



**The Victorian Bar Inc**

Reg. No. A0034304S

**ANNUAL  
REPORT**

**1 July 2004 – 30 June 2005**



# Annual Report of The Victorian Bar Inc for the Year Ended 30 June 2005

To be presented to the Annual General Meeting of The Victorian Bar Inc to be held at 5.00 pm on Monday, 5 September 2005, in the Neil McPhee Room, Level 1, Owen Dixon Chambers East, 205 William Street, Melbourne.

## Victorian Bar Council

In the annual election held in September 2004, the following members of counsel were elected:

*Category A:* **Eleven (11) counsel who are Queen's Counsel or Senior Counsel or are of not less than fifteen (15) years' standing**

Jacob (Jack) Isaac Fajgenbaum QC

Philip Alistair Dunn QC

William Ross Ray QC

Michael Warner Shand QC

Mark Alfred Dreyfus QC

Paul Gregory Lacava S.C.

Cathryn (Kate) Faye McMillan S.C.

Michael Joseph Crennan S.C.

David Francis Rashleigh Beach S.C.

Michelle Lesley Quigley S.C.

Peter Julian Riordan S.C.

*Category B:* **Six (6) counsel who are not of Queen's Counsel or Senior Counsel and are of not more than fifteen (15) nor less than six (6) years' standing**

Iain Ronald Jones

Christopher John Townshend

Dr David John Neal

Rachel Marie Doyle

Anne Elizabeth Duggan

Patrick Justin Hannebery

*Category C:* **Four (4) counsel who are not of Queen's Counsel or Senior Counsel and are of less than six (6) years' standing**

Paul Xavier Connor

Kim Joy Knights

Cahal Gerard Fairfield

Charles Edward Shaw

# THE VICTORIAN BAR INC ANNUAL REPORT

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## Chairman's Report

### Service of the Previous Bar Council

I could not have had a better foundation for my term as Chairman than service as Vice Chairman with my two immediate predecessors, Robin Brett and Jack Rush. In his report last year, Robin Brett recorded Jack Rush's service to the Bar. This year, I am glad to record Robin Brett's service, and that of those others who left the Council in the course of this financial year.

Robin Brett's Bar Council service began in February 1986, when he became Assistant Honorary Secretary. He then became Honorary Secretary, and served in that capacity for four years. He was elected to the Council in 1990 and was a member of the Bar Council for a total of twelve years. He served on numerous Bar Committees, including six years on the Equality Before the Law Committee, chairing that committee for two of those years. He still serves on that committee. He served for fifteen years on the Applications Review Committee, the last three of those years as Chairman – perhaps something of a record on such an active committee.

It is fitting that it was in Robin's term as Chairman that the renovations to three-quarters of the chambers and office accommodation in Owen Dixon Chambers East, floors 13 to 5, were completed, and people moved into those floors. Robin's involvement in the massive project of the refurbishing Owen Dixon Chambers East was substantial – as Honorary Treasurer of the Bar, as a senior member of the Council, and as a Director of Barristers Chambers Limited for four years, from 1999 to 2003.

Other significant projects of lasting significance brought to fruition in Robin Brett's term are the implementation of the Bar's compulsory continuing legal education program and the establishment of a new process for the appointment of Senior Counsel. Robin headed the development and implementation of compulsory CLE, appointing Justice Geoffrey Nettle to chair the new CLE Committee. He also headed the Bar Council sub-committee that designed the draft protocol for the appointment of Senior Counsel ultimately adopted by the Council and circulated to the heads of courts. I repeat the Bar's thanks to the Chief Justice, the Honourable Marilyn Warren for agreeing to make the appointments.

The Bar and its Council were well served by Robin Brett's energy and industry, his calm good nature, his informed and clear analysis and insights, and by his particular gift and skill in precise and elegant drafting.

Others who left the Council during this financial year are Tony Howard, Fiona McLeod, Michael Gronow and Debra Coombs. Sharon Moore, who had been Assistant Honorary Secretary for three years and Honorary Secretary for a year, passed that mantle to Kate Anderson. All served the Bar well. All were missed from the Council this year.

### This Year's Council and Administration

It has been a privilege to work with this year's Bar Council, and with our new Chief Executive Officer, Christine Harvey.

There has, over the last two years or so, been a significant turnover, both on the Council and in the Bar Office. Half of this year's Bar Council members have been elected since December 2002 – though one of those "new" members, David Beach, had previously served no fewer than twelve terms on the Council. Christine Harvey took up her appointment in October 2004, succeeding David Bremner, who had been Executive Director for seven and a half years. Anna Whitney, most recently our Executive Officer, had served the Bar faithfully for twenty-three years when she left the Bar Office on 4 March 2005.

Wendy McPhee, the Bar Office Secretary, had been with the Office for approaching ten years when she left last year.

The Bar Council has worked well this year. In particular, I record my thanks to Vice-Chairmen Kate McMillan and Michael Shand, and to Treasurer David Beach. Michael Crennan, who is not standing for re-election, has worked on a number of major projects, including the Justice Department consultation process on the new Legal Profession Act, the consultation process on the new High Court Rules, and the Bar's submission on Advocates' Immunity, with Charles Shaw as his junior. I note that the Victorian Bar submission on Advocates' Immunity was adopted by the Law Council of Australia and the Australian Bar Association and delivered to the Standing Committee of Attorneys-General as the submission of the entire Australian profession. Paul Connor produced the first draft of the Bar's substantial submission on Acting Judges. Jack Fajgenbaum, David Neal and he constituted the Bar Council sub-committee that worked on that submission. Jack Fajgenbaum and Paul Lacava took major responsibility for the submission on the proposal for concurrent general civil jurisdiction in the County Court with no monetary limitation. Paul Lacava also took Bar Council responsibility for the Domestic Building Contracts Legislation submission. Peter Riordan took Council responsibility for the Bar's initial Associations Incorporation Act submission, and Mark Dreyfus for the submission in response to the Interim Parliamentary Report, which was a joint submission with the Law Institute.

There has been a lot of work this year on the Justice Department review of the Criminal Justice System, and on Sentencing issues. The Criminal Bar Association has, as always in criminal matters, done an immense amount of work on all these matters. David Neal has taken primary and very substantial responsibility on behalf of the Council. Justin Hannebery, in addition to being Assistant Honorary Treasurer, has contributed in criminal law and sentencing matters. Every member of the Council has contributed to the work of the Council this year.

Christine Harvey's legal skills and policy insights, combined with her substantial experience in working with government and governmental regulatory bodies have proved immensely valuable, and I record my gratitude for her support in my role as Chairman this year. Mal De Silva's role has expanded immensely following David Bremner's retirement. Barbara Walsh and Deborah Burns continue their excellent work in Legal Education and Training, and Debbie Jones and Cath Mukhtar theirs in Ethics. Debbie and Cath also picked up much of Anna Whitney's work pending the appointment of a replacement. Significantly, we still do not have a permanent Executive Officer. Elizabeth Rhodes is settling in to her new role as Projects Officer. Ross Nankivell continues to serve as our Legal Policy Officer, working with leading members of the Bar who give generously of their time and expertise in their areas of specialty, writing and adding professorial polish to our submissions to government and law reform agencies.

### **Bar Governance and Administration**

The governance and administration of the Bar continues to develop and adapt in order to meet the needs of comparatively rapid change. For more than a hundred years, we were able to operate with, at first, no staff, and then a very modest staff. Now, in the space of some twenty years, there has been change after change.

The Bar has had to fight for survival in the face of never ending, ill informed attacks by competition policy ideologues in and associated with governments, both state and commonwealth. We have taken statutory responsibility for professional licensing, regulation and discipline beyond our own members. The volume of discussion papers and proposed legislation from law reform agencies and governments is overwhelming, but our professional

commitment to law and justice demands our involvement in these processes. The *Legal Practice Act* 1996 wrought one set of significant changes. Less than ten years after that, the *Legal Profession Act* 2004, about to come into operation, brings another set of changes.

In 1997, when we appointed David Bremner, we needed his financial, accounting and administrative skills and focus. David brought a new level of professionalism to the administration and finances of the Bar. No-one knew and understood the intricacies of professional regulation better than David, and he and Michael Crennan well represented the Bar in negotiations and consultation on the proposed new regulatory framework.

Upon David's retirement, we saw a future in which it was desirable that the Bar chief executive be a policy oriented lawyer as well as an administrator. We have already seen the value of Christine Harvey's legal policy experience and skills in matters across the board. We have seen the quality of her administrative skills in managing the shift to professional indemnity insurance with the Legal Practitioners Liability Committee and the formidable administrative operation of a unified process, for the convenience of members, covering applications for both the insurance and the renewal of the practising certificate.

This has, however, been a difficult year for the Bar Office, with the long and substantial bank of experience in David Bremner, Anna Whitney and Wendy McPhee all gone in a single period of less than twelve months, and with the uncertainties in relation to the future role of the Bar in relation to the issue of practising certificates and the investigation of complaints against barristers – both of critical importance in relation to the workload and financing of the Bar Office.

It is hoped that the new Legal Services Commissioner and Legal Services Board will delegate and refer to the Bar the function of issuing practising certificates and the investigation of complaints against barristers. However, that cannot be known until the Commissioner and Board have been appointed. Both the New South Wales Act and the very recent 2004 Queensland Act, which is largely derived from the April 2004 model provisions endorsed by the Standing Committee of Attorneys-General, explicitly vest responsibility in the professional associations for these matters. However, the Victorian Act does not do this and, until appointments to the new positions have been made, the attitude of such persons to the issues of delegation and referral cannot be known.

The major regulatory provisions of the new Victorian Act were to have come into operation on 1 July 2005. That has now been postponed to 1 October 2005. The default commencement date in the Act is 1 January 2006. Both the workload and finances of the Bar Office critically depend on whether the Bar is to continue issuing practising certificates and investigating complaints against barristers. With decisions on these matters seemingly imminent, we have not, to date, felt it appropriate to make a permanent appointment to the Executive Officer position, or make long term plans for the organisational reform of the Bar Office.

The Bar Constitution will require revision in light of the *Legal Profession Act* 2004 and decisions under that Act yet to be made by persons yet to be appointed. That and any changes in the Bar administration that may be necessary as a consequence of such decisions must, for the moment, await developments.

### **The Bar's Role in Legal Policy Consultation**

I have already referred to the volume of discussion papers and proposed legislation from law reform agencies and government received by the Bar. Many members of the Bar contribute generously of their time, experience and expertise in areas of law in which they are leading practitioners. Members of the Bar Council take responsibility for reviewing and working on major submissions, and I have mentioned that in my brief review of the work of this year's

Bar Council.

The Victorian Bar has played a leading role in issues of national importance. For example, our submission on Advocates Immunity was sent by the Law Council of Australia to all its constituent bodies, and then adopted by the Law Council and the Australian Bar Association and transmitted to the Standing Committee of Attorneys-General as the submission of the national profession.

The various specialist Bar Associations also make submissions – in particular, the Criminal Bar Association responds to a huge volume of material from law reform agencies and governments every year.

Members of the Bar are also involved in often extended processes of consultation. For example, David Neal and I on behalf of the Bar Council and Lex Lasry and Stephen Shirrefs on behalf of the Criminal Bar Association are members of the Justice Statement Advisory Group that is working on a major overhaul of the *Crimes Act* 1958 and related legislation. Lex Lasry and Gerard Mullaly are members of a Justice Department Advisory Group that has been working for some months on the Victorian Law Reform Commission recommendations in relation to Sexual Offences.

The Bar has a vital role to play in these matters. On a purely practical and pragmatic level, we identify the possible effects, consequences and ramifications of proposed changes, and advise in relation to the proper definition of the law. We also identify and explain relevant principles and philosophy.

### **The Bar's Commitment to Access to Justice and Pro Bono Representation**

The Public Interest Law Clearing House (“PILCH”) celebrated its 10<sup>th</sup> anniversary this year. Sir Anthony Mason, speaking in September 2004 at the dinner to celebrate this said: “A first class court system and a first class legal profession are of no avail to a person who cannot access them.” Access to justice has been a part of practice at the Bar for a very long time. The cab-rank rule requires us to accept a brief in our area of practice, no matter how unpopular, or even abhorrent, the cause or the client may be. The historical complement to that rule has been the personal charity and generosity of members of the Bar in voluntarily declining their fee in deserving cases. The Bar has, as a learned profession, accepted responsibility for taking work *pro bono publico* – for the public good. Sir Anthony Mason described this as “rooted in our common humanity and the professional ideal of service to the community”.

The Victorian Bar Legal Assistance Scheme began nearly ten years ago, in March 1996, and was operated on a voluntary basis by then Honorary Secretary Garrie Moloney and Assistant Honorary Secretary Samantha Burchell. They worked with Bar Chairmen David Curtain and Mark Derham to establish the present framework for the Bar Legal Assistance Scheme to be administered by PILCH, and that has been so since July 2000. The Bar Legal Assistance Committee was established in 2000, chaired by Garrie Moloney then, for three years by Tony Howard, and now by Ross McCaw. Through the support of the Bar, PILCH member firms and the Law Institute, PILCH grew and developed into the one stop shop for *pro bono* legal assistance in Victoria that it is today, administering both the Bar and Law Institute schemes.

Over the past year, over 200 barristers have undertaken *pro bono* work through the Bar Legal Assistance Scheme and PILCH across all areas of law and all jurisdictions, including appearances in the High Court; 26 silks have accepted briefs, often in the process also mentoring a junior barrister. Over a quarter of the practising Bar has volunteered to participate in the Bar scheme. Well over half of all new barristers who have signed the Roll in the past year have volunteered, and many of them have participated, often accepting briefs



in the Magistrates' Court for the clients of community legal centres. Many barristers have accepted calls at very short notice in response to urgent requests by judges and magistrates to assist unrepresented litigants.

Not only have members of the Bar undertaken appearances, they have also taken the trouble to meet with applicants for assistance to explain why their case is unmeritorious and representation cannot be provided. Often they have helped the applicant to access other relevant support services. Such compassionate human contacts go beyond mere formal representation of meritorious cases.

Through PILCH and the Bar scheme members of the Bar have also presented excellent professional training courses in their areas of particular expertise to other members of the bar and to community solicitors, and have also contributed to the preparation of four submissions to Commonwealth and State parliaments on topics related to pro bono practice – in particular, in relation to migration litigation reform legislation. At his own expense, one member of the Bar attended in Canberra to appear before the Commonwealth Senate Legal and Constitutional Committee on behalf of the Bar and PILCH.

### **Advocacy Training in the South Pacific Region**

Since 1987, the Bar has provided places in the Readers' Course to lawyers of the South Pacific without charge. A total of 87 lawyers from Papua New Guinea, Vanuatu, Indonesia and the Solomon Islands have participated in this program over the years. Since 1990, we have conducted week-long, full-time trial advocacy skills workshops in Papua New Guinea. We have also conducted courses in Vanuatu and, in co-operation with AusAid, in the Solomon Islands. A total of 30 members of the Bench and Bar have participated in teaching these courses, several of them teaching for many courses and years. I was a member of the team on the first four courses from 1990 to 1993, led by the late Robert Kent, who established the whole program, and I taught again in 2002 and 2003.

This year in May and June 2005, we taught, for the first time, an advanced, week-long Appellate Advocacy Workshop in Papua New Guinea. Justice of Appeal Geoffrey Eames headed the team consisting of himself, Judge Elizabeth Curtain, Director of Public Prosecutions Paul Coghlan, Ian Hill, Jane Dixon and, of course, Barbara Walsh, our Manager of Legal Education and Training, who is the driving force – arranging, organising and administering these courses both in the preparation and on location. These are not merely Victorian courses taken on tour. They are courses specifically designed for the purpose, in this case, based on a number of Papua New Guinea appeals in respect of which the Bar had obtained the appeal books and transcripts.

### **Continuing Legal Education**

The Bar program of compulsory CLE began on 1 February 2004 – the product of Justice of Appeal Nettle's CLE Committee, and the culmination of years of work by my predecessors as Chairman, Justice Robert Redlich, Jack Rush and Robin Brett, and the earlier committees chaired by me and by Tony Pagone.

The programs have been of a consistently high quality from the very beginning – a tribute to all involved, particularly Justice Nettle and Neil Young who succeeded him as Chairman of the CLE Committee, the members of the CLE Committee, the specialist subject area Bar Associations who organise their members to offer seminars, the individual members of the Bar who actually prepare and make these presentations on a voluntary basis, and Barbara Walsh who administers the program.

The program offers seminars in eight streams: Commercial, Criminal, Common Law, Family Law, Professional Standards, Advanced Commercial Law, Courses for Junior

Barristers and Industrial Law. A certificate of compliance with CLE requirements was required for the first time in this year's practising certificate renewal process. The program is in full operation and is a great success.

### **Professional Indemnity Insurance with the Legal Practitioners Liability Committee**

For years the Bar has worked to be included in the statutory legal professional insurance scheme administered by the Legal Practitioners Liability Committee. We have had the strong support of the Legal Practice Board, the Law Institute, the Legal Practitioners Liability Committee itself and the Attorney-General, Rob Hulls. Finally this came about with an enabling provision in the *Legal Profession Act 2004* and a resolution by the Bar Council in accordance with that statutory provision.

The benefits of this, and the detail of the actions of the Bar Council and its Professional Indemnity Insurance Committee in this matter are described in the report of that committee later in this annual report.

I record my thanks and that of the Bar to Michael Shand and the members of his Professional Indemnity Insurance Committee over the years, to David Bremner, and to Christine Harvey for their outstanding work which brought this to pass.

### **Opening of the Refurbished Owen Dixon Chambers East**

SEK Hulme spoke and officially opened the refurbished Owen Dixon Chambers East on 4 May 2005 – marking the completion of this massive project, which includes the new Essoign, the splendid Readers' Course Centre, and fine new chambers for members.

### **Portrait of the Late Honourable Richard McGarvie AC QC**

Dick McGarvie died on 24 May 2003. He joined the Royal Australian Navy at the age of 17, and served on the lower deck of a destroyer in World War II. He was a barrister, Chairman of the Bar Council, a Judge of the Supreme Court, Chancellor of Latrobe University and Governor of Victoria. Tributes to his life appear in the Winter 2003 edition of Victorian Bar News.

In September 2004, the Bar acquired a portrait of Dick McGarvie by Sir William Dargie – a study by the artist for the portrait commissioned by Government House. This was through the good offices of Jack Rush, who ascertained that the portrait was up for auction, and David Bremner who attend and bid at the auction on behalf of the Bar. The portrait now hangs on the ground floor of Owen Dixon Chambers East, just outside John Dever's office.

### **Retirement of the Honourable Mr Justice John Winneke and Appointment of Justice Maxwell**

On Friday 15 June 2005, the Honourable Mr Justice John Winneke retired from the Supreme Court of Victoria thus bringing to an end his term as the first President of the Court of Appeal. With characteristic lack of fuss, Mr Justice Winneke did not wish to be given a ceremonial court farewell by the profession, and declined the Bar's alternative suggestion of a celebratory dinner. He and his brother Michael, who had practised as a solicitor for many years, and who came to the Court with him as his Associate, simply finished work at the Court on 15 July and left.

There will be a farewell article in the next edition of Bar News, but I record in this report Mr Justice Winneke's remarkable professional career of service to the profession and to the law in his thirty-three years at the Bar, in which he served on the Bar Council for three

and a half years, and in his ten years as President of the Court of Appeal. His Honour was made an Officer in the Order of Australia in 1999, and last year elevated to the highest level in the Order, that of Companion.

Justice Chris Maxwell has succeeded Mr Justice Winneke as President of the Court of Appeal. I spoke on behalf of the Bar at the Gathering of the Profession in the Banco Court on 25 July 2005 to welcome Justice Maxwell. Justice Maxwell and the Chief Justice will be attending the mid-September meeting of the new Bar Council to discuss their plans for the Court of Appeal.

### **Thank You**

I have been privileged to serve on the Bar Council for 14 years, and this last year as Chairman of the Bar Council. I wish to thank all those with whom I have had the pleasure of working over these years.

**W. Ross Ray**  
*Chairman*

## Officers of the Bar Council

<i>Chairman</i>	W Ross Ray QC
<i>Senior Vice-Chairman</i>	C F (Kate) McMillan S.C.
<i>Junior Vice-Chairman</i>	Michael W Shand QC
<i>Honorary Treasurer</i>	David F R Beach S.C.
<i>Assistant Honorary Treasurer</i>	P Justin Hannebery
<i>Honorary Secretary</i>	Katharine J D Anderson
<i>Assistant Honorary Secretary</i>	Penelope A Neskovicin

### VICTORIAN BAR STAFF

<i>Chief Executive Officer</i>	Christine Harvey
<i>Executive Officer</i>	Anna Whitney (up to 4 March 2005)
<i>Acting Executive Officer</i>	Galina Hitchen
<i>Legal Policy Officer</i>	Ross Nankivell
<i>Manager, Legal Education and Training</i>	Barbara Walsh
<i>Legal Education and Training Officer</i>	Elizabeth Rhodes
<i>Legal Education and Training Assistant</i>	Deborah Burns
<i>Investigations Officer, Ethics Committee</i>	Debbie Jones
<i>Assistant to the Ethics Committee</i>	Catherine Mukhtar
<i>Accountant/Membership Records</i>	Mal De Silva
<i>Secretary</i>	Rosa Globan
<i>Receptionist</i>	Pamela Dempster
<i>Administrative Assistants</i>	Gabrielle Incigneri and Daphne Ioannidis
<i>Archivist</i>	Alison Adams
<i>Mediation Receptionists</i>	Helen Henry, Pauline Hannan, Kay Kelly, Pat Lurye, Frances O'Halloran and Virginia Cable

### EXECUTIVE COMMITTEE OF THE BAR COUNCIL

<i>Chairman</i>	W Ross Ray QC
<i>Senior Vice-Chairman</i>	C F (Kate) McMillan S.C.
<i>Junior Vice-Chairman</i>	Michael W Shand QC
<i>Honorary Treasurer</i>	David F R Beach S.C.
<i>Assistant Honorary Treasurer</i>	P Justin Hannebery
<i>Members</i>	Philip A Dunn QC
	Mark A Dreyfus QC
	Michelle L Quigley S.C.
	Dr David J Neal
	Paul X Connor
<i>Honorary Secretary</i>	Katharine J D Anderson
<i>Assistant Honorary Secretary</i>	Penelope A Neskovicin

## **Bar Companies and Associations**

(as at 30 June 2005)

### **BARFUND PTY LTD – BOARD OF DIRECTORS (as trustee for the Victorian Bar Superannuation Fund)**

Philip J Kennon QC (Chairman), Jonathan B R Beach QC (Deputy Chairman), Ross C Macaw QC, Melanie Sloss S.C. and Paul J Cosgrave

### **BARRISTERS' BENEVOLENT ASSOCIATION OF VICTORIA SUB-COMMITTEE OF THE COMMITTEE OF MANAGEMENT**

W Ross Ray QC (Chairman, Victorian Bar Council) and David F R Beach S.C. (Honorary Treasurer, Victorian Bar Council)

### **BARRISTERS' CHAMBERS LIMITED — BOARD OF DIRECTORS**

Paul E Anastassiou S.C., (Chairman), G John Digby QC (Deputy Chairman), Michael W Shand QC, David S Levin QC, Michael J Colbran QC, Peter W Lithgow, Caroline M Kenny, Wendy A Harris, Paul X Connor and Daryl F Collins (Member/CEO)

### **ESSOIGN CLUB — BOARD OF DIRECTORS**

Colin L Lovitt QC (Chairman), Philip Dunn QC (Vice-Chairman), Darren Bracken, David Beach S.C., Chris Blanden, Dr John P M de Koning (Honorary Secretary), Gunilla Hedberg, Michael Richards, Claire Harris, Peter N Crofts (Honorary Treasurer) and Simone Bingham

### **THE MELBOURNE BAR PTY LTD**

#### **Board of Directors**

Anthony J Magee (Chairman), The Honourable Justice Stephen W Kaye, David F R Beach S.C. and Mark T Settle

#### **Shareholders**

Ross McK Robson QC, Neil J Young QC, John E Middleton QC and David E Curtain QC

### **CHAIRMEN OF THE LIST COMMITTEES**

List A	-	Clyde Croft S.C.
List B	-	Mark Dean S.C.
List C	-	Ronald K J Meldrum QC
List D	-	Ross H Gillies QC
List F	-	Philip A Dunn QC
List G	-	Colin D Golvan S.C.
List H	-	Paul D Elliott QC
List L	-	David J Ross QC
List M	-	Bernard R Fitzgerald
List P	-	Richard R S Tracey QC
List R	-	Francis O'Brien S.C.
List S	-	P Gerard Nash QC
List W	-	H John Langmead S.C.

**CHILDREN'S COURT BAR ASSOCIATION**

Robert T Burns (President), Geoffrey R Martin (Honorary Treasurer) and Emma M Swart (Secretary)

**COMMERCIAL BAR ASSOCIATION**

Peter J Bick QC (President), Melanie Sloss S.C. (Senior Vice-President), Albert A Monichino (Vice-President (Convenor)) and John R Dixon (Treasurer)

**COMMON LAW BAR ASSOCIATION**

Ross H Gillies QC (Chairman), John H L Forrest QC (Vice-Chairman), Richard J Stanley QC, The Hon James H Kennan S.C., John A Jordan S.C., David F R Beach S.C., Fiona M McLeod S.C., Frank D Saccardo S.C., Michael F Wheelahan S.C., David J Martin (Secretary), Andrew McH Ramsey, Richard H Smith, Katherine L Bourke, Anne E Duggan, Simon K McGregor and Mary Anne Hartley (Treasurer)

**COMPENSATION BAR ASSOCIATION**

James L Parrish S.C.(Chairman), John A O'Brien, (Vice Chairman), Stanley B Spittle (Treasurer), Brian R Wright (Information Officer), John B Richards S.C. (Common Law Bar Liaison), Debra J Coombs (Secretary), John J Noonan S.C., Michael J O'Brien and Ian D McDonald

**CRIMINAL BAR ASSOCIATION**

Lex Lasry QC (Chairman), Stephen A Shirrefs S.C. (Deputy Chair), W Benjamin Lindner, Edwin J Lorkin (Secretary), Dr Gregory J Lyon, Gerard P Mullaly, Nicola M Gobbo (Treasurer), John Champion, Gregory T Connellan, John R Champion S.C., Thomas F Danos and Benjamin L Rozenes

**FAMILY LAW BAR ASSOCIATION**

Noel J Ackman QC (Chairman), Olyvia Nikou S.C. (Vice-Chairman), Graeme P L Thompson (Treasurer) and Bronia A Tulloch (Secretary)

**INDUSTRIAL LAW BAR ASSOCIATION**

Herman Borenstein S.C. (President), Frank Parry S.C. (Senior Vice President), Warren L Friend (Vice President), Gerard C P McKeown (Secretary) and Rohan A Millar (Treasurer)

**WOMEN BARRISTERS' ASSOCIATION**

Kim J Knights (Convenor), Samantha L Marks (Past Convenor), Caroline E Kirton (Assistant Convenor), Jane C Forsyth (Assistant Convenor), Simone M Jacobson (Secretary), Michelle R Sharpe (Assistant Secretary), Joy S Elleray (Treasurer), Debra J Coombs (Assistant Treasurer), Patricia E Dobson (Membership Secretary), Anna L Robertson (Seminar Coordinator), Liza M Powderly (Seminar Coordinator), Alexandra Richards QC (Committee Member), Fiona M McLeod S.C. (Committee Member) and Cynthia A Holland (Committee Member)

# **Standing Committees of the Bar Council**

(as at 30 June 2005)

## **Aboriginal Law Students Mentoring Committee**

Colin D Golvan S.C. (Chair), David A Parsons S.C., John E Goetz, Jane A Dixon, Amanda Glaister, Susan C Dowler, Paul J Hayes, Daniel V Aghion, Daniel I Star, Edward J C Heerey and Christine S Harvey (Chief Executive Officer)

## **Applications Review Committee**

G John Digby QC (Chair), Michael J Colbran QC, Terrence P Murphy S.C., Michael F Wheelahan S.C., Michael A Scarfo, Dr Dorothy Kovacs, Tomaso Di Lallo, Caroline M Kenny, Caroline E Kirton, William E Alstergren, Kevin J A Lyons, Roisin N Annesley, Katharine J D Anderson (Honorary Secretary), Penelope A Neskovcin (Assistant Honorary Secretary), Barbara J Walsh (Legal Education and Training - Manager), Elizabeth Rhodes (Legal Education and Training Officer) and Deborah Morris (Legal Education and Training Assistant)

## **Charitable and Sporting Donations Committee**

Peter J Riordan S.C., (Chair) and P Justin Hannebery (Assistant Honorary Treasurer)

## **Conciliators for Sexual Harassment and Vilification**

David E Curtain QC (Convenor), Frank X Costigan QC, Michael J Crennan S.C., Richard J H Maidment S.C., Debra S Mortimer S.C., Fiona M McLeod S.C., Richard W McGarvie S.C., Joy S Elleray, Melanie P Young and Sarah L Fregon

## **Counsel Committee**

Michael J Crennan S.C. (Chair), David F R Beach S.C. (Honorary Treasurer), Michelle L Quigley S.C., Iain R Jones, Kim J Knights, Paul X Connor, Katharine J D Anderson (Honorary Secretary) and Penelope A Neskovcin, (Assistant Honorary Secretary)

## **Editorial Committee for InBrief and Website News Section**

Fiona M McLeod S.C. (Chair), P Justin Hannebery, Kim J Knights, Charles E Shaw, Peter N Crofts and Christine S Harvey (Chief Executive Officer)

## **Equality Before the Law Committee**

Alexandra Richards QC (Chair), Anthony Howard QC, W Ross Ray QC, Robin A Brett QC, Mark A Dreyfus QC, Mark E Dean S.C., Fiona M McLeod S.C., Ian F Turley, Ross G Maxted, Samantha L Marks, Michael D Wyles, Richard M Niall, Debra J Coombs, Erin J Gardner, Jane C Forsyth, Anna L Robertson, Miguel A Belmar Salas, Christine S Harvey, The Honourable Justice Ronald Merkel (Federal Court Consultant), The Honourable Justice Susan M B Morgan (Family Court Consultant), The Honourable Chief Justice Marilyn L Warren AC (Supreme Court Consultant), The Honourable Justice Robert F Redlich, (Supreme Court Consultant), Her Honour Judge Rachelle A Lewitan AM (County Court Consultant), Her Honour Judge Susan M Cohen (County Court Consultant), Her Honour

Judge Frances Millane (County Court Consultant), Ian L Gray (Magistrates' Court Consultant) and Pamela M Tate S.C. (Consultant)

### **Ethics Committee**

C F (Kate) McMillan S.C., (Chair), James D Merralls AM QC, Douglas R Meagher QC, Paul A Willee RFD QC, William F Lally QC, Jeremy H Gobbo QC, Paul G Lacava S.C., Cameron C Macaulay S.C., Michelle M Gordon S.C., John L Batten, Ian S Williams, Caroline E Kirton, Desmond J Lane, Pauline L Shiff, Anne E Duggan, Debbie Jones, (Investigations Officer) and Catherine Mukhtar (Assistant to Committee)

### **First Aid Officers**

Anthea E L MacTiernan and Marietta B Bylhouwer

### **Human Rights Committee**

Jacob (Jack) I Fajgenbaum QC (Chair), Alexandra Richards QC, Herman Borenstein S.C., Michael L Sifris S.C., Debra S Mortimer S.C., Glenn C McGowan S.C., Simon E Marks, M Damian Murphy, Pauline L Shiff, Wendy A Harris, Daniel I Star, Susan M Brennan, Beatrice C Melita, Lisabella G De Ferrari, Yusuf Zaman and Judy Benson (Secretary)

### **Legal Assistance Committee**

Ross C Macaw QC (Chair), Alexandra Richards QC, Helen M Symon S.C., Mark E Dean S.C., Michelle L Quigley S.C., Thomas F Danos, Joshua D Wilson, Caroline M Kenny, Anna L Robertson, Arushan Pillay, John A Emerson AO, Jane Fricke, Emma Hunt, Paula O'Brien, Susannah Sage-Jacobson and Christine Harvey (Chief Executive Officer)

### **Legal Education and Training — Continuing Legal Education Committee**

Neil J Young QC (Chair), Herman Borenstein S.C., Frank Parry S.C., Michelle M Gordon S.C., Joseph G Santamaria QC, David H Denton RFD S.C., Jeanette G Morrish QC, Richard J H Maidment S.C., Desmond J Lane, Gerard P Mullaly, John T (Jack) Rush RFD QC, Jeremy Ruskin QC, Clarinda E Molyneux QC, Martin Bartfeld QC, Paul A Willee RFD QC, William F Lally QC, John H Karkar QC, Ross H Gillies QC, Robert Richter QC, Melanie Sloss S.C., Michael L Sifris S.C. and Barbara Walsh (Manager – Legal Education and Training)

### **Legal Education and Training — Accreditation and Dispensation Sub-Committee**

Neil J Young QC (Chair), Robert Richter QC, John T (Jack) Rush RFD QC, Jeremy Ruskin QC, Michelle M Gordon S.C., Dr David J Neal and Barbara Walsh (Manager- Legal Education and Training)

### **Legal Education and Training — Readers' Course Committee**

Paul D Santamaria S.C. (Chair), The Honourable Justice David L Harper, David G Collins S.C., David J O'Callaghan S.C., Neil J Clelland S.C., Fiona M McLeod S.C., P Mark Taft, Caroline E Kirton, Carolyn H Sparke, Matthew N Connock, Gregory P Harris, Robert W Taylor, Sara L Hinchey, Martin L Grinberg, Paul J Lawrie, Joyce G Tooher, Anthony G Burns, Deborah Burns (Legal Education and Training Assistant), Elizabeth Rhodes (Legal Education and Training Officer) and Barbara J Walsh (Manager -Legal Education and Training)



**New Barristers' Standing Committee**

Simone L Bingham (Chair), St John Hibble (Deputy Chair), Rachel M Doyle, Lisa-Maree Lo Piccolo, Sarah J Porritt, Rowena Orr, Georgia Tsirmbas, Joseph M Connellan, Marita H Foley, Antonius J Vriends, Samuel D Hay, Thomas S Pikusa, Simon Rubenstein and Sarah L Turner

**Past Practising Chairmen's Committee**

Hartog C Berkeley QC, Frank X Costigan QC, Brian J Shaw QC, Andrew J Kirkham RFD QC, Dr Chris N Jessup QC, Neil J Young QC, John E Middleton QC, John T (Jack) Rush RFD QC, David E Curtain QC, D Mark B Derham QC and Robin A Brett QC

**Professional Indemnity Insurance Committee**

Michael W Shand QC (Chair), William J Martin QC, Gregory H Garde AO RFD QC, Michael D G Heaton QC, Mark A Dreyfus QC, Jennifer J Batrouney S.C., Paul F O'Dwyer S.C., Peter J Riordan S.C., David M Clarke, Marcus Clarke, Mark A Robins, Dr John P M de Koning, Paul J Hayes, Emma M Swart, Maria A Carroll, Andrew F Hamlyn-Harris and Christine Harvey (Chief Executive Officer)

**Professional Standards Education Committee**

Paul A Willee RFD QC (Chair), Michael W Shand QC, Gerald A Lewis S.C., Paul D Santamaria S.C., Cameron C Macaulay S.C., Daniel V Aghion, Debra J Coombs, Judy Benson and Laura Colla

**Victorian Bar Dispute Resolution Committee**

David S Levin QC (Chair), Ross G Maxted (Deputy Chair), George H Golvan QC, Henry Jolson QC, G John Digby QC, Michael D G Heaton QC, Gerald A Lewis S.C., Robert H Miller, John G Bolton, Anthony A Nolan, Marc T Bevan-John, Gerald A Hardy, Carmel M Morfuni, William E Alstergren, Danielle S Huntersmith, Cornelia N Fourfouris-Mack, and C Elizabeth Brophy

**Victorian Bar News**

P Gerard Nash QC (Editor), Paul D Elliott QC (Editor), Judy Benson (Editor), Julian W K Burnside QC (Editorial Board), Graeme P L Thompson, (Editorial Board), John V Kaufman QC (Editorial Committee), William F Gillies (Editorial Committee), Carolyn H Sparke (Editorial Committee), Georgina L Schoff (Editorial Committee), Paul T Duggan (Editorial Committee), Victoria E Lambropoulos (Editorial Committee), Richard L Brear (Editorial Assistant) and Peter W Lithgow (Book Reviews)

**Victorian Bar Theatre Company Steering Committee**

Simon K Wilson QC (Chair), Philip A Dunn QC, Paul D Elliott QC, Jeanette G Morrish QC, Graeme P L Thompson, Darren A Mort, Georgina L Schoff, Nicholas A T Harrington and Sarah L Fregon

## **Joint Standing Committees**

(as at 30 June 2005)

### **Bar/BCL Accommodation Committee**

Jacob (Jack) I Fajgenbaum QC, G John Digby QC, Michael J Colbran QC, Rachel M Doyle, Daryl F Collins, (BCL) Geoffrey Bartlett (BCL) and Christine Harvey (Chief Executive Officer)

### **Bar/BCL Communications Committee**

D Mark B Derham QC (Chair), Michael Feramez, Michael W Shand QC, David S Levin QC, Peter W Lithgow, William E M Lye, Geoffrey Bartlett and Ian Green (BCL) and Christine Harvey (Chief Executive Officer)

### **Essoign Standing Committee - Advisory Panel**

Colin L Lovitt QC (Chair), His Honour Judge Tim D Wood, Philip A Dunn QC, Michael J Crennan S.C., David F R Beach S.C., Dr John P M de Koning, Justin P Hannebery, Peter N Crofts, Christine Harvey (Chief Executive Officer) and Nicholas Kalogeropoulos (Manager)

### **Law Aid (Bar/LIV)**

Peter J Galbally QC, David F R Beach S.C., John J Noonan S.C. and Mary Anne Hartley

### **Medico-Legal Standing Committee (Bar, LIV & AMA)**

David A Kendall QC, Michael A Scarfo, Christopher M O'Neill and Mary Anne Hartley

### **Police/Lawyers Liaison Committee**

Ian D Hill QC (Chair), Lex Lasry QC (Alternate), Warwick J Walsh-Buckley (CBA Representative), Boris Kayser, Carolyn M Burnside

## **Bar Appointees**

(as at 30 June 2005)

### **Appeal Costs Board**

Anthony E Hooper QC

### **Australian Bar Association — Council**

W Ross Ray QC (Delegate)

### **Commonwealth Administrative Appeals Tribunal — (Melbourne) Liaison Committee**

Charles Gunst QC

### **Council of Law Reporting**

James D Merralls AM QC and Charles Gunst QC

**Council of Legal Education**

Jack I Fajgenbaum QC and C F (Kate) McMillan S.C.

**County Court — Building Cases Users' Group**

Richard J Manly S.C.

**County Court — Business Process Re-engineering Project**

Robin P Gorton QC and David F R Beach S.C.

**County Court — Rules Committee**

Peter T Fox and Michael J Corrigan

**County Court — WorkCover Users' Group**

Robin P Gorton QC, John J Noonan S.C., Robert W Dyer and James P Gorton

**Federal Court — Corporations List Users' Group**

David J O'Callaghan S.C. and Kim J Knights (Alternate)

**Federal Court — Intellectual Property Users' Group**

Bruce N Caine S.C.

**Federal Court — Migration List Users' Group**

Richard R S Tracey QC, Anthony L Cavanough QC, Kevin H Bell QC, Maree E Kennedy S.C., Debra S Mortimer S.C., Thomas V Hurley, Warren S Mosley and Richard M Niall

**Federal Court — Native Title Committee**

David A Parsons S.C.

**Federal Court — Users' Committee**

Ross C Macaw QC, Richard R S Tracey QC, Garry T Bigmore QC, Bruce N Caine S.C. Debra S Mortimer S.C. and Jennifer Davies S.C.

**Firearms Appeal Committee**

Carolyn H Sparke

**International Bar Association — Human Rights Liaison Officer**

Jack I Fajgenbaum QC

**La Trobe University Law School — Legal Profession Consultative Council**

Ross C Macaw QC

**La Trobe University Proctorial Board**

Frank X Costigan QC

**Law Council of Australia Holdings Limited**

Mark A Dreyfus QC (Director) and Michael J Crennan S.C. (Alternate Director)

**Law Council of Australia — *Australian Lawyer* Editorial Committee**

P Gerard Nash QC

**Law Council of Australia — Access to Justice Committee**

Duncan L Allen S.C.

**Law Council of Australia — Equalising Opportunity in the Law Committee**

Kim M Pettigrew

**Law Council of Australia — Young Lawyers Standing Committee**

Katharine J D Anderson and Georgia Tsirmbas

**Law Institute of Victoria — Fee Disputes Conciliator**

Jeremy Ruskin QC

**Lawyers Engaged in Alternative Dispute Resolution (LEADR)**

William J Martin QC and Dr Damien J Cremean

**Legal Practice Board**

John E Middleton QC

**Legal Practice Board — Legal Costs Committee**

Nicholas J D Green QC

**Legal Profession Tribunal — Advocate Members**

Frank X Costigan QC, Lex Lasry QC, Richard R S Tracey QC, Peter J Jopling QC, Anthony G Southall QC, David S Levin QC, Jeremy W Rapke QC, Helen M Symon S.C., Aristomenis Garantziotis S.C., The Honourable Justice Elizabeth J Hollingworth, Sue A Winneke and Christopher J Ryan

**Legal Profession Tribunal — Conciliators**

Nathan A Moshinsky QC, Henry Jolson QC, John H L Forrest QC, Elspeth A Strong S.C., Michael F Wheelahan S.C., Richard J Spicer, Paul W McDermott, Robert W Dyer, Georgina Grigoriou, Jennifer Brennan and Kevin J Thompson

**Leo Cussen Institute for Continuing Legal Education**

The Honourable Justice Mark S Weinberg, P Gerard Nash QC (Alternate), Helen M Symon S.C. and Fiona M McLeod S.C. (Alternate)

**Magistrates' Court — Civil Rules Committee**

Ian R McEachern, Christopher W Gilligan and Franz J Holzer

**Magistrates' Court - Occupational Health and Safety Users' Group**

Christopher W Gilligan and Franz J Holzer

**Magistrates' Court - WorkCover Users' Group**

Ian D McDonald and Debra J Coombs

**Migration/Refugee Review Tribunal**

Maree E Kennedy S.C.

**Monash University Law Faculty Advisory Panel (Integration of Skills and Ethics Project)**

W Brind Zichy-Woinarski QC

**Monash University Law Faculty Board**

Paul A Willee RFD QC and P Gerard Nash QC (Alternate)

**Public Interest Law Clearing House (PILCH)**

Richard W McGarvie S.C. and Fiona M McLeod S.C. (Alternate)

**Supreme Court — Academic Course Appraisal Committee**

Jack I Fajgenbaum QC

**Supreme Court — Board of Examiners**

Ronald K J Meldrum QC, William F Lally QC, Peter J Jopling QC, Melanie Sloss S.C. (Deputy to Meldrum QC), Joseph G Santamaria QC (Deputy to Lally QC) and CF (Kate) McMillan S.C. (Deputy to Jopling QC)

**Supreme Court — Building List Users' Committee**

G John Digby QC, David S Levin QC and Richard J Manly S.C.

**Supreme Court — Chief Justice's Civil Listing Committee**

Richard J Stanley QC

**Supreme Court — Chief Justice's Committee for Religious Observances**

Anthony E Radford

**Supreme Court — Chief Justice's Computer Committee**

Julian W K Burnside QC, Paul A Willee RFD QC and David S Levin QC

**Supreme Court — Chief Justice's Library Committee**

Melanie Sloss S.C. and Stephen G E McLeish

**Supreme Court — Chief Justice's Rules Committee**

Nemeer Mukhtar QC and Peter T Fox

**Supreme Court — Civil Litigation Committee**

Peter B Murdoch QC, John H L Forrest QC, Peter J Riordan S.C., David J O'Callaghan S.C. and Dr Kristine P Hanscombe S.C.

**Supreme Court — Commercial Causes Users' Committee**

Julian W K Burnside QC, Simon K Wilson QC, Timothy J North S.C. and Stewart M Anderson

**Supreme Court — Commercial List Users' Committee**

Peter J Bick QC, David H Denton RFD S.C., Peter J Riordan S.C. and Albert A Monichino

**Supreme Court — Costs Co-ordination Committee**

Michael W Shand QC

**Supreme Court — Legal Education Committee**

Jack I Fajgenbaum QC and C F (Kate) McMillan S.C.

**Supreme Court — Probate Users' Committee**

Richard R Boaden and Shane P Newton

**University of Melbourne Law Faculty**

Neil J Young QC and The Honourable Justice Elizabeth J Hollingworth

**Victoria Law Foundation (including Grants Committee)**

Iain R Jones

**Victoria Legal Aid — Community Consultative Committee**

Dr David J Neal

**Victorian Association for the Care and Resettlement of Offenders (VACRO)**

Philip A Dunn QC

**Victorian Civil and Administrative Tribunal Consultative Users' Groups — Anti-Discrimination List Users Group**

Herman Borenstein S.C., Melanie P Young and Jennifer M Firkin

**Victorian Civil and Administrative Tribunal Consultative Users' Groups — Credit List Users Group**

Paul J Hayes

**Victorian Civil and Administrative Tribunal Consultative Users' Groups — Domestic Building List Users Group**

J A Hugh Foxcroft S.C. and John G Bolton

**Victorian Civil and Administrative Tribunal Consultative Users' Groups  
— General List Users Group**

Mark A Dreyfus QC and Mark G Klemens

**Victorian Civil and Administrative Tribunal Consultative Users' Groups  
— Guardianship List Users Group**

Carolyn H Sparke

**Victorian Civil and Administrative Tribunal Consultative Users' Groups  
— Occupational & Business Regulation List Users' Group**

Mark A Dreyfus QC, Brian J Bourke, E Lloyd Bryant, John F M Larkins, Thomas V Hurley and Mary Anne Hartley

**Victorian Civil and Administrative Tribunal Consultative Users' Groups  
— Planning List Users' Group**

Michael H Wright QC and Christopher J Wren

**Victorian Civil and Administrative Tribunal Consultative Users' Groups  
— Retail Tenancies List Users' Group**

Dr Clyde E Croft S.C. and Georgina Grigoriou

**Victorian Heritage Council**

Susan M Brennan

**Victorian Law Reform Commission Advisory Council**

Robin A Brett QC

**Victorian Workcover Authority Committee**

Robin P Gorton QC (Chair), John J Noonan S.C., Robert W Dyer and Katherine L Bourke

## **General Meetings**

### **GENERAL MEETINGS OF THE BAR**

The last Annual General Meeting of the Bar was held on 6 September 2004.

### **BAR COUNCIL MEETINGS**

For the year ended 30 June 2005 the Bar Council held 24 ordinary meetings.

The 2004/2005 Bar Council first met on 9 September 2004. Between that date and 4 August 2005 there were 22 ordinary meetings. Attendance at these meetings was as follows:

W Ross Ray QC	20	Iain R Jones	15
C F (Kate) McMillan S.C.	19	Dr David J Neal	15

Michael W Shand QC	21	Christopher J Townshend	13
Jack I Fajgenbaum QC	21	Rachel M Doyle	17
Philip A Dunn QC	17	Anne E Duggan	19
Mark A Dreyfus QC	20	P Justin Hannebery	19
Paul G. Lacava S.C.	18	Kim Knights	22
Michael J Crennan S.C.	18	Paul X Connor	19
David F R Beach S.C.	14	Cahal Fairfield	13
Michelle L Quigley S.C.	13	Charles Shaw	19
Peter J Riordan S.C.	15		

## EXECUTIVE COMMITTEE MEETINGS

For the year ended 30 June 2005 the Executive Committee held 7 ordinary meetings.

## SUBSCRIPTIONS

For the period 1 July 2004 to 30 June 2005 the Bar Council fixed annual subscriptions (including GST) for members of the Bar as follows:-

### Division A, Part I

Queen's Counsel/Senior Counsel	\$3,520
Over 15 years	\$2,100
Over 14 years	\$2,040
Over 13 years	\$2,040
Over 12 years	\$1,990
Over 11 years	\$1,870
Over 10 years	\$1,820
Over 9 years	\$1,360
Over 8 years	\$1,250
Over 7 years	\$1,130
Over 6 years	\$1,020
Over 5 years	\$910
Over 4 years	\$850
Over 3 years	\$790
Over 2 years	\$680
Over 1 year	\$620
Under 1 year's standing	\$340
Readers (September 2004)	\$170
Readers (March 2005)	\$50

### Division A, Part II

Crown Prosecutors and Public Defenders	\$420
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### Division A, Part III

Interstate and Overseas Queen's and Senior Counsel	\$560
Interstate and Overseas Junior Counsel	\$420

### Division B, Part III

Ministers of the Crown and Members of Parliament	\$420
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**Division B, Part IV**

Solicitors-General and Directors of Public Prosecutions	\$420
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**Division B, Part VII**

Crown Counsel and Parliamentary Counsel	\$420
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**Division B, Part VIII**

Other Official Appointments	\$420
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**Division D**

Academics	\$420
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## Personalialia

(as at 30 June 2005)

### OBITUARIES

The Bar Council records with deep regret the deaths since its last Report of the following members and past members:

The Honourable Peter Murphy AM QC on 20 July 2004, His Honour Judge Clive W Harris on 31 August 2004, Francis W Hender on 29 September 2004, Michael T Rush on 13 November 2004, Kenneth H Gifford QC on 20 January 2005, Dr Geoffrey S Lester on 16 February 2005, Brian K C Thomson QC on 21 February 2005, The Honourable Justice Richard E Cooper on 14 March 2005, The Honourable Keith D Marks QC, 24 May 2005 and James A Logan on 5 June 2005.

### JUDICIAL APPOINTMENTS

During the year ended 30 June 2005, the following members of the Victorian Bar were appointed to judicial office.

**Family Court of Australia**

Chief Federal Magistrate Diana Bryant, sworn in as Chief Justice on 8 July 2004.

**Supreme Court of Victoria**

The Honourable Justice Kevin H Bell, appointed 10 February 2005, The Honourable Kim W S Hargrave appointed 18 March 2005, The Honourable Justice Betty J King, appointed 21 June 2005.

The Honourable Justice David J Ashley was appointed to the Court of Appeal on 21 June 2005.

**County Court of Victoria**

His Honour Judge William H Morgan Payler, appointed 26 October 2004, Her Honour Judge Sandra S Davis appointed 26 October 2004 and Her Honour Judge Felicity P Hampel, appointed 9 February 2005.

### **Magistrates' Court of Victoria**

Brian R Wright, appointed 31 August 2004 and Charles S Rozencwajg, appointed 7 December 2004.

### **Senior Counsel**

On the 30 November 2004, the following members of the Victorian Bar were appointed Senior Counsel in Victoria:

Raymond A Elston, Francis D Saccardo, Duncan L Allen, Jennifer Davies, Peter W Collinson, David M MacLean, Glenn C McGowan, Susan E Pullen, Richard W McGarvie, Michael F Wheelahan and James D Elliott

### **Welcomes**

During the year ended 30 June 2005, the Victorian Bar welcomed the following appointments:

#### **Federal Court of Australia**

The Honourable Justice Peter Graham: on 24 May 2005 in Sydney the Chairman of the Victorian Bar, W Ross Ray QC, extended a welcome on behalf of the Bar and the Law Council of Australia.

#### **Family Court of Australia**

The Honourable Chief Justice Diana Bryant: on 28 July 2004 the then Chairman, Robin Brett QC, extended a welcome on behalf of the Bar.

#### **Supreme Court of Victoria**

The Honourable Justice Kevin H Bell: on 17 February 2005 the Chairman, W Ross Ray QC, extended a welcome on behalf of the Bar.

The Honourable Justice Kim W S Hargrave: on 21 March 2005 the Senior Vice-Chairman, C F (Kate) McMillan S.C., extended a welcome on behalf of the Bar.

#### **County Court of Victoria**

Her Honour Judge Felicity P Hampel: on 14 February 2005 the Chairman, W Ross Ray QC, extended a welcome on behalf of the Bar.

### **Farewells**

During the year ended 30 June 2005, the Victorian Bar farewelled the following judicial officers:

#### **Family Court of Australia**

The Honourable Justice John Wilczek: on 10 February 2005 the Chairman, W Ross Ray QC, spoke on behalf of the Bar at the ceremonial farewell to Justice Wilczek.

#### **Supreme Court of Victoria**

The Honourable Mr Justice John D Phillips: on 17 March 2005 Chairman, W Ross Ray QC, spoke on behalf of the Bar at the ceremonial farewell to Justice Phillips.

The Honourable Mr Justice John M Batt: on 2 June 2005 Chairman, W Ross Ray QC, spoke on behalf of the Bar at the ceremonial farewell to Justice Batt.

Master Charles Wheeler: on 17 February 2005 the Senior Vice-Chairman, C F (Kate) McMillan

S.C., spoke on behalf of the Bar at the ceremonial farewell to Master Wheeler.

### **County Court of Victoria**

His Honour Judge Warren C Fagan: on 30 November 2004 the Chairman, W Ross Ray QC, spoke on behalf of the Bar at the ceremonial farewell to Judge Fagan.

His Honour Judge Dyett: on 5 April 2005 the Chairman, W Ross Ray QC, spoke on behalf of the Bar at the ceremonial farewell to Judge Dyett.

### **Magistrates' Court of Victoria**

Colin E Macleod, Magistrate: on 16 July 2004 Arthur G Roberts spoke on behalf of the Bar at the ceremonial farewell to Magistrate Colin Macleod.

Noel Purcell, Magistrate: on 19 December 2004 Ian McEachern spoke on behalf of the Bar at the ceremonial farewell to Magistrate Noel Purcell.

## **Roll of Counsel**

(as at 30 June 2005)

	Female	Male	Total
<b>Division A, Part I</b>			
Victorian Practising Counsel —			1612
Queen's and Senior Counsel	17	198	215
Victorian Practising Counsel — Junior Counsel	296	1101	1397
<b>Division A, Part II</b>			
Crown Prosecutors and Public Defenders	7	17	24
<b>Division A, Part III</b>			
Interstate and Overseas Counsel	5	108	113
<b>Division B, Part I</b>			
Governors			
<b>Division B, Part II</b>			
Judges	30	147	177
<b>Division B, Part III</b>			
Ministers of the Crown and Members of Parliament	1	7	8
<b>Division B, Part IV</b>			
Solicitors-General and Directors of Public Prosecutions	1	6	7
<b>Division B, Part V</b>			
Masters and Judicial Registrars		6	6
<b>Division B, Part VI</b>			
Magistrates and Full-time Members of Statutory Tribunals	23	56	79
<b>Division B, Part VII</b>			
Crown Counsel and Parliamentary Counsel	2	3	5
<b>Division B, Part VIII</b>			
Other Official Appointments		3	3
<b>Division C, Part I</b>			
Retired Judges and other Judicial Officers	1	78	79
<b>Division C, Part II</b>			
Retired Holders of Public Office other than Judicial	3	6	9

Officer

**Division C, Part III**

Retired Counsel	13	79	92
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**Division D**

Academics	6	12	18
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<b>TOTAL</b>	405	1827	2232
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**The following 112 persons signed the Roll of Counsel:**

James Samargis, Gary Cazalet, Peter Davison, Jessica Leahey, Stephen Estcourt, Marko Cvjeticanin, Michael Bright, Bradley Baker, Daniel Clough, Catherine Gobbo, Geraldine Gray, Robert Sdraulig, John Armstrong, Urfa Masood, Simon Woolley, E Michael Kingston, Christian Juebner, Peter Little, Richard Dalton, Peter Gates, Damien Lockie, Simon Wood, David Gillard, Geoffrey Clancy, Damian Ballan, Shane Barker, Kristen Walker, Sharon Keeling, Nikki Wolski, Megan Tittensor, Marc Felman, Paul Halley, David Sexton, Philip Brown, Charles Morgan, Simon Matters, David Goddard, Michael Vellas, Paul Chiappi, Sarah Turner, Timothy Best, Jennifer Clark, Richard Stanley, Helen Murphy, Samuel Hopper, Ekaterini Liamos, Sally Wilson, John Livitsanos, Russell Keen, Lyndell McCreadie, W Clive Patrickson, Bradley Ross, Sally Flynn, Christine Boyle, Lydia Kinda, Donald Charrett, Rebecca Boyce, Patrick Liptak, John Glover, Richard McCormack, Panayiotis Panayi, Andrew Flower, Letizia Torres, Timothy Falkiner, Mary Agresta, Gavin Coldwell, Stephen Waldren, Dane McLeod, Timothy Tyler, Peter Schumpeter, Adrian Munro, Selena McCrickard, Claudio Bozzi, Magdalini Karagiannakis, Maria Tsikaris, Kathryn Stynes, Douglas Shirrefs, Alwyn Narayan, Fiona Forsyth, Michelle Florenini, Cynthia Holland, Amanda Ryan, Francis Jones, Michael McGrath, Alistair Pound, Benno Ihle, Andrew Archer, Brian Tierney, Madeleine Pinnuck, Paul Adami, Mark Regan, Catherine Symons, Sav Korica, Andrew Grant, Panagiotis Triandos, Michael Sawyer, Christopher Archibald, Graeme Davis, Bianca Dukic, Fiona Ryan, David Langton, Garry Moffatt, James Fitzgerald, Elizabeth Ruddle, Wendy Powles, Felicity Marks, Nicholas Doukas, Shaun Ryan, Patmalar Ambikapathy, Sarah Gaden, Raoul Stransky and J Rebecca Leshinsky

**Members whose names were removed from Division A, Part I (Victorian Practising Division):**

Basil L Stafford, Anna M Boymal, Samantha E R Burchell, Romesh Weeramantry, Rodrigo A Arellano, Shane G S Collins, Natalie Greenberg, Justin J Serong, Glenn B Johnston, Dinusha Joseph, Garry Hindson, Letizia Torres, Carolyn A Holt, Rik V Patterson, Peter F Collins, J Rebecca Leshinsky, Murray E Bruce, Richelle Scherman, Michael A Sasse, Asad Ansari, Jocelyn K Cole, Michael C Garner, Niki R Wilson, Simon Lee, James Boulton, Anna Bogan, Paul Pentony, Ross Frazzetto, Tim de Uray-Ura, Peter Burkhard Goodrich

**Members whose names were removed from Division A, Part III (Interstate and Overseas Counsel):**

Richard C Kenzie QC, Peter R Capelin QC, Barry G Hall QC, Brian H K Donovan QC, Richard J Burbidge QC, Frank P Donohoe, Ben J Salmon QC, Robertson J Wright S.C., Justin T Gleeson S.C., Peter M Kite S.C., Christopher D Freeman, Matthew C L Dicker, Christopher Barry QC, Robert J Ellicott QC, Dermot E J Ryan S.C., Andrew Morrison RFD S.C., Anthony J Meagher S.C., Philip A Greenwood S.C., John E Harrison, Alan J Sullivan QC, Dennis A Wheelahan QC, George Inately S.C., Peter Semmler QC, Bruce Oslington QC, Stephen D Robb QC

**Member whose name was removed from Division B, Part II (Judges):**

The Honourable Justice Harold Sperling

**Member whose name was transferred from Division A, Part I (Victorian Practising Counsel) to Division A, Part II (Crown Prosecutors):**

Michelle T Hodgson

**Members whose names were transferred from Division A, Part I (Victorian Practising Counsel) to Division A, Part III (Interstate and Overseas Counsel):**

Christopher R Hanson, Michael A Fullerton

**Members whose names were transferred from Division A, Part I (Victorian Practising Counsel) to Division B, Part II (Judges):**

Kevin H Bell QC, Felicity Pia Hampel S.C., Kim W S Hargrave QC

**Members whose names were transferred from Division A, Part I (Victorian Practising Counsel) to Division B, Part VI (Magistrates & Full-time Members of Statutory Tribunals):**

Jane Hendtlass, Brian R Wright, Charles S Rozenchwajg,

**Members whose names were transferred from Division A, Part I (Victorian Practising Counsel) to Division B, Part VIII (Other Official Appointments):**

Damien B Maguire, Dr Damien Cremean

**Members whose names were transferred from Division A, Part I (Victorian Practising Counsel) to Division C, Part III (Retired Counsel):**

R Patrick Dalton QC, Janette Lanzer, Paul D Page, John G Coleman, Hartog C Berkeley QC, David A Kendall QC, Lyn R Boyes QC

**Members whose names were transferred from Division A, Part I (Victorian Practising Counsel) to Division D (Academics):**

Carrie Rome-Sievers, Rachel Chrapot,

**Member whose name was transferred from Division A, Part II (Crown Prosecutors and Public Defenders) to Division B, Part II (Judges):**

William H Morgan-Payler QC,

**Members whose names were transferred from Division A, Part III (Interstate and Overseas Counsel) to Division A, Part I (Victorian Practising Counsel):**

Michael A Fullerton, Christopher R Hanson, Richard James L McCormack

**Member whose name was transferred from Division A, Part III (Interstate and Overseas Counsel) to Division B, Part IV (Solicitors- General and Directors of Public Prosecution):**

Stephen P Pallaras

**Members whose names were transferred from Division B, Part II (Judges) to Division C, Part I (Retired Judges and other Judicial Officers):**

His Honour Judge Warren C Fagan, The Honourable Antony P Whitlam, The Honourable Justice John M Batt, The Honourable Mr Justice John Winneke

**Member whose name was transferred from Division B, Part III (Ministers of the Crown**

**and Members of Parliament) to Division A, Part I (Victorian Practising Counsel):**

Richard K R Alston

**Member whose name was transferred from Division B, Part V (Masters and Judicial Registrars) to Division C, Part I (Retired Judges and Other Judicial Officers):**

Charles W G Wheeler

**Member whose name was transferred from Division B, Part VI (Magistrates and Full-time Members of Statutory Tribunals) to Division A, Part I (Victorian Practising Counsel):**

Damien J Cremean

**Member whose name was transferred from Division B, Part VI (Magistrates and Full-time Members of Statutory Tribunals) to Division B, Part II (Judges):**

Sandra S Davis

**Member whose name was transferred from Division B, Part VI (Magistrates and Full-time Members of Statutory Tribunals) to Division C Part I (Retired Judges & Other Judicial Officers):**

Colin E Macleod

**Member whose name was transferred from Division B, Part VI (Magistrates and Full-time Members of Statutory Tribunals) to Division C, Part II (Retired Holders of Public Office other than Judicial Office):**

Mary J Urquhart

**Member whose name was transferred from Division B, Part VIII (Other Official Appointments) to Division A, Part I (Victorian Practising Counsel):**

Jocelynne A Scutt,

**Members whose names were transferred from Division C, Part III (Retired Counsel) to Division A, Part I (Victorian Practising Counsel):**

John K Higham, Ian C Duffy

**The following Readers signed the Overseas Roll of Counsel:**

Dudley Aru, Tau Hoire, Tabitha Suwae, William Tekwie, Tom Joe Botleng and Nicka Pitoi

## Functions

### Opening of the Legal Year

On the occasion of the opening of the Legal Year, religious observances for the legal profession were held on 31 January 2005. The services were held at St. Patrick's Cathedral, St. Paul's Cathedral, Temple Beth Israel and St. Eustathios Cathedral. Following the services, the Victorian Bar hosted a function for the judiciary.

## Social Functions

On 8 October 2004, the Victorian Bar hosted a farewell dinner in the Bar Library in honour of the retiring Executive Director, David Bremner.

On 21 October 2004, the Victorian Bar hosted a dinner at the Essoign Club for the retiring Chairman of the Victorian Bar Council, Robin Brett QC, and other guests.

On 5 December 2004, the annual Children's Christmas Party for barristers' children was held at Princes Lawn, Royal Botanical Gardens. Father Christmas (Paul Elliott QC) was in attendance.

On 4 May 2005, the refurbished Owen Dixon Chambers East was officially opened. A reception at the Essoign Club was hosted by Barristers' Chambers Limited for former directors of Barristers' Chambers Limited, Victorian Bar members and other guests who had contributed to the project.

On 11 May 2005, the Victorian Bar hosted a reception at the Essoign Club to honour the contribution made by barristers to the Victorian Bar and PILCH Legal Assistance Schemes and other pro bono work.

The 2005 Victorian Bar Annual Dinner was held on 4 June 2005 at ZINC at Federation Square. This year the Bar honoured the following guests:

### State –

The Honourable Mr Justice John Winneke AC RFD

The Honourable Kenneth Marks AM

His Honour Judge Eugene Cullity AM QC

The Honourable Justice Elizabeth Hollingworth

The Honourable Justice Kevin Bell

The Honourable Justice Kim Hargrave

His Honour Judge William Morgan-Payler QC

Her Honour Judge Sandra Davis

Her Honour Judge Felicity Hampel SC

### Commonwealth –

The Honourable Chief Justice Diana Bryant

Major General Gregory Garde AO RFD QC

After welcoming those gathered Ross Ray QC, Chairman of the Victorian Bar Council, proposed a toast to the Queen and to the people of Australia. The President of the Australian Bar Association, Ian Viner AO QC, then proposed the toast to the Bars of Australia. Ross Ray QC welcomed the honoured guests of the Bar and the other invited guests. Ross Ray QC also paid tribute to the following barristers who were invited as guests of the Bar having signed the Bar Roll more than 45 years earlier including Hartog Berkeley QC, Gerard Nash QC, James Merralls AM QC, David Kendall and Brian Bourke. James Elliott SC was invited to propose a toast to the honoured guests and the Honourable Justice Kim Hargrave responded to the toast. The VicBar All Stars Band which comprised the following talented barristers Paul Connor (electric guitar), Sarah Fregon (vocals), Michael Galvin (electric guitar), Alister McNab (tenor saxophone) and Mike Turner (bass guitar) performed on the night, thoroughly entertaining the guests.

On 10 June 2005, the Victorian Bar, through the Aboriginal Law Students Mentoring Committee, hosted Aboriginal law students and their mentors at an informal reception in the Neil McPhee Room.

Dinners were held at the conclusion of the September 2004 and March 2005 Readers' Courses to welcome the new members of the Bar. The Readers were joined at the

dinners by their mentors and members and staff of the Bar Council. The September 2004 Readers were addressed by Jeffrey Sher QC and the March 2005 Readers were addressed by The Honourable Mr. Justice John Winneke AC RFD.

### **Other Functions**

During the year under review the Chairman and members of the Victorian Bar Council entertained guests at various functions.

## **Sporting Events**

### **Cricket**

The Bar Cricket Team won the Sir Henry Winneke Trophy back from the solicitors at the Waverley Oval on Monday, 20 December 2004. The Bar won by 5 wickets: Bar 5/147 d. the Law Institute of Victoria 7/146

### **Golf**

The annual golf day between the Bench and Bar and the Law Institute of Victoria took place at the Kingston Heath Golf Club on Tuesday, 21 December 2004. The Bench and Bar team were victorious and won the Sir Edmund Herring Trophy.

### **Hockey**

The Victorian Bar team were victorious against the New South Wales Bar team at Sydney on the Olympic No 2 Ground on Saturday 16 October 2004 winning 4 – 1. On 21 October 2004 at the State Hockey Centre the Law Institute team won the Scales of Justice Trophy with a 5-1 victory over the Victorian Bar team. Ben Stockman from the Law Institute won the Rupert Balfe Award.

### **Tennis**

The trophies for winning the overall tennis day and for the best performed pair, Hamish Redd and Andrew Fraatz, were both won by the Victorian Bar at the annual contest held at Kooyong Stadium on Tuesday, 21 December 2004.

### **Wigs on Wheels**

There are now 92 members of WoW, most of whom are members of the Victorian Bar. A WoW team participated in the BV Around the Bay in a Day ride, raising over \$7,000 for The Smith Family. A WoW submission to the Victorian Parliamentary Committee's enquiry into violence associated with motor vehicle use was used extensively in the Committee's final report. A secure facility for bicycle storage has now been constructed by BCL in the basement of ODCE and is well used by members of the Bar who commute by bike.

### **Yacht Regatta**

The 2004 Wigs & Gown Regatta was held on Hobson's Bay hosted by the Royal Yacht Club of Victoria on 20 December 2004. The Neil McPhee QC Perpetual Trophy was won by Judge Campbell sailing "Rose-Jean" with Peter Clarke sailing "Renaissance" winning the Thorsen Perpetual Trophy.



## Annual Reports of Associations and Committees

### ANNUAL REPORT OF THE VICTORIAN BAR SUPERANNUATION FUND

Barfund has had a satisfactory year.

After taxes and fees, the Barfund options returned the following results for the 2004/05 year.

Balanced	11.68%
Capital Stable	7.93%
High Growth	13.73%

These results gave a good real return to members given an inflation rate of about 2.5%. Barfund has now returned double digit results for the balanced and growth options for two consecutive years.

The balanced option result was about 1% below the median manager. This was mainly due to the defensive position of the fund managers, particularly Maple - Brown Abbott (MBA) and 452 Capital, in relation to equity markets, especially in Australia. Basically, MBA and 452 Capital, who together manage 60% of the Fund's Australian equities, took the view in the last quarter that equity markets, and the Australian equity market in particular, had run beyond fair value. They sold down equities and now hold higher balances in cash and other conservative assets than the average manager.

However, this repositioning should place the Fund in a sound position if there is a retreat in equity markets going forward.

The allocated pension option, which commenced 1 July 2004, is going well.

On 30 May this year Barfund, assisted by its assets consultants, JANA Investment Advisers, conducted a well attended seminar. A wide range of superannuation topics was covered including an investment market update and the important 2005 Budget changes to superannuation.

Again, the Directors thank David Holston and Greg Clerk for their tireless contribution to the affairs of Barfund.

Again, I thank our dedicated secretary, John Ames, and my fellow directors Jonathan Beach Q.C. (Deputy Chairman), Melanie Sloss S.C., Ross Macaw Q.C. and Paul Cosgrave for their great work and sound judgement.

**Philip Kennon**  
Chairman

### ANNUAL REPORT OF THE BARRISTERS' BENEVOLENT ASSOCIATION OF VICTORIA

Subscriptions received during the twelve months to 30 June 2005, amounted to \$50,995. Subscriptions in the past seven years were:-

- 2004/2005      \$38,985\*
- 2003/2004      \$126,739

- 2002/2003 \$20,475
- 2001/2002 \$44,935
- 2000/2001 \$34,961
- 1999/2000 \$29,650
- 1998/1999 \$39,580
- 1997/1998 \$34,128
- 1996/1997 \$52,355

- Contributions totalling \$12,010.00 were received at the end of June 2005 and were credited to the accounts in July 2005.

It should be noted that the contributions in 2003/2004 were exceptionally high because of a special request for contributions from members.

While the Association had a capital fund of \$1,014,356 as at 30 June 2005, this reserve can be easily eroded unless subscriptions are maintained at a reasonable level. Members of the Association and of the Victorian Bar are urged to bear in mind the critical role that the Association can play in assisting fellow members or their families who require financial support. Subscriptions to the Association are currently considered to be tax deductible.

During 2004/2005, the Association made six payments to applicants totalling \$110,000. One payment was by way of interest-free loan, two were gifts, one was made in respect of professional costs for granting of a loan, one was a loan with interest and one payment was a combination of a gift and a loan.

The interest received from investments during the year amounted to \$51,844.

At 30 June 2005, the total assets stood at \$1,219,540 including outstanding loans totalling \$205,184.

Members will recall the Association's funds are managed by Equity Trustees.

A summary of currently held assets by Equity Trustees (at market value) with their rates of return is set out below:

Type of Asset	Value	Proportion	Yield	Income
Cash	\$90,400	6.7%	4.4%	\$3,978
Fixed Interest	\$500,837	37.2%	4.6%	\$22,925
Sundry Debtors	\$205,184	13.7%	0.0%	\$0.00
Australian Shares	\$572,452	42.5%	3.5%	\$20,036

The Fund invests in the top 200 listed companies on the Australian Stock Exchange excluding property trusts. In May 2005, Equity Trustees reviewed the portfolio of investments and recommended that the Association reduce its exposure to Australian shares by \$65,000. It recommended that the \$65,000 should be transferred to EQT Flagship Fund. The Sub-Committee accepted this recommendation. The balance of investments is now at its original level when the portfolio was set up in January 2004.

The Victorian Bar Council is the Committee of Management for the Association. The Bar Council has delegated to a Sub-committee comprising the Chairman of the Bar and the Honorary Treasurer the power to conduct the business of the Association including to decide on applications for relief and the amount and mode of making grants in accordance with the objects of the Association. The Sub-committee is required to report to the Committee of Management on decisions it has made, but the names of recipients are not disclosed unless the Committee of Management so directs.

<b>BARRISTERS' BENEVOLENT ASSOCIATION OF VICTORIA</b>			
<b>Financial Statement for Year Ended 30 June 2005</b>			
		2005	2004
		\$	\$
Capital Fund at 1 July 2004		1,015,120	977,795
<b>Receipts</b>			
Subscriptions Received During the Year		38,985	126,739
Loan Repayments Received		16,252	3,563
GST Refunds Received		0	277
Imputation Credits Refund		2,155	0
Net Interest Earned During the Year		51,844	43,746
		1,124,356	1,152,120
<b>Payments</b>			
Grants Paid		20,000	69,000
Loans Made		90,000	68,000
Total Payments to Members		110,000	137,000
<b>Capital Fund as at 30 June 2005</b>		<b>1,014,356</b>	<b>1,015,120</b>
<b>Loans</b>			
Loans Outstanding Before Adjustments		271,665	213,937
Plus Amounts Which Should Have Been Loans		0	33,980
Less Loans Written-off		-66,481	-50,000
Loans as at 30 June 2005		205,184	197,917
<b>Total Assets as at 30 June 2005</b>		<b>1,219,540</b>	<b>1,213,037</b>
<b>Amounts Held by Equity Trustees as at 30 June 2005</b>			
		2005	2004
		\$	\$
Equity Trustee Common Fund No. 2		422,000	436,956
Equity Trustees Wholesale Mortgage Income Fund		250,978	0
Equity PIMCO Wholesale Australian Bond Fund		250,978	487,000
Equity Trustees Cash Management Fund		90,400	91,164
		1,014,356	1,015,120
Loans Outstanding Before Adjustments		0	0
<b>Total Assets as at 30 June 2005</b>		<b>1,014,356</b>	<b>1,015,120</b>


**ROSS RAY and DAVID BEACH**

*Sub-committee of the Committee of Management, the Victorian Bar Council*

## ANNUAL REPORT OF BARRISTERS' CHAMBERS LIMITED

This year the Company completed the refurbishment of Owen Dixon Chambers East, with the last floors being handed over to BCL in early December. The completion of the refurbishment project represents the culmination of 10 years work in planning and carrying out the project. Owen Dixon Chambers East has now been secured as the home of the Bar for this and generations to come.

I wish to place on record the Company's appreciation for the dedicated work of the Company's Chief Executive Officer, Daryl Collins and Secretary, Geoff Bartlett. Their dedication ensured that the project was effectively managed. In this regard, I am pleased to report that the total expenditure on the refurbishment was less than the sum approved by the Board in mid-2002.

Once again, I wish to place on record the Company's appreciation for the tolerance and understanding shown by tenants who were inconvenienced during the building works, especially those who were temporarily relocated.

I also wish to thank S E K Hulme AM QC for agreeing to officially open the refurbished chambers on 4 May 2005.

As the refurbishment of Owen Dixon Chambers is now complete the Company is in a position to give greater attention to other chambers. In October, BCL fitted out level 2 of Douglas Menzies Chambers and built 16 rooms that were offered to "young barristers" at very competitive rates. I am pleased to report that these chambers have been very popular.

The Board has also approved the refurbishment of the lift foyers and common areas in Owen Dixon Chambers West. It is anticipated that the works will commence in early 2006. The Board has established a subcommittee headed by the Deputy Chairman John Digby QC to consult with tenants once concept plans are available.

In financial terms, BCL has performed satisfactorily this year. The Company's borrowings for the refurbishment peaked in December at \$10.8 million which was significantly less than what had been anticipated in 2003.

The ongoing challenge for BCL is to continue to provide a range of chambers to meet the diverse needs of barristers at competitive rates. Without the ongoing support of a sufficient number of barristers, the BCL system, which underpins open access to the Victorian Bar, cannot be continued. During the refurbishment project BCL operated without 75 rooms. This placed pressure on demand for chambers and BCL received numerous complaints particularly from young barristers who could not obtain suitable chambers. However, since December BCL has consistently advertised between 50-60 vacant rooms each week, suggesting that the level of unmet demand was not as great as suggested.

BCL has continued to work closely with the Victorian Bar throughout the year. I again wish to acknowledge the Victorian Bar's ongoing commitment to BCL through its annual \$500,000.00 capital injection. The Victorian Bar has committed to continue this capital subscription until the year 2009. BCL could not have undertaken the refurbishment of Owen

Dixon Chambers East without the Victorian Bar's commitment to recapitalise the Company and without this commitment could not undertake the necessary refurbishment work in Owen Dixon Chambers West which I have referred to. I wish to place on record my appreciation for the support I have received from all members of the Board during the year. They are John Digby QC (Deputy Chairman), David Levin QC, Michael Colbran QC, Michael Shand QC, Peter Lithgow, Caroline Kenny, Wendy Harris, Paul Connor and Daryl Collins (Chief Executive Officer). I also wish to thank BCL's staff for their dedication to the Company and for the service they provide to members of the Bar.

Finally, I report that David Levin QC resigned from the Board on the 21<sup>st</sup> July 2005. David Levin had been a member of the Board since October 1998. He has made a most significant contribution to the work of the Company. In particular, David Levin was a member of the initial working group established to plan the refurbishment of Owen Dixon Chambers East. He has given generously of his time throughout the project and has seen it through to a successful completion.

**Paul Anastassiou**  
*Chairman*

## ANNUAL REPORT OF THE ESSOIGN

The scaffolding is down, the windows finally cleaned, and the view is now a terrific one, through the trees in William St, to the Supreme Court opposite.

The Essoign is now into its 3<sup>rd</sup> year of operation at its "new" location on the 1st Floor of ODC East. It continues to be well patronized by members of the Bar and of the Judiciary. The existence of the readers' course facilities on the same floor has proved to be of benefit in introducing not only the club to the "baby barristers" but also them to the club - and to other members. Our membership continues to expand - we have now passed the thousand mark - ".... and counting"!

Barristers from interstate regularly, and ruefully, comment upon the fact that they have nothing like the Essoign in their State. Indeed, it is the only such club, meeting place, and focal point for barristers anywhere in Australia.

Breakfast and the bistro/café have continued to grow at such a rate that we have had to increase the number of tables and chairs in the café to accommodate the rising demand. The restaurant has expanded its clientele, and is often packed out, particularly on Fridays.

Financially the club has traded very well and for the second year will return a small operating profit. The club is never likely to make a large one, for any profits are ploughed back, both into maintaining the standards of food and service that members demand, and otherwise keeping prices at a reasonable, competitive rate. We also must build up a sinking fund for asset replacement as cooking items, uniforms, tableware, glasses, etc, need to be replaced. This is an issue that the committee is currently addressing. Additionally, we are determined to maintain and even improve standards of food and service, standards which everyone who attends agrees are already very high.

The Essoign continues to be a popular function venue for its members. In the past year, we have hosted, inter alia:

- 1 The opening of the refurbished Owen Dixon Chambers East
- 2 Readers' dinners and cocktail parties
- 3 National Judges' Conference cocktail party
- 4 Medico-Legal Society Annual Dinner
- 5 Common Law Bar Annual Dinner

- 6 Family Law Bar Annual Dinner
- 7 "Liberty Victoria" Cocktail Party
- 8 "PILCH" Cocktail Party
- 9 List Cocktail Parties and Annual dinners
- 10 Readers' reunion dinners
- 11 Green's List guest speaker breakfasts
- 12 Hartog Berkeley QC's farewell dinner
- 13 Judicial + silk appointment cocktail parties

Together with in-house catering, the Essoign continues to build links with corporate clients in the surrounding area. It is a sure sign of the recognition of the quality of our cuisine and service that, in early 2005, we became Monash Law City Campus' preferred caterer. The Essoign regularly caters for the Leo Cussen institute. Weekend usage of the club has also increased - playing host to many birthday parties and a wedding. On many occasions, the Essoign has also organized staff and catering to be provided at a member's house on a weekend. Further growth in catering will be actively pursued in the coming year.

The Essoign holds occasional major events, dinners, wine-tastings, Melbourne Cup Calcutta lunch, trivia nights, etc. One such earlier this year was the "Splash of Red" dinner held in conjunction with Yalumba wines. The dinner sold out in 3 days. One hundred and twenty members and guests enjoyed the company and skills of culinary icon Stefano de Pieri, who cooked a magnificent 5 course dinner - beautifully matched to Yalumba wines. Stefano enjoyed cooking at the club so much that he is hoping to make it an annual event!

For the first time in 2004, the Essoign entered the Australian Corporate games with its own Dragon Boat team. The aim was to bring club members and staff closer in a fun environment. The day was enjoyed by all and we hope for it to become an annual event.

Much of the credit for the continued success of the club must go to popular Manager, Nicholas Kalogeropoulos, and to his terrific, tireless staff. The Essoign now employs 15, who, despite the requirement for longer hours, are happy to see the fruits of their labour rewarded with the steadily increasing usage of the club. The rapport between staff and members is excellent. Waiting and bar staff seem to know the names of most patrons these days, which adds to the friendly atmosphere. As the opening line from the TV sitcom "Cheers" states -

*"Wouldn't you like to go to a place where everyone knows your name?"*

The committee and staff look forward to welcoming you to the club; after all, it is YOUR club!! The tired old complaints of the past - that the club is "for blokes", or "for older barristers" - certainly no longer apply. If you have not been there for lunch lately, or at all, then pay the bistro or the restaurant a visit. Just remember that if you are not a member, you will need someone to sign you in. If you like what you see, take the trouble to join. The annual fee is, in comparison with other clubs, quite small, and, really, all Melbourne barristers should be members!

Colin Lovitt QC  
*Chairman*

## ANNUAL REPORT OF THE CHILDREN'S COURT BAR ASSOCIATION

This year the Association has been active in consultations, particularly with respect to changes proposed to the Children and Young Person's Act child protection provisions.

With the assistance of the Victorian Bar Ethics Committee the Association was able to negotiate a substantial change in the Department of Human Services Children's' Court briefing practises. The result of which has been a significant improvement in revenue and conditions for members of the Bar who act on behalf of the DHS.

The Association has been pleased to be consulted by the Bar and to be able to respond in issues concerning children.

Barristers practising in the family division were again able to access the discounted rate on professional indemnity insurance offered to those with predominantly criminal laws practices.

The Association continued to liaise with the court through the court users group and is participating in the court's review of pre-hearing conferences.

**Robert T. Burns**

*President*

## ANNUAL REPORT OF THE COMMERCIAL BAR ASSOCIATION

The Commercial Bar Association ("COMMBAR") is an association of members of the Victorian Bar ("the Bar"), practising predominantly in commercial law. It was established in October 1994.

The primary objectives of COMMBAR are:

- (a) to provide a forum for discussion amongst barristers of recent legislative and judicial developments in commercial law;
- (b) to provide continuing legal education ("CLE") for the Bar, especially amongst junior barristers;
- (c) to provide an opportunity for members of the Bar to become acquainted with other members of the Bar who share a common interest in a commercial law related area of practice; and
- (d) to comment upon proposed legislative and procedural reform in commercial law related areas of practice when requested by the Bar Council to do so.

As at 30 June 2005, the Executive Office Bearers of COMMBAR were:

<b>President</b>	Peter Bick, QC
<b>Senior Vice-President</b>	Melanie Sloss, S.C.
<b>Vice-President (Convenor)</b>	Albert Monichino
<b>Treasurer</b>	John Dixon

The Section Chairs and Secretaries were:

**Banking & Finance Law Section**

Chair	Maryanne Loughnan
Secretary	Andrew Kirby
Assistant Secretary	Samantha Cipriano

**Construction Law Section**

Chair	John Digby, QC
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Deputy Chair	Richard Manly, S.C.
Secretary	Caroline Kirton
Assistant Secretary	Suzanne Kirton

### **Corporations & Securities Law Section**

Chair	John Dixon
Deputy Chair	David Denton, RFD, S.C.
Secretary	Dino Currao
Assistant Secretary	Liza Powderly

### **Environmental, Planning & Local Government**

Chair	Jeremy Gobbo, QC
Secretary	Susan Brennan
Assistant Secretary	Cornelia Fourfouris-Mack

#### ***Equity Section***

Chair	Joseph Santamaria, QC
Secretary	John Glover
Assistant Secretary	David Batt

#### ***Insolvency Law Section***

Chair	Nunzio Lucarelli, QC
Secretary	Kim Knights
Assistant Secretary	Andrew Hanak

### **Insurance & Professional Negligence Law Section**

Chair	Peter Riordan, S.C.
Deputy Chair	Cameron Macaulay, S.C.
Secretary	Paul Duggan
Assistant Secretary	Kate Anderson

### **Intellectual Property & Trade Practices Law Section**

Chair	Dr John Emmerson, QC
Deputy Chair	Elspeth Strong, S.C.
Secretary	Andrew Maryniak
Assistant Secretary	James Samargis

#### ***Property & Probate Law Section***

Chair	Peter Best
Deputy Chair	Robert Shepherd
Secretary	My Anh Tran

### **Public Law Section**

Chair	Richard Tracey, QC
Secretary	Richard Wilson
Assistant Secretary	Jason Pizer

#### ***Revenue Law Section***

Chair	Alexandra Richards, QC
Secretary	Simon Steward
Assistant Secretary	<b><i>Chrissy Mavroudis</i></b>
Assistant Secretary	<b><i>Julianne Jacques</i></b>



***Sports Law Section***

Chair	Henry Jolson, QC
Deputy Chair	Tony Nolan
Co-Secretary	<b><i>Paul Hayes</i></b>
Co- Secretary	<b><i>William Alstergren</i></b>

COMMBAR welcomes its new office-bearers and thanks its outgoing office-bearers – namely, Andrew Kincaid, Caroline Kenny, Rebecca Leshinsky, Wendy Harris, Sarah Hinchey and Stephen McLeish for their contributions to COMMBAR.

During the past year, COMMBAR has continued to be the major provider of commercial law- related continuing legal education (“CLE”) to the Bar. It presented 26 seminars conducted by the various sections of COMMBAR, as follows:

<b>SECTION</b>	<b>DATE</b>	<b>TOPIC</b>	<b>SPEAKER</b>
Revenue Law	22 June 2005	Discussion on the High Court's decision in <i>FCT v Stone</i> [2005] HCA 21 (26 April 2005) which concerned the taxation of prizes and grants paid to Olympic athletes	Jennifer Davies, S.C.
Probate and Property Section	15 June 2005	Retail Tenancies: The New Landscape	Mark Brennan - Small Business Commissioner
Banking and Finance	31 May 2005	The Role of the Banking and Financial Services Ombudsman	Philip Field, Legal Counsel, Office of the Banking and Financial Services Ombudsman
Corporations & Securities Law	18 May 2005	Minority Shareholder Relief for Oppressive Conduct	Peter Almond, QC, Ian Percy and Peter Crofts
General	17 May 2005	Defamation and the Internet	Michael Wheelahan, QC
Sports Law Section	27 Apr 2005	The New Law of the Jungle: Appearances before Domestic Tribunals (in particular, the new AFL Tribunal)	Peter O'Callaghan QC, Will Houghton QC and David Galbally QC (Solicitor - Browne & Co)

Insurance & Professional Negligence Law	11 Apr 2005	Advocates' Immunity	Neil Young, QC and Graham Devries
Construction Law	6 Apr 2005	Discussion on "Off the Plan Contracts" and the implications of <i>Philip v Mirvac (Docklands) Pty Ltd</i> [2004] VCAT 142, the <i>Domestic Building Contracts (Amendment) Act 2004</i> and the <i>Fair Trading Act 1999</i>	John Bolton
General	30 Mar 2005	The Reference given to the Victorian Law Reform Commission ("VLRC") to review the laws of evidence	The Honourable Justice Smith, Jim Delany, S.C. and Andrew Palmer
Corporations & Securities Law	22 Mar 2005	Valuations of Shares & Businesses - Traps and Pitfalls	Joe Dicks, Partner, PPB Forensics
Corporations & Securities Law	22 Feb 2005	The new Commercial List Practice Note "The Green Book"	The Honourable Justices Byrne, Dodds-Streeton and Whelan
Property & Probate	23 Nov 2004	VCAT's fair trading and commercial property jurisdictions and their overlap with similar curial jurisdictions, particularly of the Federal Magistrates' Court	Federal Magistrate Maurice Phipps, VCAT Deputy President Michael Macnamara, VCAT Member Alan Vassie and Philip Barton of the Victorian Bar
Banking and Finance	18 Nov 2004 (adjourned from 13 Oct 2004)	Discussion in relation to claims by customers against banks in respect of the payment of cheques in breach of mandate	Maryanne Loughnan

Banking and Finance	11 Nov 2004	Discussion on the origins, elements and recent developments in relation to the equitable principles governing the setting aside of transactions on the grounds of unconscionability, undue influence and the special equity for "wives", with particular reference to the High Court's decision in <i>ACCC v CG Berbatis Holdings Pty Ltd</i> (2003) 214 CLR 51 and the House of Lords' decision in <i>Royal Bank of Scotland v Etridge (No 2)</i> [2002] 2 AC 773	Andrew Kirby
Environmental, Planning & Local Government Law Section	19 Oct 2004	Prosecutions under the Planning and Environment Act	Nick Tweedie
General	14 Oct 2004	Trade Practices Law Twilight Series - Price Fixing	Charles Sweeney, QC
General	7 Oct 2004	Expert evidence in civil proceedings: a judge's perspective	The Honourable Justice Heerey (Federal Court of Australia) and The Honourable Justice Harper (Supreme Court of Victoria)
General	16 Sept 2004	Current Developments in Federal Law	The Honourable Philip Ruddock, MP, Attorney-General for the Commonwealth of Australia
Revenue Law	30 Aug 2004	Discussion on the High Court's recent decision in <i>FCT v Hart</i> [2004] HCA 26 which concerned the applicability of the general anti-avoidance provisions of the <i>Income Tax Assessment Act</i> to split loans	Helen Symon S.C.
Public Law	18 Aug 2004	Judicial review of immigration decisions in the Federal Court and the Federal Magistrates Court	Debbie Mortimer S.C. and Richard Niall

Corporations & Securities Law	5 Aug 2004	Current issues confronting ASIC	Mr Jeff Lucy, Chairman of the Australian Securities and Investments Commission and Ms Jan Redfern, ASIC Executive Director Enforcement
Environmental, Planning & Local Government Law	2 Aug 2004	Costs order at VCAT in planning and valuation cases	Paul Connor and Julie Rivers Davis
Environmental, Planning & Local Government	2 Aug 2004	Planning controls on telecommunications infrastructure	Paul Connor
Environmental, Planning & Local Government	26 Jul 2004	Recent developments in relation to planning permit conditions	Ragu Appudurai
General	19 Jul 2004	The Concept of Market Power - Trade Practices Law Twilight Series Seminar II	Charles Sweeney, QC
Public Law	6 Jul 2004	Acting in Pro Bono Matters and Order	

We thank the speakers referred to above for taking the time to develop and deliver their presentations. Where possible, outlines of presentations are posted on the COMMBAR page (under "News") on the Victorian Bar's website ([http://www.vicbar.com.au/5\\_2\\_7.html](http://www.vicbar.com.au/5_2_7.html)).

The past year has been an eventful one in the life of COMMBAR –

- (a) In November 2004 it celebrated its 10th anniversary with a cocktail party held in the library of the Supreme Court. Judges of the Supreme Court and the Federal Court of Australia were invited as COMMBAR's guests. The function was well attended by members of the Bar;
- (b) In December 2004, the Honourable Chief Justice Marilyn Warren and His Honour Justice Byrne of the Supreme Court of Victoria launched the Commercial list Practice Note 2004 ("The Green Book") which superseded the Commercial List Guide published in 1992 (and revised in 1996). The Green Book represents the work of the Supreme Court of Victoria's Commercial List Users' Group, chaired by Justice Byrne, over a period of more than 12 months. Four representatives of COMMBAR (Peter Bick, QC David Denton, S.C., Peter Riordan, S.C. and Albert Monichino) represented the interests of the Commercial Bar on the Commercial List Users' Group;
- (c) In about February 2005, David Denton, S.C. retired as the President of COMMBAR. He was President from 2001. COMMBAR thanks David wholeheartedly for his leadership and direction in his capacity as President. He has kindly agreed to remain as Deputy Chair of the Corporations and Securities Law Section;

- (d) Peter Bick, QC has since about February 2005 taken over the position of President of COMMBAR. Peter was previously the Chair of the Banking and Finance Law Section;
- (e) COMMBAR has introduced two new sections, the Equity Section chaired by Joseph Santamaria, QC and the Sports Law Section chaired by Henry Jolson, Q.C;

COMMBAR recognises that the Bar has provided administrative support necessary for COMMBAR to carry on its activities, for which COMMBAR is grateful. Special thanks are extended to Barbara Walsh, Manager of Legal Education and Training for her assistance.

Members of the Bar who are interested in becoming members of COMMBAR are invited to join by forwarding a membership application to the Convenor. At present, no membership fees apply (but this may change in the foreseeable future). The application form for membership is available at [http://www.vicbar.com.au/5\\_2\\_8.html](http://www.vicbar.com.au/5_2_8.html).

All enquiries in relation to the activities of COMMBAR, suggestions as to seminar topics or offers to present seminars, should be directed to Albert Monichino, Clerk A on 9225 8247 or e-mail to [monichino@vicbar.com.au](mailto:monichino@vicbar.com.au).

**Peter Bick and Albert Monichino**  
*President and Vice-President (Convenor)*

## ANNUAL REPORT OF THE COMMON LAW BAR ASSOCIATION

During the period 1<sup>st</sup> July, 2004 to 30<sup>th</sup> June, 2005, the Common Law Bar Association has been predominantly occupied with endeavours to ameliorate the harsh effects of the 2003 amendments to the *Wrongs Act*.

Before the amendments to the *Wrongs Act*, the Common Law Bar Association expressed its opposition to many of the provisions of the legislation, particularly those provisions which, in a large number of cases, abolish the right of injured persons to bring any common law claim at all. Having been unsuccessful in preventing the enactment of the legislation, the Common Law Bar Association has remained active in monitoring the effects of the legislation in an endeavour to assemble a body of evidence which might, ultimately, be persuasive in modifying the restrictions which have been imposed. In particular, efforts have continued throughout the last year to persuade Government to introduce a “narrative” test of “significant injury”. Those efforts will continue.

Members of the Common Law Bar Association have participated in two public forums on the effects of the so called “*Tort Reforms*”. The first was held in Melbourne and convened by the State Government. The second was held in Sydney and convened by the Law Council of Australia. Members of the Common Law Bar Association spoke at each of those forums.

Members of the Association have also held discussions with a number of senior politicians outlining the case for the introduction of a narrative test and detailing the substantial injustice which has resulted from the amendments to the *Wrongs Act*. Those discussions and representations will continue.

Members of the Common Law Bar Association have delivered a number of papers at seminars conducted as part of the Bar’s Continuing Legal Education Program. It is proposed that further seminars will be held in the forthcoming year.

The Association has also been actively liaising with the Supreme Court and the County Court regarding the listing of cases. Officer Bearers of the Association have held a number of discussions with Judges of the County Court, particularly in their role as Members of the County Court Liaison Committee. In particular, the listing of serious injury cases and the new Section

134AB list in the County Court has been the subject of considerable discussion. The Chief Judge has agreed to allocate additional Judges in the forthcoming year for the determination of applications pursuant to Section 134AB of the *Accident Compensation Act*.

The Common Law Bar Association has attended meetings with representatives of the Victorian Law Reform Commission and the Australian Law Reform Commission and has made submissions concerning the introduction of the *Uniform Evidence Act*.

A very successful dinner was held at The Essoign Club in December 2004 following the Annual Meeting.

At the present time, there are 101 Members of Counsel who are Members of the Common Law Bar Association.

**The Office Bearers of the Association are:-**

R. H. Gillies Q.C.	Chairman
J. H. L. Forrest Q.C.	Vice-Chairman
D. J. Martin	Secretary
M. A. Hartley	Treasurer

**Committee Members:-**

R. J. Stanley Q.C.  
 J. Jordan S.C.  
 F. McLeod S.C.  
 D. Beach S.C.  
 T. Tobin S.C.  
 F. Saccardo S.C.  
 M. Wheelahan S.C.  
 J. Riordan  
 S. McGregor  
 K. Bourke  
 R. Smith  
 A. Keogh  
 A. Clements

David Martin  
*Secretary*

## ANNUAL REPORT OF THE COMPENSATION BAR ASSOCIATION

Throughout the year the Compensation Bar Association has continued to consolidate its position as an association for those barristers practising in compensation matters pursuant to the *Accident Compensation Act* 1985, as amended, and the *Transport Accident Act* 1986, as amended. Of course, all members of the Bar are welcome to join the Association.

The activities of the Association over the year have included :

- (a) Ongoing liaison on behalf of barristers with various officers of the Victorian Workcover Authority and Transport Accident Commission in relation to costs and various aspects of the protocols which exist between those bodies and barristers who act on behalf of the

Authority and/or commission.

- (b) The propagation to members of the Association of judgments pertaining to compensation matters and in particular, decisions of the Magistrates' Court pertaining to accident compensation matters.
- (c) The provision of members of the Association to provide CLE ledgers in respect to various aspects of the *Accident Compensation Act 1985*, as amended.

The Association was very pleased to be able to celebrate one of its inaugural office holders, Brian Wright, being appointed a Magistrate.

The Association also continues to promote functions whereby Judges and Magistrates practicing in the area of the jurisdiction can meet barristers to discuss various issues which arise from time to time. To this end, members of the Association liaise both with Judges and Magistrates.

I urge all members practising in the compensation areas to join the Association as the Association endeavours to be a very "practical" voice promoting the interests of its members.

**J.L. PARRISH**

*Chairman*

## ANNUAL REPORT OF THE CRIMINAL BAR ASSOCIATION OF VICTORIA INC

In the period 1 July 2004 to 30 June 2005 the Criminal Bar Association of Victoria Inc (CBA) has continued to deal with an extensive and wide ranging number of issues relevant to the objects of the CBA namely to: -

- Promote the professional interest of its members;
- Provide facilities and programmes which will assist members in their professional practice;
- Liaise with other bodies concerned with issues of professional interest to members;
- Provide representation for members in relation to matters which affect the interest of members generally and
- Represent the views of members to bodies and persons engaged in the administration of criminal justice and the review and development of criminal law, procedure and civil liberties.

The range and complexity of the CBA's activities over the last year in furtherance of those objects have been extensive and has necessitated the Executive Committee meeting generally weekly in addition to the numerous meetings undertaken with various organisations relevant to the criminal justice system both State and Federal.

By way of illustration some of the more significant activities and issues undertaken and addressed during the last twelve months include: -

- Continued involvement in the **Victorian Criminal Justice Coalition** in order to monitor and influence the "law and order" policy development of the major political parties in Victoria.
- The staging of the CBA's Annual **Advocating for Justice Lecture** as its contribution to Law Week on 17 May 2005. This year the CBA co-sponsored the Oration by Professor Tim McCormack on the topic "International Criminal Law – 60 years since Nuremberg". The lecture was very well attended by a wide

representation of the profession and the broader community and illustrated a considerable interest in the relevance of the topic in light of current international issues.

- The CBA was represented in a series of moot court hearings staged by the Magistrates Court as part of Law Week. Many thanks to Nicola Gobbo for participating on behalf of the CBA.
- The CBA co-hosted a **public seminar** together with the Law Institute of Victoria and the Monash law Faculty designed to encourage on-going debate and focused on developing a solution to the problems posed by systemic police corruption.
- Our **Mid Year Dinner** was held on 12 May 2005 at Matteo's Restaurant and was a great success. Justice Simon Whelan made a very entertaining speech and the venue was once again first rate. Judge Mick Bourke and Magistrate Reg Marron were honoured guests.
- The holding of a number of **Seminars** as part of the Bar's Continuing Legal Education program on diverse and practical topics of relevance including: -
  - The Commonwealth Criminal Code (several sessions);
  - Cross Examination on Documents and Prior Inconsistent Statements;
  - Submissions prior to or at Trial;
  - Acts and Declarations of Co-Offenders;
  - Appellate Advocacy;
  - Sex Trials and their Special Problems;
  - Expert Evidence;
  - The meaning of Silence;
  - Mental Impairment and Unfitness to Plead and
  - Accessorial Liability.

The CBA is most grateful to those of its members who have prepared and delivered these very valuable CLE sessions.
- The issuing of **Media Releases** and participation in a number of **print, radio and television interviews** designed to promote the views of the CBA on a range of criminal justice issues on matters of public importance such as:
  - the need to establish a Police Integrity Commission to deal with Police Corruption;
  - concerns regarding the Victorian Law Reform Commission Report re Sexual Offences;
  - the level of resourcing of the courts;
  - New compulsory questioning powers;
  - Covert police confessions;
  - Court Security and access issues and
  - the extension of powers of detention and other powers contained in the ASIO Bill.
- The continued reconstruction and improvement of the **CBA Website** at [www.crimbarvic.org.au](http://www.crimbarvic.org.au) containing copies of CBA Newsletters, CBA submissions re legislative proposals, links to major legal research websites, court lists and events of interest to members. This year the CBA retained the services of Steven Goldate to revamp the look of the website and, in particular, to make it more user friendly. Thanks go to Steven for his very professional and effective contribution.
- Continued Membership of the **Juvenile Justice Roundtable** designed to ensure that appropriate measures are maintained so that juveniles involved in the



criminal justice system are treated in a manner consistent with their age and to minimise the risk that they are subsumed into the adult criminal system.

- The continued **liaison with judicial officers** and officials of the Supreme Court, County Court, Magistrates Court and Children's Court concerning the effective and efficient conduct of court lists and associated practices and procedures in criminal matters. In particular representatives of the CBA attend regular meetings of the Supreme Court Criminal Division and also monthly meetings of the County Court Criminal Users Group and regular meetings of the Magistrates Court Users Group. The CBA considers that the exchange of views and ability to participate in such forums is of considerable value.
- The CBA has participated in a number of fruitful **meetings with Attorney-General Halls** and has been pleased with the level of access and input such meetings have made possible.
- Consultation meetings are also to be held with the **Police Minister** to discuss matters of mutual interest and to encourage liaison between the Minister's office and the CBA on legislative proposals. The first such meeting has been held and the CBA hopes that further meetings will be held in the future.
- The continued development of strong links to the Law Council of Australia especially through increased CBA participation in the activities of the **Criminal Law National Liaison Committee** of the Law Council.
- The CBA has been active in the establishment of the **International Criminal Bar** and occupies the position of Oceania representative on Council of the ICB and is the only Australasian representative. The ICB is expected to be the defence pillar in relation to the International Criminal Court. Representations have been made by the CBA to the Australian Government to ensure that the ICB enjoys support from Government in its proposed role.
- Participating in Stakeholders forums held by **Corrections Victoria** in order to raise issues of concern regarding the treatment of prisoners and professional access to prisoners.
- The CBA has been represented on the **Sexual Assault Advisory Committee** designed to report to Government on the recommendations contained in the Victorian Law Reform Commission's report on sexual assault cases. The Committee meets very regularly and is undertaking detailed consideration of the VLRC's recommendations and other possible changes to the practices and procedures applying to such cases while ensuring that the need for a fair trial is maintained.
- CBA Chair Lex Lasry has acted as the **Law Council of Australia** observer at the Military Commission hearing involving David Hicks at Guantanamo Bay, Cuba and attended the preliminary hearing in August 2004 and prepared two very detailed reports concluding that the process would not deliver a fair trial to Hicks. That view has now achieved wide support including from Sir Ninian Stephen and Mary Gaudron.
- The CBA has reactivated the ongoing liaison committee with **Victoria Legal Aid** in order to promote regular discussions on legal aid fees and other matters of mutual interest.
- The CBA has also agreed to participate in a reformed group to liaise between the **police prosecutors branch** and the CBA in order to address matters of mutual interest and concern. A formation meeting will be held in the near future.
- A strong focus on **Law Reform issues** especially in making detailed submissions on the development of appropriate legal policy or commenting on draft legislation

and appearing as necessary before State and/or Federal Parliamentary Committees to advocate appropriate legislative outcomes and initiatives.

Over the last twelve months those functions have continued to grow both in number and complexity. Examples of such matters undertaken by the CBA in the last year include: -

- Family Violence Division in the Magistrates Court;
  - National Security Cases Bill;
  - Evidence (Recorded Evidence) Regulations;
  - Warrant Powers and Procedures Review;
  - The VLRC report on Sexual Offences;
  - Difficulties with the operation of Interlock driving devices;
  - The proposed introduction of the Uniform Evidence Act;
  - Uniform Spent Convictions Scheme;
  - The retention of Committals and a change to the Committals test.
  - The retrospective operation of Appeals Costs Act amendments;
  - The introduction of Acting Judges;
  - Sexual Assault Advisory Committee;
  - Working with Children Bill;
  - Amendments to the Sentencing Act re victims;
  - Commonwealth CLRC Report on Sentencing;
  - ASIO questioning and detention powers;
  - A review of the Bail Act;
  - A review of the Crimes Act;
  - A review of Criminal Trials Procedures;
  - Provocation and Diminished Responsibility;
  - Suspended Sentences Review by the Sentencing Advisory Council;
  - Appeals to the Court of Appeal and
  - The review of the OPP.
- Working effectively with the **Bar Council** to ensure that our views are represented on matters of concern to our membership and on matters of interest to the whole Bar. We have an excellent relationship with the Bar Council and its officers and are grateful for the assistance and support the Bar and its officers provide.
  - The CBA is particularly pleased to continue its close association with and support of the **Bar's Readers' Courses** which continues to provide to readers an extremely professional, practical and wide ranging course preparatory to practice as a barrister. A large number of our members participate in a variety of ways in the conduct and planning of the course.
  - **Liaison** on an on-going basis in relation to issues including:-
    - New Criminal Listing Procedures introduced on a trial basis in the County Court;
    - Justice Teague's Committee re the criminal Division of the Supreme Court;
    - The Office of the Correctional Services Commissioner Stakeholders Forum and
    - The Establishment and continuation of Project Innocence in Victoria;
  - During the past twelve months the CBA was delighted that the following members of the CBA were **appointed to judicial office**:
    - Justice Betty King;
    - Judge Bill Morgan-Payler and
    - Judge Felicity Hampel.

- Sadly Michael Rush died on 13 November 2004 after a long battle with cancer. Mick was a proud and active member of the CBA and a wonderful advocate. He will be greatly missed.

Very many members of the CBA have contributed willingly to the workload of the Association over the last year and each of them deserves special thanks and recognition. Without such assistance the work of the CBA could not be undertaken effectively. The Committee looks forward to that support continuing into the future and we encourage all members to participate fully in the affairs of the CBA and to contact committee members with suggestions on how the Association might be improved or strengthened. All seminars conclude with drinks and, together with our dinners, are valuable social events that we encourage all members to attend.

**Lex Lasry**

*Chair*

## ANNUAL REPORT OF THE FAMILY LAW BAR ASSOCIATION

As has become a regular occurrence in recent years, the past year has seen more changes to family law. Last year the Family Court introduced into New South Wales a pilot program in relation to children's matters, this program represents a movement away from the adversarial system towards a more inquisitorial judicial process. This pilot program, "The Children's Cases Program", is likely to soon be introduced into the Melbourne Registry of the Family Court. The government have now responded to the recent report of the House of Representatives Standing Committee on Family and Community Affairs inquiry into child custody arrangements, this is likely to result in further amendments to the Family Law Act and Rules. The Family Court and the Federal Magistrates Court have undertaken a "Combined Registry Project" with a view to having a single point of entry for all family law matters. Whenever possible, members of our association have endeavoured to be involved in the consultation process relating to the ongoing changes within the Family Court and the Federal Magistrates Court.

Our representatives have continued to attend regular meetings held by the Family Court and the Federal Magistrates' Courts. Keeping up with the frequent and rapid changes in family law remains a challenge, however we have sought to maintain a close relationship between the courts and our association for the benefit of our members.

Our annual dinner was held in December 2004 at the Essoign Club. The new Chief Justice of the Family Court, the Honourable Justice Bryant gave the after dinner address.

Current members of the Executive are: Noel Ackman QC – Chairman; Olivia Nikou SC – Vice-Chairman; Graeme Thompson – Treasurer; and Bronia Tulloch – Secretary. There are currently about 90 paid up members of the Association.

**Noel J Ackman**

*Chairman*

## ANNUAL REPORT OF THE INDUSTRIAL BAR ASSOCIATION

During the last year the IBA has been active in developing and delivering a comprehensive series of CLE seminars covering a variety of industrial/employment law topics. I would like to take the opportunity of thanking all those who have participated in presenting the seminars

for their efforts in presenting papers both orally and in writing of a very high standard. It is the IBA's intention with the generous help of our Association members to continue with this program through the coming year. I expect that with the introduction of the foreshadowed far-reaching changes to industrial law, there will be a heightened level of interest in our presentations.

As well as pursuing the very important role in relation to CLE, the IBA has also established links with organisations outside the Bar, such as the Law Institute's Workplace Relations Committee and the Centre for Employment and Labour Relations Law, Melbourne University who have similar interests. The IBA is also looking at establishing links with the Federal Litigation Section of the Law Council of Australia. It is expected that these links will provide IBA members with expanded opportunities for gaining information and accessing seminars and functions arranged by these other bodies.

The IBA held a function on 13 May 2005 to honour Brian Lawrence, a highly respected member of our Association. Brian Lawrence retired from fulltime practice at the end of April 2005. I am pleased to report that Brian will continue to take an active interest in the activities of our Association.

**Herman Borenstein**

*President*

## ANNUAL REPORT OF THE WOMEN BARRISTERS' ASSOCIATION

The purposes of the WBA are as follows:

- Promote awareness, discussion and resolution of issues which particularly affect women.
- Identify, highlight and eradicate discrimination against women in the law and in the legal system.
- Advance equality for women at the Bar and the legal profession generally.
- Provide a professional and social network for women barristers.

The WBA Committee meets and has met monthly throughout the year.

The WBA is an active member of the Australian Women Lawyers ("AWL"). Jenny Batrouney SC was the President of the AWL until November 2004. Caroline Kirton now represents WBA on the AWL Board. The WBA's involvement in AWL affords the WBA representation at the national level.

The WBA also works with Victorian Women Lawyers ("VWL"). The WBA and VWL jointly hosted the following functions:

- Meet and Greet: a networking function attended by approximately 170 female barristers and solicitors.
- Women Lawyers Achievement Awards (Presentation) Dinner: also attended by the Victorian Attorney General and Solicitor General Pamela Tate at which achievement awards for contribution to the legal profession were presented to Her Honour Judge Felicity Hampel, Dr Vivian Waller (solicitor with Maurice Blackburn Cashman) and Fiona McLeod SC.

The WBA also works with the Bar's Equality Before the Law Committee and in particular in relation to promoting the uniform briefing policy at state and national levels. The uniform briefing policy with reporting provisions has been adopted by Clayton Utz and without reporting provisions has been adopted by Mallesons and Blake Dawson Waldron.

Several other major law firms have indicated that they intend to adopt the policy but have not yet done so.

The WBA also continues to build links with Universities and has enjoyed the inaugural year of its mentoring program with the University of Melbourne.

The WBA hosted two seminars. The first was part of the Bar's CLE program. It was presented by Georgina Costello of the Bar and Peggy Kerdo of Victorian Legal Aid. The topic was "The legal issues in trafficking of women for sexual exploitation". The second seminar was denied accreditation by the Bar's CLE program. That seminar was presented by Samantha Marks of the Bar, Phillipa Moorfield of Baker & McKenzie and Ann Ray of Lawstaff. The topic was "The Vic Bar website and barristers' web pages: What solicitors look for & tips on developing your own web page". Both seminars were well attended.

The WBA also hosted the following further functions:

- Drinks welcoming the 2004 female readers to the Bar.
- Babies and the Bar lunch which was attended by approximately 50 barristers and former barristers (including Her Honour Chief Justice Marilyn Warren AC, Solicitor General Pamela Tate and their Honours Judge Frances Hogan, Judge Rachelle Lewitan AM, Judge Frances Hogan and Magistrate Lisa Hannon).

The WBA is grateful to the services of its immediate past Convenor Samantha Marks who stepped down in May 2005.

**Kim Knights**  
*Convenor*

## ANNUAL REPORT OF THE ABORIGINAL LAW STUDENTS MENTORING COMMITTEE

The Bar has continued to provide mentoring services to Aboriginal law students, as it has done now for some years.

Melbourne's universities have over 30 Aboriginal law students from all over Australia – a number of whom participate in the Bar's mentoring program.

The Bar scheme is available to all Aboriginal law students who wish to apply for a mentor but sometimes some extra encouragement is needed and the Committee has convened an annual social function for this purpose, which was held this year in June.

In addition to students, the function was attended by members of the judiciary (Justices Kaye and Bongiorno of the Supreme Court, Justices Gray and Merkel of the Federal Court, Justice Browne of the Family Court and Chief Magistrate Gray), as well mentors and members of the Aboriginal legal community. Representatives of Melbourne, Monash and Deakin Universities attended, including Miranda Stewart and Sid Fry, co-ordinators of Aboriginal studies programs at Melbourne and Deakin Universities respectively, who have been strong supporters of the mentoring program.

Geographical issues have created somewhat of a challenge for students and mentors in the past, but the use of email has helped overcome some of the limitations of distance.

The Committee has determined to extend its work in promoting careers at the Bar to Aboriginal law students by endorsing the setting up of an Aboriginal Barristers' Fund, to provide financial assistance to Aboriginal law graduates who would like to start careers at the Bar but are in need of financial assistance. The Victorian Law Foundation has recently approved a seed grant of \$25,000 to help set up the Fund and to provide an initial corpus for the Fund. Once the Fund is fully established, barristers will be encouraged to make

donations. Further information about the Fund will be provided to the Bar in due course.

It has been over 20 years since the Bar last had an Aboriginal member. The mentoring scheme means to redress this anomaly, and to provide a practical added foundation for doing so by the setting up of the Aboriginal Barristers' Fund.

**Colin Golvan**

*Chair*

## ANNUAL REPORT OF THE CONCILIATORS FOR SEXUAL HARASSMENT AND VILIFICATION STANDING COMMITTEE

### **Conciliators**

**The Bar's Sexual Harassment Conciliators for 2004-2005 were:**

David Curtain QC, Frank Costigan QC, Michael Crennan SC,  
Richard Maidment SC, Debra Mortimer SC, Fiona McLeod SC,  
Joy Elleray, Richard McGarvie, Melanie Young, Sarah Fregon.

### **Complaints**

The Conciliators appointed by the Bar have not reported receiving any complaints or being notified of any incidents in the past year.

**David E Curtain**

Convenor

## ANNUAL REPORT OF THE EQUALITY BEFORE THE LAW COMMITTEE

The Committee meets and has met monthly throughout the year.

The Committee has continued in its work in promoting and establishing the implementation of the Equal Opportunity Briefing Policy adopted by the Victorian Bar Council on 1 April 2004 adopted by the Victorian Bar Council on 1 April 2004:

- The Committee has continued its presentations to law firms in conjunction with the Law Institute and Women's Barristers Association. A public seminar was conducted at Freehills and also a CLE Seminar was conducted for members of the Victoria Bar. Discussions have been entered into with the partners of Corrs Chambers Westgarth. The Equal Opportunity Briefing Kit and reporting templates have been provided to Allens Arthur Robertson which is due to launch its adoption of the policy on 16 August 2005. Of the national law firms, Clayton Utz, Malleson Stephen Jaques and Blake Dawson Waldron have adopted the policy to date.
- Late last year, a pilot scheme for the Clerks' reporting of gender appearances was run for a 3 month period by Peter Roberts List. Those results have now been collated and submitted for the Committee's consideration. In the meantime further meetings with the Clerks and List committee Chairs have taken place in order to vent some of the practical impediments which may occur in reporting.
- The Victorian Attorney-General's Legal Services Report 2004 was released providing data as to the briefing of women barristers by State government departments and the private law firms on the government panel. A sub committee of the Committee has analysed those results and future action is presently under consideration. The report demonstrated an increased parity of income against briefs to women barristers by the Victorian Government Solicitor (2003: 6% vs 17%; 2004 20% vs 24%).

However, briefs to women barristers by the private law firms, particularly in the commercial and litigation areas, both by income and percentages were disappointing by reference to the percentage of women practising at the Bar. Consultations have been held with the Senior Policy Advisor within the Department of Justice and the Committee proposes to make submissions and recommendations to the Attorney-General once it has properly considered its analysis of the data.

- A sub-committee of EBTL has commenced the instigation of a further survey of Court appearances by barristers. This survey has been conducted in the past (2003) under the auspices of the respective Chief Justices. EBTL considers that there is a need to assess whether the poor results under the 2003 survey have improved. Further in its submissions to interested parties it is important that such surveys are as relevant as possible particularly in view of the work that has been initiated by the Bar in the area of anti-discrimination in briefing practices over recent times.
- The Chair of EBTL has replaced Anthony Howard, QC on the Law Council of Australia's Working Group on the implementation of the Briefing Policy. The Working Group is in the process of settling a National Equal Opportunity Briefing Kit and a

national template (based on that of Victorian Bar) for the undertaking of the reporting requirements by the private law firms and other briefing agencies required under the LCA's Briefing Policy.

The EBTL Committee, as established after the 2004 Bar Council elections, has worked through various sub-committees:

- **Bar Home Support Care** – this sub-committee has been negotiating with care providers the establishment of a bar home support care scheme principally intended to be used by members of the Bar in times of emergency when normal care is unable to be accessed or by virtue of time and other constraints is not feasible.

Presently, those negotiations have resulted in a submission being prepared for the consideration of Bar Council.

- **General Anti-Discrimination Policy** – this sub-committee is overseeing the prospect of developing for the Bar a general anti-discrimination policy directed to all of the proscribed grounds identified in both State and Commonwealth anti-discrimination legislation.
- **Civil Wrongs by Police Officers** – this sub-committee continues to add and amend a submission directed to Bar Council consequent upon a written memorandum prepared by Peter Golombek commenting upon the submission. EBTL is indebted to Peter Golombek for his memorandum. The final submission recommends legislative amendments to ensure that in all cases victims of police wrongs will be able to sue and recover damages and legal costs.
- **Women in the Law Portrait Series** – this sub-committee continues to seek and vet suitable artists for a portrait of the Honourable Chief Justice Marilyn Warren AC as a further work of the Women in the Law Portrait Series which is displayed in the foyer of ODCW.
- **Watch-Dog Committee** – this sub-committee's work is to watch for issues arising relevant to EBTL's work and raise them as agenda items from time to time. One such issue identified by Michael Wyles is that of tax deductibility of child care expenditure. Consequent upon a recommendation to and subsequent reference from Bar Council, a standing sub-committee has now been established with a view to preparing submissions, gathering support from key business sectors and co-ordinating/collating submissions and efforts of past and present committees and groups around the country which have worked or are presently working on this issue.

EBTL has recommended to Bar Council its consideration of a detailed submission, (yet to be finalised) that the Victorian Bar review and implement the outstanding recommendations contained in the Victorian Bar Equality of Opportunity Report 1998 with particular regard to the Culture and Organisation of the Bar. The detailed submission is due to be considered by Bar Council at its meeting to be convened on 18 August 2005.

This financial year has seen the loss of a major supporter and contributor to EBTL in the retirement of David Bremner as Executive Director of the Victorian Bar. David's efforts since EBTL's early establishment have been in no small part responsible for the outcomes EBTL has achieved. We are pleased that the Bar Council has approved a consultancy between EBTL and



David Bremner in order to facilitate the collation of statistical data and otherwise provide critical administration support in order that EBTL can acquit its tasks to the satisfaction of the Victorian Bar.

Finally, the EBTL acknowledges the new role and support which Ms Christine Harvey, as incoming Chief Executive Officer of the Victorian Bar, has provided since October 2004.\

**Alexandra Richards**

*Chair*

## ANNUAL REPORT OF THE ETHICS COMMITTEE

The Ethics Committee met at its regular fortnightly meetings on 26 occasions during this year. Each member of the Ethics Committee continued to give rulings and guidance to individual barristers. From time to time, members also met as small groups to consider and determine requests for rulings.

The contribution of the members of the Ethics Committee to members of the Bar is outstanding. On behalf of the Bar, I thank each and every member of the Committee for the work done by them during the year.

During the year Martin Bartfeld QC, Mark Dreyfus QC, Gerry Lewis SC and Neil Clelland SC retired from the Committee. All of the retiring members provided a valuable contribution to the work on the Committee. Again, on behalf of the Bar, I thank the retiring members of the Committee for their contribution to the work of the Committee.

The new members of the Committee were Douglas Meagher ED QC, Ian Williams, Caroline Kirton and Anne Duggan.

The Committee continued to conduct educational sessions in both the Readers' Course and the CLE programme. Members of the Committee devote a considerable amount of time and effort to the education sessions and I thank them for their commitment to the sessions. Two members of the Committee require particular mention - Paul Willee QC and Cameron Macaulay SC. Both of them have conducted educational programmes for individual members of the Bar where the Committee considered such a programme would benefit the individual. I thank Paul and Cameron for their time consuming contribution on this aspect of the Committee's work.

During the year the Committee referred four charges to the Legal Profession Tribunal. The decisions made by the Legal Profession Tribunal during the past 12 months can be found on the Bar's website.

In addition to the referral of charges to the Tribunal, the Committee reprimanded or cautioned seven barristers, with the barrister's consent, where the Committee was satisfied that the Tribunal would find the barrister guilty of unsatisfactory conduct. In two other matters, the Committee was satisfied that the Tribunal would find the barrister guilty of unsatisfactory conduct and resolved to take no further action against the relevant barrister.

The role of the Ethics Committee will change with the implementation of the *Legal Profession Act 2004*. The expected commencement date for the 2004 Act is 1 October 2005. It will automatically come into effect on 1 January 2006 if not proclaimed prior to that date. Under the new Act, the Legal Services Commissioner will receive all disciplinary complaints and must investigate the complaints. The Commissioner may refer a complaint to a Prescribed Investigatory Body. Prescribed Investigatory Bodies will be prescribed by regulations when the Act is proclaimed and comes into force. It is envisaged that the Victorian Bar will be a Prescribed Investigatory Body. If a complaint is referred to the Bar as a Prescribed Investigatory

Body, the complaint must be investigated and the Body must report to the Commissioner about the complaint and include a recommendation as to what action, if any, the Commissioner should take against the barrister.

Mrs Debbie Jones, the investigations officer of the Committee, and Mrs Cath Mukhtar, the ethics assistant of the Committee, continued their excellent and valuable assistance to the work of the Committee. The Victorian Bar and the Committee are indebted to them for their contribution and for their dedication to their work.

**Kate McMillan**

*Chair*

## ANNUAL REPORT OF THE HUMAN RIGHTS COMMITTEE

The role of the Human Rights Committee is to report to the Bar Council and to make recommendations about matters within its sphere of interest. The Committee deals with matters referred to it by the Bar Council but may also consider matters on its own motion.

The members of the Human Rights Committee for 2004-5 were as follows:

Jack Fajgenbaum QC (Chair)	Alexandra Richards QC
Herman Borenstein SC	Michael Sifris SC
Debra Mortimer SC	Glenn McGowan SC
Pauline Schiff	Simon Marks
Damien Murphy	Wendy Harris
Daniel Star	Yusef Zaman
Susan Brennan	Lisa De Ferrari
Beatrice Melita	Judy Benson (Secretary)

1. The Human Rights Committee did not meet formally on many occasions in the past year. One matter on which it did meet, and which remains unresolved, is the enquiry into the circumstances in which the so-called "Bali-9" were arrested and charged in Indonesia with the cooperation of the Australian Federal Police. Should the Australian Federal Police have cooperated so as to expose the Bali-9 to the risk of a death penalty or should they have taken steps to ensure that any arrest and trial would occur in Australia? It is to be recalled that the Bali-9 were charged in connection with the transport of illicit drugs from Indonesia to Australia.
2. Otherwise, members of the Human Rights Committee were involved on an ad hoc basis advising the Bar Council on a number of issues including papers prepared by the Victorian Law Reform Commission in relation to children conceived through assisted reproduction. Members were involved in the preparation of the Bar Council's submission to the Department of Justices' Human Rights Consultation Committee in connection with its enquiry into the protection and promotion of human rights in Victoria. The Bar's submission, in favour of the introduction of a Charter of Human Rights in Victoria, is available on its website.

**Judy Benson**

*Secretary*

## ANNUAL REPORT OF THE LEGAL EDUCATION AND TRAINING COMMITTEE

The Bar's Compulsory Continuing Legal Education Program completed a successful first year's operation on 31 March 2005. The 2005/2006 program commenced on 1 April 2005 and has been well received.

The primary objective of the Committee has been to structure and deliver a CLE program that is comprehensive, rigorous (both intellectually and practically) and directed to the needs of barristers at different levels of development. This objective is reflected in the core principle under which the Committee functions, namely that an accredited CLE activity must have significant, intellectual or practical content dealing primarily with matters related to the practice of law, and must be conducted by persons who are qualified by practical or academic experience in the subject covered.

In delivering the program, the Committee has tried to ensure that the CLE program complements and builds upon the Readers' Course and that it takes advantage of the assistance offered by the specialist Bar Associations.

The basic requirement of the program is that all barristers must earn 10 CLE points during each relevant CLE year. Accumulated CLE points cannot be carried over from one year to the next. Generally speaking, each completed hour of attendance at a Bar CLE activity or other accredited CLE activity will earn 1 CLE point. CLE points may be earned in other ways, such as by instructing in the Bar CLE program or another accredited CLE program, instructing in the Readers' Course or publishing learned books or articles.

During the first year of the program, the Committee published detailed Guidelines to assist barristers in determining whether or not an activity qualifies as a CLE activity and the number of points which may be earned by particular activities. The Committee has regularly reviewed the Guidelines in the light of issues that have arisen and, as a result, the Guidelines have been updated several times. The Committee's hope and expectation is that, as barristers become increasingly familiar with the CLE Rules and Guidelines, the number of requests for special rulings by the Committee's Accreditation and Dispensation Sub-Committee will decrease. The CLE Rules and Guidelines are available on the Bar's website and it is unnecessary to repeat them here.

The obligation on barristers to comply strictly with the compulsory CLE requirements is a serious one. The compulsory CLE rules are Practice Rules under the *Legal Practice Act, 1996* and a breach of those rules may constitute unsatisfactory conduct or misconduct under the Act. When barristers applied for renewal of their practising certificates in April 2005, they were required to certify that they had complied with the compulsory CLE requirements. In March and April, the Accreditation and Dispensation Sub-Committee received a number of applications for dispensation from barristers who had fallen short of their compulsory 10 points. In view of the fact that the program was in its first year of operation, the Committee generally granted dispensation on condition that applicants made up the shortfall in points by viewing video tapes of seminars presented during the first year of the program. However, the Committee cautioned such applicants, that they should not expect that dispensation will be granted in similar circumstances in the future.

From all reports the Committee has received, the program is working very well. A wide range of seminars have been conducted and most seminars have been well attended. In the first CLE year ended 31 March 2005, the seminars were grouped in the following fields: Commercial; Criminal; Common Law; Family, Ethics; Criminal Advocacy; Commercial Advocacy and Practice Issues for Junior Barristers. In all, 135 seminars were conducted across a

diverse range of topics. From time to time, special seminars were conducted as interesting and well-qualified speakers offered their services. Examples include an address on 16 September 2004 concerning "*Current Developments in Federal Law*" by the Federal Attorney-General, The Honourable Philip Ruddock, and a seminar on 24 February 2005 concerning the Sex Discrimination Act, 1984, presented by Rachel Doyle and Julie O'Brien in conjunction with Australian Lawyers for Human Rights and the Human Rights and Equal Opportunity Commission.

In the year commencing 1 April 2005, the Committee has planned about 120 seminars. By 12 December 2005, 99 of these seminars will have been presented. The major structural change from the first CLE year is that seminars have been scheduled in the field of industrial law, and criminal advocacy is no longer separated from criminal law. Once again, special seminars have been, and will be, offered from time to time as the opportunity arises. For instance, Gary Gobblestone of the Australian Taxation Office presented a lecture on 11 May 2005 entitled "*What are a barrister's obligations in relation to GST, income tax, record keeping and tax compliance ?*", and on 20 July 2005 Dr Sev Ozdowski, Human Rights Commissioner and Disability Discrimination Commissioner, presented a seminar entitled "*Human Rights in Australia: Their protection and resolution through the Law.*"

A full list of seminars appears on the Bar's website.

The Committee also instituted a practice of video taping each Victorian Bar CLE Seminar, so that members of the Bar who were unable to attend a particular seminar could subsequently review the seminar on tape. This facility is of real assistance to barristers who find it difficult to attend scheduled seminars because of child minding, family or other obligations.

The Committee has enjoyed a very successful working relationship with each of the specialist Bar Associations. In large measure, the specialist Bar Associations are directly responsible for the range and quality of the seminar program.

The Committee and its Accreditation and Dispensation Sub-Committee have worked extremely hard over the past year, both in administering the CLE program and in developing the seminar program for the year commencing 1 April 2005. I particularly wish to thank the members of the Sub-Committee for their work in dealing with a large number of applications for accreditation or dispensation with diligence and care. The Committee has met 13 times since the inception of the CLE program and, on average, it has dealt with approximately 40 applications per meeting.

The CLE program casts a very heavy burden on Barbara Walsh. She is responsible on a day to day basis for the overall implementation and administration of the program, and for the actual conduct and videotaping each seminar session. The CLE program owes much of its success to her hard work. If there is any deficiency in the current program, it is that too large an administrative burden is falling on too few people. This is an issue which merits the attention of the Bar Council.

Finally, I wish to thank all of those members of the Bar and other presenters who have given their time, skill and effort to prepare and deliver high quality seminars over the course of the past year.

**Neil J. Young**  
Chairman

## READERS' COURSE COMMITTEE

In the last twelve months, the Victorian Bar conducted two Readers' Courses, commencing on 1 September 2004 and 1 March 2005 respectively.

Each of the two Courses was of approximately two months duration, continuing the shorter course program introduced in March 2004. Previously the Readers' Course spanned twelve weeks. On the whole, the shortened Course has been as successful as the longer Courses.

The Readers Course Sub-Committee of the Bar's Legal and Education Committee is presently constituted by Paul Santamaria S.C. (Chairman), the Honourable Justice David Harper, David Collins S.C., David J. O'Callaghan S.C., Neil Clelland S.C., Fiona McLeod S.C., Mark Taft, Caroline Kirton, Carolyn Sparke, Matthew Connock, Gregory Harris, Robert Taylor, Sara Hinchey, Martin Grinberg, Paul Laurie, Joycey Tooher and Tony Burns.

In the September 2004 Course, there were 54 readers, including one practitioner from Vanuatu (the Solicitor-General of Vanuatu) and three from Papua New Guinea. In the March 2005 Course, there were 48 readers, including one practitioner from Vanuatu and one from Papua New Guinea.

The Victorian Bar has continued its commitment to the teaching of advocacy in the Pacific region by inviting practitioners from those countries to participate in the Readers Course and also by conducting Advocacy Training Workshops in PNG for Government lawyers, the Legal Training Institute and the Ombudsman's Commission of PNG and the Solomon Islands. The Bar is particularly grateful to the Honourable Justices Geoffrey Eames, David Harper and John Coldrey of the Supreme Court of Victoria, Her Honour Judge Elizabeth Curtain of the County Court of Victoria, Paul Coghlan QC, Director of Public Prosecutions for the State of Victoria and to those teams of dedicated and skilled members of the Bar, who take time out from their busy practices, without reward, to travel to Papua New Guinea and the Solomon Islands to impart their knowledge and skills to the legal professions of our South Pacific neighbours.

The Course continues to be guided in its content by the Committee, but the specific management of the Course over the last twelve months has been undertaken by Barbara Walsh, the Manager of Legal Education, Elizabeth Rhodes, the Legal Education Officer and Deborah Burns, the Assistant Legal Education Officer. Each of them has contributed significantly to the conduct of the Courses and to the workings of the Sub-Committee. The Course maintains its excellent standards because of the generous commitment to it by members of the Bar and Bench. In particular, the involvement and contribution of Mentors and Instructors from the Bar cannot be overstated.

The Committee has been pleased to involve more judges and retired judges, from the Federal and Supreme Courts to assist in the Course. In the September 2004 Course, the Chief Justices of the Federal Court and the Supreme Court and the Chief Judge of the County Court graciously allowed their respective Courts to be used for the purpose of the final (civil) moot exercise in the Courts and moreover, procured judges of their courts to conduct the moots. This innovation was an extension of the moot courts conducted by the Masters of the Supreme Court in the March 2004 Course, and the Masters continued their involvement in the present Courses. The Committee hopes that the involvement of the three Courts will continue to develop in the future as the Readers report that this exercise is a particularly valuable way to conclude the Course.

This report is written soon after the news of the appointment of the Honourable Justice Christopher Maxwell as President of the Court of Appeal. It is timely, then, to acknowledge Chris Maxwell's own consistent contribution to Readers' Courses for several years as an instructor, particularly in the area of pleadings in public law cases. It is also

timely to acknowledge the various contributions made to the Course by His Honour's predecessor as President of the Court of Appeal, the Honourable Mr. Justice John Winneke. Justice Winneke was a great supporter of the Course and in his own way, a great motivator, not only of the Readers but also of those barristers who instruct in the Course. When Justice Winneke gave his support to the Course and to its instructors, one knew that it was worth doing and doing well. It was fitting, therefore, that Justice Winneke was able to accept the invitation of the Readers' Course Committee to be the Honoured Guest Speaker at the Readers/Mentors Dinner on 12 May 2005 and for the Committee on behalf of the Bar, to acknowledge with gratitude his involvement in, and support of, the Readers' Course.

**Paul Santamaria**

*Chairman*

## ANNUAL REPORT OF THE PROFESSIONAL INDEMNITY INSURANCE COMMITTEE

### ***The Legal Profession Act 2004***

In November 2004, the Victorian Parliament passed the *Legal Profession Act 2004*. The Act contained new provisions relating to professional indemnity insurance for barristers. The provisions of particular relevance are in s3.5.2 as follows:

- (2) At all times while a law practice is engaged in legal practice in this jurisdiction, the law practice must maintain professional indemnity insurance
- (3) ...
- (4) The insurance must be with the Liability Committee unless the law practice is a barrister.
- (5) A barrister may choose to apply for insurance with the Liability Committee and that Committee may provide, or refuse to provide, the insurance.
- (6) If the insurance for a barrister is not with the Liability Committee, the insurance must be on terms and conditions approved by the Board.
- (7) The Victorian Bar Council may, on or before 28 February 2005, resolve that all barristers are to insure with the Liability Committee and, if the Victorian Bar Council so resolves, the insurance for a barrister must be with that Committee despite sub-section (4).

The reference to the "Liability Committee" is to the Legal Practitioners' Liability Committee (the LPLC). The Act received the Royal Assent on 15 December 2004 and the above provisions came into operation on that date. The Act gave the Bar Council a window of opportunity between the date of Royal assent and 28 February 2005 in which to resolve in favour of barristers insuring with the LPLC. The resolution of the Council that the legislation contemplates appears to be an irrevocable one. It triggers an ongoing statutory obligation on barristers to insure with the LPLC. Once the resolution is passed, that statutory obligation stands until the legislation is amended.

The Council informed members of the Bar that the issue was one of special significance issue and may come before the Council at the earliest at its scheduled meeting on 16 December 2004. Members were invited to make known any particular views they may have on the issue.

The Council invited the LPLC to place before it a proposal to insure barristers and to that end the Bar made available our claims history data base for inspection by the LPLC on a confidential basis. The role of the LPLC in the provision of professional indemnity insurance has been the subject of a comprehensive and favorable report by PriceWaterhouseCoopers in their National Competition Review submitted to the Department of Justice and dated 20 May 2004 (chapter 7.4).

The Council also invited both Great Lakes and Suncorp Metway to place before it any proposals they may wish to make in support of the Bar continuing to place its professional indemnity primary layer insurance with the commercial market.

### **The Bar Council resolution of 16 December 2004**

At its meeting on 16 December 2004, the Bar Council considered the option afforded to it by the new Legal Profession Act, for the provision of the compulsory layer of professional indemnity insurance through the LPLC. The Bar Council had before it a formal submission from the LPLC and a letter from Affinity Risk Partners (the broker for the Bar's current scheme). The Bar Council had also consulted the Professional Indemnity Insurance Committee and received in principle support for the passing of the resolution. The Bar Council was also informed of the views of the small amount of feedback which had been received from the wider membership. On balance, the Bar Council decided that it was in the best interests of the Bar to determine this matter before the Christmas break.

The resolution of the Bar Council was in the following terms:

- "(a) *Resolved for the purposes of subsection 3.5.2 (7) of the Legal Profession Act 2004 (Vic), that all barristers are to insure with the Legal Practitioners Liability Committee for all periods of insurance commencing on or after 1 July 2005;*
- (b) *The Bar Council press the Government for consequential amendments to the Legal Profession Act 2004;*
  - (i) *for the LPLC to include on its governing body a practising barrister;*
  - and*
  - (ii) *for authority to the LPLC to make confidential disclosure of claims information to the Bar.*
- (c) *The Bar Council express its appreciation to Affinity Risk Partners for their management of the Bar's insurances over the past two years."*

### **The LPLC**

The LPLC is a body corporate established under the *Legal Practice Act 1996* which in one form or other has provided professional indemnity insurance to Victorian practising solicitors for the past 18 years. In 2003/4 it achieved an operating profit of \$2.7 million and net assets of \$57 million.

It has an enviable record of having offered insurance for solicitors at premiums which are not only lower than those available to solicitors in other jurisdictions, but which have declined in

real terms since 1993, as found by PriceWaterhouse Coopers in their report dated 20 May 2004, at page 82.

The Bar Council decision was not simply a question of deciding which insurer to select for next year and which premium pool might be the more competitive. It was rather a decision about which model of professional indemnity insurance for the compulsory layer of \$1.5 million would best serve the interests of the Bar in the longer term. The priority has been to secure stable, ongoing cover on quality terms at reasonable premium cost.

### **The LPLC offers the model of the statutory mutual insurer.**

It is a mutual in the sense that barristers will have ‘ownership’ of their insurance; they will bear both the benefits and the burdens of participation in the Liability Fund via a barristers’ account that will be maintained separate from the account in the Fund for solicitors. If the claims against barristers in a particular year are small and result in a surplus to the barristers’ account in the Fund, that surplus can accrue for the benefit of barrister insureds either through lower premiums in subsequent years or an increase in reserve funds. In the early stages, the LPLC will want to build up the reserves in the barristers’ account in the Fund to put the scheme on a sound footing for the future.

If the premiums paid by barristers plus income from the Fund attributable to barristers’ premiums fall short of meeting the claims and expenses paid out in respect of barristers, the LPLC will charge a higher premium in subsequent years to make up the shortfall. The LPLC also has the power under the *Legal Profession Act* 2004 (s6.6.19) to levy insureds to make up any shortfall. To date, it has not done this in its 18 years of operation.

The LPLC does not provide ‘**top up**’ insurance and, for the 2005/6 policy year, members had to apply separately to commercial insurers for this insurance. The Bar Council facilitated arrangements in this regard as in past years.

### **The renewal process**

On 5 April 2005, the Bar Council office sent all practising Victorian barristers a package of documents by which they could in the one process both renew their practising certificate and their professional indemnity insurance, consisting of:

- Application for practising certificate
- Certificate of compliance (continuing legal education)
- Contract of Professional Indemnity Insurance 2005/2006
- Explanatory memorandum from the Legal Practitioners Liability Committee
- Applicant declaration form
- Application for Hunter Premium Funding
- Information and application form for ‘top up’ insurance with Affinity Risk Partners

This process was a formidable administrative exercise which proved hugely convenient to members and thanks are due to Christine Harvey, Chief Executive Officer and the Bar Council staff for their work in making this happen.

### **Top up insurance**

This year, Affinity Risk Partners arranged top up insurance with Ace Insurance Limited. Suncorp Metway also offered top up insurance.



It was heartening that premium rates had fallen from the previous year. For the top up layers, the falls were even more substantial than the primary layer premiums. Top up insurance was optional and members were advised to choose their desired insurer based on their own assessment of the competing products.

### **Run off Cover**

As from 1 July 2005, the LPLC Master Run off Policy covered former barristers and barristers who ceased to practise during 2005/6 subject to the terms of that policy for an amount of \$1.5 million inclusive of defence costs. This cover is universal, automatic and without premium charge. Barristers who wished to arrange run off cover for an amount beyond \$1.5 million were advised to make their own arrangements with a commercial top up insurer.

### **D'Orta-Ekenaike – The principle of advocates' immunity**

On 10 March 2005, the High Court gave judgment upholding the immunity from suit of advocates in the matter of *D'Orta-Ekenaike v Legal Aid Victoria* [2005] HCA 12. The Court ordered that special leave to appeal be granted and that the appeal be treated as instituted and heard *instanter* and dismissed with costs.

The central justification for the advocate's immunity was held to be the principle that controversies, once resolved, are not to be reopened except in a few narrowly defined circumstances. This is a fundamental and pervading tenet of the judicial system, reflecting the role played by the judicial process in the government of society.

The Victorian Bar, Great Lakes Reinsurance (UK) PLC, the Australian Bar Association and Suncorp Metway each provided limited funding to enable effective representation of the barrister and the defence of the principle of advocates' immunity.

### **Refund of Premium**

Following negotiations last year between the Bar and Great Lakes, the Master Policy for the compulsory layer of professional indemnity insurance for Victorian barristers for the year ending 30 June 2005 provided for a reduction in premiums payable for that year by barristers in the event of a favourable decision of the High Court on the issue of barristers' immunity in *D'Orta-Ekenaike v Victorian Legal Aid*.

As a result of the favourable decision of the High Court, the Bar requested and received from Great Lakes the agreed aggregate refund amount together with applicable stamp duty and GST. The Bar has disbursed the refund amount to barristers *pro rata*.

### **Professional Standards legislation**

A subcommittee of Bill Martin QC, David Clarke, Andrew Hamlyn-Harris, David Bremner and I prepared a paper dated 23 August 2004 examining the ramifications of the *Professional Standards Act* for the Bar. The Act provides for the approval of a scheme for members of a professional association or a class of that membership and the limitation of their liability.

The Professional Indemnity Insurance Committee considered the paper at its meeting on 1 September 2004 and resolved to recommend to the Bar Council that the Bar should not proceed at this time with a professional standards scheme. The general feeling of the Committee was that a scheme that involved a cap on liability was inimical to the best traditions of the Bar and that

the Bar Council should not depart from its present policy opposing such schemes. It was also felt that because any cap on liability would not apply to barristers in the personal injuries field, a scheme would not benefit the whole Bar.

The Bar Council considered the matter closely and decided that further investigations were necessary before it would make any final decision in the matter. In particular the Council has sought advice from senior counsel on the ramifications of a proposed scheme and the matter is still under review at the date of this report. I thank all members of the Committee for their enthusiastic assistance during the past year.

**Michael Shand**  
Chairman

## ANNUAL REPORT OF THE PROFESSIONAL STANDARDS EDUCATION COMMITTEE

The Professional Standards Education Committee is constituted by Paul Willee QC Chair, Michael Shand QC, Gerald Lewis SC, Paul Santamaria SC (Ex Officio), Cameron Macaulay SC, Debra Coombs, Laura Colla, Daniel Aghion and Judy Benson. That constitution continues to be particularly well suited for liaison with the Bar Council and other committees whose co-operation is vital to its work.

This year the Committee continued its attempts to focus the attention of members of the Bar (particularly younger members) on the ethical rules underpinning good professional practice and improving risk management by identifying recurrent incidents of negligent or bad practice giving rise to claims and putting in place strategies for the avoidance of such claims. Having identified strategies it continued its efforts to implement them by every available method particularly consultation.

However, the main thrust of the committee's action has been the continuance of its attempts to ensure that CLE lectures for which it is responsible focus on matters relevant to its aims in the formulation and staffing of its lecture program; as foreshadowed in last year's report to shift focus slightly to take greater account of insurance aspects of its work; and the completion and publication of the ethics manual. Several members of the Committee have or will be involved in the presentation of the 2005 CLE program.

Completion of the ethics manual has been much more problematic than was anticipated at the outset. Although all but two of the anticipated ten chapters have been written, considerable editorial work including the provision of current examples of ethical problems, standardisation of text and citations remains to be done. The chapter on the regulatory framework will require much more attention to cater for the changes to be wrought by the introduction of the new legislation.

It has proven as difficult to achieve the high degree of readability desired in the professional standards manual, as it has to strike a balance between the expression of simple straight forward propositions of ethical principal relating to the majority of common problems sought to be addressed and the deeper requirements of more complex issues. The apparent failure to address the latter will undoubtedly be seen by some as a serious shortcoming, if the answer to their particular problem is not addressed in the first cut. For few will remember that this was an undertaking which was always intended to be a *work in progress* in the sense that its text would be constantly improved and accreted, not just revised and updated. As a result, at the last meeting of the committee it was agreed that achieving the previously suggested publishing date of 31 December 2005 was somewhat optimistic. Nevertheless it will remain as the committee's most significant goal for the ensuing year.

In the meantime, through the auspices of Judy Benson, details of publishing format, and publisher for the manual, have been largely settled by the committee. A committee whose considerable enthusiasm for its tasks, high degree of co-operative application to detail and thoroughly good humour continues unabated, for all of which I remain extremely grateful to each of its members.

**Paul Willee**  
*Chairman*

## ANNUAL REPORT OF THE VICTORIAN BAR DISPUTE RESOLUTION COMMITTEE

### 1. **Bill Martin Q.C.**

The first matter to note in this report for the Dispute Resolution Committee for 2004-05 is that Bill Martin Q.C. retired in November 2004 after 10 years' sterling service as Chair. Bill became the Victorian Bar's public face of ADR; he had a grasp of every issue and in his engaging way succeeded in quietly but effectively advancing the interests of the Bar in this area. He is sorely missed; I still regularly seek his advice and assistance, both of which he provides generously. The Committee also notes the resignation of Michael Whitten. Michael has been a stalwart supporter of the DR Committee's activities and we hope that in the years ahead he might rejoin us.

### 2. **Committee Activities**

The Committee has met on a monthly basis through most of the year. Members of the DRC now have specific 'portfolios' for which they are responsible and on which they report to the monthly committee meetings. The DRC has sought and obtained from the Victorian Bar Council a formal resolution setting out its duties. It has continued through the year to consider applications for accreditation and make recommendations to the Victorian Bar Council in this regard. As requested the Bar's web software has been augmented to allow easy communication between the DRC and all of or a designated subgroup within the Victorian Bar's accredited mediators. This facility has already proved extremely useful. It has produced a great deal of positive feedback and will be invaluable in the coming years.

### 3. Throughout the year the Committee has been active in promoting mediation as an alternative dispute mechanism. In this regard the Committee has been involved in discussions with various organisations:

- a. A pilot mediation scheme for the Magistrates Court commenced in 2004 and came to an end at the end of the year. Now, with increased jurisdiction, a greater workload, and new rules mediation is becoming more important in the Magistrates Court. The DRC has had meetings with the Deputy Chief Magistrate and the Registrar of the Court which should ensure that parties to Magistrates' Court proceedings are offered effective mediation solutions. It has had input into the design of court forms for the scheme and is confident that the Bar will be able to provide effective mediation support to the Magistrates' Court to meet the influx of weightier cases.
- b. A meeting between the Transport Accident Commission and the Victorian Bar has led to various initiatives being considered which should increase the effectiveness of mediation in this jurisdiction;
- c. A mediation scheme for sporting disputes has been the subject of discussion between the representatives of the Committee and the Victorian Olympic Council.

The Committee is considering the issues raised and working towards a purpose-built format for a scheme which will meet the wishes of the sports bodies involved and which may also be used for other special purpose mediation situations;

- d. Educational seminars are being planned to bring bodies such as TAC and the expanded jurisdiction of the Small Business Commissioner to the attention of barrister mediators.

#### **Victorian Bar Council Disputes Manager**

The Victorian Bar Council has appointed Liz Rhodes as its Disputes Manager. She is responsible for carrying out the tasks agreed to be performed by the Victorian Bar in regard to the Magistrates' Court mediation scheme and also other schemes for which the Bar Council has responsibility. The Committee is sure that she will undertake her role with impartiality and in absolute confidence.

#### **The Australasian Dispute Centre Ltd**

The Australasian Dispute Centre Ltd is a company limited by guarantee. The Victorian Bar Council Inc has been a 'Governing Member' of that company since it was established in 1996. The company was established to act as an umbrella body of non-profit organisations involved in dispute resolution. In fact it does not act in the manner envisaged. As a representative of the Victorian Bar, Bill Martin Q.C. had been a director of ADC until November 2004. When David Levin Q.C. became Chair of this Committee he was asked to accept a directorship on ADC, which he did. Further investigation by the DR Committee has led to it recommending to the Victorian Bar Inc that it cease to be associated with ADC. David Levin Q.C. resigned as a director of ADC on 21 April 2005.

#### **Bar Mediation Centre**

The Bar Mediation Centre in Douglas Menzies Chambers is now well established and has gained an enviable reputation as a convenient location for dispute resolution. The DRC is appreciative of the work undertaken by all of the mediation centre staff. Work is being undertaken to supply or upgrade equipment provided at the Centre. The workload is being actively monitored.

The Chair of the Committee, David Levin QC, expresses his thanks to Ross Maxted (Deputy Chair) and to all members of an enthusiastic and supportive committee for their tremendous assistance in assisting him deal with the myriad of issues which face the Committee.

The Committee also wishes to place on record its thanks to Christine Harvey, CEO of the Victorian Bar, and Liz Rhodes, the Victorian Bar's Disputes Manager, for their careful consideration of concerns which arise from time to time and their implementation of the Committee's recommendations. Liz has taken over her responsibilities with care and a quiet confidence. The Committee is delighted with her help and looks forward to her assistance in the future. It also wishes to record its thanks to David Bremner, whose experience and practical knowledge has been made available unstintingly when requested.

#### **David Levin**

*Chair*

## **ANNUAL REPORT OF THE NEW BARRISTERS' STANDING COMMITTEE**

The New Barristers' Standing Committee (NBSC) is comprised of 14 members of the bar who are of less than 5 years call or under the age of 36. The NBSC members are Simone Bingham (Chair) St John Hibble (Deputy Chair) Simon Rubenstein (Social Convenor), Alanna Duffy, Georgia Tsirmbas (Victorian Bar's appointed representative to the Australian Young Lawyers

Committee of the Law Council of Australia, Newsletter Editor), Joe Connellan, Lisa Lopiccolo, Madeleine Pinnuck, Marita Foley, Rowena Orr, Sam Hay, Sarah Porritt, Sarah Turner, Tony Vriends. The NBSC is self generating in that each intake of readers is asked to nominate a member to represent their readers group on the NBSC. The constituency of the NBSC is all members of the bar under 5 years call or under the age of 36 years.

In the past 12 months the NBSC has focused on the issues effecting new members of the bar such as affordable accommodation, insurance and CLE. The NBSC continues to liaise with the bar regarding issues which arise that effect or interest new barristers.

As part of its responsibilities in the past 12 months representatives of the NBSC also meets with each readers' intake regarding the committee and to seek a nomination from the intake. The NBSC has sought particularly through its contact with readers groups to make its members accessible by email and telephone regarding issues effecting new barristers.

The NBSC has an integral roll in organising social functions for its constituency in the past 12 months such as drinks with the readers after they sign the roll, and an annual social "networking" function with the Young Lawyers. Simon Rubenstein of the NBSC regularly meets with the Young Lawyers section of the Law Institute of Victoria.

The NBSC wishes to extend its thanks for the contribution made by those members who have resigned from the committee in the last 12 months due to their seniority in particular, Cassie Serpell, Rachel Doyle and Kate Anderson.

**Simone Bingham**  
*Chair*

## ANNUAL REPORT OF THE LEGAL ASSISTANCE COMMITTEE

### **Introduction**

I regard the Victorian Bar Legal Assistance Scheme ('**VBLAS**'), as an important part of the Bar's contribution to the administration of justice in Victoria.

The Scheme is now in its fifth successful year of administration by the Public Interest Law Clearing House ('**PILCH**') and is overseen by the Legal Assistance Committee ('**LAC**') of the Victorian Bar to which PILCH regularly reports.

Over 400 barristers – more than 25% percent of the practising list – have volunteered to participate in VBLAS. This strong commitment is reflected throughout all levels of seniority at the Victorian Bar, and continues, with a similar proportion of those who signed the roll this year also volunteering to participate in VBLAS. Many barristers, although not formally registered, welcome requests to assist VBLAS when approached.

Applications received by VBLAS are assessed on the basis of legal merit, lack of means and whether assistance is required 'in the interests of the administration of justice'. This year, barristers again demonstrated their generosity in assisting clients both where VBLAS' means and merit criteria were satisfied and, less commonly, in circumstances where these criteria were not necessarily met, but where assistance would directly advance the administration of justice by the Courts.

The majority of applications come from individuals, many with complex legal problems and without other options for legal assistance. Individual clients are most often referred to VBLAS by Community Legal Centres or direct from the Courts. Referrals made to barristers may be for

advice, drawing documents and/or appearance work.

VBLAS has greatly benefited from office sharing with PILCH and with the Law Institute of Victoria's Legal Assistance Scheme ('LIVLAS') through opportunities for cross-referrals and shared knowledge.

### **Funding**

VB LAS is funded by the Victorian Bar, with support from the Legal Practice Board. This funding was increased significantly (from approximately \$84,000 to \$118,000) in the 2004-2005 financial year to allow VBLAS to employ additional staff to meet the increased demands for assistance from VBLAS.

### **Staffing**

During the current reporting period, VBLAS ceased to rely on PILCH secondee solicitors, drawn from the PILCH member firms, to perform casework. In its 'coming of age' (from a staffing point of view) VBLAS now has the benefit of a full-time dedicated solicitor/manager position. This position has been job-shared by Ms Jane Fricke and Ms Susannah Sage Jacobson since October 2004. Prior to Jane's commencement, Susannah staffed the position 3 days per week.

VBLAS has also had Ms Bernadette Segrave as administrative assistant to the manager two days per week. Bernadette commenced at VBLAS in November 2004 and has provided valuable support in all aspects of VBLAS' work.

VBLAS also continues to be assisted by the PILCH staff, volunteers, student interns and fellows and seconded administrators.

### **Statistics**

VBLAS has been substantially busier in the financial year 2004-05 than it was in the previous financial year reflecting a continued increase in demand. Total inquiries rose from 284 to 374 and referrals were correspondingly higher, rising from 154 in 2003-04 to 184 in 2004-05. This increase is due to both VBLAS' increased capacity and an improvement in VBLAS' profile. Increased staffing levels allow VBLAS to effect a higher volume of timely and appropriate referrals and statistics demonstrate that interested persons such as Courts and Community Legal Centres are approaching VBLAS more regularly for assistance. In the reporting period, 39.8% of enquiries were made through Community Legal Centres, 8.5% through Victoria Legal Aid and 8.5% through Court Registries.

Areas of law in which over 10 referrals were made over the reporting period are:

<b>Area of law</b>	<b>Inquiries</b>	<b>Referrals</b>
Criminal law	54	24
Family law	19	13
Migration law	82	47
Property law	20	15

VBLAS also made more than five referrals in the areas of commercial, consumer credit and personal injuries, with referrals made, in smaller numbers, in at least 26 other practice areas.

It is important to note that where appropriate, applicants are referred to other services such as Victoria Legal Aid, an ombudsman, a community legal centre, other community-based organisations, LIVLAS or PILCH. This practice, essential to ensuring that the burden of representing disadvantaged litigants falls in its proper place, accounts in part for the discrepancy between inquiry and referral numbers, although there is also significant screening to ensure that applicants meet the means and merit criteria prior to a referral being made.

Migration law continues to be VBLAS' busiest practice area. In the reporting period it represented just over 25% of VBLAS' caseload. This figure represents a stabilisation of previous growth in the demand for pro bono migration law services, seen by comparing it to the relative migration caseload of VBLAS in previous years: 2002-2003 – 40% and 2003-2004 – 25%.

VBLAS continues to seek to record the time spent and results of the matters it refers. This year VBLAS received completed reports from 31% of counsel who undertook matters, which is an increase in our reporting statistics. We anticipate that this figure will continue to improve as a result of our increased capacity to follow up these reports and promote their importance to the Victorian Bar.

## **Events**

This year VBLAS continued to play a role in arranging functions to promote and reward participants of VBLAS. On 11 May 2005, the Victorian Bar hosted a drinks function at the Essoign Club to honour the contribution of barristers to both VBLAS and the PILCH LAS, and their other pro bono work. Over one hundred members of the Bar who have accepted briefs over the past year, without fee, were in attendance at the reception. Also present were members of the judiciary, court staff and members of PILCH who have actively participated in VBLAS.

VBLAS, with the assistance of PILCH, also arranged an afternoon tea to celebrate UNHCR World Refugee Day on 20 June 2005. Participants in the pro bono migration lists of both VBLAS and LIVLAS were invited to the event. The function was generously hosted by PILCH member firm Middletons Lawyers and Justice Tony North of the Federal Court kindly gave an address.

## **Projects, policy and advocacy**

The staff of the VBLAS participate in project, policy and advocacy activities in addition to the day-to-day inquiry and referral work of the Scheme. These activities are recognised as a natural adjunct to the client inquiry and referral work, through which it is possible to identify significant areas of legal need and ways in which to facilitate the delivery of pro bono services to meet those needs.

The additional project and law reform activities are considered vital elements of the role of solicitor/manager of VBLAS and allow VBLAS to maintain its relevance to, and profile in, the community. This participation also has significant benefits for members of the Bar and the future of pro bono practice in Victoria.

### **Family Violence Sub-Committee**

The Family Violence Sub-committee of the LAC was established in April 2005 in response to the steady increase in requests for assistance to VBLAS, from community legal centres and elsewhere, in matters involving family violence. The LAC determined that a formal Sub-committee would best address the issue, as experienced by PILCH and VBLAS, that the existing pro bono network is not adequately equipped to deal with these applications. Ms Helen Symon SC, a member of the LAC, kindly agreed to Chair the Sub-committee.

In order for the Family Violence Sub-committee to gain insight into the specific areas of need and the most appropriate strategies which could be adopted to address them, the sub-committee held a Forum with interested persons on 22 June 2005. Speakers included Senior Registrar John Fitzgibbon of the Family Court, Magistrate Caitlin English of the Broadmeadows Magistrates' Court, Magistrate Anne Goldsborough of the Melbourne Magistrates' Court, Judy Small from Victoria Legal Aid, Judith Pierce from the Victorian Law Reform Commission, Flora Culpan and Belinda Lo from the Federation of Community Legal Centres and Sarah Vessali and Allyson Foster from the Women's Legal Service. Participants agreed that the forum had done much to advance discussion of the issue amongst those working in the area.

Following the forum, the Sub-committee resolved to pursue the following aims:

- Promote education and understanding of more members of the Victorian Bar in Family Violence issues and Court and other initiatives generally;
- Improve participation and communication of members of the Bar with the Courts and legal service providers on these issues;
- Arrange training programs for barristers on family violence issues and advocacy;
- The creation and management of a specialist list of barristers in the family violence area, primarily to assist community legal centres intervention order programs.
- Arrange advocacy training for community duty lawyers.

Consultations by the Sub-committee with those working in the area are continuing and training programs are expected to be implemented soon.

### **Asylum Seeker Sub-Committee**

Given the stabilisation of the demand for pro bono services in the migration law area, the Asylum Seeker Sub-committee of the Legal Assistance Committee has played a limited role in advising VBLAS during the current reporting period. The Sub-committee continues to be convened on an ad-hoc basis when required by VBLAS. Ms Alexandra Richards QC was appointed as the Chair of the Committee in May 2005.

Previous proposals by VBLAS with the support of the Sub-committee to establish an on-site merits assessment service in 2005 at the Asylum Seeker Resource Centre (ASRC) were not pursued by VBLAS following extensive consultations early this year that suggested that the proposal would create difficulties both in relation to compliance with the Bar Rules Direct Access provisions and the management capacity of VBLAS.



VBLAS continues however to liaise with the ASRC and other interested parties to ensure that refugee cases are managed as well as possible. To this end, the manager of VBLAS also continues to be a member of the Federation of Community Legal Centres Immigration Working Group.

### **Migration Law Training**

On 3 and 8 March 2005, VBLAS co-ordinated two well received training sessions, hosted by the Federal Court, on the topic of pro bono migration litigation. The first session was intended for practitioners with limited experience in the jurisdiction. It was opened by Federal Magistrate Phipps and included papers by Dr Caron Beaton-Wells and John Gibson, both of the Victorian Bar, as well as a “who’s who” panel of prominent practitioners in migration law. 26 barristers, 28 solicitors and 8 court staff attended this session. The second session was opened by Justice Goldberg of the Federal Court and included papers by Paul Fisher and Don Lucas of Victorian Legal Aid, and by Debbie Mortimer SC and Richard Niall, both of the Victorian Bar. At this second session, 23 barristers, 28 solicitors and 4 court staff were in attendance.

Following the training, at least 22 new barristers registered to participate in the pro bono migration list operated by VBLAS.

### **Tenancy training**

In April 2005, VBLAS co-ordinated a training session in conjunction with the Tenants Union of Victoria, focusing on a recent successful appeal to the Supreme Court from a decision of the Victorian Civil and Administrative Tribunal relating to the procedures attending use of the ‘danger’ provisions under the *Residential Tenancies Act 1997 (Vic)* which allow for eviction with less than 24 hours notice. The training was presented by Alexandra Richards QC and Sam Hopper, both of the Victorian Bar, and was hosted by PILCH member firm, Arnold Bloch Leibler. It was attended by the staff of Community Legal Centres, the Homeless Person’s Legal Clinic and others. The success of this specialist session demonstrated that VBLAS can provide training and add value to the work performed by counsel through VBLAS.

### **Submissions**

VBLAS has also contributed to law reform by drafting submissions to Parliamentary Inquiries on subjects directly relevant to our casework.

VBLAS prepared a joint submission in April 2005 on behalf of the Victorian Bar and PILCH to the Commonwealth Senate Legal and Constitutional Legislation Committee Inquiry into the *Migration Litigation Reform Bill 2005*. The submission drew on previous submissions prepared by PILCH and the Victorian Bar in 2003 and 2004 on the various reforms to the Migration Act introduced by government that significantly affect pro bono practice in this area.

VBLAS also made a submission to the Department of Justice in support of a Homeless Persons’ Legal Clinic proposal to amend the *Equal Opportunities Act 1995 (Vic)* to make discrimination on the basis of homelessness or unemployment unlawful.

Support to the FCA O.80 and FMC Part 12 programs

VBLAS has continued to be engaged in the provision of administrative support and advice to barristers undertaking matters on a referral under an order of the Federal Court of Australia or

the Federal Magistrates Court. This service has included liaising with the Courts and making applications for access to documents under freedom of information provisions. Positive assessments have been received of the contributions of the Victorian Bar under these pro bono schemes.

The LAC, with the assistance of VBLAS, is currently liaising with the Federal Court and the Supreme Court of Victoria to provide input into consideration of whether an equivalent scheme could be appropriate for the Supreme Court of Victoria.

#### Promotion of VBLAS

VBLAS is consistently promoted to potential volunteer barristers by speaking at each Bar Readers' course throughout the year. The managers of VBLAS are also extensively engaged in the promotion of the Scheme, both to the legal profession and the broader community. VBLAS is promoted through PILCH and Victorian Bar publications, including regular updates in the PILCH newsletters *PILCH Matters* and *Pro Bono in Practice*, the Bar newsletters *In-Brief* and *The Bar News* and annual reports for PILCH and the Bar.

#### Acknowledgements

I wish to thank all the VBLAS staff for their work and enthusiasm. I wish also to acknowledge the dedication and achievements of the previous Chair of LAC, Anthony Howard QC.

Particular thanks are also extended to all those members of the Victorian Bar who have ensured that disadvantaged and vulnerable members of the community receive quality advice and assistance through access to the legal services of barristers.

#### Ross Macaw

*Chair*

## ANNUAL REPORT OF THE VICTORIAN BAR NEWS

The four issues produced in the 2004-2005 year featured the usual balance of "in-house" issues, social events and a spread of more serious material.

The social events covered included, not only the Children's Christmas party and the Bar Dinner (both of which provided a plethora of photos), but also Comm Bar's Celebration of its first decade, the Dragon Boat race in which the Bar competed unsuccessfully, the 20<sup>th</sup> anniversary of the March 1985 readers group, a farewell to Hartog Berkeley by the 16<sup>th</sup> Floor of ODCW, the Opening of the Legal Year, Portia's Breakfast, a martial farewell to the President of the Court of Appeal and a full coverage of the Bar's sporting activities.

Our covers featured: Chief Justice Bryant on her appointment as Chief Justice of the Family Court; the celebration (held in the library of the Supreme Court) by Comm Bar of its first decade; the refurbished face of ODCE, and a tableau of defence force lawyers celebrating the retirement of Commander the Honourable John Winneke AC RFD RANR.

Amongst the more serious material, we commend to the attention of readers the article by Alexandra Richards entitled "Are Some Humans Less Human Than Others?" in the spring issue; the views expressed by the Honourable Justice Phillips on his retirement which appear in the

autumn issue; and the article “The Twilight of Liberal Democracy” in the summer issue.

Throughout the year many unsolicited contributions were received from members of the Bar. These included: three fascinating travel pieces “Return to Bangladesh” and “Beijing to St. Petersburg – By Train”, both of which appear in the autumn issue, and “Indian Rope Trick” in the summer issue; analytical pieces such as “The View from Guantanamo Bay” by Lex Lasry in the spring issue; some exciting trivia such as the correspondence with Buckingham Palace entitled “Peter Rosenberg Congratulates the Prince on His Marriage” in the winter issue; literary pieces such as “If Hedda met Hamlet” in the summer issue, historical pieces, such as “The Revolution of 1952”, in the winter issue; and the occasional satirical piece such as “Is It Cos I Is Black” in the winter issue.

It is these unsolicited contributions which make the magazine. Without them Bar News could not function. The editors take this opportunity of reminding all barristers that Bar News is their magazine. We welcome contributions whether they be articles, short comments on current issues within or outside the Bar, travelogues, laments or letters raising matters of controversy.

**Gerard Nash**

*Joint Editor*

## ANNUAL REPORT OF THE VICTORIAN BAR BAR CARE SCHEME

In 2002, the Bar Council resolved to establish the Bar Care Scheme, a counselling service for members of the Bar and their immediate family. The establishment of the scheme was recognition that the health and well-being of a member can be adversely affected by the pressures of professional and personal life and that the Victorian Bar has a role to play in ensuring that assistance is available to members who require it.

The objective of the scheme is to enable members to immediately access a counselling service which will assist them with emotional and stress related pressures arising from family or marital problems, multiple life stressors, drug or alcohol dependency, and practice pressures. A vital feature of the scheme is that full confidentiality applies to the identity of those who use it.

The scheme is available to any member of the Bar and their immediate family. The cost of the initial consultation and referral will be met by the Bar Council.

The Cairnmillar Institute (“the Institute”) is the initial referral point for the Bar Care scheme. Its consultants are trained in psychology, medicine or social work and have specialist training in counselling and psychotherapy. The Institute provides initial counselling and refers clients to other specialist service providers where necessary.

A member who wishes to access the scheme should contact the Institute on 9813 3400 and advise that they require assistance in accordance with the Victorian Bar’s Bar Care Scheme. The Institute is located at 993 Burke Road, Camberwell, 3124.

During the course of the initial consultation, the counsellor provides assistance and determines what follow-up services or treatments are needed. The counsellor may then arrange for subsequent consultations or referrals to other service providers. The cost of any subsequent consultations by the Institute or another service provider is the responsibility of the member and may be reimbursable from government or private health insurance schemes.

On regular occasions the availability of the scheme is promoted in *In Brief* and *Bar News*.

During the year to 30 June 2005, one member sought assistance under the Scheme and received a total of 3 consultations due to stress. The first consultation is paid by the Bar Council totalling \$114 excl GST.

**Christine S Harvey,**  
*Chief Executive Officer*