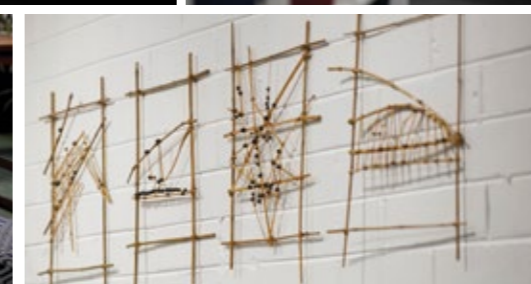
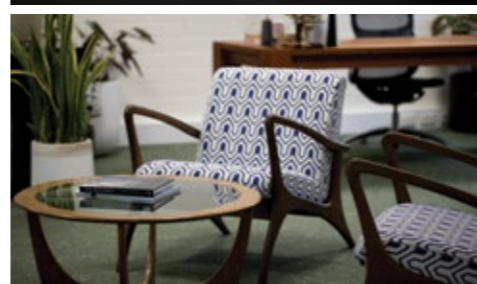
From a wellbeing perspective, our proximity to Flagstaff Gardens has been a real bonus. Walking to chambers through the gardens after court is a great way to de-stress, as is being able to watch the goings on in the gardens throughout the work day from our chambers windows. Most of all, the intentional building of community is something that junior barristers joining our chambers were looking for. This has particularly been so for members who signed the Bar Roll during COVID lockdowns, or were in their early years of the Bar during that period.

We are also keen to build community beyond our walls and beyond the world of the Victorian Bar, through collaborations with others connected to the legal world (such as community organisations, community legal centres, and academics).

Our chambers is an independent chambers. While five of our members bought the building, every member pays rent on a month-to-month basis in the same way as barristers do in a BCL building. Other than the payment of rent on a monthly basis, there is no financial 'barrier to entry' for any of our members, thereby continuing the Victorian Bar's long-standing (and important) emphasis on improving equality of access to chambers. We have sought to replicate the terms of other Melbourne chambers in many respects, and so for example, readers who wish to stay on are offered a discount, and the Victorian Bar parental leave subsidy is available for members of Koiki Mabo Chambers.

Consistently with our emphasis on collaboration, decision-making within our chambers is not based on seniority. Instead, two members of chambers act as co-convenors to facilitate the decision-making process for the wider group, with sub-committees set up to work on stand-alone projects of importance to our members. The leadership of our chambers rotates periodically, decided by all members.

We welcome all members of the Victorian Bar who would like to see what we're doing to get in touch, and come over and have a look around. It is a lovely stroll through the gardens. Our website is: koikimabochambers.com.au 📍





Candid Camera: *Pink and fitting*



VBN EDITORS

In this edition's Candid Camera, we look at the chambers of a junior commercial barrister who sought to combine certain of the traditional features of a barrister's chambers and give them a softer, modern feel.

In 2024, the counsel of 'pink for girls, blue for boys' is viewed as hackneyed and antiquated and, thankfully, mostly honoured in the breach: men have been wearing baby pink shirts for as long as TM Lewin has been in operation. But a hot pink sofa in the refined chambers of commercial barrister Georgie Coleman doesn't read as obvious or antiquated – rather, it gives off a vibe of deftly balanced modernity and playfulness without forgetting its place in a professional setting.

Georgie – at least subconsciously – took inspiration for her future workspace from the time she read on level 6 of Joan Rosanove Chambers. Walking by the well-known photo of Rosanove QC each morning, she'd be taken by the 'the delightful sum of her wig and gown, Mona Lisa eyeroll, and cigarette holder between (lightly chipped) manicured nails'. Georgie was enamoured of the 'old school meets contemporary woman' aesthetic encapsulated in that photo and happily acknowledges that it has informed both the style of her chambers and her work attire.

After moving from JRC to various rooms within Aickin, Georgie has settled on level 19. She was previously on that floor two doors down in a room with



an inbuilt bar fridge (something she still misses) but nabbed her present room when it came up because it had a Supreme Court view and a spot for readers. It would also prove to be a fitting spot for her emerging collection of furniture by venerated European designers, all found at auction houses over the years.

Georgie's aim was to take 'a traditional barrister's chamber – VRs, brown Chesterfield sofa and imposing antique partner's desk – and give it a slightly subversive, hopefully stylish, and frivolously feminine update'. And subversively stylish might be an apt description for the hot pink sofa which is hard to miss upon entry to her chambers. Georgie had been looking for something from the 1970s French design school but balked at the asking prices – not only on High St, but Gertrude St too. When a fairly dilapidated blue 1980s 'Sity' sofa with tubular leather armrests by Antonio Citterio for BB Italia came up on an auction website for \$600, she knew that it was destined for 200 Queen Street. An interior designer friend encouraged Georgie's vision for 'Memphis-Milano' bright pink upholstery; the upholsterer on the other hand thought a 'tasteful navy tweed' might be more appropriate for a lawyer. Any visitor to her room knows how that contest ended. It now sits snugly against the southern window of the chamber, its watermelon hue bringing out similar tones in the painting hanging above it: *Bush Yam* by Jeannie Mills Pwerle ('beautiful and bringing some intersectionality to my feminine update'). A Corbusier lamp abuts *Bush Yam* and juts out over the sofa, and a 1950s Italian marble coffee table with faux-Egyptian legs provides a place to read or to rest her legs.

Aside from Joan Rosanove, a further inspiration for Georgie's room was the clandestine moniker given to the marble-laden chambers of a (now) Federal Court judge: the Italian Patisserie. Taking her cue from classic continental croissanteries, Georgie sourced a striking marble-topped, gold-trimmed desk with a corrugated base reminiscent of millefeuille by Italian designer Osvaldo Borsani. That the marble is a subtle pink is – according to Georgie – simply a coincidence. And sitting comfortably under Georgie's desk are two Patricia Urquiola 'Bloomy' chairs for instructors or colleagues.

The readers' desk is circa art deco and 'after' French

designer Jean-Michel Frank. A photo above the desk – *Di Young at the NGV, 1966* – gives the 'Inscouciant Woman Surrounded by Serious/Important Work Vibes' she seeks to channel.

Keeping her textbooks in order are a pair of art deco bulldog bookends – a gift from her mother when she signed the Bar roll. And watching over the bulldogs is an untitled bird sculpture by Patrick Kunoth which also serves as a wigstand, presumably leaving the nearby wigbox of her grandfather (Bar Roll No 447 to Georgie's 4665) pining for a purpose.

We think Ms Rosanove QC would approve. 🍷



Readers' Digest

March 2024

Each edition, we reach out to the latest cohort of readers to get to know them better

Jason Allen

Favourite fictional lawyer?

Eugene Young (*The Practice*). An admirably tough and ethical practitioner. Jack McCoy a close second.

If you could argue any historical case, what would it be?

The trial of Socrates. Would be fascinating, and I couldn't really get a worse outcome...

Best piece of advice you learnt in the readers' course?

As prepared as you might be, you can always be more.

Who are you reading with?

Mr Damien Hannan.

What is your guilty pleasure?

Hiding away in my sauna (which I designed and built by hand) with tunes pumping.

Michael Beaconsfield

Favourite fictional lawyer?

Jake Brigance, *A Time To Kill*. What a closing line!

If you could argue any historical case, what would it be?

South Australia v Commonwealth (1942) 65 CLR 373 because it established the power in this country.

Best piece of advice you learnt in the readers' course?

To make use of the "open door policy" at the Bar.

Who are you reading with?

Andrew Walker

What is your guilty pleasure?

Chatting to people.



Dylan Dexter

Favourite fictional lawyer?

Lionel Hutz.

If you could argue any historical case, what would it be?

My lunchtime detention for talking in class in Year 9.

Best piece of advice you learnt in the readers' course?

Superlatives are extremely redundant in legal writing.

Who are you reading with?

Sandip Mukerjea.

What is your guilty pleasure?

The last five minutes of last year's AFL semi-final between Carlton and Melbourne.

Dr Vincent Farrugia

Favourite fictional lawyer?

Vincent Farrugia.

If you could argue any historical case, what would it be?

Pell v The Queen [2020] HCA 12.

Best piece of advice you learnt in the readers' course?

Seize the day (off).

Who are you reading with?

Geoffrey Steward.

What is your guilty pleasure?

'80s karaoke.

Tom Egan

Favourite fictional lawyer?

Ainsley Hayes (*The West Wing*) because she truly believed in duty.

If you could argue any historical case, what would it be?

Tasmanian Dams, to save southwest Tasmania, even at the cost of empowering the Commonwealth.

Best piece of advice you learnt in the readers' course?

Preparation, preparation, preparation. And more preparation.

Who are you reading with?

James McKay.

What is your guilty pleasure?

Mint choc chip ice cream, straight from the punnet.

Elliott Young

Favourite fictional lawyer?

Lionel Hutz.

If you could argue any historical case, what would it be?

Donoghue v Stevenson, representing the slug.

Best piece of advice you learnt in the readers' course?

The three A's of being a barrister—Available, Affable, and Able.

Who are you reading with?

David Cronin.

What is your guilty pleasure?

Sovereign Citizen theories.



William Stone

Favourite fictional lawyer?

Rita Harrison Williams from *I Am Sam*. Pro bono.

If you could argue any historical case, what would it be?

Ben Roberts-Smith defamation trial. Watershed for many reasons.

Best piece of advice you learnt in the readers' course?

Find your own style.

Who are you reading with?

Andrew Barraclough.

What is your guilty pleasure?

Degustation dinners (with wine pairing).

Sam Crock

Favourite fictional lawyer?

Gerri Kellman (*Succession*).

If you could argue any historical case, what would it be?

Communist Party Case.

Best piece of advice you learnt in the readers' course?

Run your own race.

Who are you reading with?

Fiona Batten.

What is your guilty pleasure?

Binge-watching *Peep Show*.



MARCH 2024 READERS

FRONT ROW (L-R): Jessy Xie, Nilanka Goonetillake, Sana Gelic, Georgia Dobbyn, Rachel Cashmore, Stephanie Mann, Stephanie Young, Karen Liu, Rebecca Barrett, Kahliia Shenstone, Zeina Alhalabi
SECOND ROW (L-R): Sebastian Campbell, Jack Cleveland, Gary Zhang, Redmond Casey, Thea Casey, James Moutsias, Brittany King, Samantha Owen, Nina Vallins, Cameron Moir, Daniel Fawcett, William Stone, Stephen O'Connell, Joshua Teng, Rowan Slattery
THIRD ROW (L-R): Dylan Dexter, Alex Gelber, Scott Thomas, Sean Kelly, Gavin Rees, Michael Beaconsfield, Thibaut Clamart, Molly Deighton, Sam Mullaly, Vincent Farrugia
BACK ROW (L-R): Louis Dean, Isaac Guan, Magnus O'Mallon, Jason Allen, Stacey Stanley, Henry Hunt, Sam Crock, Eli Fryar, Tom Egan, Elliott Young, Jay Chandramohan

Rebecca Barrett

Favourite fictional lawyer?

Elle Woods—knows how to win a case while staying true to herself.

If you could argue any historical case, what would it be?

US v Virginia—it would feel pretty good to be the advocate that moved Ginsburg J to write probably her greatest defence of women's equality before the law.

Best piece of advice you learnt in the readers' course?

Your instructor has trusted you with the brief, now trust yourself and get preparing.



Who are you reading with?

Morgan Brown.

What is your guilty pleasure?

RuPaul's Drag Race.

Samantha Owen

Favourite fictional lawyer?

Jared (Toadie) Rebecchi from *Neighbours* because he is a champion for work-life balance in the law. The ability to run a successful law practice whilst simultaneously managing bi-weekly explosions, extra-marital affairs, life threatening injuries, wives returning from the dead and your neighbours inviting themselves over to your house every day is

something to be admired.

Best piece of advice you learnt in the readers' course?

Always assume the person you're talking about is married to the person you're talking to.

Who are you reading with?

Paul Kounnas.

What is your guilty pleasure?

Reality TV—except I'm not that guilty about it.



Who are you reading with?

Morgan Brown.

What is your guilty pleasure?

RuPaul's Drag Race.

Best piece of advice you learnt in the readers' course?

Always assume the person you're talking about is married to the person you're talking to.

Who are you reading with?

Paul Kounnas.

What is your guilty pleasure?

Reality TV—except I'm not that guilty about it.

Stephen O'Connell

Favourite fictional lawyer?

Although I am afraid of attracting the VLSCB's attention, I can't go past Cleaver Greene from *Rake*.

If you could argue any historical case, what would it be?

Al-Kateb, assuming I can time-travel with NZYQ in hand.

Best piece of advice you learnt in the readers' course?

I probably don't have to take it personally if someone refuses to shake my hand.

Who are you reading with?

Myles Tehan.

What is your guilty pleasure?

Raspberry liqueur.

Rachel Cashmore

Favourite fictional lawyer?

Elsbeth Tascioni from the *Good Wife*—she was wickedly smart and constantly underestimated and was able to use this to her advantage.

If you could argue any historical case, what would it be?

Whilst I want to have a predominantly crime practice, *Stambovsky v Ackley* (New York Supreme Court 1991) is too brilliant not to want to be involved in. This is known as the “Ghostbusters” case, where the seller of a house that was haunted by ghosts, needed to disclose that it was haunted to the future purchaser of the property.

Best piece of advice you learnt in the readers' course?

Be authentically you.

Who are you reading with?

Karen Agiropolous, who is an incredible inspiration to me. I am excited to join a warm and welcoming Bar family, and the supportive community of Crockett Chambers.

What is your guilty pleasure?

Dipping garlic naan into butter chicken curry, sitting on the floor of my living room whilst watching re-runs of *The Nanny*.

Joshua Teng

Favourite fictional lawyer?

Sandy Cohen from *The O.C.*, because he really seemed to care.

If you could argue any historical case, what would it be?

Red Lion Broad. Co. v. FCC, 395 U.S. 367 (1969), because the Court used conceptions of inequality in a freedom of speech context to find that constraints on the expressive freedom of

individual speakers may be permissible when those speakers possess significant power to dominate the channels of communication.

Best piece of advice you learnt in the readers' course?

The courtroom is basically an office and you're there to do a job.

Who are you reading with?

Timothy Goodwin.

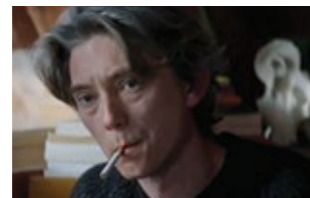
What is your guilty pleasure?

Cartoons and Disney/Pixar films.

Thea Casey

Favourite fictional lawyer?

I recently watched *Anatomy of a Fall* so I'll say the lawyer in that—Vincent. Despite his flaws he's an interesting character.



If you could argue any historical case, what would it be?

Wotton v State of Queensland (No 5) [2016] FCA 1457—hopefully it goes without saying [why].

Best piece of advice you learnt in the readers' course?

Slow down. And get to the point.

Who are you reading with?

Amanda Burnnard.

What is your guilty pleasure?

Rewatching episode 12 of *Normal People* and/or listening to SEN talk back radio.

Louis Dean

Favourite fictional lawyer?

Lionel Hutz—for teaching me of the principles espoused in *Finders vs Keepers*.

If you could argue any historical case, what would it be?

Djokovic v Minister for Immigration (acting for Djokovic)—it would have been cool to meet Novak.

Best piece of advice you learnt in the readers' course?

Make sure you have friends outside of work who aren't lawyers.

Who are you reading with?

Ash Halphen.

What is your guilty pleasure?

Reading all of the readers' course pre-readings.

Jay Chandramohan

Favourite fictional lawyer?

Horace Rumpole—a wonderfully colourful character and champion of the rule of law.

If you could argue any historical case, what would it be?

Mabo v Queensland (No 2)—a landmark decision, which demonstrated the role of the judicial arm of government in recognising and upholding rights.

Best piece of advice you learnt in the readers' course?

Develop your own style.

Who are you reading with?

David Seeman.

What is your guilty pleasure?

Re-watching the last five minutes of the third quarter of the 2021 AFL Grand Final.

Sean Kelly

Favourite fictional lawyer?

Cleaver Greene—Richard Roxburgh is brilliant and he's a hilarious representation of the unpredictability of crime.

If you could argue any historical case, what would it be?

AFL v Jason Cloke [2002]. Because the Pies would have won the flag if Cloke wasn't suspended for the Grand Final.

Best piece of advice you learnt in the readers' course?

Find your own style. Don't try and be someone else.

Who are you reading with?

Anthony Lewis

What is your guilty pleasure?

Vietnamese iced coffee.

Jessiy Xie

Favourite fictional lawyer?

Saul Goodman (he is an interesting criminal).

If you could argue any historical case, what would it be?

Any brief is welcomed.

Best piece of advice you learnt in the readers' course?

Be yourself.

Who are you reading with?

Georgina F Connelly.

What is your guilty pleasure?

Bubble tea, ice-cream, fried chicken, Lanzhou beef noodles, Korean beef/pork stew.



Stephanie Young

Favourite fictional lawyer?

Saul Goodman, I do not endorse his ethics or most of his work practices but I like his can-do attitude and sense of humour in the face of adversity.

If you could argue any historical case, what would it be?

My senior mentor Jeremy Ruskin KC leading [now Justice] Rowena Orr, argued the case of *Stuart v Kirkland-Veenstra* in the High Court, which was a very helpful case to me when I was working at the VGSO and arguing that the Crown's officers or servants did not owe a duty of care. It would have been fascinating to shape that argument and, of course, to ultimately be successful in the High Court.

Best piece of advice you learnt in the readers' course?

Whenever you are making eye contact you are conveying to the listener that you know what you are talking about.

Who are you reading with?

Justin Hooper.

What is your guilty pleasure?

Pain au chocolat from Patricia [Coffee Brewers, Little Bourke Street].

Stephanie Mann

Favourite fictional lawyer?

Elle Woods [from *Legally Blonde*]—confident, loves a bit of colour, and all over her material!

If you could argue any historical case, what would it be?

Also fictional, but the High Court appeal on the land acquisition in *The Castle*. I love working with

airports on their planning issues, and dream of being more than the solemn looking instructor!

Best piece of advice you learnt in the readers' course?

Build your networks through coffee and showing people you are (relatively) normal. Validating some of my favourite things—if anyone wants a coffee, get in touch!

Who are you reading with?

Emma Pepler.

What is your guilty pleasure?

A Saturday night in with red wine and takeaway, catching up on *Survivor*.



Karen Liu

Favourite fictional lawyer?

Alicia Florrick, for her dedication to the post work pinot.

If you could argue any historical case, what would it be?

Cattanach v Melchior (2003) 215 CLR 1, to avoid the submissions that resulted in [20].

Best piece of advice you learnt in the readers' course?

The first step to a thriving practice is to avoid a show cause event by way of aggressive tax minimisation.

Who are you reading with?

Robert Harper.

What is your guilty pleasure?

A daily Frosty Berry Mother energy drink.

Nina Vallins

Favourite fictional lawyer?

Helen Tudor-Fisk for her glamorous wardrobe and wry sense of humour.



If you could argue any historical case, what would it be?

Louth v Diprose. She should have got the house!

Best piece of advice you learnt in the readers' course?

Often one needs to be firm, sometimes even forceful or confrontational—but do it for a purpose, not for kicks.

Who are you reading with?

The wonderful Katharine Gladman.

What is your guilty pleasure?

Window shopping for ceramics.

Sebastian Campbell

Favourite fictional lawyer?

Barry Zuckerkorn (*Arrested Development*)—

Best piece of advice you learnt in the readers' course?

“they can't arrest a husband and wife for the same crime”.

If you could argue any historical case, what would it be?

The Trial of Socrates—difficult but endearing client, togas > robes, catastrophically bad plea in mitigation.

Best piece of advice you learnt in the readers' course?

Only spend your brief fee once.

Who are you reading with?

Banjo McLachlan.

What is your guilty pleasure?

██████ my ████████ with five ████████.

Henry Hunt

Favourite fictional lawyer?

Gomez Addams.

“Sentimental and often puckish—optimistic, he is full of enthusiasm for his dreadful plots.”—Charles Addams.



If you could argue any historical case, what would it be?

Tuberville v Savage (1669) 86 ER 684—I wonder

what assize time was like...

Best piece of advice you learnt in the readers' course?

How to avoid “all duck no dinner” in the words of Philip Solomon KC.

Who are you reading with?

The preeminent Andrew Dimsey and Jonathan Brett KC, of course.

What is your guilty pleasure?

Obiter dicta.

Scott Thomas

Favourite fictional lawyer?

Cleaver Greene.

If you could argue any historical case, what would it be?

Yanner v Eaton (1999) 201 CLR 351, landmark intersection of criminal liability and native title.

Best piece of advice you learnt in the readers' course?

Especially while less experienced, always have a better mastery of the facts than anybody else.

Who are you reading with?

Christopher Terry.

What is your guilty pleasure?

Steak and chips.



James Moutsias

Favourite fictional lawyer?

Cleaver Greene.

If you could argue any historical case, what would it be?

The OJ Trial.

Best piece of advice you learnt in the readers' course?

Eat the chili crab in Singapore.

Who are you reading with?

Michael McGrath.

What is your guilty pleasure?

Reading the *Commonwealth Law Reports*.



Alex Gelber

Favourite fictional lawyer?

Lionel Hutz, because of his win in the fraudulent advertising case against the movie *The NeverEnding Story*.

If you could argue any historical case, what would it be?

Skerdero Pty Ltd v Cardinia SC [2014] VCAT 1334, because the outcome has caused unfairness for almost 10 years now.

Best piece of advice you learnt in the readers' course?

Dry cleaning your robes is tax deductible.

Who are you reading with?

Nicola Collingwood.

What is your guilty pleasure?

Russell Coight's *All Aussie Adventures*.

Isaac Guan

Favourite fictional lawyer?

Saul Goodman. A truly criminal lawyer, who I can never aspire to be.

If you could argue any historical case, what would it be?

Socrates' trial. His plea was terrible. Any lawyer could've saved him and philosophy from execution.

Best piece of advice you learnt in the readers' course?

Thou shalt not engage in misleading or deceptive conduct in trade or commerce: section 18.

Who are you reading with?

Michael Stanton.

What is your guilty pleasure?

Trying hard to be funny, despite often failing spectacularly.

Georgia Dobbyn

Favourite fictional lawyer?

Mark Darcy from *Bridget Jones' Diary* (the first book/film). Loved the book and then the film when I was a teenager, and on a recent re-watch of the film I am happy to say that it had mostly aged well.

If you could argue any historical case, what would it be?

Commonwealth vs Tasmania, because of the tangible outcome of that case.

Best piece of advice you learnt in the readers' course?

We will find our people at the Bar and not to be afraid to ask for help.

Who are you reading with?

Georgie Coleman.

What is your guilty pleasure?

Fancy butter, although I don't feel guilty. Butter is life.



Gavin Rees

Favourite fictional lawyer?

Lionel Hutz—he offers a great Orange Julius.

If you could argue any historical case, what would it be?

Australian Communist Party v Commonwealth—a hard case on a real point of principle.

Best piece of advice you learnt in the readers' course?

That the most effective advocacy style is an honest presentation of yourself and your case.

Who are you reading with?

Kate Burke.

What is your guilty pleasure?

Watching all 15 days of each bimonthly Sumo tournament.

Jack Cleveland

Favourite fictional lawyer?

Defence lawyer from *12 Angry Men*. Imagine their reaction at verdict.

If you could argue any historical case, what would it be?

Veen v R (No 2)—exemplifies why I practise in criminal law.

Best piece of advice you learnt in the readers' course?

The three As—being available, affable and able (in no particular order).

Who are you reading with?

Paul Smallwood.

What is your guilty pleasure?

Yearly *The Lord of the Rings* Trilogy Marathon.

Sana Gelic

Favourite fictional lawyer?

Mickey Haller [*The Lincoln Lawyer*]—those performances are something else!

If you could argue any historical case, what would it be?

Chamberlain v The Queen (No 2)—the opposite outcome; a not guilty verdict.

Best piece of advice you learnt in the readers' course?

Be yourself and be kind.

Who are you reading with?

Andrew Woods.

What is your guilty pleasure?

A home-made passionfruit tart. Although it must be the real deal. Made with real fruit.

Eli Fryar

Favourite fictional lawyer?

Jackie Chiles [*Seinfeld*]—“That's totally inappropriate. It's lewd, lascivious, salacious and outrageous!”.

If you could argue any historical case, what would it be?

IMCC Group (Australia) Pty Ltd v CB Cold Storage

Pty Ltd [2017] VSCA 178 as the decision confirmed the ultimate consumer test which underpins the *Retail Leases Act 2003* (Vic).

Best piece of advice you learnt in the readers' course?

Only take steps towards the ultimate aim, being the orders that you seek, and avoid distracting the court from the path you want it to take.

Who are you reading with?

Sam Hopper.

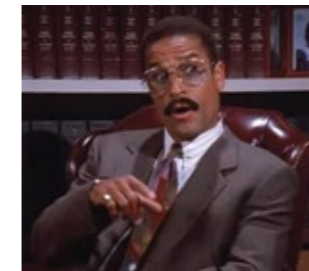
What is your guilty pleasure?

Watching and singing along to *Moana* (with my three-year-old son).

Redmond Casey

Favourite fictional lawyer?

Jackie Chiles from *Seinfeld*: “lewd, lascivious, salacious outrageous!”



If you could argue any historical case, what would it be?

The Brayden Maynard AFL tribunal case, to win it and then see the pies win the flag.

Best piece of advice you learnt in the readers' course?

Run your own race.

Who are you reading with?

Jim H Shaw.

What is your guilty pleasure?

A pint of Guinness at the Drunken Poet.



Nilanka Goonetillake

Favourite fictional lawyer?

Elle Woods. She was an icon ahead of her time.

If you could argue any historical case, what would it be?

I would love to have been involved in many of the Fourteenth Amendment cases in the United States. *Brown v. Board of Education* is an obvious one that comes to mind.

Best piece of advice you learnt in the readers' course?

Be comfortable with saying “no”.

Who are you reading with?

Eugenia Levine.

What is your guilty pleasure?

Chocolate.

Zeina Alhalabi

Favourite fictional lawyer?

Elle Woods. “I don't need backups, I'm going to the [Victorian Bar].”

If you could argue any historical case, what would it be?

R v Dudley and Stephens—most interesting story to share over dinner.

Best piece of advice you learnt in the readers' course?

Prepare, prepare, prepare. And do your taxes.

Who are you reading with?

Ashlee Cannon—legend.

What is your guilty pleasure?

Raw cookie dough—never manage to get to the baking part.



Molly Deighton

Favourite fictional lawyer?

Cleaver Greene. Perhaps not to emulate, but very entertaining.

If you could argue any historical case, what would it be?

AFL Tribunal v Brayden Maynard (intervening for the Melbourne Football Club).

Best piece of advice you learnt in the readers' course?

Look after yourself—it's a long game.

Who are you reading with?

Barnaby Johnston.

What is your guilty pleasure?

Jarrah.



Sam Mullaly

Favourite fictional lawyer?

Bob Lawblaw [*Arrested Development*]. His blog posts are insightful. I usually footnote them in submissions.



If you could argue any historical case, what would it be?

The criminal prosecution of Jason Roberts for the 1998 murder of police officers Sergeant Gary Silk and Senior Constable Rodney Miller. The trial was plagued with evidentiary problems, including allegations that some police gave false or dishonest evidence. Roberts

was recently acquitted of the murders at a retrial. I would like to have been involved in the martialling of evidence in the original trial to determine whether the prosecution could, or should, have proceeded on appropriate evidence.

Best piece of advice you learnt in the readers' course?

Be Prepared.

Who are you reading with?

Michael Clarke.

What is your guilty pleasure?

Getting back into bed with a coffee and the paper.

Brittany King

Favourite fictional lawyer?

One of the Defoe sisters from *The Split* because they have (too much) fun

If you could argue any historical case, what would it be?

Blake v JR Perry Nominees Pty Ltd (2012) 38 VR 123 for many reasons. I am always enthused by a common law “drawing of lines” case, the “skylarking” facts, counsel involved, etc.

Best piece of advice you learnt in the readers' course?

Take the work seriously, not yourself.

Who are you reading with?

Ben Jellis.

What is your guilty pleasure?

I can never say no to the Limoncello spritz at Queensmith—but all pleasure no guilt!



A great night in the Great Hall

HIGHLIGHTS FROM THE 2024 VICTORIAN BAR DINNER

On the evening of Saturday, 18 May, the National Gallery of Victoria welcomed over 500 guests for the eagerly awaited 2024 Victorian Bar Dinner. The atmosphere buzzed with sophistication and excitement as members of the Bar and Judiciary, adorned in their finest formal attire, congregated for a night of festivity and camaraderie.

The choice of the NGV's Great Hall as venue added an extra layer of grandeur to the occasion. The highlight of the evening was the keynote speech delivered by the Honourable Justice Robert Beech-Jones* of the High Court of Australia, whose address was infused with wit, wisdom, and insights into the legal profession.

The night was an occasion to acknowledge the value and contribution of all members of the Victorian Bar – from those who have dedicated 45 years of service (the “45ers”) to the Bar’s newest members (“Zeina and Magnus”).

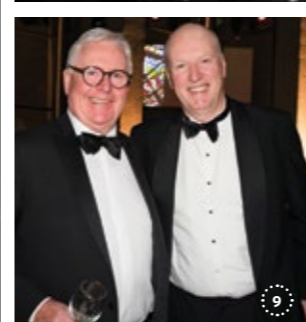
As the evening unfolded, the camaraderie among attendees flourished, with post-event gatherings taking place across Melbourne.

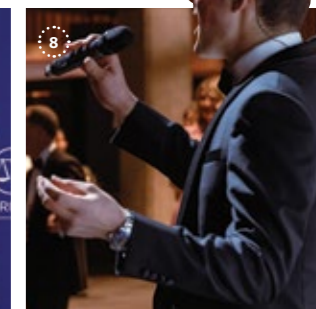
The success of the 2024 Victorian Bar Dinner underscored the enduring vitality of Victoria’s legal community. The efforts of Stephen Porter, Events Coordinator at the Victorian Bar office and curator of the event, deserve particular thanks.

*Also affectionately referred to throughout the night as “RBJ”, in reference to the acclaimed play *RBG* written by His Honour’s wife, playwright Suzie Miller.



1. Daye Gang, Haroon Hassan, Suganya Pathanjali Manoharar, Shakti Nambiar
2. Paul Elliott KC, Terence Guthridge
3. Lucinda Thies, Rishi Nathwani SC
4. Andrew Crocker, Brendan Avallone, Justin Bourke KC, Natalie Campbell, Stephanie Cheligoy
5. Judge Palmer, Patrick Doyle SC
6. James Fitzpatrick, Daniel Nguyen, Andrew Saunders
7. Christopher Brown SC, Carl Moller SC, Raini Zambelli
8. The Hon Anthony Howard AM KC, the Hon Linda Dessau AC CVO, Matthew Collins AM KC
9. Ian McEachern, His Honour Michael McInerney
10. Carly Marcs, Tahlia Ferrari
11. Sam Hay KC, James Peters AM KC
12. Dr Drossos Stamboulakis, Elodie Nadon

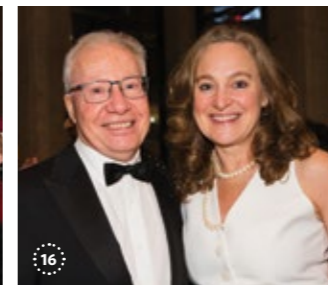




1. Patrick Doyle SC, Emily Porter SC, Fiona Ryan SC, Ffiona Livingstone Clark 2. Evan Ritli, Jamie O'Regan, Jay Chandramohan, Caitlin O'Neil 3. Franceska Leoncio, Jenny Firkin KC, Natalie Campbell, Fiona Ryan SC, Bonnie Renou, Anna Wilson, Marie Wilkening-Le Brun, Viola Katotas, Morgana Brady, Lisa Hannon, Emily Porter SC, Tammy Quin, Tahlia Ferrari, Elizabeth Ruddle KC, Felicity Bentley, Stephanie Mann, Andrea Tate, Annie Yuan. 4. The Hon Timothy Ginnane, Judge Hogan, Gerard Dalton KC, R Patrick Dalton OAM KC, Richard Dalton KC, Michael Waugh 5. Sana Gelic, Zeina Alhalabi, Joshua Teng, Jack Cleveland 6. Elizabeth Bennett SC 7. Julia Watson, David Rowe, Laura Hilly, Jane Lindgren 8. William Le Brun 9. Ian McEachern, His Honour Michael McInerney 10. Jay Chandramohan, Sam Crock, Dylan Dexter, Alex Gelber, Zeina Alhalabi, Karen Liu, Rebecca Barrett, Sebastian Campbell, Thea Casey 11. Georgina Schoff KC, Justice Gordon 12. Ben Gibson, Dan Coombes, Sergio Freire, Dean Guidolin KC 13. Georgina Costello KC, Phoebe Knowles 14. Joshua Kohn, Dr Oren Bigos KC, the Hon Michael Sifris KC, Joel Silver 15. Rachel Amamoo, Edwina Smith, Rose Singleton, Maya Narayan, Monika Pekevka



1. Laila Hamzi, Jessie Taylor, Julia Kretzenbacher, Yusur Al-Azzawi, Carly Marcs and Naomi Lenga. 2. Tahlia Ferrari, Andrea Skinner, Caroline Dawes, Roisin Ryan, Jacqui Hession, Katharine Gladman, Richard Stanley SC 3. Michael Beaconsfield, Vincent Farrugia, Sebastian Campbell, Daniel Briggs 4. Justice Moore, Justice Niall, the Hon Kenneth Hayne AC KC 5. Astrid Haban-Beer, Fiona McLeod AO SC, Georgia McMaster 6. Bridget Slocum, Joshua Kohn 7. Justice Cosgrave, Justice Kyrou, the Hon Peter Almond KC, Judge Wise 8. Anjali Griffiths, Susannah Portelli 9. John Maloney, Stephanie Young, Dylan Iannou-Booth, Hayley Daniel, Abhi Mukherjee. 10. Elizabeth Bennett SC, Caitlin O'Neil, Justice Walker, Sarala Fitzgerald, Gemma Cafarella 11. Michael Beaconsfield, Redmond Casey, Gary Zhang, Molly Deighton, Sam Crook, Vincent Farrugia, Alex Gelber, Sana Gelic, Elliott Young, Dylan Dexter, Joshua Zhang, Jack Cleveland, Stephen O'Connell, Thea Casey, Brittany King, Sebastian Campbell, Jay Chandramohan, Georgia Dobbyn, Karen Liu, Rebecca Barrett, Zeina Alhalabi, Jessy Xie, Nina Vallins 12. Rishi Nathwani SC 13. Elizabeth Bennett SC, Chief Justice Mortimer, the Hon Jaclyn Symes MP 14. The Hon Michael O'Brien MP, Chief Magistrate Lisa Hannan 15. Judge Wise, Lucy Davis, Natalie Hickey, Carmella Ben-Simon 16. Neil Young KC, Georgina Schoff KC. 17. Aaron Weinstock, Stephen Wilmoth OAM, Owen Wolohan, Kate Anderson, Mark Gibson KC



Health and Wellbeing at the Bar

FIONA ELLIS AND MICHAEL STANTON

The real point, I think, is to recognise that it can happen to you and to recognise it in yourself when it's happening. When it happens, seek professional help as early as you can.

—Justice O'Meara

As co-chairs of this year's Health and Wellbeing Committee, it's been wonderful to be surrounded by colleagues who care deeply about the health of our members.

It's fair to say that over the past decade there has been a significant change in the way our Bar deals with health and wellbeing. Some matters are no longer spoken about in hushed tones and whispers. Leaders of our profession have spoken strongly and publicly about the challenges of legal practice, including the impact on ourselves and others arising from the nature of the work we do. It is impossible not to refer to the powerful speech given by Justice O'Meara at the May 2023 readers' dinner, which was published in full in the last *Bar News*. It resonated with so many of us, pushing the conversation about health and vulnerability where it needed to be: out of the shadows. Many of us will experience challenges during our time at the Bar, and we're pleased to say that these issues are now discussed in an open and honest way that provides a much better opportunity for support, recovery and growth.

Just like in the broader community, many of us found the COVID-19 pandemic particularly stressful and challenging, both professionally and personally. It had a particular impact on those joining our Bar during that time, who did not have ready access to the kind of developed network of collegiate support that many of

us took for granted. We know from the 2023 State of the Victorian Bar survey that, while barristers generally report having a good quality of working life, key areas for improvement include stress management, bullying and the common experience of feeling unsupported.

Accordingly, it's important to emphasise the services the Bar provides to its members. These include the confidential counselling services provided by Converge and the Re-Vision Group to members and their families. We also have peer support barristers, who are available to provide support to those who have experienced or observed bullying, discrimination and/or sexual harassment. Thanks to the work of psychologists Bernadette Healy and Tom Evans, we recently completed a reflective practice program trial, which was offered to a group of volunteer barristers and will hopefully result in even more avenues of support though opportunities for structured debriefing.

We continue to provide Continuing Legal Education seminars in relation to health and wellbeing issues, including in partnership with other committees such as the Criminal Bar Association and the Equality and Diversity Committee. We have partnered with other committees on issues facing our members, including the challenges faced by parents and carers and the issue of coverage and disclosure of health matters under income insurance policies.

We were also pleased to launch *Bar None*, a film directed by Abi Richardson on the unique challenges of practising at the Bar. We acknowledge in particular the work of Dr Michelle Sharpe and Darren Mort in bringing this valuable project to life. We were pleased to be able to play the film to the last readers cohort, positively demonstrating a culture of collegial and human support at the Bar—one in which we may, at times, seek out psychological services and strategies to further support and enrich our working and personal lives.

We are keen to also focus on physical health and the importance of staying in regular contact with general practitioners to monitor the influence of lifestyle and work stressors on our bodies. Hopefully you've had the opportunity to try out the "SiSU Health Station" in our corridors, including during Heart Week in early May. We hope this might start a conversation on heart health, with the best option being, of course, to have a heart health check-up and conversation with your GP. On this issue, we plan to have someone with cardiology expertise speak to members about maintaining cardiac health, a cornerstone of overall good health.

We have continued to update the resources in the Health and Wellbeing portal, including recently uploading material on the common experience of being overwhelmed. We will soon publish new material (the first of three modules) on understanding vicarious trauma, created by Associate Professor Andrew Carroll and Brett Bridges of "Our Curious Minds". Associate Professor Carroll describes barristers as "trauma-stewards", which resonates with how many of us may feel and experience trauma.

We are building our knowledge and increasing our learning about the impact of practice and strategies to stay well.

Thanks to the invaluable and wonderful support of the Bar Office, including Miranda Tulloch and Roisin Ryan, and to all those who have served on the Health and Wellbeing Committee in the past, including past chairs Sally Flynn KC and Dr Michelle Sharpe. Just as wellbeing is a continual process, so too is the work of the committee. We are proud that—thanks to the work, commitment and contribution of many dedicated people—the Victorian Bar is a leader in the field. ■



Promoting wellbeing and preventing severe stress:

The need for awareness, reflection and connection

BERNADETTE HEALY

What is balance? What is a balanced life? No doubt barristers are well aware of the typical list of ingredients cited as constituting a balanced life. I can't recall meeting or hearing about a barrister, however, who has described themselves as leading that kind of life. Barristers typically yearn for more balance but also comment that it is unrealistic to aspire to achieving such balance while in a barrister role. I wonder whether "balance" is as useful a concept for barristers as it might be for others. Certainly it is unrealistic for many barristers to commit to the kinds of regular activities that are often cited as integral to a balanced life.

I have come to believe that it is an unnecessary stress for barristers to try and

use any wellbeing framework that does not fit with the inherent nature of their work and, in particular, the ebb and flow of that work (which might better be described as *void, staccato, onslaught, inexplicable nothing, bits and pieces, onslaught, void ...*), the predictable requirement for sustained periods of uninterrupted and concentrated focus, and the times of extreme pressure. It is clearly important to find a framework that fits with these and other inherent features of the role. The need is great.

Barristers continue to report severe levels of stress at all ages and years of call, across all jurisdictions, and regardless of life structure. These reports are regularly of paralysing levels of stress. Typical descriptions of these experiences include feelings of being overwhelmed, emotional and physical depletion, and—most serious of all—disengagement from oneself and others.

The trajectory of individuals' stories of stress commonly describe a dropping-off of both small and large everyday elements of life. Over time, these normal human activities become less frequent and in serious cases disappear altogether. Examples of these activities include regular breaks in the day, sharing of experience with colleagues, social activities, good sleep hygiene, individual interests, self-reflection and "untagged" time for self, and intimate interpersonal connection.

It is common for seriously stressed barristers to report: "I feel as if I am not myself anymore". Another common description is of a sense of dread that one will lose control in some way due to an unclear but building feeling of inner distress. These sorts of states are unsustainable and will typically "come to a head." The tipping points are endlessly variable but examples include:

- » being on the receiving end of very disrespectful behaviour;
- » behaving disrespectfully towards a loved one;
- » sudden deterioration in primary relationship;
- » escalation in substance abuse;
- » becoming a parent;
- » not becoming a parent;
- » taking silk;
- » not taking silk;
- » not finding a way of saying "no" to a matter when you know that you are barely hanging on managing current matters;
- » behaving in court or elsewhere in an uncharacteristic manner that worries you; or
- » behaving in some other way that gives you a fright / makes you question who you have become.

Enacting change for increased wellbeing will start as soon as you give yourself enough time to notice how you are functioning in your daily life. If, right now, you are feeling overwhelmed, there are many practical strategies that you can quickly enact which will help to shift

“ Many barristers report feeling uncomfortable about reaching out to others yet also report that they would welcome being similarly approached by another barrister. ”

this state; these have been described in detail and are available on the wellbeing portal.¹

If you are stressed such that it is getting in the way of functioning as you would prefer, but it is not overwhelming, spend some time reflecting about measures that have helped in the past. Consider the commonly suggested but nevertheless effective tools of: a gentle walk around the block, listening to some music, patting a dog, listening to a podcast or audiobook, or having a conversation with a trusted other. Sharing something personal with another person in a genuine way will almost always help to shift a negative state to some degree. Many barristers report feeling uncomfortable about reaching out to others yet also report that they would welcome being similarly approached by another barrister. This mismatch between how you behave towards yourself and how you would behave towards another in a comparable situation is common. A similar gap exists in the attitude that lawyers have towards the commission of a mistake; that is, there is a significant difference in the way that lawyers think about their own mistakes compared with their attitude towards the mistakes of other lawyers—the latter being much more tolerant.²

In terms of prevention, recovery from work stress needs to be incorporated into your daily life. Daydreaming about your next holiday is an enjoyable pastime and one which you no doubt share with workers everywhere. However, if your stress-management plan rests solely on the recovery benefits of the annual holiday, a wellbeing-deficit for most of the rest of the year is inevitable. That is, about a month after returning from holidays, your results on a range of wellbeing

measures are likely to be back to pre-holiday levels.³

Recovery is defined as the process whereby the body's function and system state are returned to their pre-stress position. A core activity to achieve recovery is to get rid of the mental representation of the stress, or to obtain *psychological detachment* from work.⁴ Psychological detachment requires being away from your work situation, refraining from job-related activities, and achieving a mental break via switching off from negative job-related thoughts.⁵ Focusing on *positive* job-related thoughts has a beneficial impact, and intentionally engaging in positive thoughts about work—for example by identifying "three things that went well today"⁶—has been found to contribute significantly to the recovery process in terms of subsequent positive affect.⁷ A lack of detachment has both short and long-term negative impacts; lack of detachment in the evening is predictive of negative affect and fatigue the following morning, and longitudinal evidence suggests that lack of detachment predicts emotional exhaustion over the course of a year.⁸

Those who are highly engaged (energetic at work, dedicated and absorbed) particularly need to ensure that they detach in the evenings if they want to arrive at the end of the week in a healthy state.⁹

Unsurprisingly, the impact of negative affect built up at work spills over into negative affect at home. Psychological detachment (and sleep) both attenuate this impact.¹⁰ Detaching is therefore particularly important on work days that leave you with negative thoughts.

A successful detachment process can be achieved in as little as 10 to 12 minutes.

Begin the detachment process by reflecting on and acknowledging what went well during the day, debriefing difficult situations with colleagues,¹¹ and organising your thoughts about required next steps tomorrow. Allocating a specific timeslot for these activities, preferably as the last on your “to-do” list at work, will help you to build a recovery process habit into your working life.

After you leave work (having hopefully completed the exercise described above), engaging in exercise, social activities and hobbies or interest areas will further assist the recovery process. Activities in which you have mastery, strong interest and which are absorbing enough to require your full attention will produce the optimum cognitive state to enable detachment—that is, to fully let go of the mental representation of the job stress.

A few summary questions to ask yourself:

- » How well do you detach from work during non-work time (including breaks such as lunch)?
- » Do you worry about work frequently? Do you actively solve work problems in non-work time?
- » Are you aware of your actions? Consciously choosing to solve a work problem in non-work time will have less negative impact than being unaware of allowing work issues to take up non-work time (such as via ongoing negative rumination about work). When you are left with strong negative work-related feelings, do you create opportunities to share your thoughts with a colleague?
- » Do you regularly engage in absorbing non-work tasks / activities?
- » What sorts of things hinder your detachment? Are you, for example, too responsive to technology in your non-work time?
- » Do you make regular effort in planning and organising your work, including for example the

identification of doable “chunks” of work, planning what the “chunks” will be this evening or the next day, and doing such planning at the end of each work day? Research suggests that those who plan and organise their work are less likely to have trouble detaching from it in non-work time. This finding even holds where work is required later in the evening after the completion of the work day; the engagement with, and planning of the work is predictive of better recovery even where workload is great.

- » When working from home do you think about strategies to help separate work and non-work? This might include, for example, keeping your workspace only for work, keeping devices physically out of the bedroom, and staying off devices for the hour before bed.

You will find that actively participating in a regular job stress recovery process will help to ensure that you continue to include the important everyday elements in your life. These are protective—and necessary—for long term wellbeing and connection. ■

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- 11 A program structure to facilitate such debriefing was recently explored in a pilot program initiated by the Victorian Bar Health and Wellbeing Committee. The Pilot Barrister Peers Reflective Practice Program, completed in April, explored the usefulness of small group peer support as a structure to assist barristers in reflection and debriefing after challenging workplace moments. The program was designed and co-facilitated by the author and another psychologist, Tom Evans.



The power of a pause

MOYA O'BRIEN

In July 2015 I had been at the Bar for seven years. I had a demanding criminal practice and had just moved into a larger inner-city home to accommodate three boisterous young sons. Life was hectic, and often involved musical beds. We were a busy house, a happy house and a house which was mortgaged to the hilt.

But then came the seven-year itch. The strange sensation in my left armpit which would just not abate.

I would later explain it to people as though it felt I was squeezing a book under my arm; something was tugging deep beneath the skin of my arm pit. I begrudgingly made an appointment at Breast Screen in East Melbourne, which is conveniently a service which does not require a referral from a general practitioner. As I had a family history of breast cancer the medical staff insisted on both an ultra-sound and mammogram. Their insistence and diligence that day was my fortune. There was absolutely

nothing sinister to be observed on my left side. The medical team hypothesised that perhaps I had pulled a muscle dragging my suitcase to court. To this day I am grateful to my suitcase. As my friend, Philip Dunn KC likes to remind me, “God loves a barrister.”

However, the image taken of my right side looked different. Something on my chest wall looked unusual. The medical team recommended a precautionary biopsy but reassured me that because I was only in my 30s it was unlikely to be anything sinister.

I told myself that in the event it was something nasty we would cope financially because I had just recently taken out an income protection policy. Until the tragic passing of a talented and dedicated colleague, Lachlan Carter, in 2014, it had not occurred to me that cancer was something that could swoop in and upend an unsuspecting life, especially my lucky life.

My youngest son’s second birthday was on the same day as my follow-up appointment with the surgeon. I was junior counsel briefed in a heinous murder trial. The deceased, an unsuspecting autistic boy answering a young girl’s plea for help, had been ambushed on a remote property and killed slowly in a brutal axe attack.

I was annoyed the receptionist had insisted on my attendance for the appointment. Surely, they could give me the results on the phone. After all, I was a pre-occupied barrister mid-trial with a birthday cake to bake. This would be the last morning of my life where I would wake feeling so naively invincible.

The cancer was smack against my right chest wall. It was treatable and it was early. I was rattled but philosophical as I sobbed to my husband from the cab on my way to court. The doctor had reassured me that I was incredibly lucky and if I had waited until I had felt a lump to seek intervention it would have been a much less positive prognosis.

I pushed on through with the trial whilst undergoing further biopsies, tests, and scans—many of which were startlingly not covered by Medicare, nor my “top-shelf” private health insurance. During this time, it was revealed that I had a further mass within my breast which was diagnosed by pathologists as another type of cancer, a sarcoma. Doctors suspected that I had a rare genetic mutation called P53 which can cause the body to develop a host of different cancers, often at the same time. My father, who was a doctor, grimly informed me that it is never a good thing to be considered “interesting” in medicine. Google was more direct and told me that there is a 15-month survival rate for sarcoma of the breast.

I was devastated. I thought I would be strong and optimistic, which is my usual disposition. But I found myself unable to be in the same room as my children without crying. After what can only be described as the darkest and loneliest week of my life, I was given a reprieve when specialist breast pathologists from the Peter MacCallum Centre confirmed a “fortunate” medical misdiagnosis and later surgery established the wonderful news that I had ordinary, “garden variety” breast cancer.

I had a double mastectomy and full reconstruction on 11 September 2015. A generous and concerned colleague approached the Barristers Benevolent Fund on my behalf and as a result I was able to keep up chambers whilst I waited for my income protection policy to take effect. I am forever grateful for this kind gesture and their support.

By January 2016 I was back on deck and briefed in the Royal Commission into Institutional Sexual Abuse in Tasmania, taking on a large and emotionally taxing brief for a courageous whistle blower. I faced regular personal criticism and opposition from those who had more to spend and more at stake. I

convinced myself that it was perfectly normal to miss my son’s first day of school for such an important brief. After all, it was a step up in my career. I recall sitting up in bed in April 2016 after some final surgery, the fluid still being pulled from my chest in JP [surgical] drains drafting final submissions. I had nailed this cancer caper, and I was on an upward trajectory—or so I thought.

In June 2016, after yet another far flung hearing in Albury, I called in to see my aunt on her farm in the King Valley on my journey home. My beautiful aunt had been an effervescent and life-affirming force my entire life. She could paint her film star lips a perfect red without a mirror, she was young, beautiful and knew how to drink champagne without ever smearing the glass. Yet on this visit she was sallow, angry, and painfully thin. She confirmed what deep down I already knew: that her breast cancer diagnosis was terminal. I knew as I turned out of her driveway that I would never see her again.

Suddenly I was very tired. Suddenly I was very sad and all I wanted to do was go home to my sons. All I could think about was my young boys and all the times I had been away from them. The time when I was expressing breast milk for my third son whilst acting in a child homicide case—in which the parents returned to collect their only child from the babysitter to find her limp and unresponsive. A case where I was so profoundly emotionally affected and stressed that I was dizzy upon waking every day of the trial and convinced I had a brain tumour. Then I would flash to the time when I had to cross-examine a mother about the moment she discovered her fourth son had been abused by the same paedophile who had pleaded guilty to sexually molesting her older three boys, my own bar jacket about to burst open with the final stages of my third pregnancy.



Was it my cases? Was it all the ugliness of humanity I had been exposed to during my time in the criminal law that tipped me over the edge? Was it the fact that I had always been an anxious child and lived most of my adult life expecting that my home would be subjected to an aggravated burglary? Or was it just that I had been faced squarely with my own mortality? Whatever it was I could not go on.

I told my colleagues I was taking a sabbatical, but the reality was I was on the cusp of a mental breakdown. I was diagnosed with anxiety, and I began to receive professional help and treatment for a condition I now realise had plagued the majority of my adult life. I was fortunate enough to have an income protection policy that allowed me plenty of time to recover and supported me transitioning back to full time work after an extended eight-month pause. I discovered the benefits of adding Pilates classes, stretching and exercise into my weekly routine and developed a regular practice of taking care of myself.

Sometimes the most rewarding journeys are the ones where you never leave home. For the first time in my life, I drove in a different lane,

the slow lane. I made a conscious decision to step away from all work, to turn my back on the litany of human miseries criminal barristers are exposed to daily. I chose to focus on the small things, and the beautiful things in life. Instead of cutting a speedy and rudimentary lap of the Botanical Gardens before court I would wander inside after I delivered my children personally to school, often becoming lost in their birdsong and majesty. I shared cups of tea with new friends—school mums whom I never previously had a second to meet. I sat in on clunky joyful piano lessons and I nurtured a thriving vegetable garden with my enthusiastic toddler, harvesting cucumbers and tomatoes together at dusk as the bats flew against the twilight skies of Melbourne. For those brief months I again had all the time in the world.

Writing this article has caused me to closely examine how we as barristers live with our many dualities—our complexities. Criminal barristers in particular are often drawn into the dark, the inexplicable actions of our fellow humans, and the tragedies of ruined lives. I believe it is the magnetism of these stories and the need to make sense of them

which is so engaging. When you are working in the shadows you must constantly seek out the light—one cannot exist without the other. For me that light is the feeling of garden dirt under my nails, it is the sensation of swimming in soft river waters with my children and the scheduled promise at the end of every term of connecting as a family together in nature.

Those close to me know that I consider myself a work in progress and I certainly do not profess to have all the answers on how to always maintain equilibrium or the perfect work life balance. Will I take another sabbatical? Most probably.

I now know that there exists a certain power that comes with allowing yourself to be more vulnerable, and as a profession we need to be more authentic with each other. I am not alone. There are plenty of women at the Bar who have silently and gracefully fought various forms of cancer, as there are men. There are also plenty of barristers, like me, who have tackled mental health challenges. You are not alone. Our justice system is only as good as the people in it, and we owe it to each other to be kinder and more honest with each other.



Wellbeing tips for new barristers

CHRIS BRYDON AND ASHLEA PATTERSON

Embarking on a career at the Bar is an exciting and challenging journey. This article offers some practical tips and insights to help new barristers navigate the complexities of joining the profession, manage the demands of practice, and stay healthy and happy for a fulfilling career at the Victorian Bar.

Highs and lows

Life at the Bar is punctuated by highs and lows. In his May 2023 speech to Bar readers (which we recommend reading in its entirety), Justice O'Meara said: "There are many days in which the barrister is the undeserving beneficiary of the miracles of the universe. You'll all have your share of miracles too. Enjoy those days. Because there's others."

With its inherent uncertainties and pressures, life as a barrister is a rollercoaster ride. Embracing both the triumphs and setbacks with a level head is key to navigating this

unpredictable journey.

This advice applies just as much to accepting the fluctuating returns of self-employment. Quiet periods in your diary might initially be a frightening sight. But sooner or later, things always pick up. When you have a stream of bookings coming in, you may well wish you had made the most of the downtime and might even long for its return.

Chambers, chambers everywhere—so which one should I pick?

While its no longer a pre-requisite to practising at the Bar, many of you will choose to establish yourself in chambers. Your chambers are more than just an office to prepare for (or, increasingly, appear in) court. Many of you will spend a lot of time there. With that in mind, it's worth considering what you are looking for in chambers well before it is time to leave your mentor's nest.

Ashlea Patterson: Think carefully

about where you want to be, what environment you would like to be in, and who you want to share your space with. With a bit of luck, and a little forward planning, you will hopefully find a space where you can feel at ease, surrounded by supportive people who are available to provide a second opinion on a tricky issue, or just be a friendly face after a bad day in court (and be reassured that we *all* have those days).

Chris Brydon: I agree with Ashlea, and also want to stress the importance of decorating your chambers in a way that makes you feel happy and comfortable. There really are no rules (save for your BCL lease terms) so you can pretty much do whatever you want. French-provincial theme? Go for it. Taxidermy lioness gazing out your window? You do you. When you arrive each morning and after you come back from court each day, it's helpful to be somewhere you're happy to be.

Mentors

Somewhere in Copenhagen, in around 1843, Danish theologian and

philosopher Soren Kierkegaard wrote in his journal that "life can only be understood backwards, but must be lived forwards." As a new barrister, your mentor is in an invaluable position of being able to look back at their own journey and pass on their wisdom and experience to you. Mentorship is more than just a professional relationship; it's a lifeline. Mentors are a source of advice, a network, and a friendly face in a new environment, all of which are invaluable while finding your feet. If you're fortunate, your relationship with your mentor will continue well into your career at the Bar. Don't be scared to call upon this precious resource.

Resilience: it's a marathon not a sprint

With any luck, you have a long career ahead. There are going to be good days but there are going to be difficult days too. Developing resilience is needed if you're to pick yourself up after a bad day in court, learn what you can from it, and move on. Your next client deserves your full attention.

Exercise: it can be a marathon or a sprint

It's 2024 —by now, we all know about the benefits of physical activity on our mental health. While life at the Bar can be busy and unpredictable (and particularly in the early days your schedule might go completely out the window), it's important to remain active.

Ashlea Patterson: I am fortunate that I have the option of walking or cycling to chambers. If you have a lengthy commute, consider whether you might walk or cycle part of it. Otherwise, there are lots of ways to sneak some activity into your day. You might get out for a lap of Flagstaff Gardens to break things up or join a gym or Pilates class at lunch. Many chambers have showers and changeroom facilities, making it possible to head out for a run before or after court.

Chris Brydon: I am also a big advocate for walking or cycling to work. It used to be my main form of commuting every day. Last year I moved to regional Victoria and I now spend most of my commute sitting idly on the

V/Line or driving to regional courts. Between sitting on the train, sitting in chambers and sitting in court, it has become harder, but also more vital, to find time to squeeze in gym sessions where I can. If I could fit a power rack in chambers I would. But until that's feasible, a gym membership and a change of clothes will have to suffice.

VicBar Supports

The Victorian Bar has a number of supports available to help if you're ever finding life difficult. There is the online Health and Wellbeing portal, which provides information, tools, and resources to promote mental wellbeing. The portal also had details of how you can access free and confidential crisis support and counselling. Additionally, the recently released short film *Bar None* is written, produced by, and stars members of the Victorian Bar. It depicts the stressors affecting practising barristers and serves as a reminder that you are not alone in experiencing the ups and downs of practice at the Bar. ■

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Barristers embrace video games to level up self-care

ANNABELLE BALLARD

The genesis of this article was a series of conversations with friends in my readers' course. Initially, I was reluctant to share my interest in video games with my peers because it seemed like a very un-barrister-like interest to have. Then during one of our breaks, a friend who has asked not to be named in this article joked that when he had no capacity (or was otherwise occupied by some much needed "self-care"), he would be playing *Diablo IV* in his pyjamas. Others in my cohort had also played games recreationally, including the infamous *Grand Theft Auto* franchise, and took pains to emphasise they always followed the road rules (at least in the game). Then, in my first year of practice I discovered a silk I was working with had a common interest in *Baldur's Gate*, a video game series that has been around since 1998. Over time, I realised many of my friends and colleagues at the Bar played video games recreationally and as a wellness tool (one among many) to deal with the particular stressors that come with practice at the Bar.

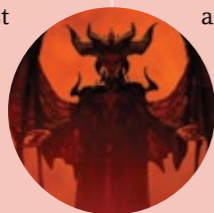
Video games and mental health

Despite negative stereotypes about video games fostering anti-social behaviour and addiction, academic and industry studies suggesting that video games benefit the mental health and wellbeing of the majority of players are starting to emerge.¹ Video games research tends to attribute the medium's capacity to improve mental health and wellbeing to its incorporation of visuals, sound, and movement, which enables players to participate in ways not replicated by other media. Most recently, last year on World Mental Health Day the *Power of Play: Global Report 2023* was published and recognised in a press release by the United Nations.² The report was commissioned by 12 national video games industry trades associations and included a survey of the behaviour of 13,000 players across 12 countries (including Australia), which was validated by 15 independent academic studies.

The findings were that globally, players reported that playing video games reduced their stress (71 per cent), helped them manage anxiety (61 per cent), increased their happiness (63 per cent), and helped them through difficult times in their life (52 per cent)³. Interestingly, a greater proportion of Australian players reported that playing video games benefited their mental health in each of these respects. For example, a colossal 67 per cent reported video games helped them through difficult times in their life.⁴ Video games may also have broader health benefits, such as preventing cognitive decline by requiring players to practise reading comprehension, visual spatial skills, attention control, memory, and cognition (or learning how to learn).⁵ At the same time, there is growing recognition that contemporary video games call on players to engage with complex ideas from a wide range of fields, including philosophy, literature, and the visual arts.⁶

What video games is the Victorian Bar playing right now?

Even if you are sceptical of these claims or think video games aren't for you, you might be surprised. According to the *Power of Play* report, 75 per



cent of players think there is a video game for everyone out there. See the example of Shirley Curry, aged 88 (better known as "Skyrim Grandma"), who has been sharing her adventures in *Skyrim* on YouTube since 2015.⁷ To give you some ideas, I've asked some members of our Bar about the video games they are currently playing.

Eliza Tiernan (8 years call)

Eliza developed an interest in video games as an adult. Although she had first played video games as a child, she played less in her teenage years and did not really pick up a video game again until after she sat the Bar exam. Following the Bar exam, she purchased a PlayStation 4 and started playing a long and involved video game to take her mind off the outcome of the dreaded exam. Through that process, she realised video games weren't "what they used to be", because they now incorporate sophisticated art, music, and storytelling, and you can be involved in the world they create. According to Eliza, they can be just as interesting and beautiful as a film—and potentially more so, because there is an engaged aspect.

While Eliza likes long form role-playing games ("RPG"), such as *Horizon Zero Dawn*, since having children she mainly plays puzzle and strategy games. She presently enjoys playing games such as *Spiritfarer* and *Yoku's Island Express* because they fit into shorter time frames. *Spiritfarer* is a strategy game with a narrative that involves ferrying souls to the underworld.



Eliza particularly appreciates that *Spiritfarer* incorporates beautiful music and imagery, and prompts players to engage with philosophical ideas such as moral relativism. Additionally, playing shorter games gives her the flexibility to "tap on and tap off" depending on how busy she is.

Eliza sees video games as one thing in her tool kit (amongst a range of other things) for taking care of her mental health and wellbeing. For her, playing video games is a way to switch gears from the intellectual challenges involved in legal practice, by refocussing on a different goal or task that requires her to use a different part of her brain.

Bec McEwen (5 years call)

Like Eliza, Bec developed an interest in video games as an adult. Although Bec's friends were playing video games when she was a teenager, she did not start playing video games herself until her thirties. Bec is currently playing *Dragon Age* (a series of three RPG games set in a dark fantasy universe), and recently finished the *Mass Effect* trilogy, which is set a long time ago in a galaxy far, far away. Bec likes RPG games because they are story driven and very immersive. Although they have similar elements to film and literature, "you get to make the choices".

In Bec's opinion, video games have a positive impact on her mental health. Bec finds that although she has other interests (such as reading), video games are a better tool for "switching off" from work and unwinding. Video games are the "perfect thing when [she] needs a mental break", because her practice requires a lot of reading, and she does not always want to read a book when she gets home. She also likes the flexibility of video games: if she is having a challenging week, she can isolate at least a couple of hours to do



“My friends and I can spend at least a couple of hours’ quality time together almost every week, regardless of how busy our professional lives become, where we are, or what other commitments we have.”

something different. Although there is a risk that two hours can easily turn into six, in her experience video games are a useful tool for stress management.

John Heard (4 years call)

John developed an interest in video games because he was “just in that generation”. He grew up with SEGA and shared a Commodore 64 with his brother. He has enjoyed playing video games since.

John is currently playing *Elder Scrolls Online*, which is a massively multiplayer online role-playing game (“MMORPG”) set in a fantasy continent “Tamriel”. Like other MMORPGs, the game involves picking a type of character and developing them by completing quests and doing other activities in the game. For example, John plays as a High Elf templar, which is essentially a mage. John enjoys this playstyle because he grew up doing archery, and while he is completing quests, he can engage in combat from a distance. Another benefit of MMORPGs is that you do not necessarily have to engage in the combative aspects of the game to progress and have the freedom to do other activities like walking through a forest collecting mushrooms.

According to John, part of our role as barristers is to advance the client’s interests in an adversarial arena, or fight for people, albeit in a rarefied way. One of the ways he calms down and discharges that “excess war energy” is “firing the game up and beating the shit out of something”. It is a way of getting rid of excess intellectual and emotional energy, that makes him a better advocate and a nicer person by helping him come to work refreshed.

Me, Myself, and I (1 year call)

I developed an interest in video games at the ripe old age of five, with the encouragement of my mum (a psychologist) and older brothers (video game players themselves). Playing *Barbie Spy* quickly evolved into playing more sophisticated titles like *Star Wars Knights of the Old Republic*, and I still enjoy playing RPGs and action games.

Since the Covid-19 pandemic, I have been playing more multiplayer RPG games because they enable me to socialise with friends during periods where it is difficult to see each other face to face. I am currently playing *Baldur’s Gate 3*, an RPG game that accommodates one to four players, with a small group of friends outside the law (my Friday night pizza friends). We usually complement playing *Baldur’s Gate 3* with a group audio call, or if possible, an in-person catch-up.

In addition to the benefits described above, for me video games are an important wellness tool for combatting isolation and facilitating social connection. My friends and I can spend at least a couple of hours’ quality time together almost every week, regardless of how busy our professional lives become, where we are, or what other commitments we have.

Takeaways

As the intersection between video games and mental health becomes clearer, it is essential to approach the topic with an open mind, recognising the potential benefits that gaming can offer. Whether as a form of relaxation, socialisation, or cognitive stimulation, video games have the capacity to positively impact mental health. Embracing the inclusive and therapeutic potential of video games may contribute to fostering a more holistic approach to wellbeing at our Bar. ■



1 See: *Power of Play: Global Report 2023*, 20. A review published by the British Journal of Psychiatry concluded that the available evidence suggests that video games, including both “serious games” and commercially produced games, are an effective tool for intervention to reduce symptoms for a range of mental health conditions including anxiety and depression. The review also raised the possibility of clinical uses of video games in the future, including integration into cognitive behavioural therapy: Dewhurst A, Laugharne R, Shankar R. *Therapeutic use of serious games in mental health: scoping review*. *BJPsych Open*. 2022;8(2):e37, p11.

2 <https://unric.org/en/video-games-and-mental-health-a-surprising-ally/>

3 *Power of Play: Global Report 2023*, 7-10.

4 *Power of Play: Global Report 2023*, 9-10.

5 *Power of Play: Global Report 2023*, 18. See also: Bavelier, D., & Green, C. S. (2016). *The Brain-Boosting Power Of Video Games*. *Scientific American*, 315(1) 26, 29-30. And see that research outcomes vary depending on the content and mechanics of the video game studied: Schmidt, M. E., & Vandewater, E. A. (2008). *Media and Attention, Cognition, and School Achievement*. *The Future of Children*, 18(1), 63, 66-67 and 72-73. See generally: Bejjanki, V. R., Zhang, R., Li, R., Pouget, A., Green, C. S., Lu, Z.-L., Bavelier, D., & Shiffrin, R. M. (2014). *Action video game play facilitates the development of better perceptual templates*. *Proceedings of the National Academy of Sciences of the United States of America*, 111(47), 16961-16966.

6 *Power of Play: Global Report 2023*, 17. For example, *BioShock*, a cult classic video game series has inspired a groundswell of academic literature on objectivism and post humanism: Chang, E. Y. (2017). *A Game Chooses, A Player Obeys: Bioshock, Posthumanism, and The Limits Of Queerness*. In J. Malkowski & T. M. Russworm (Eds.), *Gaming Representation: Race, Gender, and Sexuality in Video Games* (pp. 227-244). Indiana University Press. See also: Sicart, M. (2013). *Moral Dilemmas in Computer Games*. *Design Issues*, 29(3), 28-37. And see: SCHMEINK, L. (2016). *Individuality, Choice, and Genetic Manipulation*. In *Biopunk Dystopias: Genetic Engineering, Society and Science Fiction* (pp. 146-178). Liverpool University Press.

7 See Shirley Curry’s YouTube channel: <https://www.youtube.com/@ShirleyCurryTheOlderGamer/videos>.

State of the Bar overview

VBN

The 2023 State of the Bar report paints a generally positive picture of life at the Victorian Bar. Gender parity is within reach and workplace and personal wellbeing of Victorian barristers is improving.

Regrettably, instances of members experiencing discrimination, sexual harassment and bullying continue to be reported. The Bar identifies this as a key area of focus, and remains committed to addressing such experiences appropriately, educating its members, and setting standards that foster an environment of safety, collegiality and understanding.

Increased gender equality – with more to do

Women are better represented at the Bar than ever – in fact, last year marked the first year that more women than men became barristers in Victoria.

Over the past five years, 54 female barristers have found their way to the Bench – almost half of all judicial appointments.

It is pleasing to see that the percentage of female barristers in higher income brackets of over \$200,000 has increased to 58% in 2022 as compared to only 38% in 2016. The 2022 data also reveals that women barristers are younger than their male colleagues, with 43% of male barristers over 55 years of age, and only 22% of female barristers over that age. This may also contribute to gender pay disparity. The trend of having more representation of women at the Bar, and more experienced women barristers, is expected to continue.

While the Bar has seen improvement in this space, more is to be done about the gender pay gap. The mean average income of a Victorian barrister was \$418,000 in 2022, with the average for men higher than women. However, the data has its limitations as part-time work is not factored into the equation.

The Bar continues to incentivise equitable briefing policies, make allowances for parents at the Bar by offering chamber subsidies, and maintains a number of committees that identify and assist in the removal of barriers that negatively impact on women practising at the Bar (including the Equality and Diversity Committee, the Health and Wellbeing Committee and the New Barristers’ Committee).

Fulfilment and longevity at the Bar

Back in 1980, 90% of Victorian barristers were yet to celebrate their 50th birthday. Today, the typical barrister is older and works many years longer at the Bar, with almost half (48%) having “raised the bat”.

High retention rates show that Victorian barristers are also staying and enjoying life at the Bar. Only 2% of barristers leave the Bar each year, and that small number includes those appointed to positions on the Bench and other official appointments.

The vast majority of barristers have a sense of fulfilment, with job satisfaction at 74%, and 80% of barristers reporting happiness with their general wellbeing – a jump from 66% back in 2018.

Almost three-quarters of barristers said they are managing their workload in a healthy manner – a dramatic improvement from less than half (48%) back in 2018.

Working from home has also expanded greatly since before the pandemic, from 13% in 2018 increasing to 37% in 2023, showing adaptability and flexibility in the way in which Victorian barristers work.

Discrimination, sexual harassment and bullying

Approximately one quarter of all barristers reported having experienced bullying in the last five years. Around 20% of female barristers reported feeling intimidated over the past 12 months, with a similar number of male barristers reporting verbal abuse. These reports were more prevalent amongst junior and middle-level barristers.

A new question was included in the 2023 survey to gauge whether barristers had witnessed judicial bullying. Almost half of the survey responses were “yes”. While judicial bullying remains a concern, there has been a decrease in occurrences since the membership was last surveyed in 2018.

90% of barristers highlighted that they suffered stress due to the pressures placed on them by workload, expectations, and isolation – among other issues.

Georgina Schoff KC, President of the Victorian Bar, said that the wellbeing of members is a top priority.

She encouraged all members to view ‘Bar None’, a short film commissioned by the Health & Wellbeing Committee, that focuses on how we can all support each other in what is often a very stressful profession.

Programs on how to address and alleviate stress and other personal problems are also being introduced by the Bar for its members.

Other initiatives include mandatory sexual harassment and bullying training for members who apply to take silk, as well as free 24-hour counselling services.

The State of the Bar report is available on the Victorian Bar website. ■



Immersive Wellness

Health and lifestyle retreats provide a restorative escape for time poor barristers.

JULIA NIKOLIC

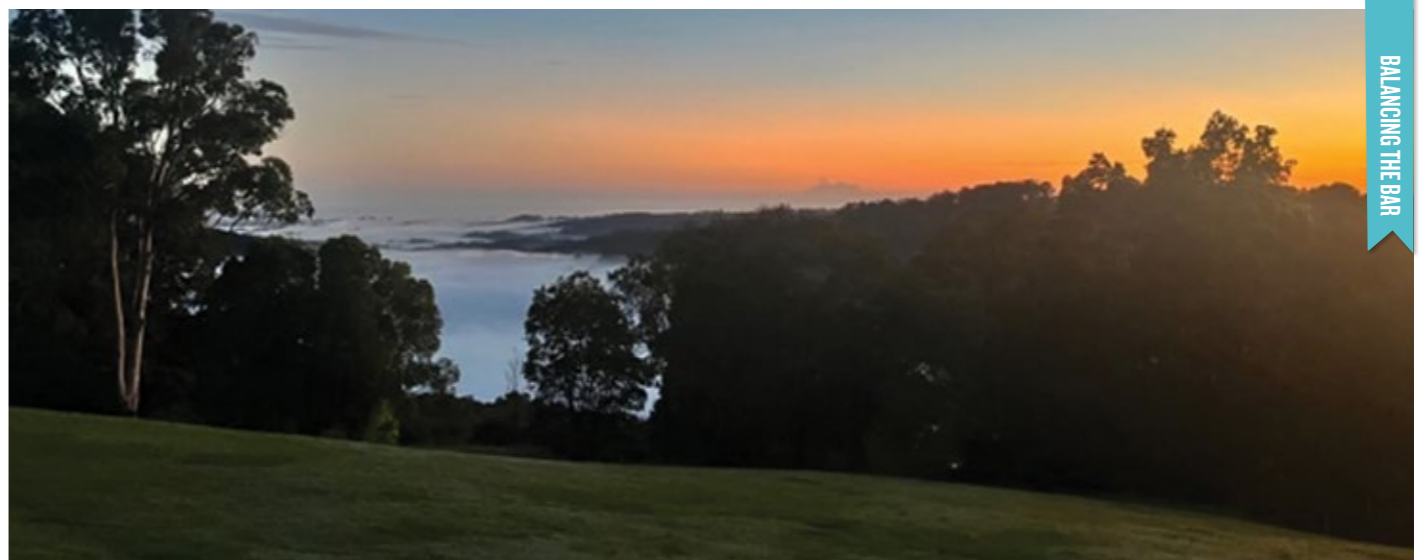
This readership well knows that the law can be an unrelenting pursuit, involving early starts and late finishes, complex briefs, and back-to-back conferences. With whatever time remains, we are regularly encouraged to balance work and home and prioritise our health with good sleep, regular exercise, nutritious food, and meaningful connections. It's enough to leave the best of us feeling more than a little depleted. So, when the opportunity does present for a much-needed break, what's an exhausted barrister to do?

One option is to book a stay at one of the many health and wellness retreats that have surged in popularity since the release of the binge-worthy series *Nine Perfect Strangers* during Covid lockdowns. Each promises to

deliver a transformational experience in a matter of days. Need to rest and recharge? No problem. Want to stress less, reconnect with nature or boost your mood? There's a program for that!

Unlike conventional holidays, where planning, long haul travel, and a busy itinerary can leave you feeling drained, health retreats are designed to leave you feeling refreshed and energised. Needless to say, these supercharged escapes from the hustle and bustle of chambers life present an attractive possibility for time-poor barristers.

With so many destinations and retreat formats available, one is spoilt for choice. To help narrow the search, *Victorian Bar News* spoke to members who have been there, done that.



Gwinganna—Lifestyle Retreat

Emily Porter SC

Where did you go?

Gwinganna is on a ridge overlooking the Tallebudgera Valley, in the hinterland behind the Gold Coast. Accommodation is an eclectic mix of structures, ranging from a basic room with shared bathroom in a converted Queenslander house to deluxe suites with a private plunge pool high on a hill, accessible by golf buggy (Hugh Jackman's personal choice, according to Gwinganna wisdom). I've been to Gwinganna five times in the past five years, and my preference is the Deluxe Orchard Suite with an outdoor bath.

What motivated you to go on the retreat?

My first visit, in 2019, was with a friend at her urging. Since then, I've returned yearly as a way of decompressing from the stress of working full time as a barrister while raising two children with my husband who is also a barrister.

Describe a typical day on the retreat

All activities at Gwinganna are optional. The program is based on resetting the body's circadian rhythm by getting all programmed exercise into the first half of the day, then allowing the body to rest and digest in the afternoon and evening.

The day starts with Qi Gong (a

traditional Chinese practice linking movement with breath, similar to Tai Chi) at 6.30am on a grassy hill overlooking the valley and the rising sun. Then there are two to three exercise options which, weather-dependent, usually involve either a challenging or gentle hike, followed by breakfast. After breakfast, there is a light stretching session, then two exercise options usually involving a challenging session in the gym or a gentler session in the pool or yoga pavilion. This is followed by morning tea, then a wellness seminar on topics such as stress, sleep, exercise or nutrition, then lunch.

After lunch, you can schedule a treatment in the stunning spa pavilion, a consultation with a nutritionist, a naturopath or an exercise physiologist, or another of the more unique offerings such as equine therapy. Or you can go for a walk through the rainforest, sit by one of two pools, use the crystal steam room or dry sauna, have a nap, read a book or do absolutely nothing. There is often a meditation or yin yoga session before dinner. Everyone is usually in bed by 8pm, because there are no screens and you are typically exhausted from the morning's exercise.

Tell us about the food

Gwinganna is a true health retreat, so most programs exclude alcohol, caffeine, dairy, gluten and sugar. I strongly advise detoxing from these

ingredients at least a week before arrival, to avoid the inevitable detox headache that can ruin your stay (and Gwinganna won't offer you anything more than a magnesium supplement to treat it, which in my experience doesn't touch the sides...). Happily, the food is excellent, almost entirely grown organically on site or sourced locally, and balanced to provide the nutrition our bodies actually need. In fact, it's pretty inspiring how delicious healthy food can be. I never go hungry, but you can ask for extra servings if you like.

What were the highlights?

I wouldn't return on an annual basis if there weren't a multitude of highlights. The spa is exceptional. The food leaves me feeling nourished and satisfied. The seminars are entertaining and informative. The rooms are slightly rustic but comfortable. The exercise program is diverse and caters to everyone. The environment is stunning. The absence of wifi and screens is a relief. But for me, the best part is having five days where I don't have to care for anyone but myself, and where the two big decisions of the day are which exercise option to take and which meal to choose at lunch and dinner.

Please provide a zen rating, from 0-5

I give Gwinganna a zen rating of 5. The retreat options don't come cheap, but they are worth every cent, and so is your wellbeing.

Balinese yoga retreat

Helen Tiplady

Where did you go?

I went on a week-long yoga retreat at Hotel Komune Resort and Beach Club on the east coast of Bali. It was run by an amazing teacher called Masha Gorodilova, who runs a fantastic yoga studio in South Yarra called Within Yoga.

What motivated you to go?

I was really keen to take a week out for myself, by myself, to recharge away from the demands of work and a young family. I was also really keen to immerse myself in yoga and meditation with a teacher whose style I really enjoy, together with like-minded people.

Describe a typical day on the retreat

We woke each morning, downed an espresso, and went straight into two hours of energising yoga and meditation. We then had the most delicious breakfast together as a group. We spent the day as we chose between about 10am and 4pm—my days were generally filled with massages, swims, naps, books, and lunches overlooking the pool and sea. We met up again in the late afternoon for another two hours of yoga and meditation, followed by dinner outside near the sea, and early bedtimes!

Tell us about the food

The food was ridiculously good—fresh, zingy, delicious, and plenty of it.

What were the highlights?

It was the biggest treat to get away for a week, and to have the time to practise lots of yoga and meditation.

Please provide a Zen-rating (0-5)

5—would definitely go again!



Gwinganna—Cooking Retreat

Joel Silver

Where did you go?

I went to the Gwinganna Lifestyle Retreat in the Gold Coast hinterlands. The acreage boasts spectacular views of the east coast, and much wildlife including native birds, koalas, kangaroos and wallabies, together with modern fitness facilities and the biggest spa in the southern hemisphere. Gwinganna runs a range of programs, but the three-day cooking retreat is specifically designed for those interested in improving their cookery skills.

What motivated you to go?

I had been on some of the longer Gwinganna programs before the pandemic and had a very good time. Life has gotten a bit busier since then, but the opportunity for a Thursday to Sunday getaway was too difficult to pass up. I wanted to have a short digital detox (although my phone data use suggests that

endeavour wasn't too successful), and I really like the food on offer!

Describe a typical day on the retreat

The program remains the same as the standard retreats, but the wellness seminars are replaced with three cookery classes. In one session we made gnocchi with a delicious Napoli sauce, assisted by the head chef. In others, we were shown how to make a chicken laksa, short-rib with chimichurri, and salmon beetroot gravlax. I ended up purchasing my seventh cookbook in the last half-year, so I probably need some help with my addiction.

Tell us about the food

The one big change since I last went to Gwinganna is that they offer coffee on the programs of four days or less, albeit only from 8–11am. Otherwise, the chefs present a wide range of concoctions, all organic, and gluten and dairy free. They cater for all diets,



including in the interactive cooking segments.

What were the highlights?

Getting a few relaxing massages, the nature walks, and not looking at my phone (other than to stream Carlton winning against Fremantle).

Please provide a Zen-rating (0-5)

A solid 4, although on a longer program, a 5 is attainable.



Vikasa Yoga Retreat

Luisa Frederico

Where did you stay?

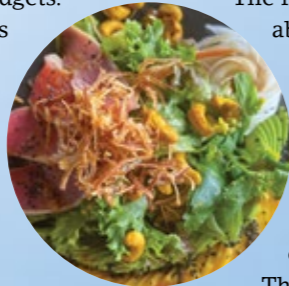
I visited the Vikasa Yoga Retreat in Koh Samui, Thailand. The retreat was organised through a yoga studio in Hawthorn, Kula Yoga. The resort is built into the side of a cliff between Lamai and Chaweng, with magnificent views over the Gulf of Thailand. There are a number of different rooms available to suit different budgets. I chose the ocean-view “lotus pad” which was mid-range, and had a comfortable bed, hot shower, and uninterrupted ocean views. I suspect most rooms would offer at least a glimpse of the water due to the positioning of the hotel.

Describe a typical day on the retreat

My day typically started with a refreshing swim in the sea, before making my way to one of the retreat’s many air-conditioned yoga shalas, for the first yoga class of the day, from 8am to 9am, followed by a leisurely breakfast.

It is open to choose your own adventure for the rest of the day. Options organised by the retreat staff included a hike through a rainforest to a nearby waterfall, a boat trip for some snorkelling, a tour of nearby Buddhist temples, or a visit to an elephant sanctuary. Or just relaxing by the infinity pool with a good book, or visiting the ocean view spa for the standard fare of massages and facials.

In the afternoon, a yoga master class awaited, covering topics such as alignment, posture clinic, backbends and balances. This was followed by dinner and, to wind down, a gentle yoga class



(yin or yoga nidra) or a guided meditation.

All activities and classes were optional, with an emphasis on individual choice, rest and relaxation. I opted for the hike and the snorkelling, and really enjoyed both. The yoga classes were challenging, but modifications were on offer to suit all levels of experience.

Tell us about the food

The food was a highlight—fresh, flavourful, and abundant.

Breakfast was buffet style, typically consisting of fresh fruit, Bircher muesli, homemade bread, eggs your way, grilled veggies and potato rosti.

Dinner varied from grilled fish to a variety of Thai curries, with fresh salads and a variety of side dishes to complement the main courses. There was limited meat, with meals largely based on veggies and tofu, occasionally including fish or chicken.

What were the highlights?

Other than the food, the location was a standout. The ocean views and sea breeze provided a perfect escape from the hot and humid weather.

Please provide a zen rating, from 0– 5

4—minus points for no coffee in the rooms (herbal tea only). Having to wait until 9am for my first coffee was a bit of a challenge.

I wouldn’t recommend this retreat if you are recovering from an injury or have any mobility issues, as navigating the 100 or so stairs to the restaurant could be challenging.



Eden Health Retreat

Julia Nikolic

Where did you go?

Eden Health Retreat is in the Currumbin Valley in the Gold Coast hinterland. The accommodation comprises a series of luxury lodges, integrated with the natural environment. I chose five nights in a Deluxe Suite, with a deep-set bathtub and private balcony showcasing views of the surrounding rainforest.

What motivated you to go on the retreat?

I only had a short period free and had heard great things about the retreat from friends and family. I wanted to visit Eden because of the beautiful location and the promise of no wifi or mobile phone reception in the valley.

Describe a typical day on retreat

A program is circulated each evening for the next day, but all activities are optional. I was told the decision not to share the entire program in advance is to help guests be more present. You can design your own program by attending the different activities on

offer, including yoga, Pilates, guided walks, cooking demonstrations, sound bowl healing and strength training classes, or explore the grounds yourself. There is also plenty of time to visit the spa and enjoy the heated outdoor freshwater pool, steam room and sauna. Don’t miss a visit to Club Mud, an outdoor hut where you can self-apply a full body mud mask (à la Louis Litt, [Suits]) before washing it off with a swim in the creek. Everyone comes together for dinner, followed by a group activity like a drumming circle or a presentation from an invited guest on topics like breathwork and gratitude.

Tell us about the food

The food was fresh, nutritious, and vibrant. Think savoury pancakes and cashew cheese for breakfast, beetroot-soaked eggs with radish, capers and dill for lunch, and barramundi and crispy root vegetables with herb sauce for dinner. I left feeling nourished, lighter, and not at all hungry. Be warned, there is no alcohol or caffeine at all, just a selection of herbal teas.

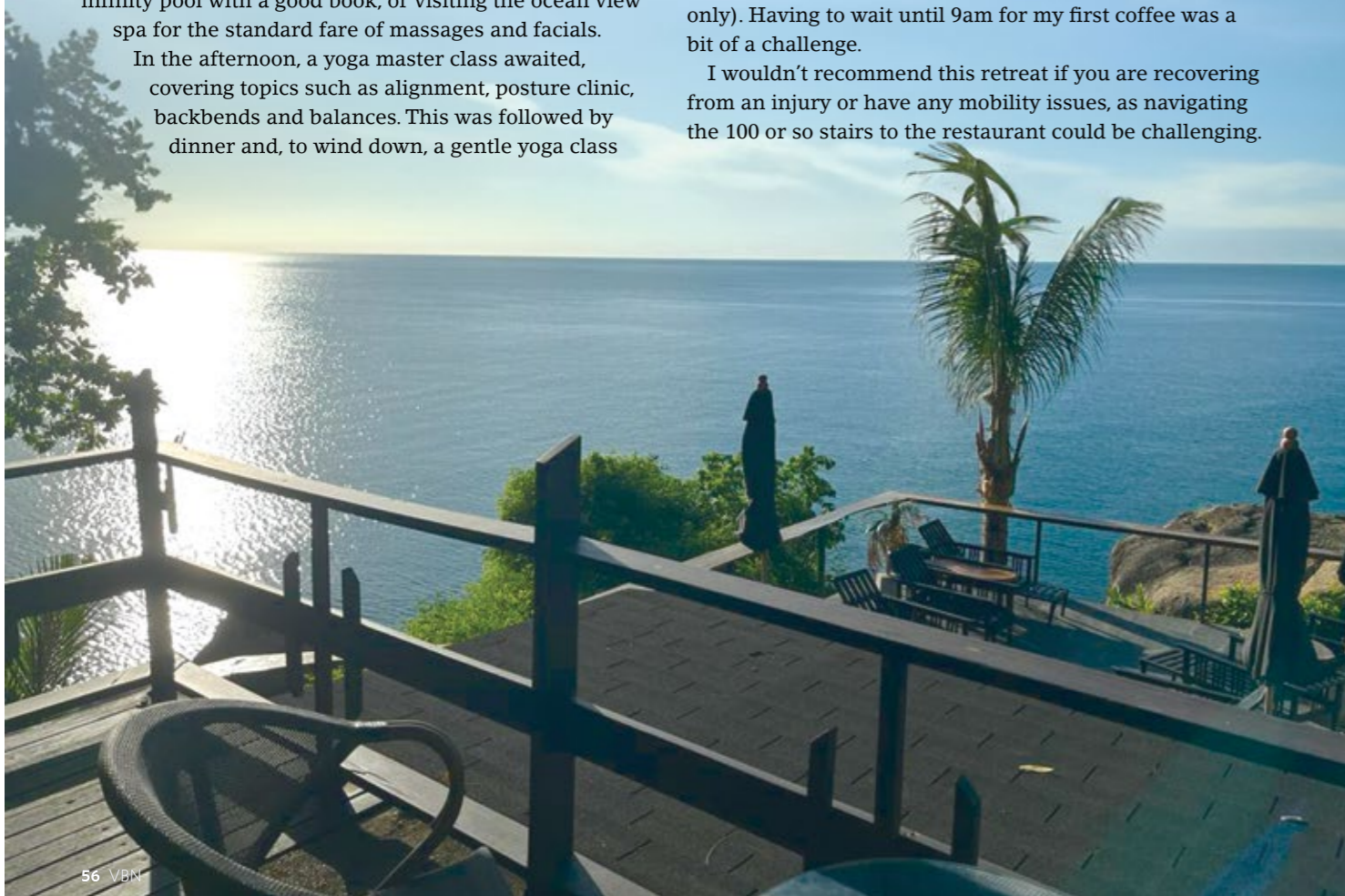
What were the highlights?

There is a seven-metre telegraph pole known as the Power Pole, which guests are invited to climb before reaching a tiny platform, then leaping towards a suspended ball. To reach the ball requires complete trust in your harness to stop you from hurtling into the creek below.

I attempted the Power Pole on the second day of my stay. Afterwards, on the walk to lunch, the retreat coordinator caught up with me. She had watched me descend after my first leap, disappointed that I had not reached the ball, and race back to the end of the line for another attempt. “It’s not about the ball,” she says, perceptively. “Sometimes, when we focus on the outcome, we miss the joy of the journey.”

Please provide a zen rating

I give Eden a zen rating of 4. With so many activities to choose from, and no scheduled down time, it can be difficult to resist the temptation to race from one opportunity to the next, instead of actually slowing down. ■



The delicate question of (apprehended) judicial bias

DAN STAR AND GLYN AYRES

Advocacy is often challenging. Sometimes, it is very challenging. Making an application to a judge to disqualify himself or herself is inevitably one of the latter occasions.

Generally, counsel are careful to emphasise that the application is for *apprehended* bias and not *actual* bias. Counsel can also frame their submissions around recusal being part of the proper working of the legal system, which aids the administration of justice by promoting public confidence in the independence and impartiality of the court. These submissions might help to reduce tensions between the Bar and the Bench, but those tensions are unlikely to be eliminated completely.

The authors have been involved in recent apprehended bias applications, in which the judge agreed to recuse himself or not sit.¹ In running those applications, we have considered other recent cases in which arguments of apprehended bias (or closely related procedural fairness grounds) have succeeded.² Our impression, albeit not empirically verified, is that the frequency of such applications is increasing (setting aside applications of questionable merit by in-person litigants). Given the difficulty of making these applications effectively, delicately and successfully, we have written this article as a practical primer on the current state of the law regarding apprehended bias as it relates to judicial decision-making.³

A brief snapshot of the established law and practice

The leading case on the test for apprehended bias remains *Ebner v Official Trustee in Bankruptcy*, in which the High Court said that “a judge is disqualified if a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial mind to the resolution of the question the judge is required to decide”.⁴ This is known as the “double might” test.⁵

A hypothetical reasonable observer “is postulated in order to emphasise that the test is objective”.⁶ That person “is not a lawyer”, but should be taken to be “informed on at least the most basic considerations relevant to arriving at a conclusion founded on a fair understanding of all the relevant circumstances”.⁷

Importantly, if a party does not apply to the judge for recusal, the party may be held to have waived the right to appeal on the basis of apprehended bias by “standing by”.⁸ However, the courts have recognised the difficulty for counsel of judging whether and when to object, or to apply for recusal, based on the judge’s conduct at trial.⁹ Particularly where the objectionable judicial conduct is an “unfolding situation”, the court will not conclude too readily that a failure to object results in waiver.¹⁰

It has been said that, before making a recusal application, the “usual practice” is for counsel to approach the judge “in chambers to notify them of the application to be made and its basis”.¹¹ We are not aware of this being an established practice in Victoria. To the authors, it seems an unnecessary and fraught practice that is potentially outdated. It appears to be based on the view that a question of apprehended bias is not “one for formal submissions or debate”.¹² We think that, if a recusal application is to be made, ordinarily it should be done by way of a formal application (accompanied by any relevant affidavit evidence and written submissions) that is heard in open court. However, in light of judicial commentary regarding the “usual practice”, the prudent course is to send appropriate correspondence to chambers notifying the judge and the other parties of the application.

Until very recently, the accepted practice in Australia has been for recusal applications to be decided by the judge to whom the application relates—even where the judge is part of a multi-member court.¹³ However, in a report that was released in 2022, the Australian Law Reform Commission (ALRC) recommended: first, that there should be a procedure for the discretionary transfer of such applications to a different judge for determination; and second, that applications relating to a member of a multi-member court should be decided by all members of that court.¹⁴ The main basis for these recommendations was said to be that “the existing self-disqualification procedure is not conducive to either positive litigant or public perceptions of procedural fairness” and “has a chilling effect on parties bringing disqualification applications”.¹⁵

The High Court weighed in on the second question in 2023, with a majority of judges holding in *QYFM* that disqualification applications relating to one judge of a multi-member court should be decided by the full court.¹⁶ However, there was no clear majority on the appropriate

procedure. Two judges held that the application should be considered and determined by the full court in the first instance.¹⁷ Three judges held that the application should be determined by the judge to whom it relates and then, if the application is rejected by that judge, by the other members of the full court.¹⁸ Faced with this division, it appears that intermediate appellate courts are now largely following the latter procedure.¹⁹

The ALRC’s recommendation for a discretionary transfer procedure has been “noted” by the Commonwealth Attorney-General,²⁰ but to our knowledge it has not been adopted by any Australian jurisdiction or court.

Having briefly described the landscape, we turn to consider two recent applications resulting in the primary judge no longer sitting.²¹

Benbrika (No 2)

Mr Benbrika is a convicted terrorist. After serving his sentence, he was the first person detained under laws that the High Court has said confer “extraordinary power to detain a terrorist offender in prison notwithstanding that the purposes of punishment have been vindicated and the sentence served”.²² Pursuant to a continuing detention order (CDO) made by the Supreme Court, Mr Benbrika was detained post-sentence in a prison for three years.²³



“Disqualification applications are part of a healthy and robust justice system.”

One of the “statutory safeguards” of this regime is that CDOs are subject to annual review by a judge of the Supreme Court.²⁴ When Mr Benbrika’s first annual review arose, it was allocated to the judge who had made the CDO. That judge had made some strong findings about Mr Benbrika, including that his claim to have put aside a previously strong desire to pursue violence had “a whiff of implausibility”; that a claimed change in ideology was “not genuine” and was “no more than a convenient fiction”; and that his claimed change of heart was “a fabrication by him”.²⁵

An application was made to the judge to recuse himself from the review on the ground of apprehended bias. The recusal application was opposed by the Minister for Home Affairs. The key authority debated before the court was *British American Tobacco Australia Services Ltd v Laurie*.²⁶ The key question was whether a fair-minded lay observer might reasonably apprehend, based on the judge having previously expressed “clear views” about questions that were live and significant issues in the review, that the judge “might not be open to persuasion towards a different conclusion” in the review proceeding.²⁷ The judge ultimately declined to make a definitive decision on apprehended bias, but determined that it would be prudent not to sit in any event. This is an example of a judge exercising his residual capacity not to sit, even without ruling on the question of disqualification.²⁸

Bruce v Victorian Workcover Authority (No 3)

Mr Bruce was employed by the Victorian Workcover Authority (WorkSafe). He brought a case in the Federal Circuit Court alleging that WorkSafe took adverse action

against him, contrary to ss 340 and 351 of the *Fair Work Act 2009* (Cth), by giving him a direction to remain away from the workplace and dismissing him. Following three days of trial including evidence from nine witnesses, WorkSafe made an apprehended bias application based on the judge’s comments and questions to three key witnesses.

WorkSafe’s application relied on recent Federal Court²⁹ and State appellate court³⁰ decisions applying the following principles in respect of judicial questioning during the evidence of a witness (as distinct from discussion between the judge and counsel):³¹

Of course [the judge] can clear up ambiguities. Of course he can clarify the answers being given. But he should be seeking to promote the orderly elicitation of the evidence, not needlessly interrupting its flow. He must not cross-examine witnesses, especially not during evidence in-chief. He must not appear hostile to witnesses, least of all the defendant. He must not belittle or denigrate the defence case. He must not be sarcastic or snide. He must not comment on the evidence while it is being given. And above all he must not make obvious to all his own profound disbelief in the defence being advanced.

In general terms, these are long-standing principles. Francis Bacon observed five hundred years ago that “[p]atience and gravity of hearing, is an essential part of justice; and an overspeaking judge is no well-tuned cymbal”.³² Nevertheless, the recent expression and application of those principles may represent something of a departure from the view that trial litigation sometimes requires judicial “asperity”, including with witnesses.³³

Ultimately, the judge in *Bruce* recused himself and the matter was referred to be listed before another judge.

Things became more interesting when Mr Bruce sought leave to appeal to the Federal Court, in effect seeking an order requiring the judge who had recused himself to decide the case. It is open to an appellate court to reverse a primary judge’s decision to recuse.³⁴ The High Court famously referred a matter back to a tribunal member who had recused himself.³⁵ However, there are also cases³⁶ and extra-judicial commentary³⁷ observing that embarrassment or loss of confidence may arise from a matter being returned to a judge who had decided he or she should not hear it because of an apprehension of bias. Ultimately, the Federal Court did not opine on these issues because the litigation between Mr Bruce and WorkSafe settled.

Concluding observations

We offer these views based on the cases and principles we have discussed. First, while a disqualification application should only be made where it is justified, counsel should not be too timid about raising the issue with the court. Disqualification applications are part of a healthy and robust justice system. Moreover, failing to raise the issue may result in waiver of appeal rights.

Second, special care is required as to how this type of application is raised with the court. Practices may vary between courts and jurisdictions, however one approach involves raising the matter with the judge informally in the first instance (but still compliantly with one’s professional ethical obligations), followed by a formal application if necessary.

Third, counsel should now expect that recusal applications that are made in respect of one member of a multi-member court will be decided by the full court, unless that member decides not to sit.

Finally, it is notable that the ALRC’s recommendation for

the discretionary transfer of disqualification applications to another judge has not been taken up. There may be a number of reasons for this, including economy

of judicial resources and the importance of ensuring that judicial officers “discharge their duty to sit”.³⁸ It must be said that, in recent years, there have been a growing number

of successful appeals on the ground of apprehended bias. Nevertheless, based on the cases we have discussed, there is a good argument that the existing system is working. ■

- Dan Star KC appeared in *Minister for Home Affairs v Benbrika (No 2)* [2021] VSC 684 and *Bruce v Victorian WorkCover Authority (No 3)* [2022] FedFamC2G 898. Glyn Ayres appeared as junior counsel with Dan Star KC in *Bruce*.
- For example: *Charisteads v Charisteads* (2021) 273 CLR 289; *Bhnan v Micheletto* [2022] FCA 846; *Dennis v Commonwealth Bank of Australia* (2019) 272 FCR 343; *Jorgensen v Fair Work Ombudsman* (2019) 271 FCR 461; *Gambaro v Mobycom Mobile Pty Ltd* (2019) 271 FCR 530.
- This article does not address the application of apprehended bias to an administrative decision-maker: see, e.g., *Minister for Immigration and Multicultural Affairs v Jia Legeng* (2001) 205 CLR 507 at [177]-[192] (Hayne J) and [99]-[100] (Gleeson CJ and Gummow J).
- (2000) 205 CLR 337 at [6] (Gleeson CJ, McHugh, Gummow and Hayne JJ) (emphasis added).
- See *HCF v The Queen* (2023) 97 ALJR 978 at [6].
- Johnson v Johnson* (2000) 201 CLR 488 at [12] (Gleeson CJ, Gaudron, McHugh, Gummow and Hayne JJ).
- Johnson* (2000) 201 CLR 488 at [53] (Kirby J). This passage is regularly cited and applied.
- Vakauta v Kelly* (1989) 167 CLR 568 at 572 (Brennan, Deane and Gaudron JJ).
- See *Royal Guardian Mortgage Management Pty Ltd v Nguyen* (2016) 332 ALR 128 at [32] (Basten JA): “awkward, to say the least”. There are, of course, other grounds of disqualification, including interest, association and extraneous information: *Webb v The Queen* (1994) 181 CLR 41 at 74 (Deane J).
- Jorgensen* (2019) 271 FCR 461 at [149] (Greenwood, Reeves and Wigney JJ).
- See *McKenzie v Cash Converters International Ltd* (No 3) [2019] FCA 10 at [6] (Lee J), citing *Attorney-General of New South Wales v Bar-Mordecai* [2009] NSWSC 117 at [3]-[7]. More recently, this procedure was followed in *Masi-Haini v Minister for Home Affairs* [2023] FCA 430 at [2]. In *Benbrika (No 2)*, the judge was informed by a notice of an intended application emailed to his chambers (copied to the other party).
- Livesey v NSW Bar Association* (1983) 151 CLR 288 at 292, quoting a statement by the President of the New South Wales Court of Appeal. See also *QYFM* (2023) 97 ALJR 419 at [88] (Gordon J), noting that “[t]he practice and procedure for raising apprehended bias and determining objections has historically been informal”.
- See *Malihin v Minister for Home Affairs* [2023] FCA 430 at [4].
- Without Fear or Favour: Judicial Impartiality and the Law on Bias* (ALRC Report 138, 2021), recommendations 2 and 3. The report was tabled in Parliament on 2 August 2022.
- Without Fear or Favour*, [7.33], [7.103].
- QYFM v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2023) 97 ALJR 419.
- QYFM* (2023) 97 ALJR 419 at [26]-[35] (Kiefel CJ and Gageler J).
- QYFM* (2023) 97 ALJR 419 at [66], [92]-[103] (Gordon J), [131]-[135] (Edelman J), [193] (Steward J). Gleeson J did not decide the question. Jagot J defended the “conventional practice” of the application being decided by the relevant judge alone: at [303]-[342].
- See, e.g., *Masi-Haini v Minister for Home Affairs* (2023) 298 FCR 277 at [94]-[97]; *Mohareb v New South Wales (No 2)* [2024] NSWCA 69 at [13]-[14]; *Acheson & Begbie* [2023] FedCFamC1A 240; *Genesalio & Genesalio* (No 3) [2023] FedCFamC1A 214. *Cf Riddell v The King* [2024] NSWCCA 46 at [115]-[119], in which it appears that the whole court considered and determined the application at the same time.
- <https://www.alrc.gov.au/news/recording-without-fear-or-favour/>
- We again refer to fn 1.
- Minister for Home Affairs v Benbrika* (2021) 272 CLR 68 at [38] (Kiefel CJ, Bell, Keane and Steward JJ).
- Minister for Home Affairs v Benbrika* [2020] VSC 888. An appeal was dismissed: [2021] VSCA 303.
- Benbrika* (2021) 272 CLR 68 at [12] (Kiefel CJ, Bell, Keane and Steward JJ).
- Benbrika* [2020] VSC 888 at [423], [430]-[432] (Tinne J). See also [424]-[428].
- (2011) 242 CLR 283.
- This language is from *Laurie* (2011) 242 CLR 283 at [104] (Heydon, Kiefel and Bell JJ).
- Benbrika (No 2)* [2021] VSC 684 at [41]-[44], referring to *Ebner* (2000) 205 CLR 337 at [20]-[21] and *Mandie v Memart Nominees Pty Ltd* [2017] VSCA 177 at [81]-[82].
- See *Bhnan* [2022] FCA 846 at [16]; *Jorgensen* (2019) 271 FCR 461 at [102]; *Gambaro* (2019) 271 FCR 530 at [24].
- R v T; WA* (2014) 118 SASR 382 at [52]; *Nguyen* (2016) 332 ALR 128 at [17], [172].
- Michel v The Queen* [2010] 1 WLR 879 at [34] (Lord Brown JSC).
- Essays or Counsels Civil and Moral: Of Judicature*, quoted in *Jones v National Coal Board* [1957] 2 QB 55 at 64 (Denning LJ). Bacon went on to say that it is “no grace to a judge ... to show quickness of conceit, in cutting off evidence or counsel too short; or to prevent information by questions, though pertinent.”
- Anderson v National Australia Bank* [2007] VSCA 172 at [95] (Nettle JA).
- Gas & Fuel Corporation Superannuation Fund v Saunders* (1994) 52 FCR 48 at 64 (Gummow and Heerey JJ); departing from *Mann v Northern Territory News* (1988) 53 NTR 15 in this respect. *Gas & Fuel* was referred to with approval in *Michael Wilson and Partners v Nicholls* (2011) 244 CLR 427 at [81]. See also *QYFM* (2023) 97 ALJR 419 at [33] (Kiefel CJ and Gageler J) regarding judges on multi-member courts being “duty-bound by the decision of the majority to hear and determine a matter contrary to their own judgment”, although this view did not command majority support in that case.
- Re Polites; ex parte Hoyts Corporation Pty Ltd* (1991) 173 CLR 78. The case related to the Australian Industrial Relations Commission.
- Mann v Northern Territory News* (1988) 53 NTR 15.
- Dr Melissa Perry (now Perry J) in *Disqualification of Judges: Practice and Procedure* (2001), pp 38-42, especially at [3.43].
- Re JRL; Ex Parte C/JL* (1986) 161 CLR 342 at 352 (Mason J).



Felicity (Flick) Chafer-Smith is a Ngarrindjeri woman from South Australia.

Lighting the way: a Torch artist's journey

JASMINE STILL AND CANDICE JACKSON

First Nations Australians make up **less than three per cent of the population**, but more than **30 per cent of the prison population**. First Nations men are **15-times more likely to go to prison** than non-Indigenous men. First Nations women are **21-times more likely to go to prison** than non-Indigenous women.

The Torch is a not-for-profit charitable organisation that aims to paint a different future for First Peoples community members experiencing incarceration by supporting their creative and cultural pursuits and providing a connection to the arts industry. It uses the power and processes of art to support reconnection to family, culture and community. Participants not only earn an income, they also rebuild their self-esteem, cultural pride and confidence. And through their art, The Torch participants educate us about

their culture, and help us to understand that they are transforming their identity and place in society.

Felicity Chafer-Smith (Flick) is one person whose life has been changed by The Torch. She is a Ngarrindjeri woman from South Australia. She grew up travelling with her family across Australia, fishing and learning about culture. However, by her early 20s she found herself imprisoned at the Dame Phyllis Frost Centre (DPFC). That was when Flick first heard about The Torch art program. Although unsure at first, she was encouraged by her friends and gave it a go; she loved it. The program, and the people she has met along the way, have helped her develop into a talented artist who enjoys sharing personal memories of growing up with her family through her acrylic paintings on canvas.

Flick left prison in 2020 and has not looked back. She is studying for a Bachelor of Business at Swinburne

University, has steady employment, is a proud mother of two boys and, of course, continues to produce amazing artwork in her signature style.

On 11 April 2024 Candice Jackson (a proud Palawa woman) and Jasmine Still from the Victorian Bar interviewed Flick about her journey with The Torch and what art means to her.

Candice: When did you first start to feel connected to culture?

Flick: When I became involved with The Torch I became a whole lot more connected to culture than I had been. It opened up a door that I knew was there but didn't know how to open. So being part of the program opened floodgates for how to learn and connect in ways I didn't know were possible.

Candice: How did painting create that opportunity for you?

Flick: Every Wednesday there was Koori art class in the education building. All the girls would say "come along, come along." I said, "I'm not an artist, I can't paint." But one day I went down to the class and one of the art officers came in and introduced himself, The Torch and what being a participant meant. He said to me, "who are your mob? I'll get a booklet and you can learn some things we have on file in our information banks." He brought that information in for me to see and it was like, "oh my God, I know that name." I then looked in the library and found some other books that had information about my family.

Candice: *Ngapuri*, 2024 is one of your latest works. Can you tell us about this painting and what it means to you?

Flick: I'm from South Australia, from the Ngarrindjeri people. This is the type of grass that is everywhere along the Coorong, where my family is from. What usually happens is that seasonally we burn it away to make way for new fresh grass to come through. So then more animals and wildlife come. That makes the Country better for hunting



Ngapuri, 2024, acrylic on canvas, 76 x 61 cm

“I have never been about hiding my past. Everything in the past has got me to where I am now.”

and produces resources for our families. It is important to share our knowledge about this practice, especially with the young ones, so our culture doesn't get lost.

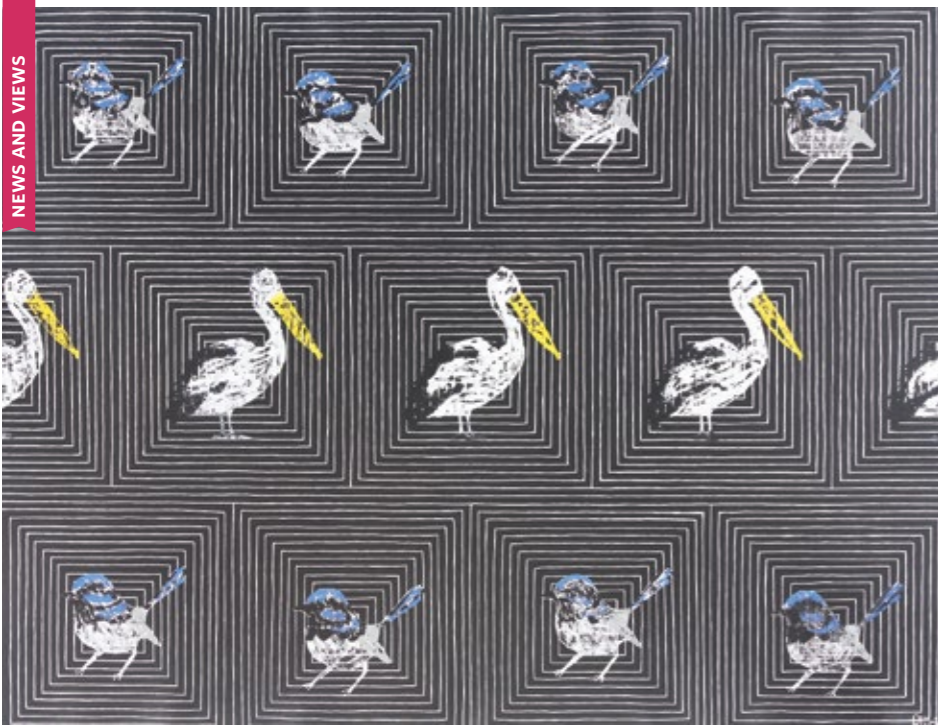
Candice: When was the knowledge passed to you about the grasses?

Flick: Through research. The program opened me up to different resources that I didn't know about before. My grandmother was my main source of cultural information. She passed away just after my last prison sentence. She was in palliative care, so I wasn't able to ask a lot of the questions I had for her. Since being a part of the program, a lot of different connections have popped up. I have

found distant family through the program. It's really reignited the connection I have to my family back home.

Jasmine: Did you learn about your language as well?

Flick: Language is a hard one. I would write to my grandmother from prison and I started putting in the letters questions for her about our language. She said we'd have to wait for me to get out. She explained that she couldn't write about language, I'd need to hear it to be able to pronounce it. But then that conversation about language sparked up with my mum. She said, "remember 'Boogadis and tukatas'?"



Waatji Pulyeri (Blue Wren) and Ngori (Pelican), 2021, acrylic on canvas, 89 x 118

That means shoes and socks. That's language." So there were all these things I already knew but didn't realise. Now I pass that knowledge onto my boys. I am teaching them to say all the parts of the body in Ngarrindjeri.

Candice: When you started the program, you said you were not an artist and didn't paint. How did it feel picking up a paint brush?

Flick: I felt completely out of my comfort zone. Some of the girls had been painting for years and their work was amazing. I remember when I finished my first artwork, it went up for sale and someone bought it, with the money that they had worked hard to earn. For someone to buy my creation, that was mind-blowing because it had been such a long time since I had created something someone wanted or cared about (apart from a negative news article). I now know that when people search for me on the internet positive articles pop up at the top of the list.

Candice: It changes the story people tell about you.

Flick: Definitely, to the people that matter. People who don't know me or my story, might still have different views. That doesn't matter, they are

entitled to their views. But the ones who matter will see where I am now. The Torch has helped me to rewrite my story.

Candice: You must be proud about that.

Flick: Yes, especially now that I have kids. I have never been about hiding my past. Everything in the past has got me to where I am now. That knowledge and experience and the wrong turns have got me to where I am. But hopefully it empowers my boys to know that mum made bad decisions and came back from it.

Candice: When you first started with The Torch did you try out different types of art?

Flick: The options in the women's system are weaving and painting. I had a crack at weaving, but it was not my jam. In a lot of my paintings you see a lot of geometric lines. I find it very soothing to do that. For example, *Life Lines #3, 2024* is a two-metre by two-metre painting. When painting these kinds of lines I get a ruler out and draw the outline, but the rest is freehand. So, to sit there and do that I have to control my breathing and do it calmly. It's my happy place. I couldn't zone out like that with weaving. But with painting I'd be lost for hours.

In *Life Lines #3, 2024*, everyone's life is a different line on the painting. It shows that we are all different. But, when we come together, we can make something beautiful.

Jasmine: Could you explain about your totem, the pelican, and its role in your life and art?

Flick: I'm Ngarrindjeri, so we have a Ngarrindjeri Nation in South Australia, in the Coorong. There are 18 different parts of my mob. And each little intermob has their own totem. Mine is the pelican. So I have a strong connection with them. I have so many memories on the Murray, growing up with family and fishing. It's our family thing. I can set up any kind of line. I can identify fish easily. A lot of those memories have pelicans in them. Whenever I'm out and can see a pelican flying across the sky I know I'm on the right path. That's the universe's way of saying continue on.

Candice: Have you always been aware of a strong connection to your totem?

Flick: No, when I got connected to my culture, once I became a part of The Torch, when I had a place to get the answers to my questions, when I met people and could sit down and yarn and started having conversations with family, that's when I really connected and that's when I really started noticing the pelicans when the good things were happening. It was always there, but I was not fully aware.

I've done a lot of art with the pelican. For example, *Waatji Pulyeri (Blue Wren) and Ngori (Pelican)* is a picture with pelicans and little blue wrens. There is a creation story back home about the little blue wren. All the birds in the area were having an argument about who was the best flyer. They gathered together and held a competition to see who could fly the highest. There were eagles, swallows, magpies and other birds. When it was the pelican's turn it went higher than any other bird. But when it had reached the peak of its flight and turned to fly down

all the birds saw that a little blue wren had hitched a ride all way up on the pelican's wing. The little blue wren flew off and went just a little bit higher. It won the competition, but it had cheated. So the other birds berated it for its behaviour. That is why little blue wrens are always down low in the shrubs, because the other birds dislike them. So part of the meaning of that story is to not cheat.

Jasmine: So, what are the next steps for you?

Flick: When I was in prison I was doing an online Bachelor of Business through Swinburne University. One day, I think at a NAIDOC event, I was talking to The Torch staff. I had already studied my first accounting units and Deb from The Torch said, "if you're getting out soon, we're looking for an accounting assistant. Are you interested?" I said "absolutely." So, I got out in 2020 and signed on as an employee. Next week I actually start my new position as an arts officer. So I will go back into the DPFC to help other women with their art.

Candice: How does that feel?

Flick: I feel blown away with the privilege. It is timed perfectly and I can't wait to go back in. Some of the women in there, I was in with. When you are in prison the only people you know and see on a regular basis are the ones who reoffend and come back in. That shows they are doing bad. To go back in and help the women see a positive story, it shows you can do it if you put the hard work in, stay in touch with The Torch and have that sense of community instead of drug acquaintances. To give that sense of hope. I went into Tarrengower to give a talk for International Women's Day. There were girls in there who I did time with and I got to see them. I was pregnant and they were excited and wanted to work with The Torch. I can't wait to go back in again and help people.

Candice: So, everything's come around in a beautiful full circle.

Flick: Definitely one of the main



Life Lines #3, 2024, acrylic on canvas, 186 x 195 cm

things this program is about is First Nations people fighting for First Nations people.

The opposite of addiction is connection. So to be able to establish mob and community before you get out of prison, you're already a step ahead. Our biggest issues are housing and interactions with drug associates. So to be linked in with a place like The Torch, you can get referrals, an income, you don't have to commit crime, you can meet like-minded artists, get together, paint, sit down and have yarnning sessions.

Candice: Because you don't have to be in custody to participate?

Flick: You sign up in custody. Once you are in the program you can stay on as an in-community participant. The opportunities are crazy. You can get casual work setting up exhibitions. Or you can do prep for setting up artwork sales. Or do mural work. Anything like that.

There are so many opportunities in community.

Candice: It sounds like it makes such a difference in people's lives.

Flick: It does. All the statistics back it up. The day after my 18th birthday I got locked up and I was in and out of prisons for most of my adult life until I was 24 and then, yeah, I got out in 2020 and haven't gone back. ■

Artworks are available for sale on The Torch website at <https://thetorch.org.au/>, which features a range of paintings, weavings, and wooden artefacts. One hundred percent of the artwork price goes directly to the artist. In November 2024 The Torch will hold its annual Future Dreaming exhibition, which showcases over 300 affordable 30 x 30cm paintings by First Nations Australians who are currently in prison in Victoria.

Secret chefs of the Victorian Bar

JOEL SILVER

Victorian Bar News is a serious publication. We report on many matters of general importance to our readers, such as developments in the law, appointments and passings, and photographs of members and the judiciary at social events. It is a duty that requires utmost dedication from the editorial committee, bringing to readers' attention matters of critical importance.

For example, in late 2022, I purchased a Traeger Wood Pellet Grill (and with wifi connectivity too!)

Traeger is an American barbecue manufacturer that specialises in smokers. Keeping a kosher diet, I have more limited dining opportunities than the average barrister, meaning that if I want something, I must often cook it

myself. And at the time of my purchase, I had a hankering for smoked brisket.

My purchase subsequently led to a conversation with a more senior colleague on my floor, Ben Gibson (who after much prodding by me—some might say harassment—agreed to participate in this article), who I learnt had been honing his slow-cooking abilities for some years, and had quite a few tips to offer me. From that conversation followed several further conversations with others skilled in the culinary arts, the result of which is this article.

While some barristers may have a reputation for keeping a struggling restaurant afloat through a single luncheon, just as many of our rank and the judiciary possess remarkable culinary gifts, from the farm to the table. I commend them to you.

Ben Gibson

1. What is your area of legal practice?

Commercial law.

2. Could you tell us about your speciality dish or cooking style?

American style BBQ.

3. What got you started in BBQ? How long have you been at it for?

I started with a Weber Smokey Mountain (smoker) purchased many years ago on Qantas points, on a whim, just to see what Texas style BBQ was like. It has been a while now.

4. Is there a particular cookbook you swear by?

A book? How old fashioned! YouTube videos of Aaron Franklin (Franklin BBQ), All Things Barbecue, Sous Vide Everything, Smoking Dad BBQ etc.

5. What has barbecuing taught you that you've deployed in legal practice?

Patience. Perseverance.

6. What tips do you have for a first-timer?

For low and slow cooking, start with quality ingredients (Vic's Meats), add a little TLC and relax, don't keep opening the lid to check it, just let it be. Once done, as with all good things, best shared with family and friends together with a fine wine, beer or cider.



Justice Kathryn Stynes

1. What is your area of legal practice?

Technology, Engineering, Construction.

2. Could you tell us about your speciality dish or cooking style?

My husband and I grow our own food (veg, meat, eggs, fruit, dairy). Therefore we eat seasonally. My specialty is coming up with different ways of serving the thing that is in season, over and over.

3. How did you get started?

I fell in love with the idea of growing and producing food watching *The Good Life* (BBC sitcom, 1975) growing up, and again when my kids were little. We started slowly about 18 years ago, and really hit our straps about five years ago.

4. We were quite excited when your Honour provided the photo of Phoebe, can you tell us a bit about her? Do you keep any other animals?

Phoebe is a jersey heifer. She was excess stock from a local dairy and too good to let go to market. We hand reared her and another calf (Clementine) last year. We have a total of seven girls, all hand-reared and therefore very friendly and easy to handle. We also keep chooks (10) and ewes (6). They are all spoilt.

5. What does your Honour currently have in season? Have you got any plans for it?

At the moment we have rhubarb, raspberries, apple, kale, chard, purslane, cos, carrots, beetroot, spring onion, broccoli, zucchini, tomatoes and

a variety of herbs. Excess apple is dried or bottled. Excess kale is dried and ground for smoothies. Herbs are dried. We eat almost everything else fresh. It is the rhubarb that is most challenging. We don't love it. Not sure why I grow it!

6. Is there a particular cookbook you swear by?

Google.

7. What has cooking seasonally taught you that you've deployed in legal practice?

Creativity.

8. What tips do you have for a first-timer?

Plant all the herbs you can. Cook with them, dry them for tea, make blended seasonings to give as gifts, use them to infuse oil.



Janine Gleeson

1. What is your area of legal practice?

I mainly practise in the Magistrates' Court dealing with crime and IVOs.

2. How did you end up making jams and preserving? Were you much of a cook before that?

I am a crap cook and leave most of it to my husband. But I started 26 years ago when we built our home on a one-acre block in the South East. We planted about 20 fruit trees and I have a large vege garden. Of course, it's famine or feast so I started

preserving all my excess fruit and vegies in the old Fowlers Vaccola preserving jars. I also make a lot of jams, marmalade and quince paste.

3. For the uninitiated, what are Fowlers Vaccola preserving jars?

A 120-year-old Australian company which sells food preserving kits for home preserving. End result is having tinned fruit/vegies which last for years.

4. Is there a particular resource you studied to get preserving right?

Very much trial and error, like jam making.

5. What has preserving taught you that you've deployed in legal practice?

Preparation is the key.

6. What tips do you have for a first-timer?

It's all about trial and error. And make sure you share produce with family and friends.

Rodney Garratt KC

1. What is your area of legal practice?

The principal areas are commercial law, equity and trade practices, with occasional forays into adjacent areas.

2. Could you tell us about your speciality dish or cooking style?

I have always got a lot of pleasure out of exploring basic techniques of food preparation (including stocks, sauces, sweet and savoury baking) and food preservation (e.g., chutneys, jams, compotes). French and Italian cuisine has been the major focus, but Chinese and Thai techniques have also appealed, giving rise to fusion influences. Duck is a favourite of mine. Here (right) I had prepared duck à l'orange, in which there were sometimes unexpected notes of fresh ginger and lemongrass.

3. What got you started in cooking? How long have you been at it for?

I have always been fascinated by the transformation of base ingredients into something delicious. As a youngster I remember the delight of pulling off my first spaghetti bolognese and crumb-based cheesecake. Success breeds confidence and curiosity pushes the boundaries. With university behind me the need for sustenance became the occasion for developing many staple dishes and for exploring new directions.

4. Is there a particular cookbook you swear by?

There are quite a few but *Mastering the Art of French Cooking* (2 vols, Simone Beck and Julia Child) has been a constant reference, as too has *The Cook's Companion* (Stephanie Alexander). Rick Stein, Yotam Ottolenghi and more recently Nagi Maehashi also cannot escape mention.

5. What has cooking taught you that you've deployed in legal practice?

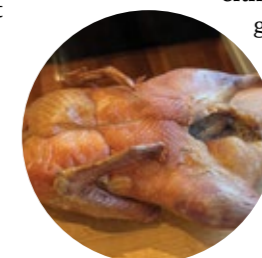
An interesting question. I am not certain there's a direct relationship



one way or the other, but there are definitely resonances. For example, in both it is best to plan backwards from where you need to arrive before moving forwards, just as the objectives of a final address or successful cross-examination need to be distilled before the exercise begins. Another example is understanding which relationships are critical (such as the ratio of some ingredients to each other) or just optional; in most cases theories there are one or two matters that are critical for a successful outcome, while others are facultative but dispensable.

6. What tips do you have for a first-timer?

Do not be afraid, or overly ambitious either. Measure your goals to your growing skills base. A spaghetti bolognese can lead on to a raspberry soufflé!



7. Nagi Maehashi, who you mention, was an Internet chef for some years before her first cookbook was published—

can we perhaps expect to see a YouTube channel showcasing the best of Garratt KC?

We would need to decide the category and format first. Perhaps comedy and something along the lines of the Canadian hit series *Just for Laughs (Juste pour rire)*? ■

Life So Full of Promise: further biographies of Australia's lost generation

BOOK BY ROSS McMULLIN, REVIEWED BY MICHAEL MCKERNAN

Ross McMullin's *Life So Full of Promise* features biographies of three gifted but long forgotten Australians.

Brian Pockley of Sydney, from a wealthy background, was a talented footballer and an excellent student. At Sydney's Shore school and at St Paul's at the University of Sydney, he was always a leader in his classes and on the football field.

Norman Callaway, a working-class boy from Hay in New South Wales, relocated with his family to Waverley in Sydney to advance his career as a cricketer. A prodigiously talented youngster, in grade cricket in Sydney he was a stand-out and progressed to play for New South Wales.

Murdoch "Doch" Mackay (right) was from a wealthy Bendigo family. His grandfather established the *Bendigo Advertiser*, which his father and two uncles managed with great success. Another prodigiously talented cricketer, he was also a first-class student, winning academic glory as a student at Ormond College within the University of Melbourne.

Towards the end of his book McMullin speculates that had Mackay survived the First World War, such were his abilities and leadership skills, he might have been Prime Minister of Australia.

Introducing Robert Menzies into his account, McMullin writes that Menzies followed Mackay, a few years later, in winning the Victorian Supreme Court prize for the best final year law student.

At the Victorian Bar, Mackay (Bar Roll No. 130) was a sought-after barrister almost as soon as he began practising. McMullin wonders if Menzies's record-breaking stint as Australia's longest serving prime minister might well have been challenged by Mackay or any number of other talented Australians who lost their lives in war. McMullin is asking readers to think of what grievous loss of talent the nation endured as a result of the war. This is a meditation for which there can be no answer but the question may unsettle many readers.

McMullin is one of Australia's leading historians. This book shows his skills in so many different ways. He shows himself to be a sympathetic and skilled sports historian. He is also a skilled social historian dealing adeptly with the complexities of family, of community, of love, of boys growing to maturity, of all the arrangements of Australian society in the early years of the twentieth century.

He also writes so well about battle. In his searing anger at the waste of Australian lives at Fromelles and Bullecourt, thrown away by incompetent generals, McMullin shows his detailed understanding of what was happening.

His account of the battle for Pozieres ridge where Mackay died is a wonderfully clear account of a battle that was so dreadfully confused and profoundly difficult to step through. At a crucial point in the battle the Australians were confused and in danger of being slaughtered as they bunched and fell upon one another. Mackay became the leader, sorting out the mess and resurrecting the charge. He died leading his men from the front. The success of the battle is due to him.

Mackay, marrying only days before his departure, wrote so lovingly to his wife from the front. His only ambition in life, he said, was to enjoy a happy family life at home. This was denied to

him. McMullin describes the agony of grief in the homes these three men left behind. Not only was the nation denied its potential leaders—family and loved ones were denied those around whom their lives revolved.

Life So Full of Promise takes readers behind the statistics of war. Three lives are presented in such compelling and, perhaps, loving detail, which provides an intimate understanding of national and personal loss. Readers will appreciate the prodigious research which underlines the stories. They will marvel at McMullin's skill as a writer, which forces them to ponder the most serious question of them all: was it in any way worth it?

Life So Full of Promise is Australian history at its very best. ■



Supporting inclusive and accessible justice at VCAT

SENIOR MEMBER REYNAH TANG AM AND SENIOR MEMBER SILVANA WILSON

It is well known that across its five divisions and nine lists, VCAT has an extremely broad jurisdiction, ranging from short, high-volume disputes to more complex and often lengthy matters involving many parties. As a result—and as any barrister who regularly appears in VCAT could attest—every day the Tribunal opens its doors to parties from a range of diverse backgrounds, reflecting the full spectrum of the Victorian community, many of whom self-represent. It is why the Tribunal is often referred to as the "People's Court".

Against that background, VCAT is committed to providing inclusive and accessible justice. As part of that commitment, the Tribunal has re-established its Diversity and Inclusion Committee to focus efforts on six priority groups and areas: First Peoples, People with a Disability, Culturally and Racially Marginalised People, Gender Equality, LGBTIQ+ Community and Age. Importantly, each committee member has lived experience as a member of one or more of these groups or areas.

As well as ensuring that the Tribunal remains inclusive and accessible for parties and other users of VCAT, the committee's workplan includes initiatives focused on staff (such as developing a workplace adjustment policy and guide) and members (such as helping to develop and implement vicarious trauma training, interventions and supports).

From the Tribunal's perspective, barristers can and should play an important role in supporting inclusive and accessible justice at VCAT, particularly where model litigant obligations are engaged.

We encourage barristers to become familiar with VCAT's practice note (PNVCAT 10) concerning the

pronunciation of names and use of preferred forms of address. The practice note requires a representative to provide the phonetic pronunciation of the family name—as well as the preferred form of address—of the represented party, their witnesses and the representative themselves. As the practice note indicates, "a person's name and how they are addressed is integral to their sense of identity, and can reflect a person's national, linguistic, religious and family heritage". Taking the time

to get a person's name and form of address right is, quite simply, "a matter of dignity and respect".

Barristers should also be aware of VCAT practice note PNVCAT 9, which adopts the recommended national standards for working with interpreters in courts and tribunals, and confirms the Tribunal will normally provide an interpreter for a party on request. Matters involving interpreters will be facilitated where barristers speak clearly, take adequate pauses and avoid the use of legal jargon or other complex language. The website of the Judicial Council on Diversity and

Inclusion includes fact sheets and training resources to assist. For example,

the fact sheet on "Using Plain English" includes tips and tricks such as defining unfamiliar words (e.g., "Crown land is land the government owns") and reframing negative questions (e.g., "So, you didn't report the trouble?" can be reframed as, "Did you report the trouble?").

Ultimately, our objective is to ensure that Victorians from diverse backgrounds can always participate fully and equally in proceedings. We invite barristers to assist VCAT in delivering on this commitment. ■

Senior Member Tang is the co-chair and Senior Member Wilson is a member of the Diversity and Inclusion Committee.



In this Back of the Lift section of the Victorian Bar News, the Bar acknowledges the appointments, retirements, deaths and other honours of past and present members of our Bar.

Adjourned Sine Die 72

- Federal Court of Australia**
- The Hon Mordecai Bromberg KC 72
- The Hon Dr Susan Kenny AM KC 73

- Supreme Court of Victoria**
- The Hon Michael Sifris KC 74
- The Hon John Dixon SC 74
- The Hon Timothy Ginnane KC 75

- County Court of Victoria**
- His Honour David Brookes SC 76

Silence All Stand 77

- Federal Court of Australia**
- The Hon Justice Penelope Neskovicin 77
- The Hon Justice Craig Dowling 77

- Supreme Court of Victoria**
- The Hon Associate Justice Caroline Goulden 78
- The Hon Justice Claire Harris 78
- The Hon Justice Andrew Watson 79
- The Hon Justice Christopher Boyce 80
- The Hon Justice Paul Cosgrave 80

- County Court of Victoria**
- Her Honour Judge Diana Manova 81
- Her Honour Judge Liberty Sanger 81
- His Honour Judge Michael Wise 82

Vale

- Malcolm Oakes SC 83
- David W Gibson 83
- Gavan Leonard Rice 84
- Gerald ‘Martin’ Randall 84
- Kenneth Spurr 85
- Laurie Robson 85
- Nimal Wikramanayake KC 86
- Peta Murphy 87
- The Hon Francis (Frank) Dyett 87
- The Hon John Dee KC 88
- Roger John Young 88
- Neville Bird 89
- Zev Wagen 89
- Gerald Joseph Grabau 89

Back OF THE Lift

ADJOURNED SINE DIE

FEDERAL COURT OF AUSTRALIA

The Hon Mordecai Bromberg KC

Bar Roll No 2253

In November 2023, Justice Mordecai Bromberg was farewelled as a full-time Judge of the Federal Court of Australia, in order to take-up his new role as President of the Australian Law Reform Commission.

Some months earlier in the Federal Court, the Anangu people succeeded before his Honour in a Native Title Application over three pastoral leases west of Alice Springs.

This was a long way from where his Honour’s grandfather had been driving a horse and cart in Poland when Germany invaded in 1939. The family fled to Israel where his Honour was born. When his parents came to Australia after the Six Day War in 1967, eight-year-old Mordy spoke no English.

His Honour’s parents later ran a small supermarket. He went to Elwood High School then spent his final school year at Brighton Grammar. Playing football for Elwood, he was surprised that the crowd was so welcoming: “Come on Mordy, go Mordy!” Their opponents were Mordialloc High. At the age of 15, he tried out successfully for the St Kilda U19s.

He was articled to Jonathan Rothfield at Slater & Gordon and then worked for Baker & McKenzie in London and Hong Kong before, becoming an Associate to Justice Gray in the Federal Court. He signed the Bar Roll in May 1988 and read with Maureen Hickey and Roy Punshon.

His Honour became a leader of the Industrial Bar. Just before Christmas 1997, Kevin Bell (later Justice Bell) led him in an unfair dismissal case for 30 Mayne Nickless drivers. Justice Ryan reinstated the workers on Christmas Eve.

His Honour was part of the “B team” in *Patrick Stevedores v Maritime Union* (Burnside, Borenstein and Bromberg [and Gronow]) arguing that Patrick’s attempt to replace union with non-union employees was illegal. They ran the case from interim injunction to High Court judgment in less than a month. As they walked out of the High Court, a cleaner approached them: “Thanks fellas, we all feel a bit safer now.”

He had four readers, Steven Moore, Peter Rozen, James Gray and Malcolm Harding, before being appointed silk in 2003.

He played football and cricket for the Bar and was rover in a Bar All Stars XVIII in 1998 with Winneke QC and Kendall QC in the ruck. The *Bar News* reported: “Bromberg expressed concern with his ruck partners. As both are silks, he thought he alone would be required to get his shorts dirty...” He was also the wicket keeper in winning Bar cricket teams in 1999 and 2004.

His Honour was appointed to the Federal Court in December 2009, becoming the first former Federal Court associate to sit beside his judge. Landmark cases he decided include *Eatock v Bolt*, in which he found that the prolific News Corporation journalist, Andrew Bolt, had breached the *Racial Discrimination Act 1975* (Cth) and *Plaintiff S99/2016 v Minister for Immigration*, in which he found that the Minister had a duty of care to provide a safe and lawful abortion to a refugee raped on Nauru when abortion was potentially illegal in PNG.

He is an ardent internationalist. He was a member of the Bar’s Indonesian Legal Aid Committee, which brought out Indonesian lawyers to do the Bar readers’ course. He helped establish the Jakarta branch of the International Centre for Trade Union Rights, of which he became Australian President. He chaired the Industrial Bar Association in 2018 and was the founding President of the Australian Institute of Employment Rights. He co-edited the Australian Charter of Employment Rights in 2007. He advised on a review of Cambodian Labour Law and helped draft Nepal’s Labour Laws.

He became President of the International Commission of Jurists, Victoria which hosts lawyers from other South-East Asian countries to do the readers’ course. One of these was Collin Andrew, who ran a successful habeas corpus application in the High Court in Kuala Lumpur for seven Rohingya refugee children held in detention.

Amongst all these achievements, his Honour found time to establish a vineyard at Vaughan Springs to grow Shiraz among marauding birds and kangaroos. At his 50th birthday party, his wife Nicky lamented the amount of time his Honour spent with his “mistress from the shed”: a mountain bike he enjoyed cycling around the hills near the vineyard.

The Bar congratulates Justice Bromberg on his years of outstanding service as a judge of the Federal

Court and welcomes his appointment as President of the Australian Law Reform Commission, a position he will doubtless carry out with customary distinction.

CAMPBELL THOMSON

The Hon Dr Susan Kenny AM KC

Bar Roll No 1619

Justice Kenny retired from the Federal Court of Australia on 29 November 2023, after more than 25 years of distinguished service to the court and to the people of Australia.

Her Honour studied at the University of Melbourne, placing first in History in 1975 and sharing first place in Law and the Supreme Court Prize in 1977. After completing her articles of clerkship at Henderson & Ball, her Honour worked at the High Court of Australia as an associate to Sir Ninian Stephen for two years from 1979. Her Honour signed the Bar Roll in 1981; at that time, she was one of just 20 women at the Bar.

Her Honour read with the late Peter Heerey AM QC, who later served with her on the Federal Court. She quickly became junior counsel of choice, specialising in constitutional and administrative law matters while also working on complex commercial and tax law matters. Among other notable early appearances, her Honour was junior counsel for the Commonwealth in the landmark *Tasmanian Dams* case.

From 1985, her Honour studied comparative constitutional law at Magdalen College, Oxford, completing a Doctor of Philosophy in 1989 under the supervision of Dr John Finnis (now Emeritus Professor).

Her Honour’s practice continued to flourish when she returned to the Bar. Alongside a busy advice practice, she appeared in high profile matters including the *War Crimes Act* case in the High Court and the *Portugal v Australia* and *Nauru v Australia* matters in the International Court of Justice.

Her Honour took silk in 1996, and in 1997 she was the first woman to be appointed to the Victorian Court of Appeal. In 1998, her Honour accepted an appointment to the Federal Court, taking the opportunity to work as both a trial and appellate judge.

It is not possible in this short tribute to give an adequate account of Justice Kenny’s exceptional period of service as a judge, but three things must be said. First, her Honour’s decision-making was characterised by intellectual rigour, thoroughness, and clarity of expression. Her decisions continue to make invaluable reading for lawyers and judges alike. As Chief Justice Mortimer observed at Justice Kenny’s farewell, her Honour’s contributions to the Federal Court’s public law and intellectual property jurisprudence were considerable.

Secondly, and no less importantly, Justice Kenny treated all in her court with unfailing fairness, courtesy, and respect—be they a leading silk, junior solicitor, or self-represented litigant. Her thoughtful and compassionate approach extended beyond the courtroom to her dealings with her judicial colleagues and court staff. In particular, her Honour’s associates benefitted immeasurably from her contributions to their development as legal thinkers and communicators. We learned from the best and remember our time in her chambers fondly.

Thirdly, her Honour’s commitment to public service went well beyond her work as a Federal Court judge. Alongside the significant demands of that office, her Honour has served as a part-time Commissioner of the Australian Law Reform Commission, Council Member of the Australasian Institute of Judicial Administration, Acting President of the Administrative Appeals Tribunal and Chairperson of the Australian Electoral Commission (a position she continues to hold). With great delight, she has also continued to teach at and contribute to the life of our universities over a significant period.

In 2020, Justice Kenny’s distinguished service to the law and the judiciary was ▶

recognised through her appointment as a Member of the Order of Australia. By the time of her retirement, her Honour was the most senior puisne judge of the Federal Court by a considerable margin. She served under four of its Chief Justices and was a valued source of advice to colleagues.

Her Honour has remarked in recent years that both our Bar and Australia's judiciary have become more diverse since her career began. Over many years her Honour has encouraged a diverse range of people to consider a career at the Bar, and expressed hope that our Bar will soon reflect the diversity of Australian society.

As Justice Kenny now embarks upon the next chapter of her life with her husband Ross, sons Kam, Pat and Ant, daughter-in-law Sophie and grandson Oscar, she has the very best wishes of the Victorian Bar. Our community has been enriched by her service.

CHRISTOPHER LUM

SUPREME COURT OF VICTORIA

The Hon Michael Sifris KC

Bar Roll No 2375

On 20 December 2023, Justice Michael Sifris retired as a judge of appeal in the Supreme Court of Victoria. He had served with distinction for 13 years, first as a trial judge and from June 2020 as a member of the Court of Appeal. Justice Sifris brought to the Bench a great wealth of experience, curiosity and a temperament that made him an outstanding judge and highly valued colleague.

Justice Sifris was born in South Africa and studied law at the University of Witwatersrand, where he came first in his graduating year and was awarded the Law Society prize. Seeing first-hand the injustice and hardship of the apartheid regime no doubt instilled in him a keen sense of justice and a corresponding hatred of injustice, an abiding theme of his life. He and his young family

left South Africa to come to Australia in 1986. He signed the Bar Roll in 1989 and through talent and industry quickly built up a large practice in commercial law and insolvency.

As a barrister, and later a silk, Justice Sifris had a formidable reputation in banking and insolvency. He was regularly retained for the banks in a broad range of complex litigation, enjoying the challenges and the fruits of high profile corporate collapses including of Estate Mortgage, Pyramid Building Society, Timbercorp and Great Southern. Michael was liked and respected by both colleagues at the Bar and judges before whom he appeared. Small and dapper in stature and presentation, he was polite and courteous to opponents, and kept an evenness of temper that avoided excess and conveyed a sense of calm and control no matter how challenging the client or brief.

Justice Sifris joined the court in 2010, one of a very strong cohort that year who have remained firm friends. Justice Sifris quickly made his mark on the commercial court and was appointed head of the Corporations List in 2016. As a judge, Justice Sifris retained his good humour and courtesy but kept a keen eye on ensuring that cases were dealt with expeditiously and by a focus on the critical issues.

His Honour has a deep understanding of principle but he was never hidebound, and although a person of outstanding repute, he was not so removed from the realities of commercial life that he was unable to understand the mercantile imperatives at play or identify a scoundrel when necessary. His judicial method was to resolve cases quickly, fairly and with the minimum of fuss; often meeting intransigence with the question, perhaps rhetorical: "why shouldn't I just wind up the company?" As a trial judge, Justice Sifris combined common sense, fair but robust fact finding and principle in a happy amalgam that allowed him to efficiently despatch an enormous volume of judicial work.

On the Court of Appeal, Justice Sifris brought his acumen as a commercial lawyer and judge and enjoyed the breadth of work that is undertaken in that court.

As a colleague, Justice Sifris provided sound and sensible advice, and was a particularly valuable sounding board for new judges. He has a natural ability to engender enthusiasm and warmth in his colleagues, thinking carefully in discussions and offering gentle but sage advice that provided great comfort and practical assistance.

The practise of the law, as a practitioner and judge, has always been important to Justice Sifris, but never at the expense of losing connection with his three great passions: his family, his faith and music. His retirement from the court will provide him with even more time to spend on these great joys.

THE HON JUSTICE NIALL

The Hon John Dixon SC

Bar Roll No 1673

John Dixon was appointed to the Supreme Court on 14 September 2010, and retired on 29 September 2023. His Honour is a proud Queenslander and apparently migrated south via motorbike to Victoria in his twenties—he certainly has risen higher in Victoria than any other Queensland bike.

During his time on the Bench, his Honour was notorious for a prodigious work ethic and for presiding over the Court's highest profile cases. Amongst others, there was the *Rebel Wilson v Bauer Media* defamation litigation, the *Banksia Securities* class action remittal, the Cardinal Pell defamation litigation, the Black Saturday bushfires litigation, and *Smith v Gould*, a fascinating dispute between two Melbourne art identities. His Honour became somewhat of a media celebrity in the wake of cases such as these, but despite his Honour's fame, his two beloved dogs, Gus and

Hughie, to this day wilfully refuse to obey his instructions.

During his time on the Bench, his Honour delivered several rulings that developed the law relating to practitioners' obligations under the *Civil Procedure Act 2010* (Vic). It is not an exaggeration to say that his Honour has shaped the way that we practise law today, and for the better. The rulings reflect his Honour's approach to practising law, being one of great fairness, practicality and efficiency. As a barrister practising in commercial, criminal and common law, his Honour was no different—his colleagues speak of his intellect and commitment to his clients even in the most difficult cases.

His Honour is also deeply committed to social justice, reflected in his much-celebrated judgment in *Certain Children v Minister for Families and Children & Ors* (No 2) on the detention of children in the Barwon Prison. This trait of his Honour was also apparent in his call in his retirement speech for Australians to "find the empathy, grace and fair go that ought to define our national character" in supporting the constitutional recognition of indigenous Australians.

His Honour is a wonderful mentor to his associates, many of whom have found their way to the Bar with his encouragement. His associates speak of his kindness and genuine love and enjoyment of the law.

His Honour also has many interests outside of the law. Indeed, somehow, his Honour has found the secret to getting through enormous amounts of work with ease, whilst still finding time to read novels, play what his close friend Rachel Doyle SC refers to as "some sort of crazy guitar thing", and enjoy the finer things in life such as his fantastic art collection, the Port Fairy Folk Festival, travel, good food and wine. His Honour loves spending time with his wonderful family, including his partner, Justice Lisa Nichols, his two children, Tom and Franny, and his grandchildren, Leo and Lucy. His Honour's priorities

are on display on his Instagram page, which is filled with images of his family (including of course the dogs), beautiful dinners and serious looking bottles of wine.

In my time working for his Honour, I only saw one thing ruffle his good humour. Justice Dixon is a Collingwood tragic. His (otherwise) loyal tipstaff, Ian, is a Richmond supporter. Chambers were very tense on the days of Collingwood/Richmond matches. A Collingwood loss was the rare thing that could (briefly) disturb his Honour's equanimity.

We wish his Honour all the best in his retirement (which appears to be short-lived given his appointment as a reserve judge!) and many Collingwood wins to come.

ELLA DELANY

The Hon Timothy Ginnane KC

Bar Roll No 1519

On 1 November 2023, a throng of judicial officers and Supreme Court staff gathered in the Old High Court library to mark the retirement of Justice Tim Ginnane, after over a decade of exemplary service. The evening's speeches disclosed not only the uniformly high regard in which his Honour has been held, by his colleagues and the profession more broadly, but also, the sincerity, intelligence, warmth, modesty, industry, integrity and humanity that have been his Honour's hallmarks over five decades in the law.

Just across the hall, his Honour's chambers offered a snapshot of the occupant. Shelves lined with photographs of his family, his eight readers and 18 associates, and Federal Court Justice Reginald Smithers, to whom his Honour was associate at the very beginning of his legal odyssey. An unassuming little frame, facing his desk, encased the oath of office he took upon his appointment as a judge of the County Court in 2009 and, again, on his appointment to the Supreme Court, in June 2013,

pledging to do equal justice and discharge his duties to the best of his knowledge and ability, without fear, favour or affection. Two autographed Western Bulldogs guernseys, presented by the club that his Honour sensationally saved from the brink, back in October 1989, when it epitomised the plight of the underdog. And there, amongst a vast library of legal texts, a copy of *My Reading Life* by Pat Conroy, featuring a favourite quote of his Honour, in pursuit of logic, clarity and accountability: "Good writing is the hardest form of thinking".

Justice Ginnane was raised in Footscray, where his late father, John, was a much-revered solicitor and champion of the Western suburbs. It was there that his Honour's love of the law, and what it could do, found root. After completing his BA/LLB at the University of Melbourne in 1975, he was admitted to practice in 1977 and, after his term with Justice Smithers, read with Alex Chernov (as he then was) before signing the Bar Roll in October 1979. A broad and bountiful career at the Bar followed, embracing administrative law, commercial law, and employment and industrial law. His Honour took silk in 2003.

The full breadth of his Honour's knowledge and experience at the Bar was brought to bear during his time on the Bench. In addition to his appointment to the County Court, he served two terms as a Vice President of VCAT. Following his appointment to the Supreme Court, his Honour heard an eclectic host of matters in the Common Law and Commercial Divisions, including as joint judge in charge of the Judicial Review and Appeals List, and during two terms on the Court of Appeal as an Acting Justice of Appeal.

In keeping with his Honour's commitment to notions of fairness and service, those appearing before Justice Ginnane invariably describe a courteous, considered and conscientious judicial officer. Tellingly, in his farewell speech, his Honour

took a moment to read a passage from *Kirk v Industrial Court of New South Wales* (2010) 239 CLR 531, in which the High Court characterised the supervisory jurisdiction of our Supreme Courts as “the mechanism for the determination and the enforcement of the limits on the exercise of state executive and judicial power”. There can be no doubt that Justice Ginnane has served that mechanism, and its underpinning logic, with honour and integrity.

EAMONN KELLY

COUNTY COURT OF VICTORIA

His Honour David Brookes SC

Bar Roll No 1422

After serving more than 10 years on the County Court, Judge David Brookes retired in December 2023.

Educated at St Bedes Mentone, David distinguished himself as a student such that he was accepted into the Medical School at Melbourne University.

He did not take to medical studies. This temporary setback was serendipitous because it caused him to decide to switch to law. Whether this was a decision that “enriched both professions”, as then Dean of the Law school Sandford Clark AM once said, it certainly enriched the legal profession, as would be demonstrated by his career to come. The decision also enriched his personal life because his father decided his academic performance would be improved if he took up residency at Newman College. It did not only that but also resulted in him meeting his future wife, Margaret Gorman, and making friendships that have endured to this day.

After completing Law School, David worked for a period with his uncle, Jack McCaffrey. He enjoyed advocacy work in the suburban Magistrates’

Courts and knew he wanted to go to the Bar. He signed the Bar Roll in 1978.

David read with Bill Gillard, later Justice Gillard, who taught him much about the art of being a barrister and, in particular, the need to over prepare his briefs.

He loved the Bar and his work. Initially he undertook a variety of lower jurisdiction work but soon found himself receiving briefs at the Workers Compensation Board. His ability as an effective negotiator, together with his known preparedness to fight cases when appropriate to do so, meant that he quickly established himself as a leading junior in that jurisdiction.

The abolition of the Workers Compensation Tribunal in 1998 led to another instance of David’s capacity to thrive in the face of adversity. Workers comp barristers were out of a job but David’s talents and enthusiasm meant that he thrived back in the mainstream of the Bar, where he quickly established himself as a leading common law junior. His advocacy skills meant that he certainly was not limited to personal injury cases. He appeared in the major Royal Commissions of the time.

It might be said that his dedication to his work did not always extend to paperwork. After waiting patiently for some time, one instructor sent him a cartoon depicting a little boy kneeling at his bed looking to the heavens and praying, “God, would you please get Mr Brookes to do my paperwork”. It did the trick of course, and David promptly completed and returned the paperwork.

David has outstanding communication skills and an ability to relate to people. As a barrister this was particularly marked with his success with juries. It also led him to develop a substantial practice as a mediator; a role to which he has now returned.

He took silk in 2007 and he quickly established and maintained a strong silk’s practice until he was appointed to the County Court in 2012.

He sat in the Common Law Division for a number of years before transferring to the Criminal Division in 2020. As a judge he was imbued with abundant common sense and always courteous to counsel, litigants and members of the public. These are important attributes of the best judicial officers. More than that, he understood the need to balance justice with mercy; and he had the courage to do what he thought was right.

David has a great sense of humour and loves to discuss politics and current issues. His personality has attracted a large circle of friends. I know that he has generously provided assistance to a number of his friends and their children when they have been in need.

I know of nobody with a more positive attitude than David to everything he does. This attitude infects everyone around him. He is looking forward to sharing his retirement with his wife Marg, his five children and 15 wonderful grandchildren. David remains a keen swimmer, golfer and tennis player and will undoubtedly enjoy time for travel and at the family holiday house in Lorne.

Thank you David for your significant contribution to our profession and our community.

THE HON PETER RIORDAN KC

SILENCE ALL STAND

FEDERAL COURT OF AUSTRALIA

The Hon Justice Penelope Neskovicin

Bar Roll No 3581

News of the appointment of Justice Neskovicin to the Federal Court of Australia was met with widespread praise as an excellent appointment and a wonderful addition to the Court.

Justice Neskovicin grew up on

the west coast of Tasmania, and retains a strong connection to and love of Tasmania. She attended the University of Tasmania in Hobart and served her articles in Tasmania, where she was admitted to practice as a solicitor of the Supreme Court of Tasmania in 1994.

Upon moving to Melbourne, her Honour worked at Arthur Robinson & Hedderwicks for several years, where her Honour made friendships and built connections which continue today.

Justice Neskovicin signed the Bar Roll in 2002, reading with Melanie Sloss (as her Honour then was) and then Simon Marks. Her Honour had four readers, but acted as an informal mentor to many more over her career at the Bar. She was a source of gentle guidance and wisdom for many.

Her Honour took silk in 2016, and her career continued to flourish, maintaining a broad and busy commercial practice, which covered class actions, regulatory matters, corporations and insolvency matters, environmental disputes and several Royal Commissions.

In her practice at the Bar, Justice Neskovicin could be described as diligent, thoughtful and humble. A role model to many junior barristers, female and male, her Honour showed the effectiveness of considered and restrained advocacy. Her Honour constantly strived to improve. Following each appearance she reflected on what went well, what did not, and what she could do better.

There is no doubt that these same attributes will stand her Honour in very good stead for her new role on the Court.

Justice Neskovicin’s capacity for hard work and perseverance translated to “leisure” activities, with her Honour for many years being a committed marathon runner. While a busy senior junior, her Honour chose to wind down by running up Mount Everest, twice completing the gruelling marathon in Nepal.

A contributor to the Bar, her Honour served as a director of BCL for several years, held the role

of Honorary Secretary to the Bar Council and, most recently, as Deputy Chair and, then Chair of List A.

Justice Neskovicin will be a great asset to the Court and make an excellent judge. Her many friends and colleagues at the Bar wish her a long and satisfying judicial career.

ALEXANDRA FOLIE

The Hon Justice Craig Dowling

Bar Roll No 3339

Justice Dowling was appointed a judge of the Federal Court on 9 February 2024.

His appointment did not surprise those who have had the privilege of working with him over his years of legal practice, as he is both an excellent person and lawyer.

Justice Dowling’s connections and contributions to the legal world are numerous.

Firstly, his studies. He was a Monash University Arts/Law student of the late 1980s and early 1990s. He was reputedly an accomplished student of law and arts, as well as being dedicated to the live music scene of the time, and a devotee of the surfboard. Not one to rest on his laurels, Justice Dowling also completed a Master of Laws at Melbourne University.

Secondly, his eight-year career as a solicitor. He did articles with Purves Clarke Richards and then worked at Slater and Gordon. Whilst a solicitor, he directed himself towards employment and industrial law: it was an area that was close to his heart and interests, that was also lively, interesting and challenging.

Thirdly, his impressive 25-year practice at the Victorian Bar. Justice Dowling joined the Bar in 1999. He predominantly practised in the areas of industrial and employment law, discrimination law and administrative law. Justice Dowling was constantly in demand, constantly working and constantly on the move around the country, plying his profession in a courteous, efficient and effective

manner. When he was involved in a matter, there was an air that the matter was moving inexorably and inevitably towards the conclusion for which he advocated.

Fourthly, his involvement with the Industrial Bar Association, of which he has been a long-term member and past president.

Fifthly, Justice Dowling had four readers. Each testify to him being an excellent lawyer and a patient, understanding and good-humoured mentor.

And finally, his return to university as an educator. As a Senior Fellow, he lectured in the area of industrial and employment law and, much to the appreciation of the student body, imparted learning in a relaxed and easy to follow manner.

Justice Dowling is well set to continue to contribute to the law as a member of the judiciary, although the Bar and his past instructors will miss him.

Justice Dowling has a busy and well-rounded life. First cab off the rank is a family that he adores. He has many friends, a number of whom go way back, with many sharing his interests of music (preferably live or at least on vinyl) and guitar, the Western Bulldogs, or a beach/surf break.

If the past predicts the future, Justice Dowling on the Bench will be prepared, informed, thorough, curious, calm and courteous, thereby setting a benchmark that those fortunate enough to appear before him should seek to emulate.

JAMES HOOPER

SUPREME COURT OF VICTORIA

The Hon Associate Justice Caroline Goulden

Associate Justice Goulden was appointed to the Supreme Court of Victoria on 27 November 2023, following a distinguished 20-year career as a

commercial litigator at Arnold Bloch Leibler.

Her Honour was educated at St Catherine's School in Toorak where she was dux and the extensive co-curricular activities on offer allowed her (self-confessed) competitive spirit to thrive. She studied law and commerce at Melbourne University, graduating in 2002 with the intention of practising as a banking and finance lawyer.

However, that plan changed almost immediately upon her clerkship at Arnold Bloch Leibler, where the intrigue and tactical thinking required in litigation quickly engaged her strategic mind. In the litigation team, her Honour's practice was incredibly diverse, but she has been recognised in particular in the Best Lawyers® international guide for her specialisation in insolvency. That specialisation was engaged in her representation of the liquidators of the Arrium group in one of Australia's biggest insolvent trading cases. This, as in all her matters, showcased her Honour's care and compassion for her clients and those affected by legal disputes as they worked through the difficult situations in which they found themselves.

In parallel with her legal prowess, her Honour has always been conscious of the need for balance to enable practitioners to have long and fulfilling careers in the exacting profession that is the law. In particular, many of her past colleagues commented on her support and mentorship to junior lawyers, remarking on her heartfelt desire to develop and nurture lawyers as well as her unflinching directness and honesty when needed. Another memorable aspect of her Honour's time at Arnold Bloch Leibler was her brightly decorated office, which was in keeping with her welcoming manner.

Despite the fast pace of the world of private practice and its cultural demands for practitioners to be "always on", her Honour led by example in taking time to enjoy

other aspects of her life while still managing to have a thriving practice. Specifically, her Honour's love for, and prioritisation of, her family was always evident. When that balance was harder to achieve, such as when travelling interstate for work, her Honour managed to ensure that spirits were maintained by her ever-ready sense of humour (and, of course, taking the time to enjoy a meal or two out).

Her Honour has been an advocate for women within the legal profession and has attributed much of her early development to the mentorship she herself received from former Arnold Bloch Leibler partner, Leonie Thompson. In addition, her Honour has always been conscious of the potential for lawyers to add value to the community more broadly. Her appointment will afford her opportunities to further that work, employing the same passion and drive she applied to her work at Arnold Bloch Leibler. All who know her look forward to seeing her excel in her new role.

SOPHIE KEARNEY

The Hon Justice Claire Harris

Bar Roll No 3624

Justice Claire Harris was officially welcomed as a justice of the Supreme Court of Victoria on 6 December 2023.

Her Honour's path to judicial office was somewhat unconventional. She attended Nunawading High School, then an outer suburban government high school, since replaced by a multi-storey car park. She then studied Arts/Law at Monash University, following a brief dalliance with speech pathology.

Her Honour completed articles at Arthur Robinson and Hedderwicks (now Allens) under the tutelage of corporate law maestro, Jon Webster. Soon afterwards, in 1997, she worked as an associate to Justice Merkel of the Federal Court, who observed that her Honour showed clear potential to

be a high achiever in the profession from the outset.

Justice Harris undertook a Masters at Cambridge, studying international criminal law. Those studies led to the extraordinary experience of working with the late Justice David Hunt for 18 months as a legal officer based in The Hague, where he was a judge of the United Nations International Criminal Tribunal for the former Yugoslavia, and later the International Criminal Tribunal for Rwanda. Justice Hunt, to whom her Honour remained close until his death, was a considerable influence on her career.

Justice Harris worked for a year at the London law firm Tite and Lewis, specialising in public law in the commercial context. She then returned to the Yugoslavian War Crimes Tribunal, as part of the team which prosecuted the case against Slobodan Milosevic—truly a central role in an important chapter of contemporary world history.

She then returned to Australia and signed the Bar Roll in 2003, reading with Peter Collinson KC. Fellow reader, Hamish Redd SC, observed that while he was regularly sent out to suburban and regional Magistrates' Courts to fulfil the usual destiny of the baby barrister, her Honour managed to quickly slip into the role of junior barrister on large commercial and public law matters. Her Honour maintained her public and commercial law practice throughout her time at the Bar, while also acting in insurance disputes, class actions and commissions of inquiry.

Her Honour's extensive pro bono work in public law—the area of practice which her Honour perhaps found most fulfilling—was focussed on judicial review and statutory construction in various government and regulatory contexts. According to Ron Merkel KC, who worked with her Honour on a number of pro bono cases, clients in a case in which her Honour acted pro bono for Tiwi Islanders became concerned that the

rosette on her gown was a very poor version of one of their totems, the turtle. They asked why her Honour was wearing a sub-par turtle and, not being happy with the response, decided to replace this poor imitation ... their substitute might not have been regulation court attire but did at least look like a real turtle.

Her Honour's career included many appearances in trials and appeals in the Supreme Court, and in the High Court, both as a junior and as a silk. She was a mentor to many, both formally and informally, and an acknowledged role model for women in our profession. She contributed significantly to the life of our Bar, serving on numerous committees and in various other voluntary roles, including as President of the Commercial Bar Association from 2019 to 2021.

Justice Harris has an enduring love of travel. She is a devotee of the European summer, frequently escaping the Melbourne winter to share family holidays in Greece on the island of Ithaca, where her husband Jason's father was born. She is equally passionate in her support of the Sydney Swans / South Melbourne in the AFL, having inherited this allegiance from our father, John who—alongside our mother, Jan, and her Honour's son, Leo—proudly watched with other family and friends as her Honour was welcomed to the Court.

WENDY HARRIS KC

The Hon Justice Andrew Watson

Bar Roll No 2608

The Supreme Court is fortunate to have been augmented by the appointment of Justice Andrew Watson. His Honour's thoughtful and considered manner of dealing with highly complex problems, combined with an innate sense of justice, have been observed over the years by all those who have worked with him. The

result of those attributes is balanced decisions showing true wisdom, and the people of Victoria will now benefit from his Honour's judgments with that same quality.

Among his Honour's many achievements have been a stint at the Victorian Bar (often working as junior to Mordecai Bromberg, now a Justice of the Federal Court and Australian Law Reform Commissioner), having carriage for the ACTU of the National Wage Cases in the mid 1990s, and joining Maurice Blackburn. At Maurice Blackburn, his Honour came to have ultimate oversight of a huge number of the most significant pieces of class action litigation in Australia, including from 2011 in his capacity as National Head of Class Actions. His Honour has acted in the interests of millions of Australians in class action cases too numerous to mention, but which included acting for shareholders against public companies, customers of banks, Victorians who suffered loss from the tragic events of the Black Saturday Bushfires, and taxi drivers (in the recently settled class action against Uber).

Justice Watson has been, quite simply, a titan of the class actions profession in Australia. Almost every major development in class actions over the past 20 years reflects his handiwork. While his Honour's formidable mathematical aptitude found expression in settlement distribution schemes and funding equalisation formulae, his Honour's mastery of the facts and the law fostered an ability to identify an arguable mass wrong and conceptualise a case theory that would enable redress to be sought by aggrieved claimants which was second to none.

His Honour's measured and calm demeanour is rarely disturbed by anything approaching excitement. A rare exception may have been the last two weeks of September 2016, where, following a nail-biting preliminary final, and a similarly

hard-fought Grand Final, his Honour's long-suffering (albeit mystifying to some) devotion to the Western Bulldogs Football Club was finally rewarded. The significance of the Sons of the West to his Honour is only matched by his Honour's (much more understandable) devotion to his family, Dani, Lachlan, and Brigid, of whom his Honour is exceedingly proud.

At his ceremonial welcome, Justice Watson said that while he had enjoyed "fighting for fair" while in practice at Maurice Blackburn, in his new role as a judge he intended to "strive for fair". His Honour has in fact always done that, and his colleagues and friends are sure that he will continue to do so. We look forward to many years of service from Justice Watson as a justice of the Supreme Court.

WILLIAM AD EDWARDS KC

The Hon Justice Christopher Boyce

Bar Roll No 2829

His Honour is a keen musician, having taken up the trombone at age 12, and also playing guitar and piano. A student of both classical and jazz music, his Honour is almost painfully humble when it comes to his own musical capacities, preferring instead to encourage the efforts of others. Perhaps in a genuine example of art imitating life, his Honour endorses respect for the craft, and studious rehearsal leading to mastery of the fundamentals—rich tone, true pitch, deft attack and fine timing.

Law was his Honour's second preference. Had he been a few months older he might have been bold enough to pursue a career in the arts but life as a post-September 1966 St Kilda supporter did not promote confidence.

His Honour was called directly to the Bar in 1993. He read with Patrick Tehan OAM KC, who supported his Honour to develop his own specialty in criminal appellate advocacy. ▶

His Honour maintained great respect for trial advocates, regarding their work as heroic, and this was reflected in the deference and tact with which he expressed his grounds of appeal.

His Honour spent two years in the Northern Territory working for the Aboriginal Legal Service. However, the bulk of his Honour's career at the Bar was spent representing applicants, intelligently and creatively and, often, funded by legal aid. It was on account of this work that his Honour took silk in 2014.

Immediately prior to his appointment to the Court of Appeal on 21 November 2023, Justice Boyce was a senior crown prosecutor, having been appointed to that role in 2016. His appearance work in this capacity is documented in the reported decisions of many difficult and complex cases. His role as an advisor and mentor to colleagues in Crown Prosecutors' Chambers, formally and informally, though not reported, is sorely missed and will not be forgotten.

His Honour was a member of Douglas Menzies Chambers when he accepted his first reader, to whom he provided advice and guidance that was both thoughtful and wise, no matter how busy he was with his own matters. This generous approach was taken with all his readers and professional colleagues alike. His Honour moved to Crockett Chambers in 2007, headed by Robert Richter KC, with close friends the late Lachlan Carter and (now Justice) Michael Croucher.

His Honour is married to Eva, whose moderation of her own career allowed him to flourish, and whose kindness and care enabled his Honour to bounce back when the going seemed too tough. His Honour has two daughters, Elena and Lucy, of whom he is immensely proud and doting, and who may be trusted to ensure his Honour does not take himself too seriously.

CLIVE SCOTT, ANDREW CONLEY AND
GEORGINA CONNELLY

The Hon Justice Paul Cosgrave

Bar Roll no 1824

On 21 November 2023 Judge Cosgrave was appointed as a justice of the Supreme Court.

His Honour's appointment followed more than 10 years' distinguished service as a judge of the County Court, including over four years as Head of the Commercial Division.

His Honour joined the County Court at a dynamic time, soon after the conferral of unlimited monetary jurisdiction and the establishment of the Commercial Division—then headed by Judge Kennedy (now of the Court of Appeal). His Honour met these new challenges with good humour and efficiency, albeit often from chambers that were notorious for their "organised chaos" of teetering stacks of papers.

Throughout his time at the County Court, his Honour garnered a reputation for his courteous and considered demeanour, both on the Bench and in chambers. His Honour gave the many self-represented litigants who appeared before him the courtesy of unflappable patience—even in the face of claims of sovereign citizenship and laminated excerpts of the Magna Carta. As for practitioners appearing before him, the harshest words ever uttered by his Honour in court were that conduct was "less than satisfactory".

His Honour presided over a number of interesting and complex matters touching on contract law, trusts, property disputes, consumer law and much more. However, despite this impressive judicial resumé, the allocation of two cases to his Honour—one concerning almonds, the other, borlotti beans—has resulted in his new moniker, "the nuts and beans specialist".

His Honour's judgments are a model of clarity and structure, reflecting his mastery of legal writing. Such is the appreciation of the "Cossie approach" that his Honour

has been regularly tasked with teaching the judgment writing course at the Judicial College of Victoria. His Honour's appreciation of quality writing has also translated into the mentorship of his associates, some of whom can recall being gifted one of his Honour's favourite texts, Bryan A Garner's *Legal Writing in Plain English* (kindly intended, we hope).

As with his 10 readers at the Bar, his Honour has been a generous and supportive mentor to all of his associates, six of whom—Monika Paszkiewicz, Cameron Charnley, Jonathan Barrington, Anna O'Callaghan, Sam Profit and Niko Kordos—have since joined the Bar.

Notwithstanding his formidable work ethic and case load, his Honour's devotion to his family has been a constant. His love of cricket, good literature and music has also endured—and sometimes spilled into life at the court, with associates being tasked with keeping him updated on the latest cricket scores when tense matches conflicted with the court schedule.

Although the County Court has lost a hard-working and intelligent judge, the Supreme Court is privileged to have his Honour join its ranks.

The Bar wishes his Honour every success in his new role.

ANNA O'CALLAGHAN AND SAM PROFITT

COUNTY COURT OF VICTORIA

Her Honour Judge Diana Manova

Bar Roll No 3489

On 14 June 2023 her Honour Judge Manova was appointed as a judge of the County Court following a career at the Victorian Bar spanning over 22 years.

Her Honour brings to the Bench a focus on ethics, procedure and rules of evidence, honed from years of practising as a prosecutor in the criminal law. This is tempered with

a good dose of pragmatism and common sense, due in no small part to her Honour's work in the common law jurisdiction.

In her time on the Bench thus far, her Honour has already presided over common law trials, serious injury applications, interlocutory applications and matters involving unrepresented litigants. Her Honour has also handed down sentences in criminal pleas. I have it on good authority that her Honour is enjoying her new role and is immensely impressed by the collegiate atmosphere and support of colleagues and staff at the County Court.

During her years at the Bar, her Honour gave her time and energy freely in pro bono matters. She guided and mentored other barristers, practitioners, and students from a diverse range of backgrounds. Her Honour practised with a strong sense of duty to the court and the community, and would often step in to assist unrepresented litigants in court at short notice. It is fitting that her Honour now has the opportunity to serve the community in a new way, as a judge of the County Court.

For those that were unable to attend her Honour's welcome last year, I urge you to access the recording of her Honour's speech on the County Court website. There you will gain insight into her Honour's background and life experiences as a child refugee to Australia in the late 1970s and as a teenager growing up in Springvale. You will also experience a little of her Honour's irreverent sense of humour, which is now bestowed upon the personnel of the County Court and in particular her Honour's first two associates, Julio Di Gregorio and Rany Misconi.

In her spare time, her Honour indulges in a passion for films of all genres, and is often to be found attending international film festivals for marathon screenings. Her Honour is also an intrepid traveller and has completed many hiking expeditions around the world including in Japan, France, Switzerland and the Balkans.

I have the privilege of being her Honour's younger sister, and many of you will know that we shared chambers for two decades. During that time, her Honour would typically be working in chambers well before I would arrive, and sometimes even before the sun came up. All of her Honour's achievements, including her ascension to the Bench, are the direct product of her Honour's diligence, persistence, tenacity and sheer grit. Her Honour was and continues to be an inspiration and role model for many, and I congratulate her and wish her well for her career on the Bench.

SASHA MANOVA

Her Honour Judge Liberty Sanger

Friends and colleagues have celebrated the appointment of Liberty Sanger as a judge of the County Court. Prior to her appointment, Judge Sanger was a principal, board member and practice group leader of Maurice Blackburn Lawyers.

At her Honour's welcome, Colin Mandy SC, Vice President of the Bar, noted her beginnings at Wodonga West High School followed by a foray into student politics, including a year as President of the Victorian branch of the National Union of Students. Her Honour graduated from Monash University with an LLB (Hons), an achievement shared by few student politicians.

Judge Sanger's career took her to Maurice Blackburn. She was articled to John Price and immediately showed an aptitude for hard work and empathy with injured clients. John Cain, then-managing partner and now State Coroner and Country Court judge, was an early and continuing mentor to her Honour while she was at the firm. Judge Cain sat on the Bench at her Honour's welcome ceremony.

One of her Honour's first cases was the matter of *Zammit* in which she briefed Robin Gorton QC and Geoff Chancellor. The proceeding

commenced whilst her Honour was still in articles and made its way from the County Court to the Court of Appeal. After her Honour's admission as a lawyer, the case successfully resolved following a grant of special leave to the High Court.

Her early days as a solicitor also involved regular appearances in the Workcover Mentions List at the Magistrates' Court before the irascible and thoughtful Magistrate O'Dwyer. She also instructed in trials and worked with contemporary and future leaders of the Bar including Brian Collis QC, Dyson Hore-Lacy SC, John Philbrick QC and James Mighell KC.

Her Honour learnt about the importance of morning coffee breaks and that fruitful negotiations often occurred after a cup of coffee.

Her Honour's career continued to progress at Maurice Blackburn when she was named a senior associate and thereafter a partner with leadership roles in establishing new offices. This was coupled with maintaining a large file load, creating and sustaining links with institutional clients and leading the growth of what has gone on to become a major national law firm.

Her Honour also undertook regular media appearances with Virginia Trioli and John Faine. Her Honour was always impeccably prepared and maintained her balance and humour, even when required to wake before dawn.

Her Honour's commitment to the community is reflected in the board and committee appointments she has held. These universally confirm her commitment to equality of opportunity and the equitable use of public resources.

In the 2021 Queen's Birthday Honours List, her Honour was awarded the Medal of the Order of Australia (OAM) in recognition of her work in the law and the community. She has also been recognised on the Victorian Women's Honour Roll.

Her Honour is raising Ned and Matilda, who appeared to greatly enjoy sitting in the jury box at the

welcome ceremony. Her Honour acknowledged the support of David Feeney, her husband, who has provided ongoing encouragement both in her career and during outdoor activities. Although, David has not always been enamoured with the amount of bushwalking sometimes required.

As a student, young lawyer, and law partner, her Honour has always been quietly driven. Friends and colleagues admire her ability to complement this with a life balanced with family, travel, and the outdoors. It begs the question, where does she find the time?

Her Honour brings to the court a broad knowledge of the law gained through more than 25 years of legal practice, a deep knowledge of corporate governance, experience in managing a large, complex organisation and an unwavering sense of fairness. We wish her all the best for her career as a judge of the County Court.

MIGUEL BELMAR

His Honour Judge Michael Wise

Bar Roll No 2756

Michael Wise KC was appointed as a judge of the County Court effective 30 January 2024. Judge Wise was an excellent barrister and he will serve the state of Victoria well.

At the Bar, his Honour had a substantial and varied commercial practice. He enjoyed the complexity of big cases and was terrific at managing them. Accomplished at running trials, he has a broad knowledge of the law and was an effective cross-examiner. His submissions were clear, developed and articulate. He was trusted by the Bench, never pressing a point too far but always resolute in his advocacy for clients. While careful to maintain his independence, he was driven by a strong sense of obligation to clients and he felt their wins and losses deeply.

His Honour is a warm and social colleague whose relationships are important to him. He shared chambers with a set of barristers

for many years, including the Hon Peter Riordan KC, Justice Ian Waller, Sam Hay KC, Hamish Redd SC, David MacLean SC and Justin Wheelahan, with whom he became close. He was superb company at chambers events and enjoyed a debrief with friends at the end of the week over a glass of riesling.

Judge Wise had two readers: Marita Wall and Noam Shifrin. He is a natural and willing teacher and gave generous guidance to many juniors who saw him as an informal mentor. He was a collaborative leader who enjoyed working with his team to prepare a case and debate the law. He was always available for questions and did not judge their quality. He was kind and inclusive to instructors. He will undoubtedly view it as a privilege to mentor his associates in the early stages of their careers and will do so with care.

His Honour's strong contribution to the Bar took the form of appointments to six committees, including the editorial committee of this magazine. He was chair of the Innovation and Technology Committee—usually being much more tech-savvy than his juniors—and coordinated the mentoring program run by the Indigenous Lawyers' Committee. He was also a contributor to List G, being a member of its governing committee and ultimately its chair.

His Honour has a keen eye for art, with colourful pieces always filling his chambers, and was a member of the board of McClelland Sculpture Park and Art Gallery immediately prior to his appointment. He reads widely and relishes a meditative bushwalk. Although he occasionally managed to set his cases aside to pursue those interests, he truly does love the law – but not in a vacuum or as a purely intellectual exercise. He values its importance to society and its role in the lives of those it governs.

Judge Wise is a humane and thoughtful man who will be conscious of the effect his decisions will have on

those who appear in his court. He will be a careful, patient and talented judge.

NICOLE PAPAleo

VALE

Malcolm Oakes SC

Bar Roll No 2070

Malcolm Oakes SC, a valued member of the Victorian Bar who practised predominantly from Sydney, passed away at home on 20 November 2023.

Malcolm was born and raised in Lismore, NSW. He studied Arts and Law at the University of Sydney and then spent short periods as a solicitor at Allen, Allen & Hemsley and later, in London, with Allen & Overy. He was called to the Bar in 1980 and read with the Hon John Bryson.

As a junior, Malcolm kept a broad practice in general equity, commercial law and corporations. Nonetheless, as is common at the junior Bar, he was willing to accept whatever brief might appear on his desk. That practice regularly took him on the country circuit and interstate. He would gladly reminisce on those early years and the mixture of weird and wonderful briefs that came across his desk. One such brief was whether a shopping centre strata by-law, which stated there could be only one "Asian Food Outlet", prevented the opening of an Indian restaurant. It turns out it did not (but only due to a technicality Malcolm identified which was unrelated to geography).

As a senior junior, Malcolm became a regular in the corporations list. This eventually became his area of speciality, particularly after taking silk in 1994. He became preeminent in schemes of arrangement, which continued his national practice.

Malcolm was welcoming, generous and interested in people. His willingness to listen to and mentor others was demonstrated in his

many readers, including the Hon Justice Gleeson of the High Court of Australia and the Hon Justice Kunc of the NSW Supreme Court.

In that vein, he was a strong proponent of the "open door" policy of the Bar. He would readily put his own work aside to help others and would not let anyone leave his chambers without being confident that whatever conundrum had been presented, it had been comprehensively answered. The question which juniors would need to ask themselves was not whether Oakes SC had enough time for them, but whether they had enough time for Oakes SC. There was no such thing as a five-minute answer from Malcolm.

Outside of the Bar, he had a hobby of finding hobbies: bushwalking, collecting teapots and collecting hockey pins (to name a few). In recent years, his primary hobby was history. After having exhausted all leads on his own family history, he turned to researching his children's heritage as fifth-generation Australians of Chinese descent through their mother and his wife, Beverley (née Choy). He eventually became the Secretary, Treasurer and then Vice President of the Chinese Australian Historical Society.

One contribution to the history of the Bar of which Malcolm was very proud was an article he wrote for the *NSW Bar News* regarding William Lee, the first barrister of Chinese descent admitted to the NSW Bar. The article concluded, "Colleagues recall him as being a very gentlemanly figure, who always exhibited grace."

The same may be said about Malcolm.

Malcolm was a loving husband to Beverley, father to his four children William (deceased), Warren, Georgie and Alistair (who is also a barrister) and grandfather to his six grandchildren Josie, Teodor, Clementine, Eloise, Lachlan and Eleanor. His brother Frank and his sister Mary also survive him.

ALISTAIR OAKES

David W Gibson

Bar Roll No 4212

David Gibson was talented, gracious and self-effacing. He would have objected to an obituary. After being diagnosed with motor neurone disease, he wanted to go quietly, with no fuss or fanfare. He died on 31 August 2023, aged 62.

David and his brother Andrew had a happy childhood in suburban Melbourne. David graduated from the University of Melbourne and in 1985 was admitted to practice, after which he immediately went travelling.

In 1987, David returned to Melbourne and started work at the Victorian Aboriginal Legal Service. For a young practitioner it was a baptism of fire—often driving hours to a country court to do 15 or 20 pleas in the morning and contested hearings at the drop of a hat. He said later, "it either made you or finished you off." He worked with remarkable people and learnt about injustice, communication and working under pressure.

David then worked as a policy officer in the Victorian Attorney-General's Department. His former colleagues remember his intelligence and mischievous wit. He was an early adopter of technology. While most of his co-workers were struggling with the basics of keyboard usage, David had learnt how to hack their screens and overwrite their carefully crafted thoughts with humorous messages.

During this period, David met his lifelong partner, journalist Gay Alcorn. In 1992, they and their daughter Beth moved to the Northern Territory, where David worked in the Attorney-General's Department. They then moved to Washington DC where Gay was *The Age's* Washington correspondent and David cared for Beth.

In 2001, they returned to Melbourne and David began his long connection with Victoria Legal Aid. He had two stints at VLA. The

first, from 2001 to 2008, was in the Children's Court section representing vulnerable children in the family and criminal divisions of that court. The second, from 2010 until 2023, was in VLA Chambers (formerly the Public Defenders Unit) as a Public Defender and Senior Public Defender.

David signed the Bar Roll on 21 May 2009 and maintained his Bar membership until his death. He read with Andrew McKenna (now Magistrate McKenna) and was a member of the Human Rights and Pro Bono Committees.

David cared for the foundational principles of our criminal justice system, none more so than the right to a fair trial. He said no matter how distasteful or unpopular, his clients were entitled to a fair trial and to good quality legal representation. With David, that was what they received. He represented complex clients in tough criminal trials, including homicides, culpable driving and sexual offences. He did so with distinction, commitment and courage. He was always thoroughly prepared, persuasive and empathetic.

Like many, he was affected by the constant exposure to trauma in criminal law. He grappled with the vulnerability of complainants and accused, particularly those who were young, cognitively impaired or disabled, and their difficulties in navigating the court system, systemic disadvantage, unfairness, racism, and misogyny.

David mentored and trained hundreds of practitioners. He was in high demand: compassionate, a good listener and a quick wit. He often shared a story from his own reel of embarrassing lowlights and then after laughing at his own expense said, "don't worry about it, how can we fix it?"

David was well-read and witty. He loved cooking, gardening, music and the St Kilda Football Club. Most of all, he loved his family and proudly shared their achievements. ▶

He was a fierce sporting adversary, which surprised his colleagues, who saw only his genial and gentle side. He cared for the honour of defence practitioners in the annual cricket match against prosecutors and competed hard and fair.

David's diagnosis with motor neurone disease was a devastating blow. It is no surprise that after his death there was a groundswell of grief and universal respect. It was a deep honour and privilege to work with and learn from David. He is dearly missed. Condolences to Gay, Beth, Andrew, and families.

JULIA MUNSTER

Gavan Leonard Rice

Bar Roll No 2019

Gavan Leonard Rice passed away on 19 December 2023 after suffering from a long illness.

After a career as a solicitor in Bairnsdale and West Melbourne, Gavan signed the Bar Roll on 21 November 1985 and read with Michael Wright KC. After 32 esteemed years at the Bar, Gavan retired in 2017.

He had a varied practice in planning and commercial law and was an accredited mediator. He was a member of the National Panel of Mediators of the Australian Government Office of the Franchising Mediation Adviser.

Gavan's areas of practice included land law and property, wills and estates, de facto property disputes, franchising, testators family maintenance, building and construction law, town planning, landlord and tenant and retail tenancies, franchise disputes and commercial and contractual disputes.

Gavan was an amusing raconteur who entertained many at dinner parties and other social occasions. He also had an incorrigible attraction to luxury cars.

He was a keen golfer. Proudly, for many years (as captain of the Bar team) he organised the annual golf competition day between the Bar and the Law Institute of Victoria.

He was the loved son of Jack and Mollie (both deceased), a much-loved brother of Denise, and loved and cared for by Shane.

VBN

Gerald 'Martin' Randall

Bar Roll No 1657

Gerald 'Martin' Randall was born on 23 October 1937 in Karachi (then British India), the elder of two boys. He sadly passed away on 20 November 2023.

Following the conclusion of World War II, Martin and his family relocated to England, where he embarked on his educational journey at a remote boarding school in Devonshire. Seeking broader horizons amidst the post-war landscape of Europe, the Randall family set sail for Australia in 1950, eventually settling in Melbourne and enrolling Martin at Essendon High School. Martin's academic prowess shone brightly during his school years, culminating in the award of a prestigious Commonwealth Scholarship to pursue law studies at the University of Melbourne.

Martin was admitted to the Supreme Court of Victoria on 1 March 1962 and worked for Russell Kennedy and Cook as a solicitor. He specialised in commercial law and retail insurance. He represented some of Australia's largest insurance companies in complex cases involving fraud, personal injury and property damage, income and disability, and professional negligence.

After many years as a partner of Russell Kennedy, Martin signed the Bar Roll in 1981 and read with Alan Archibald QC. Martin's practice as a barrister evolved to include regulatory proceedings involving the legal profession. He became the LIV's "go-to" barrister for many years, appearing before the Supreme Court (and later the Solicitor's Disciplinary Tribunal and VCAT) in urgent receivership applications and striking off applications. Martin also appeared on occasion on behalf of solicitors in

regulatory matters.

Martin's legacy extends beyond his professional achievements. Martin was married to Angie, was a loving father to their son James and father-in-law to Elise. In a prior chapter of his life, Martin was married to Margaret, and father of Martin, Michelle and Melissa, father-in-law to Ian, and grandfather to Nathan and Maddie.

On 20 November 2023, Martin passed away peacefully at home, with his wife Angie by his side. Martin's enduring legacy of integrity, expertise and compassion will continue to inspire all who had the privilege of knowing him.

JOSEPH BARRAVECCHIO

Kenneth Spurr

Kenneth Spurr, the founder of List S, passed away on 25 November 2023 at the age of 92 years.

Born on 23 September 1931 in Albury, Ken lived his early life on the borders of New South Wales and Victoria. His father, Sydney Gordon Spurr, worked on the Hume, Yarrowonga, and Lauriston weirs.

In 1941, Ken's family moved to Sunshine and then Brunswick West. Not long after arriving in Melbourne, his mother Mavis passed away in the course of World War II.

From the age of about 11, Ken worked as a newspaper and fruit shop delivery boy. He would deliver newspapers and sell them at industrial sites and even at Princes Park, the home of his beloved Carlton Football Club.

Ken was a very good tennis player and played a competitive standard of pennant tennis. He was very competitive in social games against his sons, well into his sixties.

Ken was also a member of Lions Club of Coburg for 50 years, where he made many friends and raised money for charity.

Ken was a good student during his primary and secondary school years. He attended Brunswick South West Primary School, where he skipped a

year, and Brunswick Technical School. He was strong in his mathematics and English. He attended school with people such as Peter Thompson (golfer), Bruce Comben (Carlton footballer), and a person who went on to be the head of ASIO. He achieved a scholarship to attend Footscray Technical School.

In 1946, at the age of 15, Ken obtained employment with AB Nicholls Barristers Clerk. This opportunity proved to be a life changing moment for Ken. It led to a 50-year career as a barristers' clerk. For 33 of those years, Ken ran his own successful business, List S, until he retired in 1996.

Ken greatly enjoyed this challenging and demanding occupation. He represented up to 130 barristers in all areas of practice. Ken helped most of these barristers start and then blossom in their careers. Many became senior counsel and were appointed to judicial positions. He was well known and liked by many members of the Bar and the profession. He got along especially well with Tony Hooper QC, Keith Smith, WM (Bill) Pinner, and clerks Percy Dever, Jack Hyland and Doug Muir. He also had great staff who supported him in the clerk's office.

During the early 1950s, Ken met the love of his life, Norma Marian Langdon. Norma was an employee of Harston and Partridge Legal Stationers. Ken and Norma married on 20 October 1956, the year Melbourne hosted the Olympics. They were married for 63 years. Ken was heartbroken when Norma passed in October 2020. They had a great life together, bringing up their four sons in Glenroy.

Soon after Ken retired, Ken and Norma moved to Strathmore which greatly enhanced their ability to stay independent. Ken eventually entered the Arcadia retirement home in Essendon, where he maintained great spirits and was much liked by residents and employees.

Ken is survived by his four sons,

Gregory, Grant, Scott and Murray, and their extended families.

Ken greatly enjoyed his time and acquaintances at the Victorian Bar and the legal profession as a whole.

Rest in peace.

GREGORY SPURR

Laurie Robson

Bar Roll No 1933

Laurie Robson was an enigma in many respects, with the ability to demonstrably succeed in many aspects of legal practice.

Receiving his early education at Geelong College and Melbourne University, while working during his studies, he was an accomplished sportsman and martial artist, famed in the western suburbs for helping young people who had fallen foul of the law, often in later years appearing for them pro bono without disclosing the fact.

I first met Laurie professionally in the 1980s at a time when he ruled the Magistrates' Courts in the western suburbs because of his ability as an advocate. The magistrates welcomed him and the justices of the peace were terrified of him!

He at times took an evil delight in instructing counsel in matters of labyrinthian complexity while smiling at them across the Bar table.

After a very successful period as an advocate solicitor Laurie signed the Bar Roll in November 1984, reading with Philip Dunn KC.

He had an excellent court presence and was rapidly moving into the higher courts when he chose to dedicate himself to legal education, becoming a mentor at the Leo Cussen Institute in criminal procedure and advocacy where his teaching abilities excelled. Generations of students adored him and his senior colleagues were often reluctantly persuaded to give their time by his gentle blackmail ...

Laurie was a member of the original team who taught the bail justices and was a welcome speaker at the Police Prosecutors' Course.

He was a compulsive giggler when

the mood took him, leading to he and the author being removed from various theatrical performances to the despair of his long-suffering wife.

Never without a dog in his household he moved over the years from two original giant Rottweilers to a pair of lunatic spaniels, loving all equally.

Although illness later claimed him, he never lost his love of his profession.

Laurie is survived by his beloved wife Ronniet and son Lachlan and had the joy of seeing his first grandson arrive. His family was everything to him.

I look forward to seeing him in the afterlife as a participant in the celestial orchestra—as foundational members of the wind section.

Life will certainly not be dull....

MAX PERRY

Nimal

Wikramanayake KC

Bar Roll No 1025

Nimal Wikramanayake was born in Ceylon (now Sri Lanka) on 11 August 1933. He died on 20 December 2023, aged 90, and is survived by his wife of 65 years, Anna Maria, from whom he was inseparable.

After completing his primary and secondary education in Colombo in 1954, Nimal left to study law at Trinity Hall Cambridge, where he graduated with Second Class Honours and became "mates" (his words) with "Bob" Runcie, later Archbishop of Canterbury Robert Runcie (who married Prince Charles and Lady Diana Spencer).

It was at Cambridge that Nimal met Anna Maria, who was from the small town of Asolo in northern Italy. They married in 1958 and returned to Colombo where, on 12 October 1959, Nimal followed his father and uncle (both King's Counsel) in being called to the Ceylon Bar.

Nimal developed a large practice, but the election of Mrs Bandaranaike's Sri Lanka Freedom

Party in May 1970 dramatically changed the “ground rules” in the country, and his practice suffered. These changes included the compulsory use of Sinhalese in the courts. Although Nimal could speak his mother tongue, he could scarcely read or write it. He was daunted by the prospect of learning to think in Sinhalese at the age of 37.

So, in November 1971, Nimal and Anna Maria left their privileged life in Colombo (a large house with servants) and his successful career, and migrated to Australia, as he wrote, “not knowing what was to befall us”. Nimal had no prospects of employment and knew almost no one in Melbourne. Ivor Misso (then of the Victorian Bar and who read with Nimal’s father) suggested he contact Ronnie De Kretser of Weigall and Crowther, who graciously met the couple on their arrival and took them to their accommodation.

Nimal was admitted to practice in Victoria the next month. With some difficulty, he was employed as a solicitor in an insurance law firm, but it was an unhappy time for Nimal. With Anna Maria’s encouragement and faith, he was called to the Victorian Bar in October 1972, reading with David Blackburn.

Nimal’s struggles continued. But in April 1973, Nimal moved to Equity Chambers, where good fortune introduced him to Louis Voumard. As Nimal recalled, there was “a little old man wearing a crumpled suit ... always a cigarette hanging out of the corner of his mouth,” who looked at him and said, “My boy I don’t think we have been introduced to each other,” took his proffered hand and, with a twinkle in his eye said, “I am Louis Voumard”. It began a splendid and fruitful relationship, as Nimal began assisting Lou as author of *The Sale of Land in Victoria*, a role which Nimal took over following Lou’s passing.

Nimal’s practice spanned over 40 years, and he took silk in 2014. His two readers were Richard Phillips and Grant Holley, and he

was recognised as a distinguished scholar and author on land law. He was appointed as a judge of the Court of Appeal of Fiji in October 2011, where on his first day, he recalled with delight being greeted by a member of the Fiji Constabulary who saluted him and said, “Good morning Your Lordship, I am your bodyguard Tomas!”

He gifted two items to our Bar that remain on display in Owen Dixon Chambers: a large silk’s wig tin and a full bottomed silk’s wig, which belonged to Cyril Asquith, Baron Asquith of Bishopstone, Lord of Appeal and son of Herbert Asquith, Prime Minister of England 1908 to 1916.

In 1983, I was a solicitor with a large firm with a branch office in Gisborne. After the Ash Wednesday bushfires, I had a number of very difficult and serious problems in the Gisborne conveyancing practice. Purchasers were unwilling to proceed, vendors were insisting on completion, and insurance companies were denying liability. Clive Rosen introduced me to Nimal, whose great knowledge guided me through a minefield of problems. How glad I was of Clive’s introduction!

When I was called to the Bar, I was always amazed how generously Nimal observed the “open door” rule, his carpet worn thin by juniors (myself included) coming and going for his advice.

Our friendship had many poignant moments. I remember dearly Nimal getting up at his 70th birthday party to sing the beautiful love song, “Smilin’ Through” to his beloved Anna Maria, which brought tears to my eyes. I remember, too, at the launch of his 2022 memoir, how Nimal recounted his experiences before the courts and with colleagues, some of bullying and racism, others of goodwill and reflecting the affection he gave and received.

Nimal’s portrait was unveiled at Owen Dixon Chambers in 2023, where his good friend (retired) Judge Ross Howie gave a speech.

While Nimal was extremely frail, he gave a short speech of thanks and concluded, “This is the proudest day of my life”.

Anna Maria is being very well cared for by Nimal’s family.

GRAHAM ROBERTSON

Peta Murphy

Bar Roll No 4102

Peta Murphy the advocate was forged during her time at Robert Stary and Associates where she began her career as a solicitor-advocate in 2002. She joined the Victorian Bar in 2008 and read with Peter Morrissey SC. She was a member of Crockett Chambers, VLA Chambers and David Ross Chambers. As a barrister, Peta practised exclusively in criminal defence, appearing across all Victorian jurisdictions. She defended her clients with dignity and a fearless gusto.

The best criminal lawyers exercise a simultaneous gravitational pull on the planets of forensic instinct, capacity for abstract legal reasoning, facility with dense factual material and a finely tuned understanding of people. Juries and witnesses sensed her authenticity. Peta had all of it, with an additional, extra something which is hard to name precisely but “hunger for justice” comes close. She worked hard and was brilliant.

Peta was disagreeable in the best sense of that word; she possessed an independence of intellect that compelled her to insist, plainly and without fear, on what she understood to be the real question in any problem, legal or otherwise. She did this even when, or particularly when, the tide of opinion or practice or experience was flowing in another direction.

Peta’s character was remarkably consistent. She spoke the same way to a friend, a client, a Supreme Court judge or a Labrador.

Her courage was infectious. She was extremely funny. Her colleagues respected and adored her. Her clients

could sense her trueness to their cause.

This is the second time the Victorian Bar has lost Peta; she left first in 2016 to pursue a career in federal politics, where her fearless advocacy was given a bigger field of view. Peta first stood for the seat of Dunkley in Victoria in the 2016 election where she gained a 4.1 per cent swing but lost. In 2019, Peta was elected. She was the first ALP member to win Dunkley since 1996 and was the first woman to represent the electorate. She was then re-elected in 2022. During her time in Parliament, Peta served as a member of the House of Representatives Social and Legal Affairs Committee, the House of Representative Economics Committee and the House of Representatives Select Selection Committee.

Those present will never forget how her courage filled the chamber with a kind of electricity when she rose to give her maiden speech to the House as the member for Dunkley, just two weeks after being diagnosed with metastatic breast cancer. Peta was an advocate for breast cancer awareness and in her speech she spoke of her commitment to healthcare and creating employment opportunities for her constituents. Peta passed away whilst still in office on 4 December 2023. True to form, she was in Parliament, advocating for the people of Dunkley in her final days. In February 2024, the Prime Minister Anthony Albanese opened the new “Peta Murphy Breast Imaging Suite” at Frankston Hospital, in honour of Peta’s contribution to cancer awareness and advocacy.

Peta was loved by her friends and family, and by her husband Rod Glover, who supported Peta’s brilliance at close range for 24 years. She was a great loss to the Bar, but is an even greater loss to the country.

AMELIA BEECH

His Honour Francis (Frank) Dyett

Bar Roll No 572

The legal community mourns the death of Judge Francis (Frank) Dyett, a distinguished figure who served as a judge of the County Court for 26 years until his retirement in 2005.

His Honour was raised in Bendigo, the youngest in a family of three boys. His parents were the proprietors of The Foundry Arms Hotel. His education in Bendigo was with the Marist Brothers where he completed his Intermediate Certificate. In 1949, he enrolled at Xavier College, Kew. His academic results were excellent, as they were the following year when he matriculated.

In 1951, his Honour enrolled in the Law School at The University of Melbourne. Throughout his course he resided at Newman College and in 1954 he graduated with honours. His academic success was a reward for his devotion to his studies; you would often find him burning the midnight oil in the Newman library.

After graduating, his Honour served his articles of clerkship with Hall & Wilcox. He worked there as a solicitor until he joined the Victorian Bar on 3 February 1958, reading with the Hon Sir Kevin Anderson QC.

His Honour was briefed in diverse areas of law and was intuitively skilled. He knew his way around the law, the evidence and the court room. Grateful for his career at the Bar, and aware that in adversity barristers may face precarious financial circumstances, he became a generous donor to the Victorian Bar Foundation and to the Barristers’ Benevolent Fund.

On 28 October 1978, his Honour was appointed a judge of the County Court of Victoria. He was the youngest such appointee at the time. As a criminal trial judge, he was in the very top echelon. He valued the system, the

Court, and its integrity. He brought to his court an innate sense of dignity. Appearing before him was a safe space, and he listened carefully to all, no matter how junior. He treated everyone with courtesy, respect, and good humour. He served as a judge of that court for 26 years, including time as Acting Chief Judge. When he retired in 2005, only four other judges of that court had served longer.

His Honour married Rita Ulbrick, a nurse who had trained at St Vincent’s Hospital, on 3 January 1959. Their first home was in Pascoe Vale South. There they raised their children, Amanda, Paul and Greg. In 1984, Frank and Rita moved to Kew, their final home. They loved to holiday on the coast. Early on, Portarlington and Point Lonsdale were their retreats for summer holidays. Later they enjoyed the warmer waters offered by Merimbula, Noosa and Magnetic Island.

As a parishioner of St Fidelis Church in Moreland, his Honour came to know Father Joe Giacobbe, the force behind the DOXA organisation which provides a holiday camp at Malmsbury for underprivileged children. His Honour supported DOXA administratively, as a member of its board for 15 years, and also as a donor.

In adulthood, his Honour developed a great interest in horseracing and would often be seen at the races with Father Joe. However, he had little success, with his horses ranging from the slow to the very slow. One of his horses was named Light Sentence. He was also an ardent follower of the Collingwood Football Club.

His Honour was unassuming, of quiet demeanour and always polite. He enjoyed convivial company and had a great sense of humour. These qualities were admired by the multitude of friends who mourn his passing. Sheer hard work underlay his Honour’s academic, professional, sporting and family life. A life well lived. May he rest in peace.

PETER CHADWICK KC
AND PATRICK TEHAN OAM KC

The Hon John Dee KC

Bar Roll No 764

The Hon John Dee KC passed away on 27 September 2023, aged 86.

John studied law at the University of Melbourne, having forsaken his initial studies in medicine. He was admitted to the profession in 1964, completing articles at Middleton McEachern Shaw & Birch. His Honour was called to the Victorian Bar in 1965, reading with Barry Beach (as his Honour then was).

His Honour practised in crime, initially appearing in the Magistrates' Courts, which were then called the Courts of Petty Sessions, and later in the County and Supreme Courts. He defended many people charged with serious criminal offences with skill, dedication and compassion.

A career highlight was assisting the Central and North Australian Aboriginal Legal Aid Services in representing Aboriginal defendants in criminal trials. In 1979, his Honour appeared in the trial of five indigenous youths, dubbed the "Huckitta Five". They were accused of murdering Quinton Webb, a pastoralist, at Huckitta Station. The defendant accused of firing the fatal shot was represented by South Australian barrister Peter Waye, and the remaining suspects by four Melbourne barristers referred to by Waye as the "Melbourne Mafia": John Coldrey, Frank Vincent, Dyson Hore-Lacy and John Dee. The Huckitta Five were each convicted, save for Dee's client, who was found not to have been present at the shooting.

John enjoyed playing in the Amateur Football Association. In 1988, the *Victorian Bar News* reported a peculiar incident at the "Bar All Stars" game:

Dee's highlight was being assaulted by Senator Barney Cooney who played full back for St Pat's Old Collegians. Dee was falsely accused of whacking Senator Cooney behind the ear. He reports that up until the moment

of being assaulted he did not know Senator Cooney was the current light-heavyweight inter varsity boxing champ.

He was appointed a Crown Prosecutor for Victoria in 1980, participating in many high-profile cases, including the prosecution arising from the 1986 Russell Street bombing. His Honour later served as Deputy Director of Public Prosecutions for the Commonwealth, under Mark Weinberg QC. John was appointed Queen's Counsel in 1990 and, later that year, to the County Court, where he served with distinction until his retirement in 2001.

His Honour took his responsibilities seriously and felt them deeply. He never spared himself in fulfilling the duties of his role or office to the highest standard. He was highly regarded as an advocate, and those who underrated him did so to their disadvantage. It has been said he was liked and respected by every member of the Bar and Bench.

In 2009, his Honour published his autobiography, entitled *Bars and Benches*, in which he detailed his early life, memorable criminal cases, and distinguished career on the Bench.

Victorian Bar News thanks the Hon Paul Coghlan AO, and John O'Brien, for contributing to this article.

VBN

Roger John Young

Bar Roll No 2364

First met Roger Young just on 40 years ago in my contracts class at Melbourne University Law School. Roger came to the law as a "mature age student" after his first career as a civil engineer.

With his wide general knowledge, inquiring mind and a few years on the rest of us, he was great at taking the conversation to unexpected places. He had a steadiness and wisdom about him. He was always good humoured and had

a solid and dependable presence. He was never flustered or antsy, even if the conversation got serious or stressful. He always had a positive spin on things no matter what. He had logic and clarity but he was also a realist.

These were great attributes for a lawyer and in particular for a construction lawyer, which was his realm. They were also great attributes as a friend and colleague.

Roger was called to the Bar in 1989 and read with Peter Murdoch KC. Construction law (and of course, contracts) was his speciality.

We were junior barristers together in the tough times of the early 1990s recession. His skill and demeanour kept him in work. Having been a qualified civil engineer was a pretty good thing to have on your Vic Bar profile. He was gifted at mediation and arbitration and he worked with many leading construction lawyers. Roger was a practising member of the Victorian Bar for over 16 years.

With his steady manner and wisdom, he was a natural to sit on the other side of the Bar table. He was appointed to the Domestic Building Tribunal, then to VCAT. He sat across a number of lists at the Tribunal and he was a well-respected and loved colleague. He left a worthy judicial legacy from his time at the Tribunal.

His contracts class friends may have benefitted from a bit more time in the Law Library than our alternative meeting venue at Jimmy Watsons, but the wisdom shared and camaraderie fostered, led by Roger, couldn't be learnt from a textbook.

His good nature extended to our kids as well. He took pity on my son having a vegetarian mother and regularly had us over to his place for "Roger's Roast". A big lamb roast with all the trimmings!

I was incredibly sad to hear of Roger's passing, on 1 December 2023, aged 76.

I will work at the concept of "acceptance". In the meantime, I "offer" this—not gleaned from learned

legal texts like *Cheshire & Fifoot Law of Contract*, or *Brooking on Building Contracts*, but from that great children's philosopher, Dr Seuss (because Roger always reminded us not to take it all too seriously): "Don't cry because it's over. Smile because it happened."

Roger is survived by his beloved children, Tristan and Imogen, four grandchildren and his sister, Margy. His family, friends, and VCAT and other legal colleagues farewelled him at a memorial service in Richmond on 18 December 2023, a short distance from one of his favourite watering holes.

JUSTICE MICHELLE QUIGLEY

Neville Bird

Bar Roll No 1984

Neville R Bird passed away on 25 January 2024.

Neville was admitted to practice in 1968 and signed the Bar Roll in 1985. Immediately following his admission Neville joined a small legal practice in Portland, the heart of the Western District of Victoria. Shortly after, he became a partner and grew the firm into more than a lucrative practice. It was the heartbeat of the community through which he became the local trusted advisor. This was recognised professionally when he became the President of the Western District Law Association and the area's representative on the Law Institute of Victoria.

In 1985 Neville joined the Victorian Bar, and from the first day of the readers' course, Neville thrived in the professional and personal bonds he formed. His former workers' compensation practice gave way to a robust personal injury practice, grounded in his understanding of the life of busy solicitors and their needs.

He was a frequent flyer of the Western District circuit, remaining connected to the intricacies of regional practice and the community he built. Irrespective of the area of law, Neville considered himself a jury advocate, and was at his brightest

weaving words connecting people and the law, which captured juries over decades.

Personally, Neville was the definitive appreciator of wine, art, books, politics, current affairs, theatre and, most of all, people. He was the first and last to offer hospitality to anyone who spent time with his legendary cohort on the 13th floor. He was the entertainer and speech-maker at many parties, always with a ready ear for a friend, colleague or emerging legal mind. His desire to celebrate was limitless and a rare few could keep pace.

He is survived by his beloved and devoted wife Jayne, her daughter Sarah, his four children, Cameron, Emma, Andy and Megan, nine grandchildren and his former wife Leonie.

VBN/BIRD FAMILY

Zev Wagen

Bar Roll No 3589

Zev Wagen came to read with me in 2002. At the time, he was in his early 50s and had already had a couple of careers. Virtually all of that work was for good causes. He had a history working in nursing, youth justice and then spent a long time working with intellectually disabled youth. That work was done in an era when intellectually disabled people were subjected to awful living circumstances. I remember being horrified on a visit to Caloola Training Centre, which housed intellectually disabled people in dormitories with concrete floors which would be hosed out in the morning. When Zev moved into more senior areas in the then Department of Community Services, things had already begun to change. Zev was a strong part of those changes. We talked about the significant behavioural changes he could see when people were accommodated in warm and comfortable housing.

Zev managed to mix the hard work with a rich life experience. My

favourite stories were about his time in the orange grove in the kibbutz in Israel and his interest in videography as an art form. Opportunistically, perhaps, I had cause to call on those skills to demonstrate the misconceptions of a prosecution case which accused my client of having managed an unsafe workplace. Zev impressed all of us on the third floor of Joan Rosanove Chambers with his gentle demeanour, wise countenance, and counselling to go with it. As his own practice developed, he took on the hard jobs again. A large part of his practice was appearing in the Children's Court doing child protection cases. As his friend and mine, Doug Potter, described it, Zev dealt with some incredibly difficult cases involving the deaths and serious abuse of children, including infants whose age was measured in months, not years. We talked about these cases, particularly the more difficult ones. I marvelled at his composure, and ability to deal with the emotional load in those cases and the chaotic lives of the people involved in them. Those cases involved hours of report reading, and case files from child protection workers who were often sagging under heavy caseloads and supporting children and families who faced awful problems.

Zev was a very gentle man, but with the strength to call out nonsense, be that from his clients, his opponents, and from time-to-time, the Bench.

Despite his workload, Zev maintained a range of intellectual interests outside the law. He had a deep knowledge of international affairs, in particular with respect to Israel, perhaps stemming from his days on the kibbutz. I often wondered about the depth of his knowledge about world affairs and places only specialists knew in detail. He had weekly online chats with a circle of friends from around the world about its problems. I have no doubt he enlightened them as much as they enlightened him.

Zev shared a house with Robyn, supported her soccer star son Jai and, as the years passed, Jai's daughters, particularly six-year-old Jayde. Zev was diagnosed with aggressive cancer just before Christmas last year and died a few weeks later. His warmth, wisdom and the contribution he made to lots of people who needed his help evidence a life well-lived.

DR DAVID NEAL SC

Gerald Joseph Grabau

Bar Roll No 2313

Gerald 'Gerry' Grabau passed away on 21 May 2023.

Gerry was a member of our Bar for 35 years, signing the Bar Roll in 1988 and reading with Charles William George Wheeler.

Prior to his death, Gerry was an advocate for change, providing advice to a group of women claiming their lives had been made miserable by

bullying inside WA Labor electoral offices. Grabau, approaching the case in a similar fashion to a class-action, focused on the legitimacy of the dismissals and whether discrimination had taken place. Grabau said: "They're wanting to hopefully pave the way for those that follow through, so they don't go through the trauma that they've been through".

Outside of the law, music was Gerry's passion. His strong artistic and musical personality and his talent for composition and performance flourished at Huntingdale Technical School, an alternative school that encouraged student creativity. One of his significant artistic achievements was the song he wrote for his mother – "The Time has come to part" – which Judith Durham (of The Seekers) recorded and released in 2018.

Gerry loved it when people were gobsmacked to find this out, as his

general personality came across as bohemian, often eccentric and carefree. He nevertheless had a strong moral compass which drove his lawyer side and an intelligence and pluck that meant that he could argue with the best of them.

Gerry enjoyed going out to bands and having a night out on the town, followed by a soothing coffee and cake the next morning at the nearby cafe with friends, where they recounted the events of the night before. Gerry was made from stoic stock and was often the last to go to bed and the first up.

He hailed from Balranald, NSW, where his father and stepmother had a large property. Gerry will be remembered as the whip-cracking, revelling, musician, thespian, wrestler, lawyer, comedian and poetry reciting larrikin.

VBN

GONGED

AUSTRALIA DAY AWARDS

Dr Ian James Hardingham AM KC, for significant service to the law and legal reform in Victoria

Mr Richard Patrick Dalton OAM KC, for service to the law, and to the community

OTHER MATTERS

Court of Appeal

The Hon Justice Kevin Joseph Lyons

Public Prosecutions

Raelene Sharp KC - Commonwealth Director of Public Prosecutions

MAGISTRATE APPOINTMENTS

Her Honour Magistrate Allison Vaughan

MAGISTRATE RETIREMENTS

Magistrate Alexandra Burt

Magistrate Andrew Capell

Magistrate Anne Goldsbrough AM

Magistrate Martin Grinberg

Magistrate John Hardy

Deputy State Coroner Jacqueline Hawkins

Magistrate Randall Kune (Children's Court)

Magistrate Andrew McKenna

Magistrate Peter Mithen

Magistrate Kristen Rose (Children's Court)

Magistrate Ron Saines

Boilerplate



A BIT ABOUT WORDS

Forgotten Words

JULIAN BURNSIDE

It is easy to forget the meaning of various words that have faded from common vernacular. To make sense of what follows it is useful to recognise the dates of several dictionaries I refer to: *Johnson* 1755 (in this article I refer to the 6th edition (1785) or the first posthumous edition by the Rev H.J. Todd (1818)); the *Shorter Oxford English Dictionary* (1947) (“SOED”); and the *Oxford English Dictionary*, 2nd edition (1989) (“OED2”).

For example: scandaroon, nimgimmer, Night Hag, usufruct, catchpoule, Mop Fair, bladderskate, fribbler, stangster and gleek. They’re all genuine words, but no longer in use. The meaning of some of them is

self-evident, but the meaning of others is much harder to work out. Some of them derive from Greek or Roman origins, while many have Anglo-Norman or old French origins.

The first exception to the Greek or Roman origin principle is *scandaroon*. It is a reference to that very common creature: the pigeon. Its name was taken from the Turkish seaport Iskenderun in Syria, because pigeons are native to North Africa. That is a startling fact, given how common pigeons are in Australia. In 1855, harming a pigeon was an offence punishable summarily, by fine or imprisonment. The word is recognised in *OED2*, but not in *Johnson* (1785) despite the reference to an offence in 1855.

Nimgimmer refers to a “surgeon or one that cures the clap or pox” (according to the Thomas Dyche dictionary dating back to 1740). Its origins are uncertain: certainly it does not appear to be Greek or Roman.

A *Night Hag* is a female demon who supposedly abducted people at night on horseback during the 17th to 19th centuries. It is thought that she created bad dreams in her victims by producing a feeling of suffocation, as referred to in Barrough’s *Method of Physick* (1624). *OED2* defines *Night Hag* in a way that replicates the definition in *Method of Physick*: “A hag or female demon supposed to ride the air by night: the nightmare”. *Hag* comes from the Dutch and gets a bad run in the dictionaries: *Johnson* defines *hag* as meaning, “A fire monster, a witch...”. He defines *night hag* as meaning a “witch supposed to wander in the night”; *OED2* defines *hag* as meaning, “an evil spirit daemon or infernal being in female form ...”. (The word “nightmare” is inevitably a reference to the origins of *hag*.) A *hag knot* is a matted snarl in a horse’s mane supposedly used by witches as stirrups during evening flights.

Usufruct is, as its form suggests, a legal term meaning literally “fruit usage”. The notion used to allow people to pass through land belonging to others and Blount said *usufructry* came to signify “one that hath the use and reaps the profit of that, whereof the propriety doth rest in another”. For example, a person passing through land which belongs to another may pick up fruit which has fallen to ground. As Jeffrey Kacirk has written, “as implied by its literal meaning, early *usufructry* statutes also include the right to gather “windfall” fruit (that blown down by wind storms), or fallen pieces of firewood under the cover of *usufructry*, peasants sometimes used long handled bill hooks and shepherds crooks to pull down fruit and branches that, they reasoned,

would have come down eventually ...". This may be the origin of the modern term *crook* as reference to a person who behaves unlawfully, although not seriously.

Catchpoule is an old English expression for "tax gatherer". Perhaps appropriately, it comes from the Latin *cacepollus* which means "one who chases fowls". It was later misunderstood and confused with the behaviour of bum-bailliffs who in the 14th century carried out the duties of sheriffs. (It is not referred to in *Johnson*, but in *SOED* it is referred to as "catchpole", with the meanings given as above). Incidentally, *cachepule* is an ancestral name for tennis or tennis court.

Next is *Mop Fair*. From the 13th century until the 20th century, mop fairs were an opportunity for would-be employers in England and Wales to find domestic and agricultural workers. They were generally held on Saint Martin's Day. Servants, often numbering in the hundreds, stood in lines wearing occupational emblems. So, grooms would carry a sponge, while domestic servants would carry a mop and from this assembly the event became known as a *mop fair*. *Johnson* notes that the privilege of holding a fair was a gift of the King. Although he devotes a substantial amount of space to discussion of the words *mop* and *fair*, *Johnson* does not refer to the *mop fair*. The same is true of *OED2* even though the latest *mop fairs* were held in the 20th century. For example, one was held in 1913 and reported in the *Daily Mail* a few days later.

It was often the case that fine or elaborate food was offered at mop fairs. So, for example, in 1912 the *Daily Sketch* reported:

The Stratford-on-Avon mop fair which dates from the reign of King John was held on Saturday. Six excursion trains ran from London, and specials arrived from many towns. The ox roasting in the streets was one of the principal sights of the fair, seven bullocks and a dozen pigs being spitted.

A *bladderskate* is a person who speaks indistinctly or indiscreetly. This may derive from the fact that many "comedians" used to inflate human bladders and use them as props in their performances. The word is not referred to in *Johnson* or *OED2*. However, *Johnson* includes this in his definition of "bladder": "1. That vessel in the body which contains the urine. 2. It is often filled with wind to which allusions are frequently made."

A *fribbler* is a person who declares his love and devotion to a woman but is unwilling to commit himself to her. It is hard to see why this word is no longer used. The phenomenon to which it refers has been common for a very long time. As Shakespeare said in *Much Ado About Nothing*:

Sigh no more ladies, sigh no more,
men were deceivers ever,
One foot in the sea and one on the shore,
To one thing constant never.

In *Johnson* (1785), *fribble* is said to derive from the French *frivole*, *frivolous*, *silly*. The associated verb *to fribble* is thought to derive from the Teutonic *frevel* or from the French; it is defined as *to trifle*, and *to totter*, like a weak person.

To the contrary, a *Stangster*, which comes originally from the Old Norse *strong*, was a pole on which a man was forced to sit, while he was carried through crowds jeering at his marital weakness. The 1814 *Costume of Yorkshire* refers to a *stangster* in these terms:

The ancient provincial custom is still occasionally observed in some parts of Yorkshire, though by no means so frequent as it was formerly. It is no doubt intended to expose and ridicule any violent quarrel between man and wife, and more particularly in instances where the pusillanimous husband has suffered himself to be beaten by his virago of a partner.

No *fribbler* there.

My final vanished word is *gleek*. As a noun, it is said to derive from Old English *glig* (meaning mirth) and *gliowean* (meaning jest). It is said to be a word of the 16th to 19th centuries. Certainly, I have never heard it used. In *Romeo and Juliet*, Shakespeare has a character say to a musician: "I'll give you no money, on my faith, but the *gleek*". And in *A Midsummer-Night's Dream*, Bottom says: "Nay, I can *gleek* on occasion" (to which Titania responds: "Thou art wise as thou art beautiful"). In the 1660s, Samuel Pepys wrote about playing *Gleek*.

That said, the dates of *gleek* seem wrong, as Henry VIII's first wife, Catherine of Aragon, enjoyed a card game called *Gleek*, which, incidentally, seems to be an early form of the children's card-game Fish.

A century later, in *Johnson's* first posthumous edition (1818) edition, he is said to define the noun as follows: "Musick". Todd goes on to explain, "Dr Johnson notices no other meaning of this word, and gives the following example..." (there follows the quotation from *Romeo and Juliet* noted above). Todd then adds to the definition: "A scoff; a joke".

As a verb, *to gleek* is said by *Johnson* to come from Saxon, and to mean: "to sneer; to jibe; to droll upon". Todd adds that, "In Scotland it is still retained, and signifies to fool or spend time idly with something of mimicry or drollery". *Romeo and Juliet*. Of course, Todd was writing in 1818.

The *SOED* does not refer to Scotland retaining *gleek*, although it does have the following entry (for the verb): "to trick, circumvent—1653; to make a jest or gibe (*at a person*)—1687".

The big question is: how did a card game derive all these meanings? Alternatively, given the other meanings of the word, how did the card game come to be called *Gleek*? ■

A Long Sentence

PETER GRAY

But there is one profession that thinks it can't live without long sentences: the lawyers. They maintain that all possible qualifications of an idea have to be put into a single sentence or legal documents would be no good.¹

Rudolf Flesch published that comment when I was only three years old. He was making the point that short sentences are easier for the reader, or the listener, to process. His book *The Art of Readable Writing* was not written for lawyers. It was primarily for journalists and others who write for a living. His book has been reprinted many times and has been influential in the study of writing. Lawyers can learn from it.

Flesch's readability index is found in the appendix to the book. It is complex and involves doing a lot of counting. One take-away from it is useful, however. That is that a text starts to become difficult to read if its average sentence length is more than 20 words. I stress that this is an average length. Sometimes a sentence needs to be longer than 20 words. We do need to express the idea in the sentence completely. The text will not be difficult to read if longer sentences are balanced by shorter ones.

Lawyers seem to have more difficulty than most people keeping their sentences short. Flesch is still correct. We do seem to have trouble putting a full stop when we have expressed one idea and starting another sentence. We do seem to think that we must include all the qualifications of the idea before the full stop. Take the following example from a recent judgment of the High Court of Australia:

But the insistence in *Lim* that the detention of an alien must be limited to a period that is "reasonably capable of being seen as necessary" for one or other of two legitimate and nonpunitive purposes, identified in terms of removing the alien from Australia or enabling an application by the alien for

permission to remain in Australia to be made and considered, is difficult to reconcile with the constitutional holding in *AlKateb* that ss 189(1) and 196(1) of the Migration Act have valid application to an unlawful noncitizen in respect of whom there is no real prospect of removal from Australia becoming practicable in the reasonably foreseeable future.²

This sentence contains 109 words, more than five-times Flesch's recommended average. It has 13 verbs or verb phrases (*must be limited; is; being seen; identified; removing; enabling; to remain; to be made; considered; to reconcile; have; is; becoming*). This means that it has 13 clauses, each of which could stand alone as a sentence. Some of the clauses would require rewriting to make sense on their own.

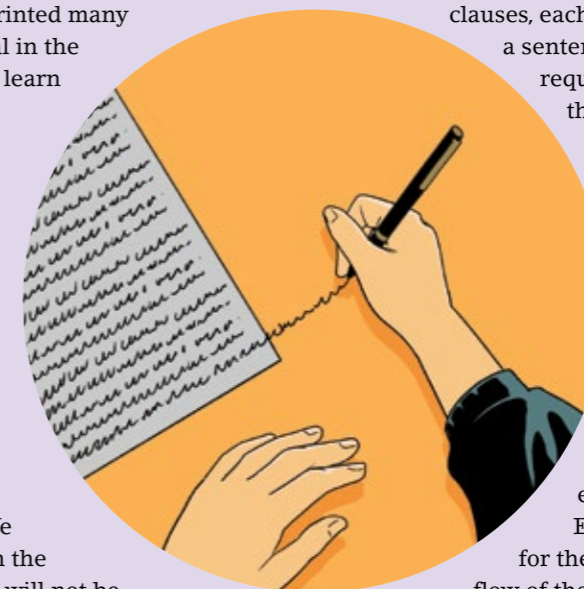
This sentence is difficult to process. The reader must keep in mind an increasing number of ideas, to understand how they relate to each new idea that the sentence contains. The vice of the sentence is not just the number of words. Nor is it the number of ideas. It is that the sentence consists mostly of embedded clauses and almost entirely of subordinate clauses. Embedded clauses cause difficulty

for the reader because they interrupt the flow of the sentence. For example, consider the complex of clauses in the middle of our sample sentence:

identified in terms of removing the alien from Australia or enabling an application by the alien for permission to remain in Australia to be made and considered,

The reader must keep in mind what goes before this embedded complex, while reading the embedded complex itself, to understand the part of the sentence that follows. Even worse, the embedded clauses are all subordinate clauses. The sentence contains two examples of what linguists call multiple subordination.

In the first example of multiple subordination, the subordinate clauses qualify the noun *insistence* in the opening clause. Only the first relative clause that follows qualifies that noun directly, however. Each of the others



qualifies *insistence* indirectly, by qualifying another noun in its immediately preceding clause. Thus, the relative clause *that the detention of an alien must be limited to a period* qualifies *insistence* directly. The next clause *that is “reasonably capable of being seen as necessary” for one or other of two legitimate and nonpunitive purposes*, qualifies the noun *period* that precedes it. Finally, the clause complex that we have looked at already, beginning with *identified in terms of*, and ending with *and considered*, qualifies the noun *purposes* that precedes it.

The second example of multiple subordination in the sentence is structured similarly. The clause *that ss 189(1) and 196(1) of the Migration Act have valid application to an unlawful noncitizen* qualifies the noun *holding* in the preceding clause. In turn, the clause *in respect of whom there is no real prospect of removal from Australia* qualifies the noun *non-citizen*. The final clause of the sentence *becoming practicable in the reasonably foreseeable future* qualifies the noun *removal*.

This kind of cascade of relative clauses makes a sentence very hard to process. It reminds me of the old nursery rhyme “The House that Jack Built”:

This is the farmer sowing his corn,
That kept the cock that crow'd in the morn,
That waked the priest all shaven and shorn,
That married the man all tatter'd and torn,
That kissed the maiden all forlorn,
That milked the cow with the crumpled horn,
That tossed the dog,
That worried the cat,
That killed the rat,
That ate the malt,
That lay in the house that Jack built.

Each of the 11 relative clauses is easily recognised because it begins with the word *That*. Each directly qualifies a noun in the clause that precedes it immediately. The more the cascade continues, the further it gets from the farmer. He or she is the one whom the entire rhyme is designed to identify. By the time we have read the whole thing, we are likely to have forgotten the farmer altogether.

Interestingly, if we remove all the relative clauses in our High Court sentence, what remains is the idea that the authors of the sentence sought to convey: *But the insistence in Lim ... is difficult to reconcile with the constitutional holding in AlKateb*. This is a sentence in its own right. Its elements, *insistence* and *holding*, need to be explained. The question is whether to explain them in the same sentence or in other sentences in a single paragraph.

My preference is for the latter, to explain the main idea in other sentences. To illustrate what can be done, I have translated the sentence as follows:

But *Lim* is hard to reconcile with *Al-Kateb*. The Court in *Lim* insisted that an alien could be detained only for a period “reasonably capable of being seen as necessary” for one or other of two legitimate and non-punitive purposes. One purpose is removing the alien from Australia. The other is enabling the alien to apply for permission to remain in Australia and to have that application considered. The Court in *Al-Kateb* held that ss 189(1) and 196(1) of the Migration Act could apply validly to an unlawful non-citizen who has no real, practical prospect of removal from Australia in the reasonably foreseeable future.

You will see that my translation is slightly shorter than the original. It consists of 104 words. Importantly, it consists of five sentences. Those sentences are respectively eight, 32, eight, 20 and 36 words long. My average sentence length is 20.8

words, just slightly more than the 20 words that Flesch recommends.

I claim that my version is easier to read than the original sentence. I have stated the main idea in my first sentence. The explanations of that statement follow. I had no difficulty splitting up the summary of *Lim*. I found it too hard to split up the summary of *Al-Kateb*. I have included sentences of 32 and 36 words. That illustrates my proposition that sometimes we cannot avoid long sentences. The important thing is to balance them with short ones. In this case, I have included two very short ones (eight words each) and one of the recommended average 20 words.

I have preferred short words to long ones (*hard* instead of *difficult*). I have preferred the active to the passive voice where I can (*enabling the alien to apply* instead of *enabling an application by the alien ... to be made*). I have shortened prolix phrases (*who has no real, practical prospect* instead of *in respect of whom there is no real prospect ... becoming practical*). I have avoided nominalising verbs (*insisted* instead of *insistence*, *held* instead of *holding*). These are all techniques that can help us to shorten our sentences.

I hope I have persuaded you that Flesch was right to condemn lawyers for our long sentences. We do not need to include all qualifications of an idea in the one sentence. The reader can connect one sentence with another and understand that the qualification in the second applies to the first. Short sentences help our readers to understand what we want to convey to them. We should never allow our language to obscure our meaning. If we write too many long sentences, our meaning will not be clear. ■

1 Flesch, R (1949) *The Art of Readable Writing*, Harper and Row, 111; available at <https://dc135.wordpress.com/wp-content/uploads/2012/11/flesch-the-art-of-readable-writing.pdf>, downloaded on 23 April 2024.

2 *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] HCA 37 at [31].

MUSIC

Mystery Beats

ED HEEREY



Stubblefield performing with James Brown.

A year ago in this column I indulged a very personal interest with a review of “the five greatest bass players you have probably never heard of, but definitely have heard”. I had no idea if anyone would be at all interested, and was blown away by the number of readers who took the time to send me their thoughts. The VBN readership certainly knows and cares a lot about music.

Of course, the logical sequel is drummers—those musical servants toiling deep inside the engine room of any great band, usually without fanfare. So, without further ado (and mindful of a word limit imposed by your diligent editors) here are **the three¹ greatest drummers you have probably never heard of, but definitely have heard.**

1. Clyde Stubblefield—James Brown 1965–1971

Clyde Stubblefield is widely considered the world’s most sampled drummer. His beat on James Brown’s track “Funky Drummer” provided the foundation for some of the biggest hits by the early pioneers of hip-hop including Run DMC (“Run’s House”), Public Enemy (“Fight the Power”), LL Cool J (“Mama Said Knock You Out”) and N.W.A (“F--- Tha Police”).

Outside the hip-hop genre, that same beat was sampled for mainstream pop hits by George Michael (“Freedom 90”), Madonna (“Justify my Love”), Prince (“Get off”), Sinead O’Connor (“I Am Stretched on Your Grave”), Britney Spears (“Touch of My Hand”) and many others. Even Kylie Minogue sampled it in 1989 in “Wouldn’t Change a Thing”.

Stubblefield was born in Chattanooga, Tennessee in 1943.

He taught himself drumming as a child after watching drummers in a military parade. Despite no formal training, he was playing professionally as a teenager, and toured with Otis Redding.

In 1965, James Brown saw Stubblefield perform in Georgia and invited him to join the band. Stubblefield only played with Brown for six years, but within that time he laid down some of the greatest ever funk beats on tracks including “Cold Sweat” (1967), “Say It Loud—I’m Black and I’m Proud” (1968), and “Ain’t It Funky Now” (1970).

The song which would become his calling card, “Funky Drummer” (1970) features a 20-second unaccompanied drum solo towards the end, introduced by Brown telling Stubblefield, “You don’t have to do no soloing, brother, just keep what you got... Don’t turn it loose, ‘cause it’s a mother.” Brown names the song on the spot as it continues: “The name of this tune is ‘The Funky Drummer’, ‘The Funky Drummer’, ‘The Funky Drummer’.”

For some classic footage of Stubblefield playing with Brown, search YouTube “Clyde Stubblefield Drum Beat—“Give The Drummer Some”!!” To hear the isolated solo from “Funky Drummer”, and snippets from songs which have sampled it, search for “Who Sampled? James Brown—The Funky Drummer Break”.

Stubblefield explained the inspiration for his beats:

What influenced me mainly was sounds. Train tracks. Washing machines. I just put patterns against natural sounds, and that’s what I do today. I could be walking down the street in time and put a drum pattern against it while I’m walking (...) That’s the same thing I’m doing now when I sit down behind the drums. I put a pattern behind what everyone else is doing.

In 1970 Stubblefield also recorded Brown’s classic live double album “Sex Machine” alongside a precocious 19-year-old bass player named William “Bootsy” Collins, who would go on to be

a funk legend in his own right with his bands Funkadelic and Parliament.

In 1971, most of Brown's band, including Stubblefield, split with Brown over a pay dispute. Stubblefield moved to Madison, Wisconsin, where he would live for the rest of his life, playing every Monday night in a local bar for the next 20 years. "On those Monday and Tuesday gigs, I don't make much money. It's almost a rehearsal," he said, "but I'm happiest when I'm playing."

Meanwhile, as hip-hop exploded in the mid-1980s, it was almost too easy for a new generation of artists to copy and use his isolated drum solo from "Funky Drummer". Stubblefield was not credited for the use of the samples. Meanwhile, Stubblefield's life reached its lowest ebb in 1990, when he was convicted of selling cocaine to an undercover officer. He was jailed for a year with work-release privileges, which allowed him to keep playing.

He was interviewed in a 2009 PBS documentary, *Copyright Criminals*, where he said:

I never got thanks, I never got a hello or how are you doing or anything from any of the rap artists. The only one I got a thanks from was Melissa Ethridge.² So many groups have sampled my stuff, they say I'm the world's number one samplest³ drummer—I haven't got a penny for it yet though—he he. I'd prefer to get my name on the record saying, "this is Clyde playing." The money is not the important thing, just to get myself out in the world. The acknowledgement of my name is more important. My music is my life. My music is my breathing.

Stubblefield died in 2017 from kidney failure. It was reported that Prince paid a large amount of Stubblefield's medical costs in his later years.

2. Phil Rudd—AC/DC 1975–1983, 1993–2015, 2020–present

As Australian music fans it is easy to take AC/DC for granted, and to underestimate the band's global



It's a long way to Flinders Street: Bon Scott, Malcolm Young, Phil Rudd, Mark Evans, 1975.

dominance. To this day, their album *Back in Black* (1980) remains the second highest selling album of all time, surpassed only by Michael Jackson's *Thriller* (1982); that's more than any album by the Beatles, or anyone else.

Phil Rudd has been in and out of AC/DC several times over the years, but he played drums on all but three of their 18 studio albums, including all of their biggest hits.

Phillip Hugh Norman Witschke Rudzevecuis was born in Melbourne in 1954. He bought his first drumkit with his first pay cheque as an apprentice painter and electrician. In 1973, aged 19, he joined local band Buster Brown with lead singer Gary "Angry" Anderson⁴ (later of Rose Tattoo) and enjoyed a following among suburban "Sharpie" gangs. In 1974 he joined the Coloured Balls with Lobby Loyde (who went on to produce The Sunnyboys and Painters & Dockers).

Brothers Angus and Malcolm Young formed AC/DC in Sydney in 1973. In 1974, they recruited Bon Scott from Perth on lead vocals. AC/DC relocated to Melbourne in late 1974, where they shared a house at 6 Landsdowne Road, East St Kilda. By early 1975 the Young brothers had churned through six drummers before they recruited Rudd, along with Melbourne bass-player Mark Evans, who was replaced two years later by Cliff Williams. That line-up went on to record the classic

albums of the Bon Scott era: *High Voltage* (1975), *Dirty Deeds Done Dirt Cheap* (1976), *Let There be Rock* (1977) and *Powerage* (1978). When *Highway to Hell* (1979) went multi-platinum worldwide, Rudd said he "went straight down the road to buy my first Ferrari".

Some people criticise how the ABC spends tax-payer money, but it was never spent better than the day in 1975 when *Countdown* filmed Rudd and the rest of AC/DC performing "It's a Long Way To the Top" on a truck driving down Swanston Street, with three kilted bagpipers (Bon Scott and the Young brothers all emigrated as children from Scotland). Search YouTube for "AC/DC—It's A Long Way To The Top (Official Music Video)" and enjoy not only a classic rock clip but also a beautiful slice of Melbourne street life from half a century ago.

AC/DC's residence in Melbourne was relatively short, but the city claimed them permanently as its own by renaming a CBD laneway as AC/DC Lane.

In February 1980, while the band was living in London, Bon Scott died of acute alcohol poisoning. Scott's family encouraged the band to carry on. They recruited English singer Brian Johnson and recorded their biggest album ever. *Back in Black* (1980), aptly named in tribute to Scott, went straight to number 1 in the UK, Australia, Canada, Germany and France and number 4 in the US.

Rock 'n' roll superstardom often has



a dark side. Rudd has had lifelong issues with drugs and mental health. Bon Scott's sister received a letter in 1978 explaining that:

Phil had a bit of a nervous breakdown & had to spend a lot of time with a shrink. It was really bad but luckily he got over it quickly enough not to upset the band. We had to treat him with kid gloves for a bit but he's ok now.

Rudd's personal issues culminated in 1983 with a physical altercation with Malcolm Young. Rudd was fired from the band, part-way through the recording of their 9th album *Flick the Switch*. He moved to Tauranga, New Zealand where he purchased a helicopter company, and has lived there ever since.

Chris Slade replaced Rudd on drums, until an AC/DC tour of New Zealand in 1991 prompted a casual jam session and an invitation for Rudd to re-join the band in 1993.

The band clearly recognised something was missing without Rudd.

While AC/DC are rightfully hailed as giants of hard rock, Rudd's rhythmic foundation is really a medium-paced blues boogie, epitomised, for example, in "It's a Long Way". Music nerds can compare Rudd's studio version of "Back In Black" with Chris Slade playing the same song on the 1991 live version (both are on Spotify). It's a great drummers' song with the guitars holding back to leave large gaps before the killer riffs kick in. Notice how Rudd sits just behind the beat—that's what gives the groove its magic. Slade's version sounds stiff in comparison.

Certainly, Rudd's drumming is loved by AC/DC's massive fanbase in Brazil, a country which knows more than most about drums and rhythm. They once played a show in Rio to over 250,000 people.

In 2014, after police raided his house in New Zealand, Rudd pleaded guilty to threatening to kill a former assistant and possession of methamphetamine and cannabis. He was sentenced to eight months in home detention. He

pleaded he would lose tens of millions of dollars if convicted because he could not tour to certain countries with AC/DC. District Court Judge Ingram said there was no evidence of an offer from the band and he was not convinced that Rudd's drumming was integral to the AC/DC sound, and added (not quite correctly), "Queen replaced Freddie Mercury." An appeal to the High Court of New Zealand was dismissed.⁵

Chris Slade was re-drafted into AC/DC until, eventually, Rudd was invited to rejoin the band in 2020. The band continues to tour (and have just announced a stadium tour of Brazil), but with the loss of Malcolm Young who died after suffering dementia and Brian Johnston to hearing problems and the retirement of Cliff Williams, one wonders whether it is beyond time to call it a day. Otherwise, Rudd describes his current life on his own webpage:

My hell raising days are over, I see a psychiatrist once a week and I'm closer than ever to my children. I still have all my flash cars but now I want to grow chillies.

3. Carlton Barrett—Bob Marley and the Wailers

On a nation-by-nation analysis of musical output and global influence per capita, Jamaica comes out on top by a country mile. With a population less than three million, relatively isolated and economically disadvantaged, Jamaica would seem an unlikely candidate for the musical superpower it has been for decades. Since the 1960s Jamaica has incubated and exported a string of unique homegrown musical styles: ska, rocksteady, reggae, dub, dancehall, ragga and more.

And there has been no greater ambassador for Jamaican music than Bob Marley, who took reggae to a global audience in the 1970s, with Carlton Barrett providing the rhythmic backbone on drums.

But Carlton Barrett began his career with an older Jamaican legend, Lee "Scratch" Perry, a prolific artist and producer who played a pivotal role in

reggae and dub music for over 60 years from the 1950s until his recent death in 2021. In the late 1960s, a teenage Carlton Barrett, with his older brother Aston on bass guitar, were playing in Perry's studio bands the Upsetters and the Hippy Boys, recording with a range of Jamaican artists.

In 1970, Perry began producing albums for Bob Marley, and it was at that point that Carlton and Aston (then aged 20 and 24) joined Bob Marley and the Wailers. They stayed with Marley for the rest of his career and carved out a legacy as one of history's greatest rhythm sections.

Bob Marley and the Wailers started to go truly global in 1972, when they signed with Island Records. However, they remained based in Kingston, where they recorded their breakthrough album *Catch a Fire* (1973), followed by *Burnin'* (1973), *Natty Dread* (1974) and *Rastaman Vibration* (1976).

In December 1976, gunmen broke into Marley's home in Kingston and shot Marley, his wife Rita and two others. Thankfully they all recovered, but the band soon relocated permanently to London, where they would record their most popular albums including *Exodus* (1977), *Kaya* (1978), *Survival* (1979) and *Uprising* (1980).

Rolling Stone magazine described Carlton Barrett as "[a]rguably the single most influential musician in reggae history" and credited him with popularising reggae's "signature 'one-drop' rhythm." The concept of the "one-drop" is to drop out the kick-drum from the first beat of each bar. In combination with the "skanking" guitar chords on the second and fourth beats, the gap on the first beat leaves a floating anticipation before the groove kicks in again. On top, Barrett added triplets and other intricate patterns on the high-hat, punctuated by snare rimshots. Check it out on tracks like "No Woman, No Cry", "Three Little Birds", "Get Up, Stand Up", "One Love/People Get Ready", and "I Shot the Sheriff".

(Arguably, the one-drop rhythm is the polar opposite to the type of funk

beat epitomised by Clyde Stubblefield, for example, where the first kick-drum beat is fundamental to the groove.)

Barrett's other signature rhythm is the "steppers" beat, featuring similar high-hat and snare patterns built on a stomping four-to-the-floor kick drum. Good examples are "Jamming", "Is This Love", "Buffalo Soldier". Check out also the live version of "Exodus" from the album *Babylon By Bus*, performed in Paris in 1977. Around the four-minute mark the rest of the band drops out to let the Barrett brothers carry the show on drums and bass alone.

Just when Bob Marley and the Wailers had almost conquered the world, it all came to tragic end in 1981 when Marley died of a melanoma aged 36. Carlton Barrett was six years younger than Marley, but his life was also tragically cut short at the age of 36, when he was murdered in 1987 outside his home in Kingston. His widow Albertine Barrett was jailed with two other men for conspiracy to murder, but later acquitted on appeal.

Probate lawyers will note that Marley died with no will, 12 children to eight mothers, an estate then valued around US\$30 million and a virtually endless stream of future royalties. Courts in Jamaica, the US and the UK have been tied up for decades with claims by family, band members and record companies.

Aston Barrett took legal action against the Marley estate in New York in 1986 and in Jamaica in 1989. In 2006 he sued in the High Court in London for himself and as executor of Carlton's estate, against Universal-Island Records, Marley's widow Rita and seven of Marley's children, seeking £60 million in unpaid royalties.

Justice Lewison's 105 page decision⁶ sets out a comprehensive history of the band's career and the various legal arrangements (or lack thereof) made along the way, and an analysis of which band members contributed to the creation of a number of contested songs. Sadly, Rita (a vocalist in the band) gave evidence that the Barrett brothers were merely "backing or session

musicians". However, Lewison J accepted expert evidence that:

The Barretts gave the Wailers a sound like no other band working in Jamaica at the time: a raw, haunting sound in which Aston's bass served not just as a rhythmic marker but also carried the melody of the song, in the manner of a lead instrument. Carlton's pioneering "one-drop" drumming, utilizing the roots sound of Rastafarian ritualistic drum patterns, the music's "heartbeat", gave the Wailers a unique edge over their contemporaries, and their styles were often imitated, but never truly duplicated.

Ultimately, Lewison J dismissed Aston Barrett's claim that he and his brother were co-authors of the songs in question, and also held that Barrett surrendered his rights to royalties in a 1994 settlement in New York for US\$500,000 and legal costs. Aston died of heart failure in February this year.

So, what have we learned?

Perhaps it is inevitable that frontline singers and guitarists will always soak up the attention of audiences, while drummers get the job done behind the kit. These great drummers obviously deserve more recognition, and their stories demonstrate that copyright law inadequately rewards the role they play in building the groove, without which music is nothing. Discerning music fans know the truth; a band is only as good as its drummer. 🍷

- 1 Note word limit again.
- 2 I have searched far and wide but cannot find the song by Melissa Ethridge using his beat.
- 3 I have not come across the word "samplest" before, but if anyone was entitled to coin that term, it was Clyde Stubblefield.
- 4 You be the judge: which was the worst ever AFL Grand Final "entertainment", Meatloaf in 2011 or Angry Anderson in the back of a Batmobile in 1991?
- 5 *Rudd v R* [2015] NZHC 2399.
- 6 *Aston Barrett v Universal-Island Records Ltd & Ors* [2006] EWHC 1009.



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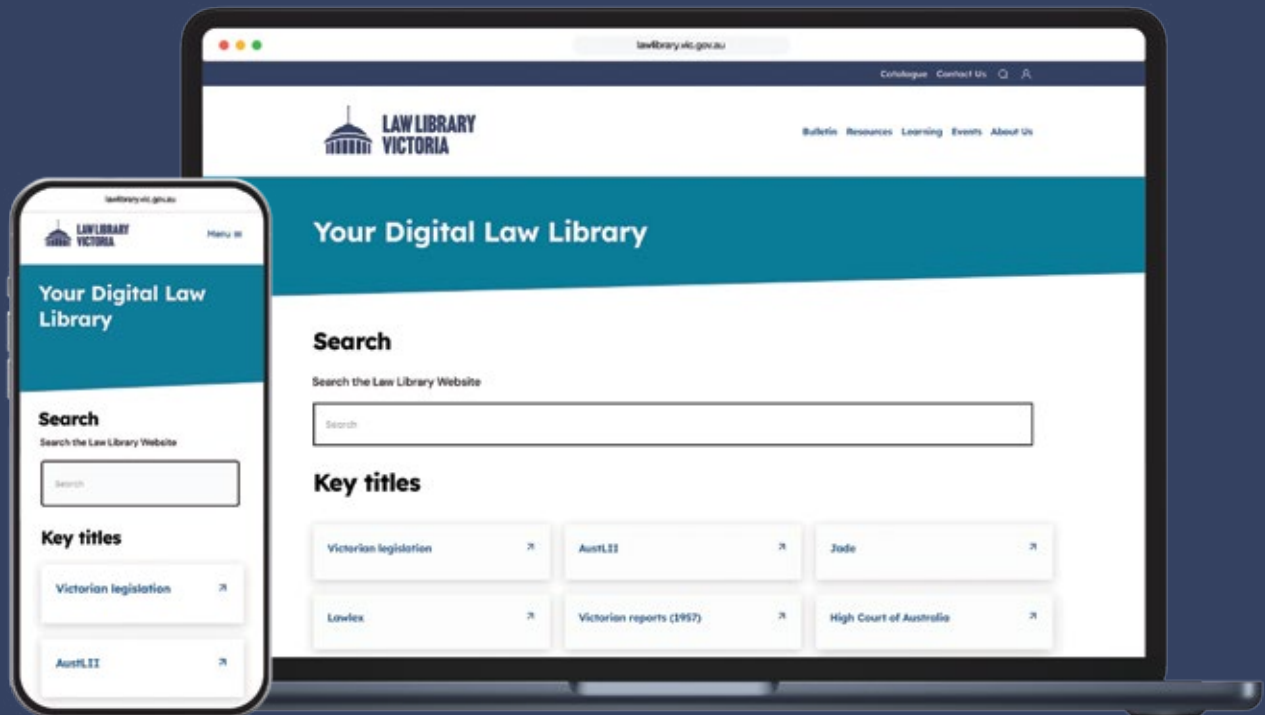
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