

IN



BRIEF

THE FORTNIGHTLY NEWSLETTER OF THE VICTORIAN BAR COUNCIL

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Introduction to "In Brief"

This is the first of what is intended to be a regular fortnightly bulletin aimed at keeping members of the Bar fully informed as to what the Bar Council is doing about matters of interest or concern to the Bar.

It is also aimed at dispelling some of the misconceptions and rumours as to what the Council is doing, or neglecting to do, in certain cases.

The Bar Council invites comments and suggestions from members on matters

reported in this bulletin. It is hoped that its function will be not only to make members aware of what the Council is doing, or contemplating, but to give members of the Bar an opportunity to influence what the Council does.

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Victorian Bar Mediation Centre

The Bar Council has recently decided to establish a Mediation Centre on the first floor of Four Courts to use premises in conjunction with the Readers' Course. The recent "Spring Offensive" successfully conducted by the Supreme Court is likely to usher in a period of court-ordered mediation at a level not previously seen. The Victorian Bar Mediation Centre will be ideally located and equipped for this purpose.

The Mediation Centre will, it is hoped, provide an opportunity for members of the Bar to become more involved as mediators. Combined with this initiative, the Dispute Resolution Committee will be organising mediator training courses for early 1993. The Bar will be informed further about this in due course.

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Independence of the Judiciary - Accident Compensation Tribunal

The fate of the judicial members of the former Accident Compensation Tribunal is, of course, now a matter of public record. It goes without saying that it is unacceptable for judges to be legislatively removed from office in the way that the Tribunal was abolished in this instance. However, it is doubly unfortunate that the new Government should have left it until the eleventh hour to resolve what ought to have been obviously an issue of central importance right from the outset. The result of the Government's indecision in this area was to leave judges sitting on the Tribunal, and attempting to exercise a jurisdiction in which the Government was a major litigant, whilst the legislative sword of Damocles hung suspended over their heads. A great deal more will be said about this. Members of the Bar may wonder why the Bar Council was relatively silent in the weeks leading up to 1st December, 1992. The reason is that the judgment was made (based in part upon direct representations made to the Bar by the Government) that any publicising of the issue would only make a satisfactory resolution in the interests of the Judges themselves less likely.

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Four Courts Chambers

Members of the Bar will have recently received a circular setting out suggestions for the refurbishment and re-naming of Four Courts Chambers.

A number of expressions of interest were received from groups of barristers in response to that circular. These are being considered in the context of rentals which will need to be fixed to cover the costs of holding and refurbishing Four Courts Chambers.

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Mutual Recognition

As is well known, each of the State and Territory legislatures is passing uniform legislation to empower the Federal Parliament to pass a Bill to provide for the uniform recognition, on a national basis, of occupational registrations in the various State and Territory jurisdictions. Real problems arise in an occupation such as the legal profession, which some jurisdictions treat as a single occupation (barrister/solicitor) whereas others (New South Wales and Queensland) treat as two separate occupations.

The Law Council of Australia held a meeting on Sunday, 29th November, 1992 at which representatives of each of the constituent bodies were present. Matters discussed included the definition of "equivalent occupation" for the purposes of the legal profession and the attainment of common standards for pre- and post-admission education requirements.

One of the concerns which the profession has is the avoidance of a situation whereby mutual recognition produces, in effect, a "lowest common denominator" system, whereby a person will be able to shop around for admission in the "easiest" jurisdiction, and then become entitled to

admission in every other jurisdiction. The Law Council has been informed that further legislative adjustment is unlikely, and that it should address this problem by the institution of uniform national standards for admission and commencement of practice.

The other major problem relates to the occupation in a jurisdiction with a divided profession which is "equivalent" to the occupation of barrister/solicitor in a jurisdiction with a fused profession.

The meeting resolved to recommend to the constituent bodies that, for the purposes of admission as a barrister in New South Wales, the equivalent occupation in a jurisdiction with a fused profession was a barrister practising as a member of an independent Bar.

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Legal Aid Commission - Barristers' Fees

It has been a considerable time since Legal Aid fees were adjusted upwards. The most recent adjustment, it will be recalled, was the unilateral 10% reduction introduced by the Legal Aid Commission in March 1992. Since that time, s32 of the Legal Aid Commission Act has been amended to enable the Commission to determine fees to be paid to providers of legal services, including barristers. Henceforth, the Commission will not be bound to pay 80% of scale in family and other civil matters. In criminal matters, and in those matters where no scale applies, the Commission has determined its own scale for some time.

Recent negotiations with the Commission have centered upon what will be the Commission's first determination under s32. It is fair to say, at this stage, that neither the Commission nor the Bar Council is entirely confident as to how the new system will work. However, the Bar Council set up, some time ago, a Legal Aid Commission Fees Determination Committee which is carrying out substantial preparation with a view to making a major submission to the Commission on the question of fees in early 1993. In the meantime, the Commission is looking at some kind of "interim" determination to cover the period until proper consideration can be given to the question of barristers' fees which will apply in the long term.

Meetings with representatives of the Commission on this subject have been held in recent weeks, but the Commission found it necessary to re-do some of its computer calculations concerning the impact upon approvals which any fee adjustment would have. The hope is that an interim determination of some kind is made in December to operate from 1st January, 1993, but whether this involves an increase for all or any of the legal aid Bar is not yet known.

Both the Commission and the profession have, of course, been affected by the very large reductions in Legal Aid funding announced by the new Government. Further, the impact of the decision of the High Court in the Dietrich case will need to be addressed, both by the Commission and by the Government itself.

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Bar Library

Investigations and questionnaires by the Legal Resources Committee have elicited overwhelming evidence of the desire of members of the Bar to establish a vastly improved library for the use of members of the Bar. The library presently provided is not regarded as being adequate and many of the larger firms of solicitors in Melbourne are way ahead of the Bar so far as the provision of library facilities is concerned. The New South Wales Bar provides an excellent service and could well serve as a model for what should be done in Melbourne.

The Bar Council is currently considering the matter and members of the Bar will be kept informed. Two matters which need to be decided are the location of any new library and the costs involved in procuring material and providing adequate staff.

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New ABA Code of Conduct

At the meeting of the Executive of the Australian Bar Association held on 21st November, 1992 it was unanimously resolved to adopt, from a date in 1993, standard rules and guidelines for the constituent Bars.

These rules are to come into operation early in 1993. The delay in implementing them is due solely to the logistic problems of printing and distribution of the new rules to all barristers.

Copies of the new rules will be provided to all members prior to the date upon which they come into operation.

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Handing Briefs over to another Barrister

Complaints have been made from time to time about barristers who, finding themselves jammed, transfer a brief held by them to a colleague without consulting or obtaining the consent of the instructing solicitor. The Bar Council was recently informed of such a matter.

Gowans, at page 68 under the heading "Transferring Briefs", sets out a ruling made by the Committee of Counsel as far back as the 19th October, 1923:

"It is improper for one counsel to suggest to the instructing solicitor the name of another counsel to appear in his place. As a general rule, counsel, if unable to attend, should not request other counsel to appear with or instead of him but should return the brief or ask for another counsel to be briefed with him. Counsel should never hand his brief to another counsel to hold for or with him unless in an emergency when it is impossible to consult with the solicitor instructing him."

Violation of the ruling is a disciplinary offence and should be avoided.

Rule 4.11 in the new Australian Bar Association Code of Conduct, soon to be in operation, is unequivocal.

"A barrister shall not hand over a brief to another barrister to conduct the case unless

the instructing solicitor has consented to that course."

If an emergency arose (such as that referred to in Gowans) it would be possible for a barrister to ask the Bar Council or the Ethics Committee to grant a dispensation from the operation of Rule 4.11.

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Opening of the Legal Year

The 1993 legal year will open on Tuesday, 2nd February, 1993 with the customary Church Services as follows:

St. Mary's Star of the Sea 33 Howard Street West Melbourne (Red Mass)	9.00 am
St. Paul's Cathedral	9.30 am
Temple Beth Israel	9.30 am

Note: There will be no Greek Orthodox service this year owing to a conflict in the Orthodox religious calendar.

The Chief Justice has expressed his regrets that owing to construction work being carried out in the Supreme Court Library it will not be possible to hold the customary Judges' Reception after the ceremonies.

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Personalia

Hartog Berkeley Q.C., for the last decade the Solicitor-General, has retired from that position and is now on Division A, Part I (Victorian Practising Counsel - Queen's Counsel) effective from 9th November, 1992.

Raymond Finkelstein Q.C. who had been acting as Solicitor-General during Berkeley Q.C.'s sabbatical leave, has also now been returned to Division A, Part I (Victorian Practising Counsel - Queen's Counsel) effective from 1st November, 1992.

On Tuesday, 24th November, 1992 the Executive Council appointed as Queen's Counsel the following members of the Bar -

F.G. Davey	Michael A. Adams
John V. Kaufman	A.J. Howard
R.G. Williams	Betty J. King
B.W. Collis	S.K. Wilson
N.J. Ackman	J.T. Rush
Lillian Lieder	G.A.A. Nettle

The appointments were formally announced before the Supreme Court and Federal Court on Monday, 30th November, 1992 at 10.00 am and 10.30 am respectively.

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Reports Received

Administrative Review Council - Sixteenth Annual Report 1991-92.

Australia in Asia: Legal Education Challenges & Opportunity - Report by International Legal Services Advisory Committee - November 1992.

Law Reform Commission of Victoria - Annual Report 1991-1992.

Office of the Director of Public Prosecutions - Annual Report 1991-1992.

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