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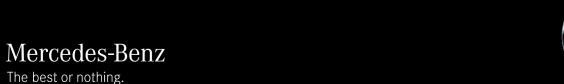
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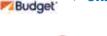






























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# VICTORIAN BAR NEWS

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# Editorial

VBN COMMITTEE: (Front row) Justin Wheelahan, Natalie Hickey and Sarah Harrison-Gordon. (Back row) Jesse Rudd and Campbell Thomson. (Absent: Annette Charak, Georgina Schoff QC, Georgina Costello, Brad Barr, Justin Hooper, Georgina Coleman, Catherine Pierce, Maree Norton, Amanda Utt and Denise Bennett)

## What does it mean to be a barrister?

#### NATALIE HICKEY, JUSTIN WHEELAHAN, ANNETTE CHARAK, EDITORS

f there is one word to describe what it means to be a barrister, it would be "multifaceted". During his opening remarks at the Victorian Bar Dinner held recently, Dr Matt Collins focused on the word "independent". Autonomy is, of course, a key characteristic of being a barrister. We are not beholden to an employer. We can say what we think, and we are, in fact, paid to do just this.

Our independence is also central to our ethics and professional obligations. We speak up about issues where appropriate, whether individually or as a collective profession.

That said, if we are inappropriately unconstrained, what may be a positive for us may not be so positive for others.

We often disagree with each other. Barristers tend to be competitive and love a debate. In fact, many us of have grown up thriving on disagreement around the dinner table. It is energizing and, dare we say, fun, to engage in a battle of ideas.

We love words and the nuances of the English language. Words are the building blocks of our advocacy and our conversation. Dissecting words, parsing collocations, and mining the rich seam of ambiguity in the English language is part of what we do for work. For some of us, etymology is also a hobby.

We are known for our conviviality. Although we can be loners too. We love travel, food and holidays. For some of us, we become immersed in these interests to the extent we have a second career.

We explore these different dimensions of being a barrister in this Issue of *Bar News*.

President Maxwell's insights into the rule of law and the Court of Appeal in an age of transparency provides a refresher in elementary jurisprudence. The

President's article will put us into a much more confident position next time we are challenged on the meaning of 'the rule of law' at a dinner party.

His Honour also shares with readers his views on the scrutiny often given to the Court of Appeal in the media, and what he would like to see from Government to assist the Court of Appeal to communicate decisions more effectively.

Kathleen Foley provides an insider's perspective on the Marriage Equality Postal Survey, including her observations of barrister colleagues who experienced the ups and (for some barristers) very significant downs during the campaign that led to a Yes! Vote by a majority of Australians.

Victoria's new DPP, Kerri Judd, shares her views on her new role. Her observations on how she manages stress will resonate with many readers.

There is much in this Issue of *Bar News* about words. Julian Burnside would like certain Shakespearean words like *begruntled* to be restored to our vocabulary. Peter Gray teaches us that what is heard is often not what was said. As Bryan Keon-Cohn approaches the seventh stage of life he has become obsessed by the ridiculousness of pre-nominals, post-nominals and acronyms. Peter Heerey has something to say about clichés, and would prefer it if some Shakespeareanisms were honoured less.

The Verbatim column has also returned, by popular demand.

Bar News also supports the idea that it's never too soon to plan for your next holiday. Accordingly, destinations such as Lord Howe Island and Mexico may, or may not, move up the pecking order once you have read our reports. Bar News' Campbell Thomson also 'took one for the team' and explored Noosa's restaurants, with somewhat mixed results.

A 'must read' article is barrister Peter Booth's determination to understand charcuterie to such an extent he has written more than 70,000 words about it in his much-vaunted book, *A Charcuterie Diary*. Try his recipe for Petit Salé during the court vacation (unless you are a vegetarian). It is certain to impress friends.

We also announce that Annette Charak has joined the Editorial Team. The workload of Bar News has increased through, amongst other things, a rapid succession of recent judicial appointments, and accompanying farewells. Annette has been a Deputy Editor of Bar News for some years. She is seizing control of the Back of the Lift section, to the relief of her fellow editors.

In the spirit of thriving dinner party conversation, we welcome your feedback, debate, ideas, letters and articles. Please write to us!

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## Letters TE Editors

## Letter from Kate Auty

Dear Editors,

Thanks to John Kelly for sharing his insights on criminal law practice in Western Australia and the satisfaction found in work well done (VBN Issue 162).

John's observations about the need for pro bono work in the west are particularly timely. We know that the pro bono contribution from the Victorian Bar significantly improved justice outcomes for Aboriginal people in the NT — in spite of the well known, continuing challenges.

From my time as a magistrate in the goldfields and western desert (2008-2009) I endorse John's observations.

Can I, however, urge anyone thinking about volunteering their time in WA to consider the seemingly less significant cases than the big trials.

Routine driving matters can still see people disqualified for life, and applications to lift disqualifications are rarely made but available.

Mandatory terms of imprisonment for burglaries can be avoided by appropriate legal representations and advocacy.

Criminal injuries compensation advocacy is constantly required.

Aboriginal justice officers in the regions can always do with another body/brain to assist with very heavy workloads.

It is important that both women and men emerge to assist in this work. There remains a very clear culturally grounded need for women to be actively involved in representing women.

Finally, as we know, barristers with good skills don't just improve the outcomes at the high end of the scale, they increase everybody's understanding of what 'Justice' should actually look like. This will probably always form the basis of pro bono work.

If anyone wants to discuss WA criminal law practice in remote places I would be happy to contribute some observations and I can be contacted at kateauty@hotmail.com.

Professor Kate Auty Professorial Fellow, University of Melbourne, Commissioner for Sustainability and the Environment (ACT) **HIS HONOUR:** Ms Wilson, would you mind stepping out of the court, please, and we'll tell you when you're in a position to come back in.

Rebel Melanie Elizabeth Wilson v Bauer Media Pty Ltd

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**MS WILSON:** Am I allowed to say anything at this point?

**HIS HONOUR:** No. If you have got a dog, you can't do your own barking. Sorry, Dr Collins.

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

**Supreme Court of Victoria** 

& Anor, before Justice Dixon

DPP v Volpe, before Justice Macaulay

**MR DESMOND:** All right, so you weren't suffering from the effects of your drug addiction at the time of the interview and in the lead up to the interview? ---- No.

**MR DESMOND:** You were sober as the judge, to coin a phrase? --- Well ----

**HIS HONOUR:** I don't think I'm an exhibit in this case, Mr Desmond.

## **Financial Services Royal Commission**

Before Commissioner Hayne

**THE WITNESS:** At the risk of upsetting the flow, might I request a short comfort stop.

**THE COMMISSIONER:** I'm sorry? Yes. Better you pipe up than you don't, Mr Godkin. --- Thank you.

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

Yunghans v Colquhun-Denvers, before Justice T Forrest The Plaintiff is being cross-examined by counsel for the defendant.

**COUNSEL:** Then you said this: "In my view, his many actions confirm he is nothing more than a evacuative organ for the disposal of faeces"?---Yes.

What did you mean by that?---I thought it was a slightly nicer expression than "arsehole."

You actually thought it was slightly nicer, did you?---Well, more refined.

You don't think it's vulgar, Mr Yunghanns?---Not in the circumstances, no.

It's scatological. You would agree with that, wouldn't you?---I beg your pardon.

Having to do with faeces?---I don't know the word.

Unfortunately, in the last edition of *Bar News* there was an editorial error in the heading of the review by Will Houghton QC of Peter Heerey QC's autobiography, *Can You See the Mountain? A legal journey with a few diversions*. The publisher is, in fact, Hybrid Publishers. To purchase the book, please go to its website at hybridpublishers.com.au.

CORRECTION

Can you see the publisher?

Have your Say Victorian Bar News encourages letters to the Editors on topics ranging from the meaningful to the mundane. Write to the Editors at Victorian Bar News, Owen Dixon Chambers, 222 William Street, Melbourne, VIC 3000 or email vbneditors@vicbar.com.au



# Driving change in the way the Victorian Bar is perceived, and the way we perceive ourselves

Interview with Dr Matt Collins QC, 2018 President, Victorian Bar

NATALIE HICKEY AND JUSTIN WHEELAHAN

he first half of 2018 has felt, at times, like a dizzying whirl of survey reporting about attributes of the Victorian Bar, with associated media attention. Issues of diversity have received particular focus. For Matt Collins, the Victorian Bar's 2018 President, this is plainly not a time to sit on the sidelines, because there is much work to do. Here. Matt discusses his experience as 2018 President to date, his key priorities for members of the Bar, as well as further initiatives being planned for the latter part of the year.

## Showcasing the Bar and its members in 2018

Asked whether being Bar President has met his expectations, Matt says that he never aspired to the presidency, but found himself in the chair without a lengthy apprenticeship due to a number of judicial appointments. He had

received good advice about the importance of focusing on signature initiatives, which has been important to him when developing his priorities.

In answer to what those priorities are, Matt says, "If I could summarise it into a sentence, they are to showcase the excellence of the Bar and its members in as many different forums as possible." He adds:

This approach informs things like the diversity and inclusion focus, showcasing the full array of talent in briefing decisions and the kind of workplace we maintain. It informs the kind of work we are doing in maintaining and growing our market share relative to solicitors. It informs our media strategy, and a complete review of our commitment to pro bono work. It informs our conference program. It informs the work we are doing with law schools, high school students. and mentorina.

Driving change in the way barristers are perceived and the way we perceive ourselves, is central to Matt Collins' purpose as Bar President. He

is passionate about this: "Contrary to perception, we are a modern, accessible, forward-looking college and often we don't give ourselves enough credit. We need to showcase what we do."

He continues to learn about attributes of the Bar which affirm this purpose. As he explains, at the most recent readers' signing ceremony, he was informed that in the past 19 years, since he joined the Bar in May 1999, the number of practising members of the Bar has doubled. The attrition rate is very low, with only about 2.5 per cent of Victorian

Legal Aid is at historic lows which impacts the junior Criminal Bar, he notes. Matt considers that our branch of the profession is ripe for disruption. He thinks that the answer to that is to focus on the quality of the work we do, and our core skill-set as trained advocates.

Asked to look back on the year so far, before looking forward, Matt explains that the first half of the year was to showcase our values. "We are positive and modern", he says. "This is who we are and what we stand for." He acknowledges that some element of this is aspirational. On equitable

## **66** We have such talented women in Victoria. I just don't think we could have had that mix anywhere else in Australia **99**

barristers departing per year. The average age is increasing, while in junior ranks the composition has never been more diverse.

On the demographic consequences of this, Matt Collins reflects, "I think we still perceive ourselves as a small, manageable institution where we know each other—and we want to keep that—but in reality we are big and complex." This means, he thinks, that we must overhaul our governance structures to manage this complexity. That said, the existing structures already do a great deal of work. Matt commented in particular on the work done in the Bar Office, by Bar Council, and by committees such as the Ethics Committee.

Asked whether he thinks the Victorian Bar is too large, Matt Collins responds, "I think it is likely to peak in numbers fairly soon." Gazing into the future, he speculates that our Bar may be smaller 20 years from now. "There are opportunities and challenges that arise from this", he says, adding that the 'State of the Bar' report last year showed that the amount of work barristers do for corporations and for top law firms has more or less halved in the past decade.

briefing, he says that we are not there yet but that the data shows we have momentum. "We need to build that momentum rather than sap its energy," he says.

## Showcasing the Bar's diversity, and why

He is proud of the work done to encourage barristers to sign up to the Law Council's equitable briefing policy. At the start of this year, fewer than 10 Victorian barristers had committed to this. By explaining the purpose and benefits to the profession of signing up, combined with a little subtle pressure, more Victorian barristers have committed to the policy than the rest of the country combined.

As to Victoria's strong diversity figures in barrister ranks, Matt Collins points to the incredible advantage we have in Victoria with the BCL tenancy system (no requirement for key money, or to 'buy in' to chambers), which means the barriers to entry are lower. He also identifies the parental leave policy (in which the Bar subsidises BCL for the rent-free period available to barristers eligible under the policy)

as one of the most important drivers to diversity.

The statistical effect of this is that women now make up 45 per cent of barristers who have been practising for under 15 years call. That's about double the amount in Sydney. He also refers to the observable effect of the Financial Services Royal Commission. That is, in February 2018, on the first day of the Royal Commission, 29 barristers announced their appearance. Of those barristers, 13 were women. There were seven female silks. The overwhelming majority of those barristers were Victorian. He says, "We have such talented women in Victoria. I just don't think we could have had that mix anywhere else in Australia."

Nevertheless, we still face difficulties with under-represented groups at senior levels, especially women, he says: "We need to encourage top women to apply for silk... and then to stay a bit longer before getting an appointment."

Matt is conscious that diversity extends beyond questions of gender. He is of the view that we have quite properly focused on gender equality but is concerned that this not be done at the expense of other diversity measures, including race, religious belief and disability. He also refers to the importance of ensuring a non-discriminatory environment for the LGBTI community, and the need to encourage LGBTI participation in barrister ranks.

When asked whether he would like to comment on LGBTI participation in further detail, Matt responds:

As a gay man, I don't want to be pigeon holed as the 'Gay President' of the Bar but I am conscious that LGBTI diversity hasn't sufficiently been focused on.
Regrettably we still have pockets of the profession who perceive that if you've got a serious Supreme Court case, you need a stereotypical grey-haired male barrister. Anyone who deviates from that perception risks missing out on work.

## A core goal - driving work for members

For Matt Collins, issues of diversity and inclusion are more than matters of principle. They are practically important. A diverse and inclusive workplace drives work for those members of the Bar not getting their fair share. He refers to barristers as "an association of sole traders". A huge part of what we do, he says, referring to the work of Bar Council, has to involve driving more work for our members.

He mentions that when the Financial Services Royal Commission was announced, both he and the Victorian Bar's CEO. Sarah Fregon. flew to Canberra and lobbied for the Royal Commission to be based in Melbourne. Whilst he doesn't claim credit for its being here, he notes it has resulted in a massive boost in Melbourne's legal economy. In answer to a question as to whether he is competitive with Sydney about this, Matt says, "Well, I would frankly prefer the work to remain in William Street in Melbourne rather than be in Phillip Street in Sydney."

Driving work for members extends beyond the commercial sector:

We are constantly in discussions with the DPP about using the Bar more for prosecution work, and with the VLA about the economics of using the private Bar.

## A proposed pro bono online portal

Another major piece of work currently being conducted concerns the manner in which the Bar commits to pro bono work. Matt explains that the Victorian Bar is currently negotiating protocols with every court, and with VCAT, and secured funding for the Bar's proposed online portal which is designed to make it easier and more rewarding for barristers to do pro bono work.

As to why pro bono work matters, Matt is clear:



It matters because our members have a profound commitment to access to justice. Most barristers will gladly put their hand up for appropriate pro bono work. Secondly, it can be a fantastic means of countering future challenges. Getting members on their feet in challenging cases at an earlier stage is important, as we know. It's altruistic, of course, but also about generating meaningful opportunities for advocacy which can lead to paid work. We also want pro bono work to be meaningful and rewarding, and that is why we are negotiating with courts about the matters they refer to the Bar for pro bono assistance.

As to what this proposed portal means in practical terms, Matt caveats his response on the basis that "this is being developed by people smarter than me", but otherwise explains that the objective is for every court to have a rule of court or practice note governing the referral of requests for pro bono assistance to the Bar. He wants to see a process where, when referrals are made, there is standardised information

including why it qualifies as pro bono work, and the level of experience and time commitment required by the relevant barrister.

The objective is to have a scheme that makes a difference to access to justice in a worthy case, with Matt acknowledging some previous challenges with these schemes:

Frankly, in the past that hasn't always been people's experience. We must do better. It is a huge job to get it right. We can measure results in a valuable way. In turn, this will be a huge marketing benefit for the Bar as a whole, and its individual members. It will help us showcase what we do in a more informed way.

He also notes that it's a big job, but says, "I'm passionate about getting it right. This is a huge opportunity particularly for junior members who might find it hard to get on their feet."

## Speaking up by and on behalf of members of the Bar

As the author of *Collins on Defamation* and *The Law of* 

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Defamation and the Internet law, and with defamation law forming an integral part of his practice, Matt Collins is no stranger to the media or the benefits of speaking up, within appropriate limits. He is comfortable in the space, and it shows in his attitude to the Bar's engagement at a public policy and promotional level.

Matt considers that the Bar's policy engagement has significantly increased. The aim, he says, is "to be an authoritative voice on law reform".

He also says, "On behalf of our members we make submissions for law reform. We now have a fulltime lawyer in the Bar Office who performs work under the supervision of the Bar Council, relevant Bar Associations and the Bar Office." He considers it important for the Victorian Bar to be integrated with peak bodies such as the Law Council of Australia, and the Australian Barristers' Association. He also thinks it essential that the Victorian Bar has good relationships with the federal and state Attorneys-General and their shadow equivalents.

When asked about the basis upon which the Bar decides to speak up, Matt notes that there is a media statements policy available on the VicBar website, which guides decision making. That said, he acknowledges that judgement calls are inevitable. He says:

> On social and political issues, there will always be a diversity of views. But other issues will result in a consensus or near consensus. An obvious example of likely consensus concerns attacks on the judiciary. It is appropriate for us to speak up as we are very visible users of the court system and we can speak with authority on the pressure judges are under and the chasm between what we know happens in court and how it plays out in the media.

Other areas which he regards as 'no brainers' include discretionary sentencing. He says, "We always speak out against mandatory sentencing, which is an erosion of

judicial power." Another example is statutory reforms taking away common law rights. Access to justice and properly funded legal aid are other areas where the Bar will speak up. The erosion of civil liberties is another example. Matt says, "We don't mean to suggest that there will be a unanimity of views among members, but we will speak up when we can expect a broad consensus."

Marriage equality is an area where more complicated questions arose as to whether the Bar could or should speak up on behalf of members. Matt reflects on this:

> This was an issue that arose long before my time. Jim Peters was the President. The position taken was based on the position that equality before the law, and non-discriminatory treatment, are values giving rise to sufficient consensus that the Victorian Bar should adopt a position.

Matt also considers that in a contemporary society, it is not just academic experts who should be made available to appear in the media to showcase their legal expertise. He refers to a pilot program called #VicBarExperts and says:

> This is about promoting our members as experts in their field able to explain complex areas of the law, legal policy debates or complicated court decisions (in which they are not involved), in their own name.

He thinks this is a good thing because it is good for the profile of the individual. It allows the media to say 'Melbourne barrister [the barrister's name]', which promotes an association between the Victorian Bar and legal excellence. However, he wants to see how it works before he is prepared to discuss the prospect of the pilot program's expansion.

#### Mental health initiatives

Confronting the disturbing aspects of mental health outcomes to the profession as a whole is also a priority. Matt Collins says that the Bar

is doing quite a lot of work around that. The Bar will co-sponsor an Australian first, a profession-wide summit on mental health in the second half of the year. A task force has just been formed, designed to understand the stressors, to improve information sharing between different branches of the professions, and to establish a mental health structure for the whole profession.

The State of the Bar survey, which gave data on discrimination, sexual harassment and bullying, forms part of this bigger picture. Matt says that it is clear to Bar Council that there is a need to do more work around this. At the time of publication of this issue of Bar News the biggest survey on wellbeing at the Bar, conducted in conjunction with the University of Portsmouth in the United Kingdom (world renowned experts in conducting surveys of this nature), will be well underway. Matt says, "This will help us understand better the prevalence of discrimination, sexual harassment and bullying, and other conduct affecting wellbeing, and the contexts in which they occur."

In establishing processes for dealing with complaints of discrimination, sexual harassment and bullying, Matt acknowledges that, for the Bar, this is early days. He says, "It is a difficult area to grapple with, given the adversarial nature of the profession, subjectivity about where to draw the line and the importance of natural justice."

#### Conclusion

Asked how he feels about his work as Bar President so far, Matt responds:

> Overwhelmingly, I feel it's a privilege to be in the role. At the risk of making my life busier, it's a really lovely feature of our Bar that any member of the Bar can pick up the phone to speak with me, whether the matter is large or small. I am conscious always of what a broad church the Bar is. Being modern. accessible and relevant is not the enemy of honouring our traditions and where they come from.









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## Opening of the Legal Year

VBN

he opening of the legal year is a centuries-old tradition. The first recorded instance was at Notre Dame Cathedral in Paris in 1245.

The tradition continues in England. Judges arrive in a procession from the Temple Bar to Westminster Abbey for a religious service, followed by a reception known as the Lord Chancellor's breakfast, held in Westminster Hall. This ceremony stems from the Middle Ages and, except during World War II between 1940 to 1946, has been held continuously until the present day.

In Hong Kong, the Ceremonial Opening of the Legal Year is marked by an address from the Chief Justice of Hong Kong.

The United States is more prosaic. The majority of U.S. state and federal courts have abandoned the concept of the legal year. Rather, rules of court simply require that the courts are open during business hours except for weekends or any day that is a legal holiday.

As is the case every year, in January 2018 members of the profession in Melbourne (and Geelong) conducted this annual ritual. In Melbourne, this included on 29 January 2018 an Ecumenical Service at St. Paul's Cathedral, a Red Mass at St. Patrick's Roman Catholic Cathedral (so-called because of the red vestments traditionally worn for this annual celebration), an Eastern Orthodox Service at St Eustathios Greek Orthodox Church, and a Synagogue Service at the East Melbourne Synagogue.





















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## What is the collective noun for a group of past Victorian Bar Presidents?

he grammatically correct term is apparently a "succession". Humorists prefer an "incompetence". Jennifer Batrouney calls them a "gaggle". Whatever the case, former Presidents of the Victorian Bar came together to farewell Jennifer Batrouney QC as 2017 President, and to usher in 2018 President, Dr Matt Collins QC.

In her parting speech, Jennifer likened her ascension to the Presidency to Steven Bradbury's remarkable performance in the short track speed skating at the 2002 Winter Olympics. After trailing the field throughout the race, seconds before the finish line Jennifer, like Bradbury, watched those in front of her fall and proved the accidental winner.

The first such casualty was Paul Anastassiou QC, who literally fell from his post in the final days of his Presidency. The person typically next in line for the role, Senior Vice President David O'Callaghan QC, was then given the nod by the Federal Attorney-General. This led to Jennifer rather unexpectedly assuming the driver's seat.

Jennifer was grateful to receive Paul Anastassiou's extensive handover briefing: "Don't stuff it up". After evaluating her performance against this rigorous KPI, Jennifer thanked her fellow councillors, Bar office staff and members of the Bar for their support throughout her term as President. She reserved special thanks for her family, and in particular her husband, for putting up with an unusually grumpy, distracted wife during the year. She presented him with a Rolex Golf Ball (and a watch that came with it) as fair compensation for the pain and suffering caused.













## Junior Bar Conference 2018

**CATHERINE DERMODY** 

n a brisk morning that signalled the first day of winter, the Junior Bar Conference kicked off with a breakfast attended by members of the Bar Council and a very welcome tea and coffee.

The formal programme commenced with a presentation on future directions of the Bar from Dr Matthew Collins QC, President of the Victorian Bar. Matt spoke in-depth about the work of the Bar Council in future-proofing the Bar as a viable and vibrant institution for all current members and future members. He gave an overview of the outcomes of the survey undertaken last year on the State of the Bar and what the results indicate about the changing demography of the Bar, trends in relation to income, and changing work practices. Many of the indicators gave reason for optimism. However, as Matt said, it was also clear that more work is required. In connection with these outcomes, Matt highlighted the importance of a number of initiatives, including: the Equitable Briefing Policy and the introduction of policies around bullying, discrimination and sexual harassment.

The session on equality and diversity at the Bar expanded upon a number of the matters touched on by Matt in the introductory session. The Victorian Bar's CEO, Sarah Fregon, chaired the session at which Jacinta Forbes QC (Chair of the Equality & Diversity Committee), Elizabeth Bennett and Daniel Nguyen spoke. Jacinta addressed the new policies on bullying, discrimination and sexual harassment that will come into effect on 1 July 2018. She explained that the grievance process set out in these policies has been designed to address conduct at two levels: first, at an individual level via complaints (which are the subject of investigation and may be independently conciliated) and, secondly, at a broader cultural level. This will be achieved through reporting of unacceptable conduct that does not involve investigation, but which is used to better inform training and awareness needs and initiatives of the Bar.

In the context of this session, participants discussed whether the equality and diversity picture genuinely reflected the experiences of individuals from minority groups. This

robust discussion acknowledged that the Bar can be a challenging place and underscored the importance of Bar Council's continued work in this area. It served as a reminder of the individual responsibilities all members have to ensure that the Bar is a welcoming place for everyone.

Peter Hanks QC was next, delivering a session on the rules of statutory interpretation. This engaging session clearly demonstrated Peter's passion for, and deep knowledge of, this dark art. Peter's presentation drew on two recent cases to reinforce a number of the principles underpinning the process of construing legislation. These examples anchored the discussion of the rules in a practical context that tied the session together. The presentation served as a salutary reminder of the discipline required when seeking to identify the meaning of a statutory provision.

Following a networking lunch with junior silks the conference separated

## **66** It served as a reminder of the individual responsibilities all members have to ensure that the Bar is a welcoming place for everyone. **99**

into a number of master classes. The subjects on offer included: courtroom conduct and advocacy; dealing with expert witnesses; expert evidence; hearsay evidence; and how to become the junior barrister of choice. The smaller group format facilitated a richer discussion on the various topic areas. A drawback was deciding which master class to attend. I opted for the class on becoming the junior barrister of choice with Marika Hubble-Marriot (Russell Kennedy), John Cain (OPP) and Robert Hay QC. Each of the speakers gave their different perspectives on the attributes of a good junior and practical tips on getting exposure to new areas of work and clients - but I'm not giving any of those away!

The final session of the day offered the ever elusive and sought-after ethics CPD point. This came via a topical presentation by blogger (and barrister) Natalie Hickey on social media and ethics. The relevance and potential pitfalls for barristers of the intersection of ethics and social media was demonstrated through the use of case studies and was a very thought-provoking session.

The Junior Bar Conference was thoroughly worthwhile, with the formal sessions providing an excellent mix of substantive law and practice development for junior barristers. It was also a great forum in which to meet new people and re-establish connections through the networking sessions and the master class format.



## Bar v. LIV annual cricket match

## Monday 18 December 2017 DUGALD MCWILLIAMS

he mercury had already reached 30 degrees at 9am on Monday 18 December 2017, and was on its way upwards towards an expected maximum in the high 30s. The sky was clear, there was little wind: just the kind of conditions desirable for 11 toned, fit and experienced cricketers from the Bar, who were ready to take on the solicitors. Sadly, most members of the former team satisfied only the latter quality, with a very small percentage still playing competitive cricket. Nonetheless, everyone headed off to the lan Johnson Oval in St Kilda, a lovely turf wicket in the heart of inner suburban Melbourne. The protagonists had assiduously dusted off their spikes (which had no doubt lacked attention for many years) in preparation for what was to be a fine display of batting, bowling and fielding prowess by members of the Bar.

Much effort had gone into organising the venue to ensure a turf wicket and the best quality play. Sadly, the communication within the City of Port Phillip's Parks and Gardens Department was somewhat lacking: someone had allowed the sprinklers to

remain on all night and well into the morning without the pitch being covered. The result, of course, was a tacky and highly volatile pitch that would make not only an express paceman salivate, but also any medium pacer trundling in to bowl a bit of "seam-up". The state of the pitch left a lot to be desired and made the 1975 Headingley pitch look like a WACA flat-track after two months of searing heat and no rain.

Hurried attempts were made to find an alternative venue. After many phone calls and negotiations with various municipalities, Shaun Clement (Captain of the Bar team) came to the rescue and managed to secure Batesford Reserve in Chadstone as an appropriate site. This threw many of the participants into disarray — Batesford Reserve did not have a turf wicket, meaning that the players had to shun their recently dusted off, cleaned and re-sprigged spikes in favour of the much less classy "rubbers".

After a slightly delayed start, the players congregated at Batesford Reserve. Those assembled from the Bar were

## **66** His impassioned plea to the umpire, following an LBW decision halfway through his spell, of "Oh c'mon, throw me a bone here ump!" was something to behold. **99**

Peter Lithgow, Dugald McWilliams, David 35 overs. Neal SC, Toby Mullen, Justin Willee, John Valiotis and Shaun Clement (C). On reflection (given the result), perhaps the Bar should have insisted on the members of the solicitors' team producing current practising certificates before taking the field. Whilst the opposing team did appear to have some familiar faces from the ranks of the solicitors of Victoria, it seemed the only qualification the vast majority had for playing was membership of the Burwood Cricket Club 2nd XI. But let's not get distracted by technicalities. Shaun Clement won the toss and elected to bat. The Bar got off to an excellent start with the opening combination of Irving and Felman. In the mould of Greenidge and Haynes, the opening partnership of 52 was just the start the barristers needed, Felman taking to the solicitors' bowling with the long handle and amassing 28 for his innings. Irving was the first to depart, signalling an early collapse of the top order. Felman followed without addition to the total. That brought Andrew Fraatz to the crease; a champion schoolboy cricketer from that august Jesuit institution on Barkers Road. He was clearly a wise choice for first drop. Unfortunately, Fraatzy appears to have focused too much recently on prosecuting bushfire class actions with Tim Tobin SC rather than his batting, because he departed for a duck. Peter Lithgow then exited cheaply, bringing Dugald McWilliams to the crease. McWilliams and Cam Truong (clearly the best cricketer to ever come out of Saigon) steadied the ship with a handy middle order partnership. With his sublime and graceful stroke-play, Truong grafted a delightful 36 runs. By contrast, McWilliams snicked, bludgeoned and lucked his way to 38.

newly-minted silk Mark Irving QC, Marc

Felman, Andrew Fraatz, Cam Truong,

The late middle order struggled but then that Hellenic demi-god, John Valiotis, took to the crease and smashed a quick 22 not out and, together with Shaun Clement (14 not out). The Bar amassed a competitive total of 194 off its 35 overs.

The planets did not align for the barristers on the day. However, just as they took to the field, the temperature gauge hit 38° and a fierce northerly wind began to blow. Furthermore, the Bar team was left with only 10 men on the field at the start of the solicitors' innings — Justin Willee accepted a late brief from John Dever for the following morning and had to take off to retrieve the brief, post-haste.

Toby Mullen took the new pill for two very good reasons: he could bowl the ball faster than 50 km/h and he was the youngest member of the Bar team by a mile. McWilliams opened at the other end but the solicitors' opening batsmen (both of whom were stalwarts of the Burwood Cricket Club 2nd XI!) smashed an opening partnership of 72 runs.

Irving dazzled with his rhythmic sling-action which brought to mind images of Jeff Thompson in full flight in the 1970s. His impassioned plea to the umpire, following an LBW decision halfway through his spell, of "Oh c'mon, throw me a bone here ump!" was something to behold. Unfortunately the umpire turned down his exquisitely crafted appeal. He was also the first bowler on the Bar team to draw blood - sadly, his own - when he was fielding in slips and dived for a spectacular catch, taking the bark off both his elbows in the process.

John Valiotis was panther-like behind the stumps. He was poised and composed in the centre of the ground. He chose not to wear pads, an exhibition of both his grit and toughness and (as he described) because they inhibited his feline agility behind the wickets. He stumped Steve Harris in lightning fashion off the bowling of Truong. The Bar only managed to take three wickets all day. Toby Mullen took a fantastic catch at extra cover off the bowling of McWilliams to dismiss J. Edgar, one of the solicitors' star

performers. Truong finished with a respectable 1 for 15 off 3, Felman 1 for 47 off 7 and McWilliams 1 for 21 off 7. The Bar was desperate in the field. The skipper, Clement, kept the spirit and tempo in the field upbeat. Neal patrolled the covers like a minesweeper with nothing within his grasp getting through. Lithgow had plenty to do in the outfield and stopped many boundaries, keeping the Bar in the game. Their enthusiasm never waned and they were always ready to put their bodies on the line.

Mark Irving drawing his own blood was one fine example, as was McWilliams' effort to try and stop any ball in the outfield with shins, knees, ankles, torso — any part of his body other than his hands. (This was not due to any desperation on his part, he's just horribly uncoordinated.) Despite counsel's best efforts the solicitors got the runs with three overs to spare and all batsmen contributing — J. Kerr 50 not out, S. Kish 28, J. Wilkes-Green 50 not out, J. Edgar 16, S. Harris 15.

After much post-match deliberation, the captains and the umpires agreed that the Brendan Keilar Memorial Trophy would be awarded to Dugald McWilliams for his efforts with the bat and ball (and lemming-like efforts in the field). Brendan had been a keen participant for the solicitors in previous matches, but was tragically shot dead in the CBD in 2007 when he went to the aid of a woman who was being assaulted. He is remembered annually through this award.

Congratulations to all members of the Bar and the solicitors who participated. Special thanks must be extended to David Neal SC who was heavily involved with the Bar cricket team for many years, both as captain and organiser. His tireless efforts have ensured that this sporting event remains a fixture in the Bar and LIV calendars. Congratulations to Shaun Clement (one of the few members of the Bar who continues to play competitive cricket) who has taken up the mantle of captain. As with many of the Bar's sporting activities, it could always do with an injection of youth and younger members of the Bar are encouraged to join in for future events.

VBN 2:

## Opening of Levels 19 & 20 Aickin Chambers

**DANIEL BRIGGS** 

osting a floor opening celebration on 3 May 2018, the new chambers on levels 19 and 20 of Aickin Chambers opened their doors to the profession and the judiciary. The expansion of Aickin Chambers is a product of the hard work by Barristers' Chambers Limited, the Victorian Bar and the barristers involved. The result is modern and professional chambers, bringing the face of the Victorian Bar in line with the expectations of the community we serve. Barristers' chambers are an important part of life at the Bar. The environment, the facilities and most importantly the people, all contribute to our daily lives as barristers.

Michael Thompson QC spoke of the new joint-chambers, which span over two levels, and bring together barristers from the now defunct Joan Rosanove Chambers and Scottish House, and other BCL and non-BCL Chambers. Floor members benefit from the wealth of experience on the new floor. This experience ranges from commercial, criminal, environment, planning, industrial, international, public, administrative, tax and common law; equity and trusts; and apellate work. The chambers offer a diverse learning environment for young barristers and a comprehensive knowledge base upon which to draw.

An extensive library spans across the two floors. Many of the volumes bear the names of their once-owners, including the neatly handwritten name of Joan Rosanove QC (the first woman to sign the Bar Roll in Victoria, the first woman to be appointed as one of Her Majesty's Counsel for Victoria and, of course, the namesake of Joan Rosanove Chambers) as the first owner of the early Australian Law Journal reports. In memory of her contribution to the Bar, the members have decided to dedicate the library in her honour. Other inscriptions include Sir David P Derham (Vice-Chancellor of the University of Melbourne from 1968 to 1982), his son the Honourable Associate Justice Derham, the Honourable Mr JM Batt QC, and past Bar President Mr Paul Anastassiou OC.

The members of Levels 19 and 20 of Aickin Chambers are: Neil Clelland QC, Michael Thompson QC, Anthony Young QC, Peter Willis SC, Gerard Dalton QC, Mandy Fox QC, Ian Fehring, Garry Livermore, Mark McNamara, Richard Wilson, Don Farrands, Nick Harrington, David Bailey, Dean Guidolin, Anthony Lewis, Tim Purdy, Maree Norton, Carmen Currie, Nina Moncrief, Ben Jellis, Kevin Jones, Sergio Freire, David Oldfield, Damien McAloon, Brian Mason, Jennifer Findlay, Daniel Briggs, Georgie Coleman, Claire Nicholson and Naomi Lenga.









1. Brian Mason and Jim Peters QC 2. Mandy Fox QC (now her Honour), Neil Clelland QC, Tom Clelland, Dave Hallowes SC 3. Robert Richter QC and The Honourable Associate Justice Mukhtar. 4. Maree Norton, Georgie Coleman, Nina Moncrief, Claire Nicholson.













ABOVE: 'The unveiling': The Hon. Linda Dessau AC, Governor of Victoria, the subject, and Peter Jopling AM QC FAR LEFT: Ross Gillies QC, The Hon. Marilyn Warren AC, Wendy Harris QC, the Hon Linda Dessau AC, Governor of Victoria, and The Hon. Tony Howard QC

## Ross Gillies QC Portrait Unveiling

SIOBHAN RYAN, ART & COLLECTIONS COMMITTEE

n case you hadn't heard, the Bar's latest portrait of a favourite son was unveiled on 14 March 2018. But how could you not? This event was the hot ticket of the Hilary term. Over 180 colleagues, friends and family of Ross Gillies QC, the man regarded by many as "the barrister's barrister", gathered in the Peter O'Callaghan QC Gallery to see his portrait by Julia Ciccarone revealed. A large contingent from Dever's List was there to inspect the fruits of their donations, the commission having been largely funded by List D and members of the Common Law Bar. Barristers from other lists also attended, as well as tranches of judges (past and present) from all courts. Her Excellency the Governor of Victoria, Linda Dessau, arrived to do the honours. There were also 28 members of the Gillies family, plus another carload "still circling the building looking for a park", Ross

Peter Jopling AM QC, the chairman of the Art and Collections Committee spoke with raw admiration:

It is our privilege tonight to honour a fearless advocate not only in court but outside the courtroom. A man whose insightful use of language and quick witted style has outfoxed many an opponent with its devastating acuity. His is a style that his supporters say is unparalleled at this Bar and which they say explains his success. But Gillies is also the man to go to for barristers in trouble and his pro bono advice is keenly sought after.

The choice of the Governor of Victoria to unveil the portrait was no accident. Linda Dessau and her husband, the Hon. Tony Howard QC spent a combined 40-plus years at the Victorian Bar. She witnessed firsthand the changing nature of the Bar

and Ross's contribution to maintaining its collegiality. Like so many in the room, as a young barrister, Linda Dessau was a recipient of Ross' pastoral care which she recalled in affectionate anecdotes.

Her Excellency also introduced us to the life and art of Julia Ciccarone - a graduate of the VCA and in recent years a finalist in the Archibald and Moran portrait prizes - noting the invented space that inhabits many of Ciccarone's works and the artist's take on the intersection between memory and reality. She urged the viewer to understand Ciccarone's portrait of Gillies QC against this background, to note the civility of his outstretched hand and to see, in that, how the artist has captured the essence of her subject as a "Renaissance man".

All that was left was for Gillies to reply, which he did with his usual mischief by taking the "Renaissance man" mantle and running with it. He made teasing observations about the Governor's "upward trajectory" to Yarralumla, which hinted at Machiavellian tendencies. He likened the Peter O'Callaghan QC Gallery to Vasari's Corridor in Florence, or at least its structure:

Vasari's Corridor is upon a bridge – Ponte Vecchio – and is, of course, a corridor. O'Callaghan's Gallery is also on a bridge, albeit traversing Guests Lane and not the Arno River. It is also a corridor.

Finally, he invoked the ghost of Filippo Brunelleschi, as he claimed the Supreme Court as Melbourne's own Duomo.

The jury was persuaded. As the throng exited onto Williams Street and Lonsdale Street in the cool autumn evening, they could not help but look anew at Guests Lane and the Supreme Court.





PLAZA BALLROOM, MAY 25 2018

n Friday, May 25, 2018, almost 500 guests congregated in the Plaza Ballroom, Collins Street, Melbourne, for the annual Victorian Bar Dinner. In his introductory remarks, Victorian Bar President, Dr Matt Collins QC, reflected on members of the Bar, Bench and Parliament (state and federal, either side of the aisle) coming together to celebrate their respective independence and mutual collegiality.

The early 20th Century Spanish Rococo architecture, plethora of candelabras, and resplendent attendees created quite an aura. In opening remarks, President of the Australian Bar Association, Noel Hutley SC, aptly described himself as 'at Hogwarts'.

Chief Justice Susan Kiefel AC of the High Court was one of the key note speakers, her Honour's remarks delivered with bone-dry humour. In the spirit of 'what happens at the Bar Dinner stays at the Bar Dinner', Bar News will only hint at one of her Honour's stories from when she was a practising Silk: namely, that the ability to deftly roll one's own cigarettes can prove key to winning a client's trust. The anecdote brought the house down.

Anne Hassan delivered the Junior Counsel keynote speech, skewering the role of Victorian Bar President to the delight of those assembled. Anne revealed 'tweets' from President Trump on the 'fake news' of the VicBar Presidency. Her 'revelation' that the current President's photographic pose bears hints of Derek Zoolander's 'Blue Steel', and use of the Trump/ Shakespeare heuristic, was also met with amusement. If you could not attend the dinner, we have included the photo in the attached spread so you can judge for yourself.





## Victorian Bar Foundation Student Achivement Award and Mentoring Program

**GEORGIE COLEMAN** 

he Victorian Bar Foundation has this year established the Victorian Bar Foundation Student Achievement Award and Mentoring Program as a tangible way to promote the message that the Bar is open to all on merit — irrespective of socio-economic circumstances, ethnic background, religious affiliation, sexual orientation, gender, gender identity or disability.

The Victorian Bar Foundation is the Bar's charitable trust, and a relatively recent initiative of the Bar. The Victorian Bar established the trust following the 2009 Black Saturday bushfires as a way to enable the Bar and Bench to contribute to the community and causes outside the Bar itself.

To date, the Foundation has largely focused on making grants to organisations and institutions, often to enable them to pass on the Foundation's benefaction to needing and deserving individuals in furtherance of the Foundation's purposes.

Such grants have been made to the Ninian Stephen Menzies Scholarship, the James Merralls Fellowship at Melbourne Law School, the Monash Refugee Scholarship, and the Bar's

Indigenous Barristers Development Fund, among others.

The Student Achievement Award and Mentoring Program is the first program to be administered by the Victorian Bar Foundation. For the pilot year, the Foundation has partnered with the City of Hume (which includes outer north-western suburbs of Melbourne such as Broadmeadows, Faulkner and Keilor). It is a diverse area of Melbourne. According to the most recent census data, the most common countries of birth of residents, after Australia, are Iraq, India, Turkey and Lebanon. Over half of the area's residents' parents were born overseas.<sup>1</sup>

Further, astute readers of the *Bar News* may recall that in 2016, members of the Bar and judiciary travelled to the Hume Global Learning Centre in Broadmeadows to meet with 200 students who heard from then Chief Justice Warren and Justice Gordon about the importance of the legal system and the sense of fulfilment that one can achieve through a career at the Bar.<sup>2</sup>

The City of Hume was seen as the perfect place to start the program, given it continues the message conveyed at the Hume Global Learning Centre in 2016 that the Bar is open to

# 6 Supporting and encouraging bright young minds from diverse backgrounds ??

all comers on merit. The program is an initiative of Justice Michelle Gordon, who is also the Patron of the program, Peter Jopling AM QC, Paul Anastassiou QC (who initiated the City of Hume event in 2016), and your author.

#### **The Mentoring Program**

In a testament to the community-minded outlook of the Bar, the program has received overwhelming support from the barristers approached to participate in the pilot program: over 50 junior barristers volunteered, with alacrity, to participate in this program by mentoring a student.

These mentor-barristers met with their students for the first time on a Friday evening at the Melbourne Recital Centre on 27 April. Prior to this night, the 15 schools in the Hume region had each identified four promising legal studies students who would benefit from the program. Each mentee-student completed a questionnaire, and was then paired with a junior barrister who best suited the areas of law that student was interested in traits the student had identified as important to them in a mentor, as well as the student's general interests (some were easier to match than others: students' outside interests ranged from reading and AFL to video games and 'intricate nail art'!).

Consistent with her notorious dynamism, program patron Justice Gordon studied the completed student questionnaires, as well as the names of each student and their mentors, before arriving early at the Recital Centre; her Honour then met and spoke with each of the 45 students in attendance before the concert commenced, again doing the rounds over interval.

Reflecting the night's focus on bright young minds, the concert at the Recital Centre that evening was performed by the Australian National Academy of Music, a training institute for young musicians. ANAM has a reputation for





pushing the boundaries of how music is presented and performed, and the energetic performance of well known Leonard Bernstein works that evening lived up to the ANAM "hype".

Justice Gordon also gave a speech on the night, identifying the program as an opportunity to create "life long links between the current and future leaders from many walks of life". She urged the students to grab the opportunity of the evening to speak to their mentors, the judiciary present and the ANAM musicians (who met with the students and mentors after the concert) and to "be inquisitive". Justice Gordon spoke of her love of music and about how her career would not have been possible without encouragement and support she received from a diverse range of people.

The Mayor of the City of Hume, Cr Geoff Porter, also thanked the Foundation on behalf of the Council for the award and the mentoring program, and said that the Foundation's award is "important in helping students who are passionate about legal studies to get insights into how the legal profession works and start developing a successful career path".

The event at the Recital Centre was possible thanks to significant financial contributions from the Bar, two anonymous Recital Centre donors and the City of Hume, to cover the costs of tickets and refreshments. The Mentoring Program between these 50 junior barristers and their mentee-students will continue throughout this year: keep an eye on the next edition of Bar News for an update.

## The Student Achievement Award

As part of the program, the highest achieving units 1 and 2 legal studies student at each of the 15 schools in the City of Hume region have each received a prize of \$1,500 (\$1,000 each from the Foundation, and \$500 from the City of Hume). The prize is a way to recognise the hard work and talent of each of the winners, motivate them to continue to excel in their studies (particularly during the challenging task of year 12), and to encourage them to consider a future career in the law. Each student is free to use the money as they wish: one has already spent it on a laptop for year 12 and university next year.

A prize presentation night was held in the George Hampel Library on 29 March 2018. In attendance were the winning students, their proud parents, siblings, teachers, and mentors, along with others from the City of Hume and past Foundation donors. The prizes were presented by Justice Digby, the Foundation's Chairman, and the Mayor of Hume, Cr Geoff Porter. Justice Digby congratulated each student for the "hard work and talent you have already shown in the area of law, as well as, no doubt, your studies in general" and expressed the hope that the prize encouraged each to stay motivated to continue to excel as each student looked to completing the challenging task of year 12 studies. His Honour encouraged each student to keep in mind the possibility of a legal career as they progressed through school and tertiary education, adding that "the Bar would be extremely lucky to have each of you join its ranks as barristers in 10 or 15 years from now". Councillor Porter echoed this sentiment, saying that the students will be "future leaders, thinkers and workers of our community. We are so proud of everything they have achieved".

## The Foundation's aim to extend the program

The Foundation's Chairman, Justice Digby, notes that the Foundation has been overwhelmed by the enthusiastic responses and generous offers (of time





and in other forms) from junior barristers, the judiciary, the Recital Centre and other institutions, which means an inspiring program can be offered to a number of bright legal studies students from diverse backgrounds. The Foundation aim is in due course to extend the prize and the program to reach further students in future years, such as to students in regional areas such as Shepparton, or by partnering with communitybased organisations such as SAIL (the Sudanese Australian Integrated Learning Program, which provides support and services to the Sudanese-Australian community).

The Foundation, Justice Digby says, "is delighted to have been able to establish this program this year, thanks in no small part to the generosity of barrister-donors

in the past, and hopes that barristers, and others interested in supporting the Victorian Bar Foundation will consider donating this year, so as to allow the program to extend its reach in future years".

A letter on how to donate to the Victorian Bar Foundation will be included in the Bar Subscription packs later this year; a donation form is also available on the VicBar website (vicbar.com. au/public/community/victorian-barfoundation).

- 1. See the 2016 Census data, available at http://www.censusdata.abs.gov. au/census\_services/getproduct/ census/2016/quickstat/LGA23270
- 2. Angela Lee, "The Bar in Broadmeadows: An event with Hume City Council", Victorian Bar News Summer 2016



# CIArb Australia autumn events

**VBN** 

n 17 April 2018, Caroline Kenny QC, president of the Chartered nstitute of Arbitrators (CIArb) Australia, welcomed over 800 delegates to the gala dinner at the 24th International Council for Commercial Arbitration (ICCA) Congress. A biennial conference, the ICCA Congress was held in Sydney and spread over three days. The Congress was an opportunity to shape the future of international arbitration, the theme being one of "evolution and adaptation". CIArb Australia sponsored the gala dinner attended by delegates and guests from across Australia and around the world.

Earlier in the year, on 1 March 2018, Susan Crennan QC, Neil Kaplan QC and Dr Michael Pryles presided over the grand final tribunal of the CIArb Australia Vis Pre-Moot, held at the Federal Court in Melbourne. The aptly named Pre-Moot gives Australian students a unique opportunity to exercise and improve their advocacy skills, to help equip them for the rigours of overseas mooting competition. Participants may then proceed to the Willem C Vis International Commercial Arbitration Moot in Vienna, or to the Vis East Moot in Hong Kong.

RIGHT: Caroline Kenny QC, President of CIArb Australia, welcomes guests to the ICCA Congress Gala Dinner.

ABOVE: Mr Neil Kaplan CBE QC SBS, Caroline Kenny QC, The Hon Susan Crennan AC QC and Dr Michael Pryles AO PBM at Essoign Bar, Post Pre Vis Moot Grand Final held at the Federal Court.



# The Bar's new conduct policies and procedures for lodging a grievance

#### DANIEL NGUYEN

n 16 May 2018, the Bar's Diversity and Inclusion Working Group presented a CPD to introduce the Bar's new policies and procedures concerning the lodgment of sexual harassment, discrimination and bullying grievances. The new policies, adopted by resolution of Bar Council, will take effect on 1 July 2018.

Our President, Dr Matt Collins QC, addressed the recent data received by the Bar via its 2016-17 Case for Change Survey. 30 per cent of respondents reported being subject to at least one instance of discrimination, sexual harassment or workplace bullying in the past five years. This number represented a significant minority of Victorian Bar members and of that number, women disproportionately reported such instances.

The Diversity and Inclusion Working Group, led by Chair Jacinta Forbes QC and comprised of Dr Matt Collins QC, Sarah Fregon, Kathleen Foley and Daniel Nguyen, reviewed the existing grievance processes and saw a real benefit and need for the new policies.

The existing prohibitions on such conduct are found in the *Legal Profession Uniform Conduct (Barristers) Rules 2015*<sup>1</sup>.

The existing complaint mechanisms, whereby one can lodge a complaint with the Legal Services Board for a formal investigation or lodge a grievance via the Victorian Bar Grievance Protocol, offer relatively formalistic processes and are available as between barristers only.

The new policies, formed in consultation with the Bar's Ethics Committee, deal with the Bar's stance in relation to sexual harassment, bullying or discriminatory conduct, and the Bar's processes for lodging grievances regarding such instances.

The new policies make a clear statement that:

- » the Bar is committed to providing a working environment where barristers and those engaging with barristers can conduct themselves free from bullying, discrimination and sexual harassment;
- » at the Bar we demand and expect respectful behaviour by our members; and
- » sexual harassment, bullying or discriminatory conduct are contrary to the values of the Victorian Bar and will not be tolerated.

The new policies respond to individual circumstances but are also aimed at driving broader cultural change at the Bar. Consistently with the conduct rules, they adopt:

- » the legislative definition as to unlawful discrimination grounds (Equal Opportunity Act 2010 ss 6 and 7);
- » the definition of sexual harassment as defined by our conduct rules; and
- » the bullying definition from our conduct rules (rather than the WorkSafe definition).

The new policies adopt a mechanism that is internal and voluntary, confidential and informal to address complaints. They introduce an informal process for an aggrieved person who does not wish to go through a formal process of investigation. They also open up the process so that people other than barristers may now lodge a grievance.

There will be two types of recording of grievances:

- » 'Reports' of conduct that breach the policies where no redress or action is sought, designed to assist the Bar to identify areas of particular concern and to effect community change; and
- » 'Complaints' of conduct where some redress or action is sought.

In a Report, the identity of the barrister complained of is not identified and no redress or action is taken. In a Complaint, the identity of the barrister complained of must be provided to enable some redress or action to be taken. For both Reports and Complaints, the aggrieved person will need to put their name to the online form which is submitted.

Persons who may submit Reports or Complaints include barristers, solicitors and others working within chambers such as barristers' staff. Barrister's clients cannot use the new policies but rather they should lodge any grievances with the Legal Services Board. Where the aggrieved person has an employer who is not a barrister, it is preferred that they first use their employer's mechanisms for grievances.

Where the employer is a barrister or a group of barristers, the aggrieved person may use the new policies.

The Reports will be used for raising concerns before the Bar Council and the implementation of training and identification of actions to address any systemic issues. For example, where multiple reports arise from a particular event, this may lead to consideration of changes at a subsequent event.

Bar Conciliators have been appointed to assist in the triage of available options with the aggrieved person and the investigation and conciliation of individual complaints. Bar Conciliators are appointed from the Bar and they come from a cross section of seniority, practice areas and gender. Bar Conciliators will receive training before the new policies take effect.

The new policies and an online form to submit reports or complaints may be found on the Victorian Bar website, where many of the Bar Conciliators may also be found. For further information, refer to the 'Governance' page of the VicBar website and click on 'Conduct policies and internal complaints procedures'.

1 Section 123 provides: 'a barrister must not in the course of practice, engage in conduct which constitutes: (a) discrimination; (b) sexual harassment; or (c) workplace bullying'.



# An invitation to join the Victorian Golfing Lawyers Society

#### CAROLINE PATERSON, HONORARY SECRETARY

Golfing events, along with other sports, have been an important fixture on the social calendar of the Bar, Bench and our solicitor colleagues for many years. The Frank Marrie trophy between the Victorian and NSW professions has been played for years, and the Sir Edmund Herring trophy, contested between the Bar/Bench and solicitors, dates back to the 1920s. In a profession like the law, where interpersonal relationships are so central, it's important to have opportunities beyond court to network with your colleagues. Playing golf with someone for four hours gives you a lot of time to talk.

But other regular golfing events, including the Lander Cup played between the country law associations since the 1960s when it was established by the late Hartwell "Chic" Lander, former Law Institute of Victoria President and keen golfer, had fallen by the wayside.

In July 2017, a group of barristers and solicitors established the Victorian Golfing Lawyers Society (VGLS), hoping to rekindle the enthusiasm of old. The VGLS has already signed up over 110 members. It was established with the purpose of organising golf events at Victoria's premier golf courses for barristers, solicitors, judges and law students. Since then, the VGLS has successfully held four events.

On 20 October 2017, 57 players (14 from NSW and 43 from Victoria) competed at Commonwealth Golf Club for the Frank Marrie Trophy. With an average score of 39.86 versus our average of 38.09, the NSW visitors retained the trophy for the ninth year in a row. NSW will defend the title at the NSW Golf Club on Tuesday, 16 October 2018. Best pair - Tony Kenna and Jeff Sher QC.

On 14 December 2017, a twilight round of nine holes was played at Royal Melbourne Golf Club, followed by a casual dinner in the clubhouse. Best pair - David Parsons and Michael Strong.

On 16 February 2018, 24 members and their guests played 18 holes at Woodlands. On a warm afternoon, the course was in fabulous condition and there were several solicitors in attendance from regional Victoria. Best pair - Julian McDonald and Chris Arnold.

On 3 April 2018, the Sir Edmund Herring Trophy was contested at the Kingswood site of Peninsula Kingswood Country Golf Course (PKCGC). The solicitors played very well and reclaimed the trophy, which had been held by the Bar and Bench for quite a few years. The field of 35 players enjoyed ideal conditions, and the Kingswood course was looking fabulous. It will probably be the last time many of us will play on that course, as it is due to close for good in August 2018. Next year this event will be held on the new north course at the Frankston site of PKCGC. Best pair – Tony Salce and Paul Cariss.

Many members have enjoyed the opportunity to get to know judges in a more relaxed context, and to make connections with other barristers and solicitors with whom they may not have otherwise crossed paths. The VGLS is also open to law students, providing them with a unique networking opportunity.

The joining fee for the VGLS is a one-off payment of \$50. Any members of the Bar and Bench, past and present, who are interested in joining, are invited to contact either Caroline Paterson (carolinepaterson@vicbar.com.au) or Norman O'Bryan SC (nobryan@melbchambers.com.au). There is no minimum handicap requirement, and some members do not have one. We encourage all keen golfers to participate.

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The rule of law and the Court of Appeal's place in an age of transparency

Insights from Justice Chris Maxwell AC, President of the Court of Appeal

NATALIE HICKEY AND JUSTIN WHEELAHAN

he rule of law has recently been in the public spotlight. Former Deputy United States Attorney-General, Sally Yates, expressed concern about the 'normalisation' of behaviours, such as the current US President's hectoring of the Justice Department on Twitter, might threaten democratic norms and the rule of law.1 The European Union recently demanded action by Poland's government to protect the rule of law, following proposed legislation perceived to limit judicial independence.<sup>2</sup> Closer to home, political attacks on the judiciary in Australia have led to lawyers' opinion pieces on the topic in mainstream media.3

What is the rule of law? How is the rule of law consistent with transparency? For

many of us, the rule of law recalls faint memories from jurisprudence lectures. The topic deserves consideration. Fortunately, Court of Appeal President, Chris Maxwell, is available to elucidate the concept of the rule of law to *Victorian Bar News*.

President of the Court of Appeal since 2005, the rule of law underpins Justice Maxwell's approach to his daily work, and is also plainly an important topic to him. He approaches the task of explaining what it means, and how it interacts with other concepts, with genuine enthusiasm, and a keen academic focus. Given the Socratic dialogue that follows, it is no surprise to learn that the President is a keen teacher, having taught amongst other things the subject 'Philosophical Foundations of Law' to Juris Doctor students at the University of Melbourne.

## What does the rule of law mean?

## The supremacy of the law and judicial independence

Justice Maxwell explains that at the heart of the rule of law is the idea of the supremacy of law. Firstly, government and people should be ruled by law, and should obey it. Secondly, the law should be such that people are able to be guided by it, and to comply with it. An "indispensable bedrock requirement" is the independence of the judiciary. Judges should be free of, and be seen to be free of, political interference.

Whilst some might think the concept of tenure is anachronistic, his Honour explains that security of tenure is central to this notion of judicial independence:

Security of tenure ensures that a judge is immune from political pressure.

There is no scope for political influence — or the perception of influence — on the judge's decision making. This is critically important, never more so than in the area of judicial review of government decisions.

#### Characteristics of the rule of law

President Maxwell identifies the salient characteristics of the rule of law as follows:

- » the government operates under law—the contrasting concept is arbitrary, capricious or discriminatory exercises of power;
- » effective procedures and institutions to ensure that government action is in accordance with the law;
- » open justice;
- » an independent legal profession (free from influence);
- » impartial tribunals and access to the courts;
- » natural justice: the right to a fair hearing:
- » proper limits on judicial function: judges interpret the law, but do not legislate; and
- » the principle of equality before the law: like cases are treated alike. The penultimate point leads to further discussion. Certainty is a key quality of the rule of law. The court's function in the rule of law framework is interpretation. In his Honour's view, close adherence to the statutory text promotes the fundamental objectives of making statute law accessible to, and comprehensible by, those to whom it applies; increasing certainty in judicial interpretation; and maintaining proper limits on the judicial role.<sup>4</sup>

His Honour notes that characteristics of the rule of law are not just present in the legal system, but in laws themselves. Laws must be certain. He says, "If they are vague, then as citizens we don't understand what they mean".

#### Limits on the judicial function

Highlighting the distinction between interpretation and legislation,
President Maxwell refers to the
Charter of Human Rights and
Responsibilities Act 2006. Section
32(1) provides that, so far as it is
possible to do so consistently with
their purpose, all statutory provisions
must be interpreted in a way that is
compatible with human rights. The
Court of Appeal held — and the High

Court agreed — that s 32(1) does not authorise a court to rewrite legislation so that it is more compatible with human rights.<sup>5</sup> The President says:

If there is more than one interpretation, the Court must adopt the interpretation which is (more) compatible with the relevant Charter right. If the statutory language permits only one interpretation, however, that is how the provision must be interpreted.

The President referred to a recent case which also illustrated the limits of the judicial role. In the 'baseline sentencing' case, *DPP v Walters (a pseudonym)*<sup>6</sup>, the Court of Appeal concluded that the legislation had an 'incurable' defect. Parliament had not provided any mechanism to enable sentencing judges to achieve the intended 'median sentence'. The Court of Appeal had no authority to create such a mechanism, since "to do so would be to legislate, not to interpret".

Judicial review is not about the merits of decisions but about the limits of law. It is intrinsic to the function of superior courts to review for legality.7 The President enthuses that ensuring that Government operates according to law, and that powers conferred by statute on ministers and public officials are exercised within the legal limits fixed by Parliament, is a "thrilling notion". He endorsed the comments made by recently appointed Justice of the Supreme Court, Melinda Richards, in her speech at her welcome: "The law is a higher power to which everyone, great and small, is held to account".8

The fundamental distinction between the function of judicial review and the merits of government policy was emphasised by the Court of Appeal in *Minister for Families and Children v Certain Children.*<sup>9</sup> The Court pointed out 'in the interests of informed public discussion' that it was not concerned with, and expressed no view about, the merits of the Minister's decision to establish a youth detention centre at

Barwon Prison. Courts play no part in government policy, but perform a supervisory role to ensure that Government operates according to law, that powers conferred by statute are exercised within the legal limits fixed by Parliament. The Court said:

It is one of the foundations of our democratic society that the courts perform this supervisory role, and do so independently of Government and immune from political pressure. This is one of the guarantees of the rule of law.<sup>10</sup>

Courts exist to ensure that the laws made by Parliament, and the common law created by the courts themselves, are applied and enforced. This means that people must in principle have unimpeded access to courts. Without such access, the UK Supreme Court said recently, laws are liable to become a dead letter.<sup>11</sup>

#### The principle of equality before the law

Equality before the law is "the starting point for all other liberties". 12 This principle requires that like cases should be treated alike, so far as the law permits. Asked what this means in practice, the President responded:

It means a right to equal treatment in the application of the punitive power of the state to those who break the criminal law. It means that cases which are relevantly identical should have identical outcomes. One of the key concerns of the Court of Appeal during my time here has been with consistency of sentencing as a foundational principle. This does not mean precise numerical equivalence, but it is uncontested that there should be equal treatment. As Chief Justice Mason said in Lowe's case: inconsistency of treatment is 'a badge of unfairness' 13.

## Where does 'transparency' or free speech fit into the rule of law?

Justice Maxwell points out that there are competing views about whether the rule of law extends to the substantive content of laws or is constituted by the essential characteristics of the legal system listed above. Freedom of speech can thus be viewed either as an element of a rights-based conception of the rule of law or as a foundational "civil and political right".

On either view, freedom of speech is not absolute. Defamation law is a case in point. As his Honour further explains, s 15(3) of the Human Rights Charter recognises that the right of freedom of expression carries "special duties and responsibilities", and may be subject to restrictions which are reasonably necessary to respect the rights of others.

Accordingly, the President's explanation of the rule of law does not centre on free speech. He emphasises, at the same time, that freedom of speech is fundamental to our understanding of democracy, within the limits of the law.

## How does the Court of Appeal view transparency in the discharge of its functions?

#### **Embracing change and new technology**

Justice Maxwell has overseen significant criminal and civil reforms in the Court of Appeal since 2011. It is perhaps not surprising then that he is unafraid of change when it comes to communication initiatives. He is keen to embrace new ideas. He welcomes the Supreme Court of Victoria's move to begin using social media, considering it an essential part of modern communication. He is comfortable when photographs are taken in Court in appropriate circumstances. He endorses webcasts by the Court of Appeal.

His Honour describes as 'marvellous' the live streaming of important sentencing decisions. In his Honour's view, such visibility dispels misconceptions:

> Because it's one step closer to having the public understand the nature of that task and the nature of the person who is doing it. When you see judges,

you can identify with them. You get a better sense of how they deal with difficult questions, and you realise they are doing a difficult job. Visibility goes some way in dispelling the myth of the judge as remote or out of touch and 'not like me'.

He refers, in particular, to the landmark moment when people could hear the "actual voice" of Justice Coghlan sentencing Arthur Freeman. Freeman had been convicted of murdering his daughter by throwing her off the West Gate Bridge—a crime that had captured the public imagination in Victoria. The sound of Justice Coghlan's voice eloquently conveyed to the public that sentencing was "a serious and difficult task".

## Scrutiny is welcomed but should be informed

Justice Maxwell endorses an open and transparent communications approach. His Honour sees the rule of law as a reason for courts to embrace scrutiny. One of the indicia of the rule of law is that the content of the law should be accessible to the public. 15 His approach to transparency is robust, but qualified:

It is essential for the rule of law that courts are exposed to stringent scrutiny for what they do, how they do it, and their decisions. This is part of our democracy. We are publicly funded to serve the community. If people are unhappy with what courts do, they should be absolutely free to have their say. But the time-old qualifier from courts is that it would be better for everybody if the criticism was based on a reasonably complete understanding of what was actually decided, and the basis on which it was decided.

His Honour adds, "General deterrence can only work if decisions — for example stern sentences on random street violence — are widely communicated." The President's view is that, since governments have a proper commitment to public safety, they should take greater responsibility for publicising what

sentencing courts do. This is vital if the principle of general deterrence is to operate effectively. Making this point in *DPP v Russell*, <sup>16</sup> the Court of Appeal drew an analogy with the TAC's successful road safety campaign.

## Judges are not public relations experts, nor should they be

He would like to see a collaborative approach so that citizens understand more fully what the Court does:

I appreciate the difficulty of providing information in readily digestible form to the media, let alone to ordinary members of the community. That's really hard. The problem for courts is that we are not equipped, not funded, not trained to be publicists of our own work. It is not our job. There is a role for government to communicate what courts are doing.

#### Sentencing - a continuing challenge to communicate the Court of Appeal's work

Perceived lenient sentencing is a topic that leads to frequent criticism of the judiciary: "If the public do not know what exactly produces the result, it can lead to misunderstanding." There is a great deal of pressure on judges, associated with the need to arrive at a sentence that sends the right message of punishment and denunciation but that also takes into account mitigating factors, such as mental illness, moderating the principle of general deterrence.

It is difficult for journalists, and members of the public, to plough through complex Court of Appeal sentencing reasons. The Court of Appeal tries its best to communicate its own decisions by publishing judgment summaries (akin to a media release) for appropriate cases. For example, the Summary for DPP v Dalgliesh (a pseudonym)<sup>17</sup> announced, "The Court of Appeal today said that higher sentences were required in cases of incest." There was then provided a brief summary of the Court's reasons for

## **((**The problem for courts is that we are not equipped, not funded, not trained to be publicists of our own work.**))**

finding that sentences for incest were disproportionately low, when considered against the yardstick of the maximum penalty of 25 years' imprisonment. His Honour noted that this summary formed the basis of mainstream media coverage.<sup>18</sup>

#### Speaking out as a judge has its limits

There are limits, though, to what judges can do in the interests of transparency. Justice Maxwell would avoid being a panellist in a discussion forum with politicians, except for the purpose of explaining the work of the courts. It is important to him that he not be seen to be engaging in political commentary. His Honour refers to the Guide to Judicial Conduct (3rd edition), published by the Council of Chief Justices, which addresses public comment by judges.19 According to the Guide, appropriate judicial contribution to debate about the administration of justice is desirable. But 'considerable care' should be exercised to avoid using the authority and status of judicial office for purposes for which they were not conferred. Involvement in political controversy is to be avoided.

#### Conclusion

Plainly, the President considers that judges and politicians should recognise the limits of their respective roles, and should not interfere with each other's functions. This is distinct from scrutiny of the court's function, which his Honour embraces—if the opinions are well informed. He also regards collaboration between the judicial and executive branches as vital. Wider publicity for sentencing decisions is an important area which he believes can lead to maximum benefit for Victorians. Justice Maxwell concludes, "Our legal system is premised on citizens having confidence that they will have access to independent and impartial justice."

- Jennifer Rubin, 'Sally Yates: Don't 'normalize' attacks on the rule of law', The Washington Post, 15 May 2018.
- Daniel Boffey, 'EU demands action by Poland's Government to protect rule of law', The Guardian, 15 May 2018.
- See, for example, Morry Bailes, 'Attacks on the judiciary by politicians weaken our democracy', The Age, 5 February 2018
- See also Justice Chris Maxwell, 'The quest for certainty and the limits of the judicial role', paper delivered at La Trobe University Law School Seminar, 17 November 2016.
- Momcilovic v The Queen (2010) 25 VR 436; Momcilovic v The Queen (2011) 245 CLR 1; Cf Ghaidan v Godin-Mendoza [2004] 2 AC 557.
- 6. (2015) 49 VR 356, in relation to the then s 5A of the *Sentencing Act 1991*.
- 7. Kirk v Industrial Court (NSW) (2010) 239 CLR 531, 580–1 [96]–[100].
- Speech in Reply by her Honour upon her appointment as a Justice of the Supreme Court of Victoria, 10 May 2018.
- 9. (2016) 51 VR 597, 600 [10]-[12].
- 10. Ibid [12].
- 11. R (on the application of UNISON) v Lord Chancellor [2017] UKSC 51 [66]– [68].
- 12. Green v The Queen (2011) 244 CLR 462, 473 [28]; Zogheib v The Queen (2015) 257 A Crim R 454, 457 [3]; Hasan v R (2010) 31 VR 28, 39 [48]; Boulton v R (2014) 46 VR 308, 321 [48]; Nash v R (2013) 40 VR 134, 137 [9].
- 13. Lowe v The Queen (1994) 154 CLR 606, 611.
- 14. The *Herald Sun*, for example, embedded a podcast of the sentencing remarks into its 11 April 2011 report.
- Murray Gleeson, 'Courts and the Rule of Law', The Rule of Law Series, Melbourne University, 7 November 2001.
- 16. (2014) 44 VR 471, 483-4 [69]-[73].
- 17. [2016] VSCA 148.
- 18. Bianca Hall, 'Judges imposing 'extremely lenient' sentences for incest: court of appeal', *The Age*, 29 June 2016; Sol Dolor, 'Court of Appeal urges judges to give harsher incest sentences', *Australasian Lawyer*, 4 July 2016.
- 19. Chapter 5.7, page 25.

## Interview with Kerri Judd QC, Director of Public Prosecutions

#### CAMPBELL THOMSON AND ANNETTE CHARAK

ictorian Bar News spoke with the new Director of Public Prosecutions, Kerri Judd QC, in her eyrie on the 9th floor at 565 Lonsdale Street. The surrounding new towers have disrupted what used to be good views in all directions. Despite 100,000 workers marching through the streets, chanting about work place laws, we managed to make ourselves heard.

## VBN: Did you have any sense of what you wanted to do and where you wanted to go before you went to uni?

**KJ:** I knew I wanted to do a law course. I didn't envisage that I would be a barrister. I had no contacts in law at all. I had no concept at all of what being a lawyer was. And I certainly wouldn't have known who the Director of Public Prosecutions was. 1983 saw the first director appointed. That would have been when I was doing HSC.

#### VBN: So what drew you to law?

**KJ:** My grades at school were good and I wanted to do something that could extend my brain. I liked the policy side of it. I don't think I thought about *being* a lawyer but I thought about how law impacts on society. The other path was medicine/science but that wasn't where I had any interest or skill.

## VBN: Did you have any particular mentors who encouraged you to do law?

**KJ:** I don't think I really started developing any mentors until I went to work as a judge's associate.

#### VBN: What was working with Justices Gray and Crockett like?

**KJ:** I became a judge's associate, not really thinking through what I would do at the end of it. There were two lots of associates at that time. There were the retired servicemen and there were the graduate associates. From time to time, you would sit in other judges' courts. I sat in Justice Alan McDonald's court when he was doing the *Grimwade* trial

All the judges proceeded on the basis that if you were working as an associate, it meant that you wanted to be a barrister. They spoke to me on the assumption that

I was going to the Bar. They would always say, "well, when you're a barrister, that is a great way to do it" or "when you're a barrister, don't do that". You did sit there thinking, "I can do it better". And then when you go and do the Bar readers' course, you realise it is so much easier watching.

## VBN: Was crime something you were particularly interested in?

**KJ:** No. I finished being an associate with Bill Crockett when he was presiding in the Full Court in crime. So I was exposed to the criminal law in that context. And I met a lot of criminal law solicitors and barristers, including Bernard Bongiorno QC, the DPP at that time. I read with Stephen Kaye and, when he took silk, Kate McMillan. It took me ages to get briefs; I wasn't one of these people who started with a bang. I think Stephen Kaye felt sorry for me. In the end, I got work in a whole lot of areas: commercial, regulatory work, admin work and criminal work. The other areas pay a lot better but criminal law is always the most interesting.

## VBN: How did your experience as a legal officer in Alice Springs in the 90s shape you as a lawyer?

KJ: It was a challenging experience. I think it helped me on a personal level and as a lawyer. I had to deal with a whole range of issues. I had a field officer and we would get in the four wheel drive, go out and look for clients. If we didn't find them, we might bump into someone else to give instructions. I might have had 300 running matters. It taught me good communication skills because you couldn't use legal language. It taught me chit-chat at the beginning of meeting someone. Social protocols meant that you couldn't just start talking about a legal case. You had to talk about where you came from, about their family and your family. It taught me to ask questions very clearly in court.

The other aspect was a real male-female aspect. I would talk to the women, who wanted to engage white man's law, because they were usually the victims, and my field officer would talk to the men. He would report back that they did not want to engage white man's law—because they were usually the perpetrators and preferred

their own way of dealing with things. I learnt a lot.

# VBN: The central Australian experience must have been helpful in your role at the Royal Commission into Institutional Child Sexual Abuse, when you were acting for the State.

**KJ:** When I was in Alice Springs, there were a large number of young boys who had been sexually abused. That was another scenario where it was difficult to get instructions. Having those experiences helped me formulate how government officials should respond to things, whether there should be apologies. It helped with getting through the evidence. Some of those witnesses were older men, who were just so broken. It was really upsetting.

VBN: Some solicitors deal on a day to day basis with child sexual abuse cases, which are stressful and can be damaging. Inherent in that is a work, health and safety issue. How do you cope with the stress of cases like that and stress at work in general? And how do you help other people cope with those sort of things?

**KJ**: I cope by doing a lot of exercise. And I've found since I've started in this job that I haven't had as much time to do my normal exercise and I'm getting grumpy! I swim, I used to run...I am too old now, too many injuries! I walk the dog. I do gardening. I see my family and friends as much as I can and they force me to talk about other things. I think well-being is very important and what the office has done is be very conscientious of well-being programs, so we have bring your dog to work day...only one dog per floor! We have Pilates...

## **VBN:** Maybe a yoga class would be a good idea! Is there access to counselling or mental health support?

**KJ:** There is. John Cain is the Solicitor for Public Prosecutions. He is my solicitor, he runs the office. I do not micro-manage that side of things, but I support all these programs. The other aspect to wellbeing though is to

make sure that there is rotation. You don't want anyone doing the same type of case day in day out and that is very important for managing stress.

VBN: Emily Wilson recently translated Homer's Odyssey into English. She is the first woman to have done that. She was asked at the Sydney Writer's Festival about being the first woman and she pushed that question aside and said that it is not her being the first woman that is interesting but what she, as a woman, brings to the task that those who have gone before her did not. What do you bring to this role that is different from what other Directors have offered?

**KJ:** I think it enables me to act as a role model, it enables me to

demonstrate that women can be in leadership positions, women can be the head of organisations like this. The other part of it is that it gives me a great opportunity to promote women and to assist in helping women reach their full potential. We are getting to a point where being a woman in this type of job is unremarkable with Chief Justices of the Supreme Court and the High Court, lots of women judges, Kristen Walker QC as Solicitor-General, a lot of silks...

I think it leads to a different culture. Being the head of an organisation is about leadership. It is about systems, it is about training and it is about culture. I think just the women side ticks off on



the leadership and ticks off on the culture.

I've got a good understanding of how a variety of Directors worked. I started at the Bar as junior to Bernard Bongiorno QC, I was then iunior to Geoff Flatman OC and to Paul Coghlan QC. I saw the way each of them worked. And they all had a different way of dealing with things. Before I became a Senior Crown Prosecutor. I had a good 10 years of not doing any criminal law. A lot of things changed; a lot of things stayed the same. But I can look at things freshly. I have good knowledge of government law, administrative law, privilege and subpoena cases. I understand the way public interest immunity works. I've acted for the police in a lot of cases. So that makes it a good starting point in terms of relationships with other stakeholders.

**VBN:** Where do you see the OPP going in terms of size? We've got bigger prisons, more people getting arrested,

## **66** We are getting to a point where being a woman in this type of job is unremarkable. **99**

## more police. Are we going to need more solicitors at the OPP?

**KJ:** I think it is always growing. We rely on the Bar a lot. We have Crown Prosecutors but each day we brief about 80 external counsel.

#### VBN: What sort of cases do you see yourself appearing in now that you are the Director and you can pick and choose?

**KJ:** I would like to do some High Court cases. I would like to do some Court of Appeal cases when they involve matters of particular public interest and importance. We've got a whole raft of new legislation coming in. I'd like to be involved with some of those cases. For example, I would be looking at doing the first detention order application for serious violent offenders.

VBN: There is bound to be a case on standard sentences going to the Court of

## Appeal before long. Would you take that on as an issue?

**KJ:** That is the type of case that I would take on but Brendan Kissane QC as Chief Crown Prosecutor could do it, or Fran Dalziel who has been formulating where we are going with that body of sentencing law. We can also call on Chris Boyce SC for that sort of appellate work.

## **VBN:** This role places you very much in the public eye. How do you feel about that side of your job?

**KJ:** I am adjusting to the public aspect of the role. I was much more used to working in the background. But I'm a good decision-maker and I know what the job requires. And this job really does represent the next stage of a career.

**VBN:** Thank you very much for your time and good luck in your new role. ■

## The Crown

## Essays on its manifestations, power and accountability

WITH CONTRIBUTIONS FROM THE HON JUSTICE STEPHEN McLEISH AND THE HON JUSTICE RICHARD NIALL

he notion of the Crown, no less than the notion of the people, is a valueladen abstraction. Within a system of representative and responsible government, the two abstractions are intertwined. The notion of the Crown is capable of appreciation only in its relation to the notion of the people, and only then in the sweep of history and with an understanding of the practical working of democratic and administrative processes. Both notions bring with them a sense of unity and continuity. But it is in the notion of the Crown that there is captured that expectation of tempering privilege with responsibility which characterises our fundamental attitude

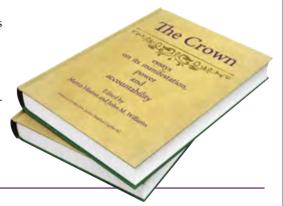
to institutions of government.

Because it is a notion that is not the product of the law, the Crown defies legal definition. Aspects of its operation and application have been described by lawyers, and aspects of its legal incidents and legal consequences have been identified. But its contours have never been mapped. Perhaps because it has defied definition, it has been a source of both fascination and frustration over many years to many lawyers, whose professional habit of mind has often led them on a quest for greater precision than the subject-matter of their study will bear.

The subject-matter of this book is as deep as it is wide. Each author whose contribution appears in

this book, through long study and experience, is extraordinarily well qualified to shed light on a dimension of it. Collectively, they do much to deepen our appreciation.

From the Foreword by the Hon Justice Stephen Gageler AC





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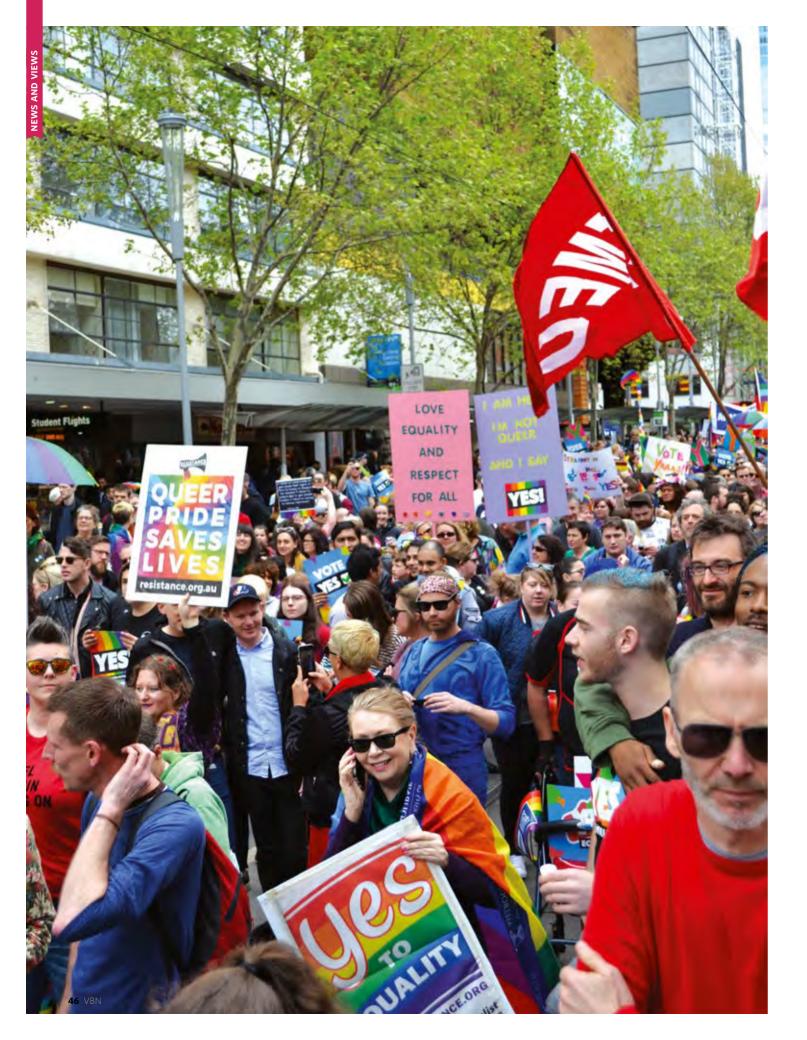
Whether you lead an in-house legal team, or service the in-house sector, this report delivers a range of information and will provide a crucial reference point into the future.

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## Marriage Law Postal Survey

#### **KATHLEEN FOLEY**

lovember 2017 was an historic day for Australia. The result of the controversial "Australian Marriage Law Postal Survey" was announced, with the "yes" vote a resounding win at 61.60%. Like many Australians, I threw a party at my home that night, to celebrate with friends and family. We celebrated the result, but we also celebrated having reached the end of what was (for many) an incredibly painful campaign.

I was involved as counsel in one of two High Court challenges to the postal survey. I will never forget the queues stretching down William Street when the challenges were heard by the Full Bench, sitting in Melbourne. I will never forget the unprecedented number of rainbow-coloured umbrellas confiscated by security at the entrance to the Commonwealth Law Courts Building. But this is not an account of the case. This is a personal account of the campaign that followed.

Challenging the postal survey in the High Court—and losing—seemed to have a remarkable galvanising effect on the "yes" campaign. No matter whether one felt that the process was right or wrong, lawful or unlawful, the collective mood seemed to be that with the challenge lost, the only option was to fight and in fighting to win. Like many others, I resolved the night of the High Court's decision to dedicate myself in whatever way I could to the "yes" campaign, and embarked over the

next few months on a whirlwind of fundraisers, rallies, community family days, house decorating, rainbow accessorising and the like.

Bringing my stance on the survey into my workplace (in the form of a small badge, helping to arrange a fundraiser at the Essoign and attending rallies) was unusual for me. As a young lawyer, I was cautioned to keep my politics to myself. Nevertheless, I decided to be quite open about my support for the "yes" campaign. For me, this was not a political issue. It was an issue of basic human rights. It was about the fact that a segment of the Australian population had been denied the right to marry solely on the basis of their sexuality, and that the postal survey represented a chance to change that. But more than anything, I looked at my two children-then six and three years old-and realised I wanted to look them in the eye as they grew older and be able to tell them that I had done everything I could to help the "yes" vote win. Many at the Bar felt the same way, and it was wonderful to see colleagues attending rallies, organising fundraisers or doorknocking.

I worried about the impact of the postal survey on my children. Their circle of family and friends includes many from the LGBTI community. To have a same-sex partner is so normal in their world that the word "gay" had never arisen or been discussed with my children. It would have been odd to make that point of distinction. Would I now have to discuss this with them, to explain for the first time that some people in Australian society





**66** As a young lawyer, I was cautioned to keep my politics to myself. Nevertheless, I decided to be quite open about my support for the "yes" campaign. **99** 

did not think all people should share the same right to marry their loved one? I entertained the vain hope that I could get through the campaign without having to broach the topic, at least with my three-year-old. Yet the topic couldn't be avoided. We live in the inner north of Melbourne and the suburb was quickly plastered







## **(**4 The denial of marriage equality is something future children will find impossible to understand. **)**

with rainbows and "yes" campaign material as far as the eye could see. There was also the not-insignificant matter of a "no" campaign billboard prominently displayed within walking distance of our house. The discussion had to be had. As it turned out, both my kids threw themselves into the "yes" campaign with absolute enthusiasm. Spotting "yes" campaign material on houses as we walked or drove became a favourite pastime.

Despite the interest of my children in our suddenly rainbow-themed suburb, as the campaign went on, I realised the very different experiences of the campaign of some of my LGBTI friends and colleagues. A number of close friends found the campaign incredibly hard. Some were particularly pained by the fact that family members or work colleagues were unexpectedly voting "no". It was so very personal. Some found the "no" campaign's focus on

children to be particularly hurtful. Others found that the campaign was triggering long-buried memories of homophobic experiences. And the process was just so long. As the weeks of the campaign dragged on, many found it hard to maintain their positivity. It was, at its base, a horrible thing to have to go through, to have the country voting on whether you should have the same fundamental rights as your siblings, colleagues and neighbours. At the same time, other friends were finding the campaign to be a surprisingly uplifting experience. They felt it was bringing people together; LGBTI Australians found new allies, often where they least expected it. These divergent experiences were reflected on the night of the survey result. While it was undoubtedly a night of celebration, there was sadness too. Sadness that 38.40 percent of the country could vote "no". Sadness

that the survey had to happen at all. Sadness that the "no" campaign had been so hurtful to so many.

But here we are, six months later. Whether it should have occurred by way of a postal survey or not, the survey happened and the "yes" vote prevailed. Legislation was passed, and marriage equality is now a reality. I am not one of those who believes that the result retrospectively justifies the process. But that is now nothing more than an interesting discussion point. What matters is that the denial of the right to marry because of sexuality is now a matter of history (and becoming more distant history by the day). The denial of marriage equality is something future children will find impossible to understand. Sitting at my desk a few months ago, an email popped up on my screen: a "save the date" for a wedding day. Two dear friends-together for years and previously not able to take this stepannouncing they are to be married. At that moment, for me, it was all worth it.

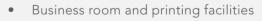


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# Authorised law reporting — up to the challenge

JUSTICE CAMERON MACAULAY 1

he challenges for law reporting in the early 21st century may be likened to the challenges for law reporting in the United Kingdom in the early to mid-19th century.

Leading to the early 1800s, more often than not, judgments in England tended to be delivered orally rather than in any written form. Judgments were transcribed by law reporters (typically barristers) who attended court, heard the judgments delivered and then published them in what were known as the nominate reports. It was, in effect, a private enterprise system. It has been described as 'hotch potch, commercial publication of law reports associated with the names of particular reporters'.<sup>2</sup>

The system had its benefits but also had its deficiencies: the reporting of cases had a tendency to be arbitrary and unfiltered, it did not involve checking by the judges and thus could be inaccurate, and it lacked any overarching control or system.<sup>3</sup>

In response to this situation, the Incorporated Council of Law Reporting (ICLR) UK was established in 1865. It was a council represented by members of the profession who selected cases for reporting, had them checked by the judges and published them in what became known as the Authorised Law Reports.

The advance of that system over the unfiltered, non-selective and unsystematised form of law reporting to that point was profound. Authorised reporting was systematic. Cases were selected on principled bases, generally because they contained some advance in legal principle. The reports were checked and approved by the court. They featured the value-added benefit of a headnote. And, they could be organised and indexed topically using a consistent taxonomy of legal subject matter.

Australian colonies, and then states, followed a similar model by establishing their own councils of law reporting composed of representatives of the profession and the judiciary. Such a model was established in Victoria in 1876.

There were many other new developments and changes to the system of law reporting throughout the 20<sup>th</sup> century. For example, as well as authorised reports, there developed a proliferation of specialist reports published by commercial publishers.

But still, all reports, whether authorised or not, were only available by subscription, that is, they were fee-for-service publications.<sup>4</sup>

The real game changer came with the 'free to air' online law reporting services (eg Austlii, BarNet JADE, NSW Caselaw, etc). Although said to be free, at least some come at an indirect cost through Government grant funding.

The availability of free to air publication of legal judgments may be described as contributing to the 'democratisation' of the law. That is, it contributes to a system of justice administration that is both more transparent and more accessible to citizens. In that regard, in my view, these developments are to be welcomed.

That 'democratisation' has been made possible because of the coincidence of a number of factors in the late 20<sup>th</sup> and early 21<sup>st</sup> centuries. Those factors include:

First, the increasing and now unexceptional practice of judicial officers producing written judgments in a digital form capable of being uploaded to an online platform immediately following delivery, checked by those who authored them:

Second, the funding for and construction of online internet platforms widely and freely accessible across the world-wide web: and

Third, and in tandem, the development of powerful search engines capable of being applied to the vast databases of judgments stored on those platforms using various kinds of search parameters.

But this democratisation has led to something else, something which takes us back to a characteristic that was prevalent in the early 19th century. The massive takeup of free online legal databases, as a tool of convenience, is contributing to the de-systemisation of the reporting of judgments. The online, free to air databases do not generally organise the material on any topical basis. No selection is made of what is to be reported, other than by the individual judicial officers who cause them to be uploaded. Important decisions advancing legal principle are reported alongside humdrum decisions of fact involving no application of principle, all in one undifferentiated mass. So, this situation may be described as a new form of 'hotch potch'.

Free online databases have brought a highly accessible but largely unfiltered and non-selective torrent of decisions from all levels of judicial hierarchy across almost every conceivable subject field. Research of the law deploying this resource is dependent on (1) the ability of the search engine to find key words, and (2) the proficiency of the user to choose appropriate key words

and other search parameters to find a case relevant to the point of interest.

In my view—and it has been observed by other commentators—

these changes have had an influence on the method of legal research; then on legal argument; and possibly even on judgment writing.5 A word search conducted across a vast database of cases can return a batch of cases which illustrate the application of the principle identified by the word search in particular factual situations. It returns results by reference to words and language not by principle. Observations have been made that research using this method can lack depth. Worryingly, some anecdotal evidence suggests that lawyers are tending to 'fact-match' rather than ascertain and apply principles to facts.6 The results of such research are deployed in argument by reference to the factual similarity or dissimilarity of previously decided cases to the one at hand. If it persists, there is a danger this process might tend toward the 'factualisation' of the law contrasted with the search for and discovery of authoritative principle for its application to the facts at hand.

In short, the same technological advances that have produced the benefits of democratisation are, arguably, dynamically inter-related with the de-sytemisation of legal reporting and a tendency toward factualisation in legal research and case presentation.

It is against this background that the retention and preservation of a robust and user-friendly system of authorised law reporting is needed as much as, if not more than, ever. One that holds its own against the challenge of free to air services and responds to the changes in user choices in the electronic age. One that maintains the important elements of discerning case selection and the skilful crafting of succinct headnote summaries. But one that also takes advantage of the modern advances of online publication: speed of delivery and reach, search-ability,

cross-linking to other databases, and options for a range of flexible and affordable delivery modes that suit different classes of user.

Recently, the ICLR UK 7 and the publishers of the New South Wales Law Reports<sup>8</sup> and the Victorian Reports (Little William Bourke)9 have made innovative developments in authorised law reporting. As with the changes brought about in the mid-19th century, the modernised model that each of them has adopted emerged from and involves a close association between the law reporting process and the profession itself. All three have stamped themselves as leaders in meeting the present challenges. Against the trend of de-systemisation, each has sought to preserve and revitalise the important role of authorised law reporting for the systematic development of the common law by the principled selection and reporting of authoritative decisions. Each has responded innovatively to technological challenge and changing consumer demand, including by first publishing reported cases online and by providing various means of access and subscription models, including 'pay-per-view'.

The journey is not over, of course. Speaking locally, for example, even more can be done to achieve connections between the various repositories to reflect and enhance the development of the 'one' common

law of Australia. There is ongoing conversation nationally on that issue.

- Judge of the Trial Division of the Supreme Court of Victoria; Chair of the Council of Law Reporting Victoria; Chair of the Law Library of Victoria. Speech given on 10 May 2018 at the 'Autumn Drinks' function in Melbourne to celebrate developments in the reporting of authorised law reports published by the Incorporated Council of Law Reporting (England & Wales), and the Councils of Law Reporting in NSW and Victoria.
- The Hon Justice G Lindsay (judge of the Supreme Court of NSW), A Future of Authorised Law Reporting in Australia, paper presented to the Australian Law Librarians Association, 11 June 2013.
- See Michael Bryan, 'The Modern History of Law Reporting' (2012) 20 Australian Law Librarian 65.
- 4. A general account of the landscape of authorised law reporting in Australian jurisdictions to the end of the 1990s, together with the usual rationale given for authorised law reporting and the stages through which the reporting process passes, is given by Naida J Haxton in 'Law Reporting and Risk Management Citing Unreported Judgments' (1998) 17 Australian Bar
- Terry Hutchinson, 'Legal Research in the Fourth Industrial Revolution' (2017) 43 Monash University Law Review 567; The Hon Justice Stephen Gageler, 'What is information technology doing to the common law?' (2014) 39 Australian Bar Review 146.
- 6. Hutchinson, 586.
- 7. https://www.iclr.co.uk
- 8. https://nswlr.com.au
- 9. https://victorianreports.com.au



## LANGUAGE MATTERS

## Lost in transcription: covert recordings

eter Gray was a judge of the Federal Court of Australia for 29 years until his retirement in May 2013. He was appointed an Adjunct Professor of Monash Law School in 2013. Peter has had a long-term interest in language and communication. His work among Aboriginal Australians sparked a particular interest in cross-cultural communication, especially in the legal system. This interest has led him to forensic linguistics and to membership of the International Association of Forensic Linguists (IAFL) since 2003. His chapter dealing with the contribution forensic linguists can make to the legal system is published in M Coulthard and A Johnson, The Routledge Handbook of Forensic Linguistics (Springer) 2010.

#### PETER R A GRAY

e often mishear the lyrics of songs. How many of us heard repeatedly Jimi Hendrix singing, "Excuse me while I kiss this guy", when all he wanted to kiss was "the sky"? We are often surprised to be corrected, because we are certain that what we have heard is what has been sung.

Misheard utterances in recordings have been called "Mondegreens" ("laid him on the green" was misheard as "Lady Mondegreen")<sup>1</sup>, "pullet surprises" (after the famous American literary awards)<sup>2</sup> and "headless whores" (because of a mishearing of "head lessor" in a dictated letter). <sup>3</sup>

The recordings we mishear are made under ideal conditions, often in studios, with the best recording equipment. How much easier it must be to mistake something said when a conversation is recorded through a hidden microphone.

Covert recordings from bugging devices are used often in criminal proceedings. These recordings are made in conditions that are far from ideal. The sounds of TV or radio, and the myriad noises we make in our ordinary lives, which our brains filter out as "white noise", are preserved along with the utterances the police are hoping will provide

## **(**6 If you are briefed in a case involving a police transcript, don't accept the accuracy of the transcript. Ask for an expert in forensic transcription. **)**

evidence of culpability. Speakers are rarely facing, or even close to, the microphone. They are not trying to enunciate clearly, as if they were in a recording studio or speaking into a dictating machine.

In most cases, simply inviting the jury to listen to the recording would be a waste of time. Turors would be unlikely to hear anything meaningful. Following Butera v Director of Public *Prosecutions (Vic)*<sup>4</sup>, the practice is for the police to prepare a transcript, which is given to the jury to assist them in listening to the recording. The police who have prepared the transcript are said to have become "ad hoc experts" on the recording; by means of repeated listening to the recording, they have developed an understanding of what was said. Often, much is made of the fact that the recording has been "enhanced" by an audio engineer (although the jury is given the original, as well as the enhanced version).

Science has moved on since *Butera*. We now know that repeated listening does not make the indistinct clear. Transcribing speech is a very specialised skill. It is the result of training in the ways in which the various sounds of language are produced (phonetics) and how those individual sounds (phonemes) are put together to construct speech (phonology). It requires long experience of making transcripts, before anything like accuracy can be expected.

Police have neither the training nor the experience to do the job properly. What they do have is background knowledge of the other evidence revealed by the investigation of the alleged offences, and a keen ear for anything that might add to that evidence. It is easy for them to become convinced that they have heard inculpatory utterances and to include those utterances in their transcripts.

Enhancement of a recording is possible. It is used to make music more pleasant to listen to (especially when remastering old recordings). It cannot make indistinct speech more distinct.

You can test these propositions easily. In a NSW case, a father and son were convicted of murdering the former's father, who was the latter's grandfather. The father denied being a party to the murder. He admitted to having failed to call the police after his son told him what he had done, which would have made the father an accessory only. One minute, out of about 38 minutes, of an enhanced covert recording used in the case is available online<sup>5</sup>. Chances are you won't understand any of it.

Once you are told that the excerpt includes the father saving to his son. "At the start we made a pact", you are very likely to hear those words. The prosecutor made much of this alleged admission in the case. The prosecutor, the defence counsel, the judge and the jury all accepted that the father said these words. They "heard" them, just because they were shown the police transcript of the recording. This is a phenomenon known as priming. Once you have been primed, it is very hard to change your mind, just as the misheard lyrics tend to stay with you, even if you have been told the correct version.

Independent researcher Dr Helen Fraser is an expert in phonetics and phonology. She says those words are not there. The sounds, the rhythm and the cadences do not match such an expression. She is not certain what was said, but something like, "It was fuck'n' payback" is more likely. Dr Fraser has conducted experiments with audiences, priming them with first one, and then the other, suggestion. Priming is almost 100% effective and is very hard to undo.

If you are briefed in a case involving



a police transcript, don't accept the accuracy of the transcript. Ask for an expert in forensic transcription. To avoid the risk of priming, don't brief the expert on the facts or provide the police transcript until the expert asks for it. The expert's evidence might help you to exclude the police transcript from the evidence, which might be an important step in defending your client.

If you are interested, you can read a New Zealand case in which part of a recording was excluded from the evidence, because experts on both sides were agreed that the defendant had not uttered an admission a policeman thought he heard in the recording.

- Burridge, K & Stebbins, T. (2015). For the Love of Language: An Introduction to Linguistics. Melbourne, Australia: Cambridge University Press. (p. 134)
- 2 Fromkin, V, Rodman, R, Hyams, N, Collins, P & Amberber, M. (5th ed. 2005). *An Introduction to Language*. Melbourne, Australia: Nelson Thomson Learning Pty Limited. (p. 79)
- 3 Young, P. 'Headless Whores' (2011) 85 ALJ 330
- 4 (1987) 164 CLR 180
- 5 http://forensictranscription.com.au/ case-study/
- 6 Bain v R [2009] NZSC 16. The expert evidence is summarised at [5]. The recording can be heard at http://forensictranscription.com.au/the-crisis-call-experiment/

## Acronyms, 'pre' and 'post' nominals et al

#### DR BRYAN KEON-COHEN AM OC. PH D (MON), LLM, LLB, BA (MELB) DIP ED (MON)

I ith the late Ron Castan, AM QC, Bryan worked tirelessly on the landmark Mabo litigation for more than 10 years, representing the Murray Island plaintiffs. The opportunity arose only a month after being admitted to the Bar, when Bryan received a phone call from Ron asking if he would be interested in working on the case. They had known each other for a few years, prompted in part by Bryan's unsuccessful attempt to read with him. Bryan had previously worked as a lecturer at Monash Law School, and at the ALRC in Sydney, on its reference concerning the recognition within the general legal system of aboriginal customary law. He was also, in his own words, "very cheap". An important legal journey therefore began, culminating in the historic High Court decision handed down in 1992. In 2016, after a career of 35 years of tireless work, Bryan retired from active practice (or was "re-directed" as he puts it) and has, inter alia, developed a sense of the ridiculous about things like the art and science of nominals—of which he bears a few.

prefer to use the term "re-directed" rather than "retired" to describe my on-going (but carefully disguised) existential crises. After a busy professional career driven daily to produce work efficiently and meet deadlines, the change of pace needs, I think, to be recognised and managed, with appropriate adjustments.

I consider myself fortunate to have long-held interests, held in abeyance for 40 years or so, to continue to pursue, being interests completely outside the law—especially writing fiction. Sadly, to date, no self-respecting, or any, publisher wants my stuff (cf the much-published Honourable Dean J)1. I have also been hopelessly busy researching and writing legal material and lecturing to secondary and tertiary students on, what else, Mabo. I'm told, in these places, that I'm a piece of walking (viz ancient) history. Great ...

Law, language, linguistics and literature are intertwined in many ways: see, e.g., F Dostoevsky, Crime and Punishment (1867)<sup>2</sup>. I read this novel, aged 19, when studying first year Medicine at Monash University in 1964. I passed Literature that year. In 1966, I commenced Law-Arts at Monash Law School. The rest is "history". This pilgrim's progress, in one sense, has been from literature to law and back again.

Meanwhile, I perceive other "retirees", at a similar age and stage, sometimes floundering in a vacuum of too much time and too little to do. Still, perhaps they're right and I'm wrong. One must adopt a responsible attitude to doing nothing—a serious skill to be fostered and pursued

relentlessly.3 This journey from the sublime (Mabo) to the ridiculous (stories, novels, all unloved, unwanted, and cruelly rejected) triggers for me a renewed interest in our constantly evolving language.

I have no real interest in nominals, pre or post, save for the ridiculous number I seem to have collected. In my humble opinion, those who rely on or emphasise them would be much happier frequenting, not the Essoign Club, but London's West End clubs, whose members still crave invites to Royal weddings.

Acronyms are increasingly prevalent, however, everywhere. They reflect various factors, which include, at best, a need for concise expression given limited space, or a method of efficient communication amongst a discipline-based working group, keen to get to the point; at worst opaque and impenetrable club-speak by members intent on secrecy or obfuscation; a craving to belong by participating in a made-up language that excludes others; and an increasing community practice where language is optional and acronyms become a bridge between words and those cute emojis as a means

Having become familiar with the *Urban Dictionary* as part of my re-directed creative life, I've turned my mind to deconstructing 'legal' acronyms as a useful guide for those time-poor practitioners seeking a moment to relax and ROFL (for the meaning, refer below).

## Acronyms essential for the Essoign Club and other suitable locations

- **A-G** Aka politician, first law officer of the Crown. Sits in parliament, supposed to know a bit of law, appoints Js, so good to buy the A-G a G&T.
- **Aka** Also Known As. Used by criminals, often.
- **ALRC** Australian Law Reform Commission. Sydney-based, so not recognised in Victoria. Produces valuable reports rarely implemented by A-Gs, especially if a report was commissioned by a predecessor now in opposition (my personal experiences influencing this one).
- Big-time gong. Usually received from the G-G; envious of AO and AC. As to G-G, AO and AC, for space reasons,
- Important demonstration of intellect (short for the Latin: confer/conferatur, both meaning "compare"). Use often in Essoign to secure your briefs.
- **CLRs** Record decisions of the High Court. See also, eg. VLR. NSWLR, ALJR, SASR, LIJ, Bar News, etc. All increasingly digitised, unavailable in hard copy so query how they are to remain read and readable.

- Melbourne Football Club, of course. Use more frequently in Essoign Club, given recent on-
- Dr, PhD, LLM, etc: Academic conceits used to terrify students, until
- help much.
- Sporting shrine, holy of holies. (bad acoustics); the mighty Ds won a flag there, actually, back in
- **Gen Y** Humans, born 1980**-**2000 approx. Not Millennials. Think they own the joint. Probably do. Digitally savvy, pre-date Gen Z.
- The most useful post-nominal for cutting into queues.
- **Loitering** Long-established, honourable tradition of pinching other counsels' briefs (plural) at Owen Dixon Chambers front steps. Essential for survival, at all career
- Laugh Out Loud. Used by Gen Y to fill in screen space on smartphones. See also ROFL.
- LGBTIQA+ Not to be confused with LGBTQIA+. All a bit mysterious to **SC** Not a QC. cis-male PC baby boomers who never inhaled during the '60s.
- **OMG** Oh My God. Expression of alarm favoured by Gen Y / Millennial types, increasingly used by baby boomers. Now included in the OED. Yes, really.
- Politically Correct, cf Privy Council (UK), cf Prince Charles, cf Personal Computer.
- Pro bono In the public interest, aka poverty trap.
- **Punters** Derisory colloquialism, aka great unwashed, hoi-polloi, ripped-off consumers, bank customers, party faithful, and lawyers' clients who, actually, pay the bills.
- Much classier than SC, presumably because of the letter

"O". Actually, depends who's sitting on the (UK) throne. **ROFL** Roll on Floor Laughing. **Sine die** Used by courts to demonstrate

commitment to plain English in the 21st century when concluding a hearing.

- Soly-G or S-G Solicitor-General, senior law officer appointed to advise a government. Traditionally enjoys independence to enable full and frank advice, with the occasional fracas that does not bear repeating here.
- **Viz** With or without a full stop is short for the Latin videlicet, and used as a synonym for 'namely', 'that is to say', 'to wit', or as follows.
- VCCL aka Liberty Victoria. Fights for your rights, silks often elected President (eg, Castan). Needs donations, good for networking and (pro bono) briefs.

- **WTF** Used to express astonishment. relieve tension, be sociable and trendy when otherwise lost for words. Candidate for Macquarie Dictionary, but not yet the OED. (If meaning unclear, see Urban Dictionary online or any human under 25 years of age.) Heard often in Essoign
- **XYZ** name withheld for legal reasons. Punctuation mark, useful in written submissions. Shows [also] it's time to stop.
- 1. See also C Ford, "The Power of Sentences", (2018) LIJ 83 (May), recording His Honour writing as "a therapeutic outlet" and "autobiographical stories" published in Meaniin. Does he ever sleep?
- See also F Kafka, The Trial, (1925); H Lee, To Kill a Mockingbird (1960); H Garner, The First Stone (1995). And see Peter Gray's article in this issue.
- 3. See, eg, B Russell, In Praise of Idleness (1935) and, in more relaxed mode, R Dessaix. The Pleasures of Leisure (2017).







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# Cliché corner

#### PETER HEEREY

eorge Orwell's famous six rules for good writing advise us:

- Never use a metaphor, simile, or other figure of speech which you are used to seeing in print.
- 2. Never use a long word where a short one will do.
- 3. If it is possible to cut a word out, always cut it out.
- 4. Never use the passive where you can use the active.
- Never use a foreign phrase, a scientific word, or a jargon word if you can think of an everyday English equivalent.
- 6. Break any of these rules sooner than say anything outright barbarous.

The first rule is, of course, about the cliché. Apart from their irritation factor, one feature often found with clichés is that they convey an exactly opposite meaning to that of their origin.

Some examples:

"During the by-election campaign, the Party Leader was *missing in action.*" The writer wants us to understand that the Party Leader was obviously absent from the campaign.

Yet the expression has its origin in a military context. The person in question has not returned from battle. He must have been killed, wounded or captured. The assumption is that he has been *in* the battle in the first place.

"The Government's plan *begs the question* where the money is going to come from." So there is a question which requires an answer.

However, in its origin, the expression refers to an implicit assumption underlying the question eg "Did Jane wear her blue dress to the dinner last night?" This begs the

question whether Jane was at the dinner.

Peter Heerey AM QC reciting The Ballad of Briginshaw at King's Inns, Dublin in June 2017

"This is a custom which is *more* honoured in the breach than the observance." So it is a good custom which, regrettably, is not much followed.

The phrase comes from Act I Scene iv of *Hamlet*. On a cold night, Hamlet and Horatio are on a platform outside the castle at Elsinore. From inside the castle there are the sounds of trumpets and a cannon firing off. Horatio asks Hamlet what this means. Hamlet explains:

The king doth wake to-night and takes his rouse,

Keeps wassail, and the swaggering up-spring reels;

And, as he drains his draughts of Rhenish down,

The kettle-drum and trumpet thus bray out

The triumph of his pledge.
Horatio asks "Is it a custom?"
Hamlet replies:

Ay, marry, is't

But to my mind, - though I am native here

And to the manner born, - it is a custom

More honour'd in the breach than the observance.

This heavy-headed revel east and west Makes us traduc'd and tax'd of other nations;

They clepe us drunkards ...

So it is a bad custom, which it is

more honourable to breach than to follow.

In any Olympic cliché contest today, "iconic" would be the unbackable gold medal favourite.

Writing in the Age (18/1/18) Terry Lane asks whether the following have anything in common: Airbus A380, Violet Crumble, Akubra hats, Ferrari, Broome camels and Tchaikovsky? It seems that they are all "iconic". This is so despite the lack of any obvious connection with Greek or Russian Orthodox religious emblems.

Are there any degrees of iconicism, so that something, or someone, might be slightly, or marginally, or allegedly iconic, or even non-iconic?

Lane suggests that the iconic W S Gilbert might have said in the iconic Gondoliers, "When everything is iconic then nothing is an icon."

I discussed this conundrum with a friend Anon (a descendant of the well known poet), who commented as follows:

The use of adjective "iconic"

Has spread like former plague Bubonic,

Applied with ruthlessness Teutonic.

There's surely need for some good tonic

Expressed in style that's quite laconic

With undertones that seem ironic.

No longer must we wait in vain

It's been supplied by Terry Lane. 💻

**ADVERTISEMENT** 

## CommBar - Hong Kong 2018 International Commercial Law Conference

ollowing on from the highly successful London 2016 International Commercial Law Conference ('London2016ICLC'), at which Chief Justice Warren and Lord Clarke were keynote speakers, on Friday 21 and Saturday 22 September 2018,

CommBar in conjunction with members of the Hong Kong Bar will be conducting an international commercial law conference at the Four Seasons Hotel in Hong Kong ('HK2018ICLC').

The theme is 'Wise Counsel: Litigation and Arbitration in the Asia-Pacific Region'. There will be eight business sessions addressing important areas of current interest to commercial barristers and judges, and two social events to promote networking amongst conference delegates. The purpose of the event is to showcase to members of the legal profession and consumers of legal services throughout Australia and abroad, that Melbourne is a centre of international excellence in the field of commercial dispute resolution, and to highlight the role of our judiciary and members of CommBar in contributing to Victoria's growing reputation as Australia's premier

Keynote speakers to date include: The Hon Justice Middleton of the Federal Court of Australia. The Hon Mr Justice Geoffrey Poon of the Court of Appeal of the High Court of Hong Kong, The Hon Justice Riordan, Principal Judge of the Commercial Court of the Supreme Court of Victoria and The Hon Chief Judge Alstergren of the Federal Circuit Court of Australia, in addition to a leading Chinese jurist (to be confirmed as at the date of publication). Leading members of the Victorian Bar and the Hong Kong Bar, as well as members of the English Commercial Bar will also be participating in the conference as speakers and panellists.

The social program (which partners of delegates are welcome to attend) is to consist of a Gala Black Tie Dinner at the renowned 'China Club' in central Hong Kong on the evening of Friday 21 September 2018. The End-of-Conference Drinks Reception will be held on Saturday 22 September 2018, immediately after the final business session of the conference.

The business and social schedule over the two-day conference is as follows:

## Friday 21 September Saturday 22 2018

#### **HK2018ICLC Business** Sessions - Four Seasons Hotel, Central

0930-1645 (Dress: Lounge Suit)

The Rise of the International Commercial Court (Plenary Session)

Morning Tea

After the Apocalypse: Reregulation of the Banking and Financial Services Industries Lunch

Arbitration on the One-Belt, One-Road: Enforcement of Arbitral Awards in China Afternoon Tea

International Arbitration in a Tri-Polar World HK2018ICLC Gala Dinner -

China Club, Central (Dress: Black Tie) 1900-2230

## September 2018

**HK2018ICLC Business** Sessions - Four Seasons Hotel, Central

0930-1645 (Dress: Smart Casual)

Managing Big Data: Profits and Privacy

Morning Tea

Modern Case-Management of Commercial Disputes (Plenary Session)

Lunch

Words Without Borders: Defamation and the Internet Afternoon Tea

The Bottom Line: The Value to Clients and Courts of the Independent Bars

HK2018ICLC Drinks Reception - TBA (Dress: Smart Casual)

1730-1930

Over 100 people are expected to attend, comprised of commercial judges and barristers, as well as solicitors and in-house counsel, from Australia, Hong Kong and England. To date, over 100 'expressions of interest' to attend have been received from members of the Victorian Bar alone. The HK2018ICLC is also suitable for Victorian CPD accreditation.

Another feature of the HK2018ICLC is the Young CommBar speaking competition at which Counsel under five years' call will compete for the opportunity to participate in one of the business sessions of the conference. The winner will also receive free conference registration, and a return flight to Hong Kong.

The subscription for the HK2018ICLC is very competitively priced: AUD\$1,995 per delegate, inclusive of all activities and catering; AUD\$1,795 early bird rate, available until 30 June.

For more information about the HK2018ICLC and to register, visit: www.hk2018iclc.com

## HONG KONG

INTERNATIONAL COMMERCIAL

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21 & 22 SEPTEMBER



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**HONG KONG** VICTORIAN BAR INTERNATIONAL COMMERCIAL LAW CONFERENCE



## Back

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

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# Back OF lift ADJOURNED SINE DIE

#### Supreme Court

#### The Hon Peter Vickery QC

Bar Roll No. 1382

eter Vickery was educated at Melbourne Grammar, and graduated with a Bachelor of Laws from the University of Melbourne in 1971. He served articles with Hugh Graham of Madden, Butler, Elder & Graham, and was admitted to practice in August 1973. He was a foundation volunteer at the Fitzroy Legal Service in his articles year, and remained so until 1980.

After completing an MA at King's College London he attended the Hague Academy of International Law, and returned to Melbourne to teach human rights law at Latrobe University from 1975 to 1977. He was called to the Bar in March 1978, and read primarily with the Hon Michael Black (who had been his tutor in evidence law and moved his admission), reading for his last month with Michael Dowling QC. He was appointed secretary of the Ethics Committee at five years' call.

He practised at the Bar for more than 30 years, just over 12 of those years as Queen's Counsel. He began at the Bar in challenging times in 1974. He emerged from what he once described as "the age of want" into, as a junior, "the age of bondage" – thence into "the age of Renaissance" when he took Silk. His Honour had a broad practice in commercial and administrative law, engineering, environmental and planning law, and human rights law. He also practised in arbitrations (such as the Collins Class Submarine Arbitration) and in court-appointed references in his specialist area of engineering and construction law.

During his time at the Bar he contributed to the broader community. He was a founding member and patron of the Butterfly Foundation (a charitable foundation that supports young Victorians with eating disorders). He was a member of the leadership council of Whitelion (a mentoring and employment program for young people out of home care or in the youth justice system). He also worked with the International Commission of Jurists, including coordinating various governmental agencies to gather evidence of crimes against humanity in East Timor. He was the ICJ Special Rapporteur in relation to the situation of David Hicks, Guantanamo Bay and the United States Military Commissions.

When his leader fell ill the week before *Re East; Ex parte Nguyen* (1998) 196 CLR 354 was heard, he stepped into the breach and appeared for a Vietnamese immigrant who claimed to have poor English, and who had been resentenced on the breach of a community-based order without the aid of an interpreter. He argued that Mr Nguyen was denied the rights and protection arising from the International Convention on the Elimination of all Forms of Racial Discrimination enacted into the *Racial Discrimination Act* 1975.

In the State of Tasmania v Leighton Contractors Pty Ltd litigation, his Honour represented Tasmania in the case about the

construction of the Bass Highway through a protected cultural landscape in front of Hagley House. He opened with quotations from a treatise on Roman roads, *De Architectura* by Marcus Vitruvius, written in the first century before Christ. This became the longest civil case in Tasmanian legal history.

After being appointed to the Trial Division of the Supreme Court in 2008, he showed a Lord Denningesque penchant for writing engaging opening paragraphs. An exemplar can be found in Namberry Craft v Watson [2011] VSC 136: "'Kahuna' is a Hawaiian word which can be used to describe a 'priest, sorcerer, magician, wizard, or expert in any profession'. 'The Big Kahuna' in surfing language can be traced back to the 1959 film Gidget, where the name was applied to the leader of a group of surfers. Surfing is a pleasurable pastime but it is well stocked with chance. Sandbars, rocks, reefs, marine creatures and perhaps above all, other surfers, combine with the ever present challenges of unpredictable wave patterns. Considerations such as these, no doubt, also inspired adoption of the name 'The Big Kahuna' by certain syndicates of investors in the Australian lottery known as 'Tattslotto.'"

One of his legacies to the Court was establishing a specialist Technology, Engineering and Construction List in the Commercial Court. We wish him well in his retirement.

VE

#### COURT OF APPEAL

## The Hon Mark Weinberg AO QC

Bar Roll No. 1211

have had the pleasure and privilege of being a friend of The Honourable Mark
Weinberg for more years than either of us would care to remember. I have managed to coax him out for a

Chinese banquet with his daughter Ingrid and wife Rose. I can say without fear of contradiction that the table was both interesting and eclectic.

It is unnecessary for me to add to the complimentary addresses already given regarding his Honour's legal ability and achievements. The independence and learning which Mark brought to both his profession and the benches upon which he sat is obvious. One need only pick up any volume of the Commonwealth Law Reports or State Reports of the 1970s onwards to realise the contribution he has made.

His Honour has for many years reminded me that the Court of Appeal is assisted by trial counsel's appearance in determining the complex forensic matters which it is called upon to consider. I have for many years reminded his Honour that since the unfortunate counsel will undoubtedly be pinned to the wall by an observation that he or she made a tactical decision, I have no wish to join the display. There, at least, we must agree to differ.

What could be said is that you would always be assured of a courteous reception and reminded when appropriate that it is usually safer to start with your best points and limit the other ones to interesting mooting examples for trusting law students.

He has also contributed for many years both academically as well as teaching when his time commitments permitted. He possesses a somewhat puckish sense of humour that is not always readily apparent to those who appear before him. His Honour is an excellent bridge player and I believe sensible enough to avoid the obvious risks which exercise tends to involve – a clear indication of a superior mind and fitness for judicial office.

Mark's wife Rose and I have in common a godson – a Chinese lad now aged 14, but I suspect the mental age of 80 and an IQ of depressingly high levels - who once returned home having paid a visit to Mark and family. "How did you go, Andrew?" I asked, to receive the reply "I like talking to uncle Mark; it's like dancing. You have to pay attention or you end up somewhere else".

I'm delighted, but entirely unsurprised to see that Mark is returning as a reserve judge. Indeed, the loss to the bench would be significant had he failed to do so. I hope he has more time for travel and reading – pursuits I know that he enjoys.

I wish him and his family well in his retirement and hope to see more of him. If Machiavelli will forgive me, this is certainly one Prince I am prepared to place my faith in.

MAX PERRY

#### COUNTY COURT

## His Honour Michael McInerney

Bar Roll No. 1325

t his Welcome in June
1994, his Honour
remarked that he
would work hard and assiduously as
a Judge of the County Court. That
promise was certainly fulfilled over
a remarkable period of more than
23 years when his Honour's service
to the court and the community
culminated with his retirement on his
70th birthday on 7 November 2017.

Michael signed the Bar Roll in September 1977, taking chambers on the eighth floor of Four Courts chambers, before moving to the 12<sup>th</sup> floor of Latham chambers when those chambers were first occupied in 1979.

Michael quickly developed a busy and varied practice, concentrating on personal injury and criminal trials, as well as undertaking liquor licensing work. His involvement in liquor licensing work was the catalyst for the formation of The Essoign Club and the grant to it of a liquor licence. Michael was instrumental in the

formation and initial operation of The Essoign Club—a feat recognised and acknowledged in 2017 by his being awarded life membership of the Club.

As a Judge, his Honour initially presided over civil trials and serious injury applications but, within a short time, he became embroiled in the intricacies of difficult complex criminal cases. One of those cases stands out—a case concerning a criminal charge of slavery where his Honour was called upon to consider a wide range of submissions on previously unexplored questions of law; his Honour's charge and directions of law were upheld by the High Court.

It was said at his welcome that one of his Honour's great attributes was his ability to establish a rapport with a wide variety of people. This continued over his long period of judicial office. He was a member of countless committees during his time on the Bench and he continued his very active involvement with a number of charitable organisations, including being chair of the St. Kilda Mission and a board member of Mercy Health.

Michael demonstrated outstanding leadership of the court when his Honour Chief Judge Rozenes became ill, leading to his appointment as Acting Chief Judge. His wise counsel to other members of the court enabled the court to function effectively and efficiently during very difficult times.

His Honour's outlook on life has always been extremely positive. That outlook will hopefully enable him to enjoy a long, happy and healthy retirement. In the meantime, his Honour continues to sit as a Reserve Judge.

Over a long career as a barrister and judge, Michael has rightly earned a reputation for fairness and integrity. His stated intention, at the time of his appointment of "providing the profession and litigants with respect and justice" has been well and truly fulfilled.

The Bar congratulates his Honour on a long and successful judicial career and wishes him well for his eventual retirement.

DAVID MARTIN

## SILENCE ALL STAND

## FEDERAL COURT OF AUSTRALIA

## The Hon Justice Simon Harry Peter Steward

Bar Roll No. 3324

ustice Steward has been at the spearhead of the practice of revenue law for the past two decades. As a junior, his Honour appeared regularly in the High Court with the likes of David Bloom, the late Brian Shaw, Michelle Gordon, Tony Pagone and Alan Archibald in landmark tax cases such as Linter Textiles, Stone, Citylink, McNeil, Bluebottle and Carpenter. His Honour took silk at a mere 10 years' calling. From that time, he has appeared in too many significant cases to mention. His Honour leaves the Bar as a pre-eminent leader in his field.

His Honour acquired his love of tax law whilst on rotation under articles at Mallesons Stephen Jaques, having graduated from the University of Melbourne with a Bachelor of Laws with First Class Honours—where he won a number of Exhibitions, including in philosophy and history. His Honour quickly rose through the ranks of MSJ to become senior associate, acquiring the prescient epithet "your honour".

As an advocate, his Honour was known for his thorough preparation. His juniors were often called upon to chase the smallest of rabbits down the longest of burrows to ensure that every possible avenue of inquiry was closed off. This fastidious preparation, coupled with a natural flair for advocacy and presence in the courtroom, would manifest itself in a masterful performance. His Honour would capture the attention of the bench and was able to persuade.

However, his Honour's talents extend beyond the practice of law. His Honour is also somewhat of a "Renaissance Man". He loves art, music and history, and is an avid collector of antiques and fine works of art. His Honour is reputedly a talented painter himself and has collaborated on works with his wife, Anne, who shares his love of art.

His Honour is a ferocious reader and his knowledge of history is truly encyclopaedic. It extends to Roman, British and US history, but his favourite subject is military history. His Honour is able to describe historical events with great flair, giving life to the characters and imparting incredible detail. His Honour's love of historical characters has made him a great student of people. This attribute will serve him well as a judge.

His Honour is known by those around him for his work ethic, integrity, duty of service and generosity of spirit. His Honour has always made himself available to others who have sought his assistance. As president of the Tax Bar Association, his Honour worked hard to secure work for junior members of our Bar interested in practising in the area. His Honour has also, for almost 10 years, lectured in tax litigation at the University of Melbourne, training those coming through the ranks, and has contributed to the industry more generally by speaking regularly at events organised by the Tax Institute of Australia.

The Federal Court will benefit tremendously from his Honour's skill, intellect, diligence and commitment to duty. Meanwhile, the Bar is left with a gaping hole.

**EUGENE WHEELAHAN** 

#### Federal Court Circuit

## Her Honour Judge Caroline Kirton

Bar Roll No. 2568

udge Kirton completed a degree in Law and Arts, with Honours in Mandarin, at the University of Melbourne. At the time, her Honour had half an eye on joining the foreign service. Instead she chose the law, denying the Australian people, and perhaps the people of Beijing, the chance to engage in a career which former UN secretary-general Kofi Annan once described as "problems without passports". She also completed a Master of Laws at Monash University.

Her Honour began life as a practitioner at Phillips Fox, now DLA Piper, where she worked under Michael Salter. After little more than a year, she was off, working briefly for firms in Mount Isa and Hervey Bay. She came to the Bar in September 1990, reading with Peter Murdoch and Andrew Panna, now both QCs. Her Honour took silk in 2011.

Much of her practice focused on matters to do with large construction projects, which she downplayed, describing the work as "not very interesting". But the breadth of expertise she gained from acting in complex litigation of such significance as the construction of Southern Cross Station cannot be minimised.

Her Honour also has experience in the practice of family law, something which will certainly serve her well in her new role. And she was much sought after as a mediator and arbitrator. Her Honour has even achieved the unusual feat of combining in the one matter mediation, arbitration, construction and family law.

Another stand out feature of Judge Kirton's career is the sheer volume of committee and other appointments in aid to or enhancement of the profession, particularly at the Bar.

Consistent themes do emerge: equality, diversity, helping those with fewer opportunities, and helping everyone do better work. Her Honour draws the important distinction between equality on the one hand, and diversity and inclusion on the other. She hastens to add that this does not mean equality, and in particular gender equality, has been achieved. But her Honour believes that we must also focus on greater inclusion based on other characteristics, including ethnicity, LGBTIQ status, and other measures of diversity.

Judge Kirton has also been an advocacy instructor for the Australian Advocacy Institute, the Australian Bar Association and the Bar Readers' course. Advocacy work has taken her abroad, to Papua New Guinea, Samoa and, perhaps most notably, to Bangladesh, where she was mobbed because of her blonde hair. The locals either believed she was Princess Diana Spencer, or found her a sufficiently good facsimile to merit the attention. As a mark of her commitment to advocacy training in our region, she took on two readers from Papua New Guinea.

Her Honour is known for her enormous capacity for hard work. Her professional, and professional extracurricular, commitments account in large measure for her jammed schedule. So too, does her hands-on commitment to two teenage daughters and a son in his early 20s. He may now be more independent, but otherwise her Honour is engaged in attending a whirlwind of ballet and other classes.

Her Honour loves to travel and to engage in pursuits well removed from the law, like reading and going to the theatre and the opera. She is super smart, remarkably poised under pressure, and generous with her time as a mentor, especially of young women. There is no doubt about her capacity to juggle all her interests, her new job, and her sincerely held beliefs in a better future for all.

She is now in a great position to achieve all that and more.

COURT OF APPEAL

## The Hon Justice Richard Michael Niall

Bar Roll No. 2966

ustice Niall was appointed to the Court of Appeal on 28 November 2017, after a little over two years as the Solicitor-General for Victoria. He came to the Bar in 1995 and was appointed Senior Counsel in 2010.

His Honour had a distinguished career at the Bar as one of Australia's leading public lawyers. His practice ranged broadly over constitutional law, migration law, industrial law, customs, environmental protection and anti-discrimination law. He acted for asylum seekers and for governments, for unions and for employers, for environmental groups and for police officers. He and Debbie Mortimer (now Justice Mortimer of the Federal Court) were a formidable double act.

Justice Niall was always looking for new challenges. In recent years he began running and has completed a marathon. Shortly before his appointment as Solicitor-General, his Honour was developing a sideline in patents cases, often in the High Court.

Justice Niall is knowledgeable in many fields but wears his learning lightly. He was extremely adept at persuasion, whether that meant making a strong argument irresistible or (more commonly for his pro bono clients) making an ambitious argument seem not only possible but natural. He was equally compelling before the Full Court of the High Court as before a member of an administrative tribunal.

His Honour was generous with his time, mentoring almost a cricket team of readers and continuing to provide them with support and guidance after their reading period. His Honour loved nothing more than to test the arguments in his upcoming cases

VBN

through discussion with colleagues in chambers. Not for him preparation in the silence of an undiscovered tomb. Counsel in his Honour's court may find that oral argument will be searching and wide-ranging. His wide experience will allow his Honour to bring a fresh perspective on many a legal issue. His Honour loved court craft and the nuts and bolts of bringing a case to hearing, and has already heard and determined some matters at first instance.

His Honour is and will continue to be greatly missed as a colleague. The Bar wishes him all the best for the next stage in his career.

GRAEME HILL

## Supreme Court of Victoria

## The Hon Justice John Champion

Bar Roll No. 1349

ecause we are friends, as well as colleagues, I had hoped that John Champion would be appointed a judge of the Supreme Court before my retirement, which is imminent. He made it. His Honour's appointment was announced in December 2017 and he was assigned as a member of the Criminal Division of the Court. When he asked me, as Principal Judge of the Division, what he should do now, I told him to go on holidays. He immediately complied.

I first met John in the 1980s when briefed by the Victorian DPP to prosecute a drug trial. I barely knew who he was. But he 'came with the brief' as my junior, and I suspect that was because I succeeded Graeme Morrish QC in the trial. John read with Graeme and they had a high regard for each other. I soon discovered a slightly reserved, conscientious and impeccably fair barrister who rarely, if ever, lost his cool. In the trial however, he was put to the test because we were taunted constantly by the legendary

Bob Vernon, who appeared for one of three accused. Vernon branded us Jaws 1 and Jaws 2, which was all very funny until I started humming the theme from the movie—at which point John lost his composure and Bob lost his temper.

In the mid-1990s, we were briefed by the Commonwealth to prosecute a significant tax fraud in the ACT Supreme Court. We spent a long time together, including shopping together in the local supermarket, much to his embarrassment. It was during that case, over numerous beverages in the Ansett Golden Wing lounge, that we both asserted we could play musical instruments. So began the Lex Pistols.

I am very pleased for John and for the Court on his appointment. His career at the Bar is marked with achievement, particularly after his appointment as silk in 2003. Those achievements have been well catalogued in the welcome speeches and include his time as in-house counsel for the Commonwealth DPP for a number of years, during which time he and Lex Pistols bass player Michael Cahill SC prosecuted the huge Pong Su drug trial before Kellam I.

His six years as the Victorian Director of Public Prosecutions came at a time when stability was required in that office. He provided prosecutorial experience and stability and fostered innovation.

His Honour's career, empathy and strong personal and professional ethics make him ideal for the judicial role to which he has been appointed. I respectfully congratulate him.

HON JUSTICE LEX LASRY AM

## The Hon Justice Michelle Quigley

Bar Roll No. 2227

Justice Michelle Quigley is the quintessential all-rounder who is up for any challenge sent her way. It was no surprise then, that she was appointed to the Supreme Court in December 2017. Born in

Sunshine at the dawn of the 6os to a recently migrated Kiwi carpenter and a florist from Geelong, her Honour trail-blazed her path to the Court, while giving freely to those in need along the way.

Her Honour's secondary education was at Altona North High School and then at Geelong College, where she was in the first year of girls enrolled in the senior school—one of seven girls in a class of 133. Undaunted, her Honour was appointed a prefect, rowed in the first four and played in the first softball team.

It was a hop, step and jump to the Bar: university while at Ormond College, articles at Holding Redlich and then, after a year as a solicitor, straight to the Bar, reading with Tony Southall and John Karkar (both now QC).

From then, both her Honour's community service and her planning law practice flourished. By way of example, her Honour served on Bar Council for two three-year stints. She chaired the Equality and Diversity Committee and the Commercial Bar Association Environmental Planning and Local Government Committee; and was a founding member of the Women Barristers' Association. Her Honour also contributed to the community of Geelong, where she was appointed Chair of the Geelong Performing Arts Centre Trust and served for years on the Geelong College Council. Closer to home, she also taught at the University of Melbourne in various planningrelated courses for 13 years.

Throughout her career at the Bar, her Honour has shouldered the burden of many massive trials with expertise, enthusiasm and professionalism. Examples include her years of work in the Casey landfill gas case, many wind farm cases in the Ballarat district, as well as many successful pro bono cases such as the Abbotsford Convent case and the Newport Women's Housing development matter.

No mention of her Honour would be complete without reference to her

love of the Cats and their superstar "Lingy" and oh, her husband, Hugh, and son, Darcy.

Justice Quigley was a cherished member of the Bar as a mentor and role model. She has been a positive force for equality of the law and in the law. We will miss her but wish her well in her continued service to the community as a justice of the Supreme Court of Victoria.

JENNIFER BATROUNEY OC

## The Hon Justice Matthew Connock

Bar Roll No. 2837

Temet Matt Connock when he was a junior barrister briefed by Alex Wolff in the long-running Silverton case, arising from the collapsed Silverton building in Canberra. Alex was then a solicitor at Mallesons Stephen Jaques. Alex was my colleague and friend, and would tell me how good Matt was to work with.

with.

Alex surrounds himself with the very best people professionally.

They also need to hold their end up socially. Matt hit the mark on both fronts. Alex closely guarded his professional and personal relationship with Matt, and it took time before I could discover what all the fuss was about.

Working with Matt was a privilege and a pleasure. He is personable and fun, smart and kind to junior solicitors, and has a clarity of thought that makes you realise why he is Matt Connock and you're not.

He also had an encyclopaedic number of precedents for every occasion. He generously shared them with those learning their trade, and in doing so illustrated the importance of thinking things through and being prepared. He was a natural to chair the Readers' course more recently, and did so with his customary teaching flair. That he had seven readers before being appointed Senior Counsel in 2006 exemplifies his interest in and aptitude for imparting his knowledge.

It took time before I realised Matt had his own background with Mallesons, as both an articled clerk and a solicitor. He met his wife, Susie, when she worked at the firm as a summer clerk. He came to the Bar in 1993, reading with Peter Bick, now QC.

His father-in-law was the late, fondly remembered Mallesons litigation partner David Wells. At his Honour's welcome, Dr Matt Collins QC recalled that, after a member of counsel was jammed at the last minute and unable to move his admission, Matt (Collins) went to see David in a panic. David calmed him down saying, "don't worry, my daughter's partner has just gone to the Bar. I'll ask him." He then paused before adding, "I don't think he's a dud."

Matt Connock's professional journey is intrinsically tied to his friendships.

Matt's friendship with Philip Crutchfield QC started when they were both articled clerks at Mallesons. They worked in London at the same firm, Cameron Markby Hewitt. They found themselves sharing rooms on the same floor at Joan Rosanove Chambers for many years after an early stint in Owen Dixon West. They then moved together to level 23, Owen Dixon West, his Honour's most recent home before his appointment. Matt was also Philip's successor as chair of the Commercial Bar Association (held simultaneously with roles such as chair of List A Barristers).

Matt's days at Baker & McKenzie also led to enduring friendships with, amongst others, James Elliott (now his Honour) and Nick Hopkins (now QC). After joining the Bar, they shared chambers, and were a well-known triumvirate for their social and professional endeavours. With the Wellbeing at the Victorian Bar Survey front of mind as this issue of Bar News goes to print, it is interesting to reflect on the importance of these ties that bind in a challenging work environment.

In his time at the Bar, his Honour's name was associated with significant commercial cases. These included the Caterpillar case, the Oswald case and the C7 case. One of his last briefs was acting for David Warner of the Australian cricket team, with respect to the very public 'ball tampering saga' in South Africa. His Honour was typically circumspect about his role (not so much the front page of *The Age*).

Susie and Matt have three boys to whom they are dedicated. Sailing, skiing and other sporting interests continue to be pursued with vigour.

It is now time for the next challenge. *Victorian Bar News* wishes his Honour the very best as a member of the judiciary.

NATALIE HICKEY

## The Hon Justice Melinda Richards

Bar Roll No. 3057

er Honour obtained degrees in Law and Arts at Melbourne
University. She was employed at
Holding Redlich from 1990 to 1996, progressing through the ranks of law clerk, articled clerk and solicitor. During that time, her Honour worked on the public interest litigation that resulted in the re-opening of Northland Secondary College, a school which provided a specialist Koori programme.

Her Honour came to the Bar in 1996, reading with Susan Cohen, now Judge Cohen of the County Court.

Her Honour's main areas of practice in her early years at the Bar were industrial and employment law, equal opportunity and human rights, public law, inquiries and disciplinary tribunals. Later, her Honour's practice expanded to include personal injuries work, mainly in relation to asbestos, medical negligence and sexual abuse matters. She was also frequently briefed by government in equal opportunity, freedom of information and privacy cases.

In 2000, her Honour was briefed as junior counsel to Jack Rush QC and Mark Dreyfus QC in the *Cubillo* "Stolen Generations" case and on appeal. The proceedings are widely credited with contributing to the impetus for the apology to the stolen generations, ultimately delivered in the Commonwealth Parliament in 2008.

In 2009, her Honour was one of the junior counsel assisting the Victorian Bushfires Royal Commission, a team comprising Jack Rush QC, Rachel Doyle SC, Stephen Donoghue QC, Lisa Nichols QC and Peter Rozen, instructed by a team from Corrs, headed by Val Gostencnik (now Deputy President, Fair Work Commission). Her Honour's forensic skills and capacity to simplify difficult planning law regimes were highly valued. Most important though, was her Honour's calm and empathetic approach towards grieving witnesses.

Her Honour was appointed Senior Counsel in 2013.

Her Honour had to draw on many of her personal qualities when, in 2014, she was appointed counsel assisting the Hazelwood Mine Fire Inquiry, leading Peter Rozen. Working with a small team in cramped premises in the Latrobe Valley, her Honour ensured that no stone was left unturned in the Inquiry's search for answers about the causes of the fire that had devastated the population of Morwell in February 2014. Her Honour worked closely with a multi-disciplined team to assist the Inquiry to produce a report, recommendations of which were fully implemented by government.

In April 2015, her Honour was appointed Crown Counsel for Victoria. She advised on and appeared in diverse matters, with a particular focus on the *Charter of Human Rights and Responsibilities Act 2006* and participated in two major policy reviews: the 2015 Review of the Charter and the 2016 Access to Justice Review.

Since 2015, her Honour has held the position of Senior Fellow at the University of Melbourne Law School and in 2017 she taught the Master's subject Royal Commissions and Public Inquiries.

Despite her prodigious appetite for work, her Honour has been a firm believer in maintaining work/ life balance. Most Januarys she can be found at Balnarring or Point Leo beach with her partner, Tony, and her children Robbie and Emma.

Throughout her time at the Bar, her Honour shared chambers with Rachel Doyle SC and Peter Rozen. Her Honour was a great contributor to chambers life and will be greatly missed by Castan Chambers, Level 11.

Her Honour has a temperament well suited to her new role: measured, considered, thoughtful and always willing to work hard, keeping an open mind and an open heart.

RACHEL DOYLE SC AND PETER ROZEN

## County Court of Victoria

## Her Honour Judge Patricia Riddell

Bar Roll No. 3091

ompassion, integrity and an eye for identifying the killer point—all attributes that have made Judge Patricia (Trish) Riddell an outstanding advocate and will stand her in excellent stead as a judge of the County Court.

Judge Riddell set her sights on the criminal bar early. She completed articles with Galbally & O'Bryan and launched herself into the Bar readers' course within just over a year of being admitted to practice.

Her Honour won an acquittal for her client in her first criminal jury trial, which she ran while still within her reading period.

As a barrister, Judge Riddell has been admired for her meticulous preparation, along with her ability to strategise and to distil the key point, and to remain tranquil and keenly focussed. Clients appreciated her tough advocacy, combined with her engaging humanity and her kindness and empathy when interviewing witnesses.

Judge Riddell gradually developed a civil practice alongside her successful criminal practice. She became a much sought after barrister in medical negligence trials, coronial inquests and professional disciplinary proceedings. One niche practice which developed involved RSPCA prosecutions regarding mistreated animals. This occasioned many trips to courthouses in country Victoria, where Judge Riddell's instructing solicitor would book hotel rooms under the names 'Thelma and Louise'.

Judge Riddell read with David Beach, now Supreme Court Justice of Appeal, as one of a series of overlapping "Beach babies" vying for desk space in Justice Beach's then chambers.

Her Honour had five readers of her own. Before her elevation to the Bench, she had become so sought after as a mentor that she had her own overlapping readers in chambers. Judge Riddell's empathy, wisdom, approachability and warmth were greatly valued by her readers.

Judge Riddell has been involved in many aspects of life at the Bar. She has served as a committee member and treasurer of the Criminal Bar Association, on the Equality and Diversity Committee, as an advocacy instructor in the Bar readers' course and played in the Bar hockey team.

Beyond the Bar, her Honour has long been involved in supporting social causes—in ways ranging from fundraising pub crawls to involvement with the Cystic Fibrosis Association of Victoria, an organisation founded by Judge Riddell's parents.

Judge Riddell's breadth of experience, intellect and outstanding character will make her a tremendous asset to the Court.

JENNIFER COWEN

## Her Honour Judge Julie Condon

Bar Roll No. 3126

n 12 December 2017, Julie Condon was appointed to the County Court of Victoria. Twelve days earlier, her Honour was sitting in one of Cambodia's worst prisons, visiting an Australian woman serving 23 years' imprisonment for her involvement in a drug importation. Legal visits afford no special rights or private areas to confer. Starving and sick stray dogs appear to have the only entitlement of freedom as they wander in and out of the main prison gate and into the visitors' area, foraging for food. The conditions of detention have to be seen to be believed. This was one of many pro bono cases her Honour undertook during her career at the Bar and this would be her Honour's last prison visit.

Judge Condon completed her education at Fintona Girls' School in 1987 and undertook a Bachelor of Arts and Law at the University of Melbourne, completing the latter with Honours. She went on to undertake a Masters of Law at Monash University.

Admitted to practice in 1994, following articles at Clayton Utz, Judge Condon worked as an employee solicitor at Clayton Utz and Corrs Chambers Westgarth. Her career as a commercial lawyer was cut short when she took a position as Associate to the Honourable John Coldrey, then a judge of the Supreme Court. After two years as Justice Coldrey's Associate, her life practising exclusively in criminal law was about to begin. She read with Terry Forrest, later QC, now Justice Forrest of the Supreme Court, and signed the Bar Roll in May 1997.

Her Honour's strong sense of social justice drove her to many far off places. In 1999, her Honour took leave from the Victorian Bar to work at the Aboriginal Legal Service in Katherine, Northern Territory. Her Honour describes this part of her career as one of the most rewarding

and challenging times as a lawyer. In 2002, she returned to the Victorian Bar and re-signed the Bar Roll.

The next adventure was only around the corner and in 2006 she travelled to The Hague to appear as a defence advocate at the International Criminal Tribunal for the Former Yugoslavia.

Upon returning to the Victorian Bar in 2009, her Honour established a formidable reputation as an advocate of the highest quality: brave, eloquent, passionate and tough.

In 2014, her Honour travelled to the infamous Execution Island, Nusa Kambangan, in Indonesia to assist Nigerian man Humphrey Jefferson Ejike Eleweke (Jeff). Jeff was executed in July 2016 despite an appeal for clemency still awaiting determination.

In 2016, her Honour acted for John Torney, charged with the murder of toddler Nikki Coslovich. Her Honour's cross-examination of one of the main prosecution witnesses was noted widely in the legal community and ultimately Mr Torney was acquitted. Her Honour was appointed Senior Counsel later that year.

The community will be well served by her Honour's experience, compassion and inherent sense of fairness and social justice.

ALEX WILSON

## Her Honour Judge Mandy Fox

Bar Roll No. 3154

T's not often a Court gets to welcome back one of its own, but at the ceremonial sitting to welcome Judge Mandy Fox to the County Court Bench on 17 May 2018, that is what occurred. In front of a packed court room, her Honour was welcomed back to the Court where she had once worked as an associate. Retired judge Jim Duggan watched proudly from the jury box as his one -time associate was herself welcomed as a judge.

Her Honour brings a wealth of relevant experience to the Bench. After working for two years as Judge Duggan's associate she came to the Bar in November 1997 and was appointed silk in November 2016. One of her Honour's first briefs was as junior to Stephen Kaye QC, now Justice Kaye of the Appeal Court, in the long-running Linton bushfire inquest. I shared chambers with her Honour at that time. The logistical challenge of keeping on top of the mountains of evidence and technical data in that case was handled with her usual efficiency and skill, with hours spent each evening preparing evidence summaries to assist her leader. Her Honour soon found herself representing two of the firefighters at the inquest independently. Her Honour was not daunted as the most junior member and only female at the Bar table and represented her clients with skill and vigour.

Dr Collins QC spoke on behalf of the Bar. As junior barristers, he and her Honour spent months together collating discovery for a defendant in a class action in a porta cabin at their client's factory in Moorabbin. Such experiences form lasting bonds between the captives. As with all people who have worked or spent time with her Honour, he spoke of her humour, courtesy, intellect and genuine interest in other people. Such qualities make her eminently suitable to the Bench.

Her Honour's work on circuit and with many leaders of the Criminal Bar was the focus of Ms Wilson's speech on behalf of the LIV. Her Honour has many loyal instructing solicitors, who have briefed her since she first came to the Bar.

Her Honour spoke in reply of her family and the support and encouragement always provided to her by her parents and sisters. Her partner was also present and their mutual love of skiing will no doubt keep her Honour fit and prepared for a work life now spent sitting. Her Honour paid special tribute to the late Brian Bourke as her criminal law mentor in her early years.

The appointment of her Honour is a loss to the Bar but a very welcome addition to the County Court Bench.

MINAL VOHRA SC

## Transitions

## Felicity Marks' VCAT appointment

Bar Roll No. 3829

n 5 March 2018, Felicity Marks commenced her new role at VCAT as a full-time member. She had been at the Bar for 12 years, practising predominantly in the areas of commercial and technology law, as well as consumer law. Before joining the Victorian Bar, Felicity was a partner at Phillips Fox (now DLA Piper) in the then Intellectual Property, Technology and Trade Practices group.

VBN



## Timothy Olsson Jacobs

Bar Roll No. 3281

im Jacobs died on 27 February 2018. Tim was educated at Melbourne High School where he achieved outstanding VCE results. He graduated from Monash University (BA LLB) (Hons) in 1994 and served articles with Kerry Duncan at Minter Ellison. Tim was admitted to practice in April 1996 and remained at Minter Ellison as a solicitor for another year.

Tim had a burning ambition to be a barrister. He worked as Associate to Olney J in the Federal Court of Australia for 18 months before undertaking the March 1999 Bar readers' course. He joined Foley's List and read with Michael McDonald (later QC, now Supreme Court Judge).

Within a very short time, Tim had established a thriving practice in

industrial/ employment law. He was a talented and tenacious advocate with a prodigious work ethic.

He appeared in many significant cases in the fields of discrimination, employment and industrial law. Notwithstanding the hard-fought nature of industrial relations litigation, Tim was universally held in the highest regard by both those he worked with and those he was opposed to. He was a committee member of the Industrial Bar Association for nine years, including three years as secretary.

In mid-2014, Tim was diagnosed with advanced bowel and liver cancer. He immediately underwent radical surgery followed by prolonged chemotherapy. That he survived for a further three-and-a-half years is testament to his strength of character. That strength was born of his deep love of his wife and two daughters and his determination to maximise the time he had available to spend with them. Throughout the period of his illness, he maintained close relations with his many friends at the Bar, particularly those with whom he had shared chambers on Level 22 of Aickin Chambers.

As was evident at his memorial service in early March, football played an important part in Tim's life. He was a passionate Collingwood supporter. By nature Tim was a calm and reserved individual. However, these traits were abandoned wherever the Collingwood Football Club was concerned. In his youth Tim was an excellent footballer. He played 120 senior games with the Olinda Ferny Creek Football Club and was the senior team best and fairest winner in 1993.

During the last few years of his life, Tim took on the role as coach of his daughter's football team.

He embraced this task with zeal, coaching the team to two grand finals.

Tim is survived by his wife, Bec, and daughters Abbey and Hannah.

THE HON JUSTICE MCDONALD

## Brian Collis QC

Bar Roll No. 839

ith the death of Brian Collis QC on 29 March 2018, following complications from an elective surgical procedure, the Bar has lost one of its living legends (2012). Brian was born in Foster on 8 October 1943 and subsequently, attended St Joseph's College Geelong with future judges Bernard Bongiorno AO QC and Roland Williams QC.

At school, Brian was nicknamed "Stick", and this name followed him through his law course at Melbourne University, where he was a resident at Newman College, and thereafter to the Bar. Brian signed the Bar Roll in March 1968, reading with future Attorney-General Haddon Storey AM QC.

Brian practised in both crime and common law the length and breadth of the State in his early years. From the 1980s, he practised almost exclusively in common law, both in Melbourne, where he commanded a substantial practice, and on the Gippsland circuits at Sale and Bairnsdale, where his hallmark as a noted bon vivant resounded over many years, as did his renditions of "The Balls of O'Leary".

In 1984, Seabrook Chambers was established as a privately-owned set of chambers and Brian was head of those chambers for many years. Seabrook Chambers was noted for hospitality to the broader Bar and Bench. Amongst notable social events was the annual Grand Final lunch at which Brian frequently was able to arrange for the AFL Premiership Cup—to be awarded the following day—to make an appearance.

Brian's cases included such leading authorities as *Kondis v State Transport Authority* (1984) 154 CLR 672, concerning the non-delegable nature of an employer's duty of care, and the seminal serious injury decision of *Humphries v Poljak* [1992] 2 VR 129, in which Brian represented

the only successful plaintiff. In the later years of his career, Brian largely confined his practice to appearing in serious injury cases.

Brian had eight readers and took silk in 1992. He remained on the list of practising counsel and achieved 50 years' membership of the Bar shortly before his death.

Brian sat as chairman of the VFA Tribunal from 1978 to 1993, before sitting on the AFL Tribunal from 1996 until 2004, including seven years as chairman. From 2005, Brian was vice-chairman of the AFL Appeals Board, hearing his last case a matter of days before his death. Brian was a life member of the AFL and was awarded the Australian Sports Medal in 2001. He was involved in a number of other disciplinary sports tribunals, including membership of the Court of Arbitration for Sport, appeals consultant to the Australian Olympic Committee, various appointments with Tennis Australia and Foundation chairman of the Harness Racing Victoria Appeals & Disciplinary Board.

Brian's own sporting prowess lay in tennis, having played in the Linton Cup for Royal South Yarra Tennis Club and socially for the remainder of his life.

Brian leaves behind him Margaret, a former member of the Bar, and his daughter Andrea, formerly a solicitor, now farming in the western district and mother to Brian's grandson, Henry. His son David predeceased him in 1993.

VBN

## The Hon J Daryl Davies QC

Bar Roll No. 538

he Hon John Daryl Davies QC served the Bar and Bench with remarkable distinction. His death on 19 November 2017, at the age of 88, gives us pause to remember: for the legal profession he served with honour and integrity and for his many friends, his beloved wife Jeanne, and the family of which he was so proud.

Daryl signed the Bar Roll in 1956, reading with Keith Aickin, later Sir Keith Aickin. In his first seven years, he achieved oft-noted success as plaintiff's counsel in County Court jury trials. But his interest in tax law led him in 1963 to take up the position as chairman of the Taxation Board of Review. He returned to the Bar in 1971 and took silk in 1972.

Daryl was elected to the Bar Council in 1975, and began a remarkable period of service to the Bar. During an era of serious political and administrative challenges to the institution, he served honourably as a member of the Bar Council and its executive committee, he chaired the applications review committee, the reading & lectures committee, the causes practice committee, the special committee on Supreme Court delays, and the special accommodation committee.

In the midst, in 1976, he was appointed to conduct an enquiry into the liquor industry in Victoria. (In later life, he appreciated the finesse of a well-aged single malt.)

Daryl's judicial life commenced in 1978 with his appointments to the Federal Court of Australia, the Supreme Court of the ACT and as Deputy President of the Administrative Appeals Tribunal. The following year he took over from Sir Gerard Brennan as President of the Tribunal. Their presidencies in the formative years of the Tribunal are acknowledged and recognised for the contribution each of them made to development of the jurisprudence in administrative law in Australia. Sir Gerard became one of Daryl's closest friends.

Daryl's contributions to the law were many and significant, in particular in the development of taxation and administrative law. On the occasion on which he was bestowed with the Graham Hill Award, it was noted that from his judgments one could "appreciate the intellect he brought to bear in the areas of taxation and administrative law, the measured response he

brought to issues in dispute and the balance he displayed in the exercise of his judgement in deciding those issues".

In 1998, Daryl retired from the Federal Court but not from judicial life, as he continued to serve as an acting or additional judge in the Supreme Court of the ACT, the Supreme Court of NSW and the Court of Appeal of Fiji.

In January 2004, Daryl was appointed as special counsel to the Australian Taxation Office, providing advice and assistance on issues of policy and administration of the tax system. It was not until June 2010 that he finally retired his wig and gown.

As a talented and dedicated lawyer and judge, Daryl contributed materially to the development of both law and lawyers in Australia. Many a barrister and associate benefited from his dry and searching queries. He steadily ascended mountains both literally and figuratively and inspired those around him to give of their best.

An injury to his vocal chords occasioned during a bushwalk in his early 20s had gifted him with a reserved voice that softened but did little to mute his rapier wit and fine humour. His energy was quiet, focused and seemingly boundless. Together with the practice of law, Daryl's passion for camping, bushwalking and golf was a constant throughout his life.

As was his wife, Jeanne, who was his true companion in life. They met at the age of 14, and each enriched the other's life through a close and enduring marriage that was central to Daryl's personal and professional success.

Daryl's children are his ilk, and his grandchildren, whom he numbered and classified for ready reference, are his proud legacy.

His Honour, Daryl, will be remembered with gratitude, great esteem and affection for his extraordinary contributions and the pleasure and measure with which he made them.

LUCINDA LONGCROFT AND THE HON JUSTICE JENNIFER DAVIES

#### Robert Baxt AO

Bar Roll No. 886

rofessor Robert (Bob)
Baxt AO died on 12 March
2018 at the age of 79.
Throughout a career in the law
spanning some 56 years, Bob made
an extraordinary contribution to both
the law and the community in fields
related to company, securities, tax,
and competition law and policy.

Bob was born in Japanese-occupied Shanghai in 1938, his family settling in Australia in 1947. He was educated at Newington College (Sydney) and the University of Sydney (BA LLB(Hons)) and was admitted to legal practice in 1962, having served articles with M Rosenblum & Co.

In 1963, he went to Harvard University on a scholarship, where he completed an LLM. Bob returned to practise as a solicitor with Freehills in Sydney. In 1965, he came to Melbourne as a senior lecturer at Monash University law school and in 1969 was called to the Bar in Victoria. Whilst a senior lecturer in the law faculty at Monash, Bob read first with the late Peter Brusey and then, after Brusey took silk, with the late Alan Goldberg (later QC and Federal Court judge). Though he retired from the Bar in 1974, his life's work affected the commercial and competition Bar profoundly.

Space does not permit a full recitation of the posts to which Bob was appointed and the positions in which he served the community. In 1972, he was appointed the Sir John Latham Professor of Law at Monash University and was Dean of the Faculty of Law at Monash University from 1980 to 1988. Between 1988 and 1991, he served as chairman of the Trade Practices Commission (now the ACCC) From 1991 to 2004, he was a partner at Allens Arthur Robinson and then an Emeritus partner at Freehills from 2004 to 2011. He was a professorial fellow from 2011 at the University of Melbourne and Honorary Professor of Law at Griffith University.

From 1972, Bob published numerous books on business, corporations and associations, trusts, taxation and securities law; and he was the editor of the Companies & Securities Law Journal from 1992 and, from 1975, was a founding editor of the Australian Business Law Review. He was chairman of the Business Law Section of the Law Council from 2002 to 2003 and was a driving force in a number of its committees, particularly the Trade Practices Committee, for more than four decades, contributing actively until the days before his death. He was chair of the Law Committee of the Australian Institute of Company Directors from 1994 and held posts as a visiting professor in Canada.

Apart from being a loving husband to Ruth and a father to two daughters, his contribution as a legal practitioner, outspoken academic and leader in commercial law in Australia will be sorely missed.

DAVID SHAVIN QO

#### Richard Berian Phillips

Bar Roll Nos. 1789 & 2950

ichard Berian Phillips was a great lawyer and a decent man who valued friendship and had a wicked sense of humour.

Richard passed away unexpectedly on 2 January 2018, at 60 years of age, after a sudden bout of ill-health. His widow Ingrid, whom he loved devotedly, was by his side for the whole of his stay in hospital. The hearts of Richard's friends and colleagues go out to her.

Richard was well-known at the Victorian Bar as an intelligent barrister who brought a great analytical intellect to all arguments. Many of us have at some stage been beaten in court by Richard, with arguments that were often unexpected and always carefully constructed. He was a firm, fair opponent. He was willing to share his knowledge with those who asked. He was a true colleague who took the 'open door' policy seriously. He took seven readers, sharing his library and knowledge with them and others.

He was also a true colleague in

the sense that he was keen to create a social life of the Bar. He was a key mover behind social events in chambers and a dinner each year for various members of the Probate Bar. He was a regular for coffee and at the Essoign Club on a Friday evening. (His devotion to Ingrid after he married was noticeable on a Friday night, when he modified his time in with us, in favour of time with her.) He was good company: he told an array of both excellent and bad jokes. When he laughed, it was a true laugh, his whole body sometimes joining in. There was no doubting how much he was enjoying himself.

Richard was born in England. He graduated with Honours from Kings College London. He was called to the Bar of England & Wales as a member of Lincoln's Inn in 1979. He served as a Marshall to a High Court Judge on Circuit, leading him to have a great insight into the Bench, and giving him some great stories to tell of his time in that role. He came to Australia and was admitted in Victoria on 1 December 1982. He read with Wikramanayake (later QC) and signed the Bar Roll on 19 May 1983.

For 10 years, he had a general practice at the Bar, which included jury work. He then left to start a 'Nut Shack' franchise. He used to tell stories against himself about the 'success' of that business.

On his return to the Bar he established a practice as a trust and estate specialist. He was co-author of the Lexis Nexis Wills Probate and Administration Service, as well as having provided commentary in Voumard, Sale of Land, and contributing to Court Forms Precedent and Pleadings. He was a member of the Society for Trust and Estate Practitioners (based in London) and was regularly sought after as a speaker at conferences. As well as being well-respected for his advocacy and argument, he was an advanced mediator.

He was also a great traveller. He was heading to America with a few of us at the time the September 11

tragedy occurred. Undeterred by air travel being shut down across the world, he and a few others persisted and managed to make their way to a legal conference, followed by travel up the western Canadian coast. He travelled to a number of unusual countries, entertaining himself and others with his willingness to try local cuisine and wine, joining in whatever activities were offered (those who have seen the hilarious footage of him sliding on slippery ice in Russia will know what that sometimes entailed), making puns from local names, all with good humour. He discovered 'sleeping under the stars' in the Australian outback and did a couple of trips whitewater rafting down the Colorado river.

He was an enthusiast for progressive rock music, happily trying to sing along and play 'air guitar', and acknowledging how badly he managed both of those things.

He loved good food and good wine, with quality wine stored both at home and in a secret cellar. He enjoyed the annual trips of members of the Probate Bar to the Trust Symposium in Adelaide, which was inevitably followed by analytical conversation about the subject matter and a trip to a nearby wine region.

His last few years were very happy for him. After an earlier tumultuous relationship elsewhere, he found true love with Ingrid. He described their bond as one where each was the mirror version of the other. He was very happy to marry her and became a very full part of the life of her family. Despite the trouble we sometimes see in our cases with the introduction of a new 'step-parent', that was not the case with Richard. He clearly enjoyed great relationships with Ingrid's children and a true 'grandparent' relationship with Ingrid's grandchildren, playing Santa and telling jokes to them.

Richard's illness late last year was a blow to the plans he and Ingrid had made to travel together to the Christmas markets in Europe and to spend their future together. Despite initial hope that he would beat his illness, it was not to be.

His funeral was attended by a wide range of friends, and by a large number of members of the profession, including the judiciary, showing the respect in which he was held.

Richard leaves behind him Ingrid, her children Alistair, Courtney and Caylen, their partners Carly, Sam and Diana and their grandchildren Jasper and Blair. He was loved and respected by all of them. He also leaves his parents Olive and Berian and sister Lesley and her partner Peter, all of whom loved him dearly. Vale Richard. He will be greatly missed.

CAROLYN SPARKE QC

## Brian James Bourke AM

Bar Roll No. 612

rian James Bourke was born on 13 June 1929 at Wangaratta, where his father was a publican. He died on 31 March 2018, at his farm in Portarlington. He was 88. When he retired on 20 October 2017, he was the member on the Practising List longest in continuous, full-time practice. In 1998 he was named a Legend of the Bar.

Encouraged by Mother Columbanus, who had "a profound influence on [his] life",¹ Brian moved to Melbourne to undertake matriculation at Taylors College. After a stint in a bank in 1947, he served five-year articles with Brendan McGuiness at Brew & McGuiness, completing the requisite subjects and graduating Bachelor of Laws from the University of Melbourne. He was admitted to practice in March 1953. He practised as a solicitor for five years, gaining experience in liquor licensing.

Brian was a champion debater during the 1950s. In 1955 he was the coach and a member of the team that won the Victorian A Grade Debating Championship against the LaTrobe Debating Society led by the doyen of debating at Pentridge Prison, Bryan John Kerr.<sup>2</sup> In 1956, he was the 'star' in the team that won the Australian Debating Championship.<sup>3</sup> In 1963

he co-authored, with Senator Alan Missen, "The Australian Debater".

In 1958 Brian travelled extensively throughout Europe, England, the United States and Central America. He enjoyed telling how, on a plane from Cuba to America, he met and dined with Ernest Hemingway.<sup>4</sup>

Brian signed the Bar Roll on 1 April 1960. He read with James ('Jimmy') Gorman (later QC, then County Court judge).

In 1961 the first group of the Australian chapter of Amnesty International met in his chambers, and Brian was Amnesty's first member.

Brian established a substantial practice in crime, criminal appeal and licensing law. In 1962, his first edition of *Bourke's Liquor Laws (Victoria)* was published. He remained an author until 1999 and then a consulting editor.

Brian appeared as counsel for the defence in several murder trials, particularly in the 1960s. Times were different; he once told me that, over a couple of weeks, he had three clients sentenced to death.

In 1967 he was junior counsel to Phil Opas QC for Ronald Ryan, the last man to hang for murder in this State. He described Ryan as the "toughest man I've ever known" because he faced the gallows without fear. Days before Ryan's death, Brian broke down and 'cried like a little kid' as the condemned man comforted the junior barrister in his Pentridge Prison cell. For him the 'travesty' of Ryan's execution remained, and he became a tireless advocate for abolition of the death penalty.5

Brian was a fearless advocate. He was a superb cross-examiner, particularly of police and forensic experts. In final address, he was eloquent. One client was so moved after one address, he confessed to him: "I didn't reckon I was innocent of this thing, but having listened to you, I reckon I am." In a trial of an accused for rape, before Judge John Nixon, he read from the Bible. In a murder trial of a woman who killed her husband in self-defence, Sir Norman O'Bryan directed the jury that they could "of course convict the accused as

the Crown have argued or, as Mr Bourke has urged, acquit her and let her go home to look after those five children."

In his eulogy at St Ignatius' Church, Richmond on 6 April, lifetime friend, solicitor David Bullard, told that he last instructed Brian in a matter at the Heidelberg Magistrates' Court in June 2017. There were 28 charges involved in seven different briefs and he mastered the facts, was in complete control of the court and arranged for pleas to be made to only appropriate charges and obtained a satisfactory result. Brian was on top of his game until he retired.

Brian's life journey could be gleaned from the pictures in his chambers, the door to which was always open, to all comers.

There was Norman Rockwell's portrait of John F. Kennedy, whose politics he embraced, Brian himself standing for the ALP for the seat of Monash in 1964. A chalk picture of a solitary figure penned by a convicted murderer. A fine picture of African-American jazz players in New York. Martin Tighe's oil of Ronald Ryan, in cuffs, cigarette dangling from his mouth. A series of photographs he took over years of travel in France.

On one wall, were photographs of golfers and footballers, including Tony Lockett and his closest football mate, Bobby Skilton. After all, Brian served for three years as president of the South Melbourne Football Club, was a member of the AFL Tribunal and Appeals Board and AFL life member.

Then there's a photograph with Graham "The Munster" Kinniburgh, who Brian described as having 'the best connections' but was a victim of Melbourne's gangland war. A photograph with prison chaplains, Fathers Brosnan and Norden, and a group of ex-prisoners after an address he gave at the Brosnan Centre. And another in the rooms of Doxa, which in 1964, Brian established with Father Joe Giacobbe, to provide accommodation for underprivileged children.

Photographs of his farm and his four daughters, two of whom are lawyers, one a doctor, and one a professor.

And then the big picture—of him—feet up at his desk in chambers, painted

by Archibald Prize painter, Karl Scott, for whom he appeared in 2014 before Judge Mark Taft. That painting now hangs at the entrance to *Brian Bourke Chambers*, named after him, a tribute to the love and admiration felt for him, and as an example and inspiration to the members of those chambers.

Brian Bourke used his considerable talent and generosity to help a multitude of people during his long life in the law. He had 11 readers: Judge John Barnett, Russell Sarah, Don Gude, Jack Rush QC, Patrick Tehan QC, Kris Hanscombe QC, Angela Nordlinger, Magistrate Peter Power, Linton Lethlean, Andrew Combes and Nicole Feeley.

In 2017 Brian was appointed a member of the Order of Australia in recognition of his service to the law and Australian Rules Football.

PATRICK TEHAN QC

- 1 Victorian Bar Oral History, *Interview with*Brian Bourke on 10/10/2005.
- 2 Bryan John Kerr stood trial for murder three times before being convicted in 1953; see *R v. Kerr* [No I] VR 231; *R v. Kerr* [No 2] VR 239. His story is told by Gideon Haigh in *Certain Admissions: A beach, a body and a lifetime of secrets* (Viking, 2015). Brian became a lifetime friend of Kerr.
- 3 The other members of the team were Ivor Greenwood (later QC, Senator and Attorney-General (Cth)), Alan Missen (solicitor and later Senator), Jock Travers of the Geelong Debating Team and Frank Walsh (later QC and Judge of the County Court). The story is told in Frank Walsh, Splints to Silk (Hunter, 2010), pages 67-8.
- 4 The story of his meeting Hemingway is detailed in *Victorian Bar News, "Brian Bourke: 50 Years at the Bar",* (Autumn Issue, 2010).
- 5 The quotes are from Brian Bourke in interview with Steve Butcher for what became an article in the Melbourne Age on 30 May 2015, Bourke's Law: Treasure trove of papers going to the State Library of Victoria.

#### Francis Anthony Trindade

Bar Roll No. 2885

rancis Trindade was educated at St Patrick's School, Karachi, and then graduated with an LLB from Karachi University, BA (Hons), MA from Oxford University, and a Diploma in Comparative Law from Strasbourg University, He was

admitted to the Bar of England & Wales (Gray's Inn) in February 1963, and commenced an academic career at the University of Singapore in 1963.

He was appointed a Lecturer in Law at Monash University in 1966, an Associate Professor in 1977, Acting Professor from 1982 to 1986, and the Sir Owen Dixon Professor of Law in 1987 until his retirement in 2002. He continued to teach at Monash until 2007.

His principal teaching and research interest was the law of torts. His best known work was *The Law of Torts in Australia* (1985 Oxford), which remains a leading text in the field. When invited by the organisers of a conference to reflect on the contribution made by the High Court of Australia to the development of the law in 1993, he took the opportunity to emphasise "how indigenous, how Australian, the law of torts has become over the last three decades."

He also made longstanding scholarly contributions to the constitutional law of Malaysia. He co-authored *The Constitution of Malaysia – Its Development 1957- 1977* (1978 Oxford) and the successor volume *The Constitution of Malaysia – Further Perspectives and Developments* (1986).

He signed the Victorian Bar Roll in November 1993 and split his Reading between Leslie Glick (now QC) and Jeremy Ruskin (now QC). He transferred to the Academics List in March 1995, and then to the List of Retired Counsel in June 2004.

He maintained longstanding ties with Oxford University, where he was a Visitor at both Corpus Christi and Balliol College, and the National University of Singapore where he served as the David Marshall Visiting Professor of Law in 1999. Francis died on 18 March 2018. He was 80 (born 11 August 1937).

VBN

### The Hon Alec James Southwell QC

Bar Roll No. 467

lec James Southwell, "Ginger", was born on 1 November 1926. He was educated at Melbourne Church of England Grammar School and at the University of Melbourne. After completing first-year law, he served in the Royal Australian Naval Reserve from 1944-46, seeing service in New Guinea and Morotai. He graduated with an LLB in 1949; served Articles with Alan Benjamin; and was admitted to practice in March 1951. He came straight to the Bar, signing the Roll in May 1951 and reading with Ben Dunn (later a County Court, then Supreme Court judge).

He had a varied practice and became a dominant figure in common law and personal injuries, serving some years on the juries subcommittee of the Bar Practice Committee and other committees including as a Bar appointee to the Legal Aid Committee. He had five readers and took silk in 1968.

His Honour is one of the rare few to have served as a judge on both the

County Court and the Supreme Court. He served 10 years as a judge of the County Court from 1969, during which he also conducted three important inquiries: one into the teaching service; and two Courts of Marine Inquiry. That was followed by 18 years as a judge of the Supreme Court; and a further five years as a reserve judge.

At his Supreme Court welcome, his Honour joked that his forays into the "whispering jurisdiction" were "but dim memories". At his Honour's farewell, the Solicitor-General said that his Honour "seemed as much at home in such esoteric fields as administrative law and town planning as in crime and personal injuries" and that, in recent years, most of his Honour's time had been occupied in the hearing and disposition of criminal appeals in the Full Court, then as an additional Judge of Appeal.

Alec Southwell was an outstanding

sportsman. As a cricketer, he played in the First XI at Melbourne Grammar; earned a half-blue as a member of the university team; and played district cricket, and for the Bar. He was elected to the committee of the Melbourne Cricket Club and served from 1979-97, including nine years as vice-president. He was vice-commodore of the Sorrento Sailing Club and captain of the Sorrento Golf Club. He played tennis and pennant squash and billiards.

Two poignant occasions came in 2014 and 2016, when he moved the admission of his granddaughters, Sarah and Katherine Southwell, with Sarah as his junior for Katherine's admission.

His was a long and accomplished life. His family and friends, and those who worked with him will remember him with great fondness.

VBN

### Remembering Ninian Stephen

#### A PERSONAL REFLECTION

Bar Roll No. 478



ir Ninian Stephen had a most remarkable public life, both nationally and internationally. He was a High Court judge from 1972–1982, and Governor-General from 1982–1989. But it is his international work from 1989 onwards which is particularly intriguing.

His international career was extraordinarily varied. Beginning with his appointment as Ambassador for the Environment in 1989, it ranged from chairing peace talks in Northern Ireland to investigating options for the trial of former Khmer Rouge leaders to being a founding member of the International Criminal Tribunal for the former Yugoslavia. In its length and its breadth, his career was unique in Australian history.

What distinguished Sir Ninian in every setting, public and private, was his warmth, his acute intelligence and his interest in people. And it was doubtless those qualities which made him such an effective leader in so many different forums.

He readily won the trust of those

he was working with, because he was— and was seen to be — open and interested and eager to learn. Never preoccupied with his own importance, he embraced the task at hand: concerned to ensure constructive engagement, to bring out the best in others, to obtain and deploy the best available information.

To his children and grandchildren, and to his extended family, Sir Ninian was the antithesis of the grand public figure. He was deeply engaged at a personal level, in an entirely unaffected way. And his partnership with Lady Stephen was a joy to behold. Their collective strength, and mutual trust and support, enriched everything they did.

JUSTICE CHRIS MAXWELL

- 1 For those interested to learn more, the many facets of Sir Ninian's public life are described in a collection edited by Professor Tim McCormack and Professor Cheryl Saunders, entitled, 'Sir Ninian Stephen: A Tribute' (MUP, 2006).
- 2 Justice Maxwell is married to Sarah Stephen, one of Sir Ninian's daughters.



BACK ROW: Geoffrey Lake, James Portelli, Jonathan McCoy, Ramon Fowler, Nicholas Modrzewski, Stephen Scully, Andrew White, William Barker, William Stephenson, Callum Dawlings, Andrew Roe, Glenn Barr, Kate Ballard, Joanna Dodd

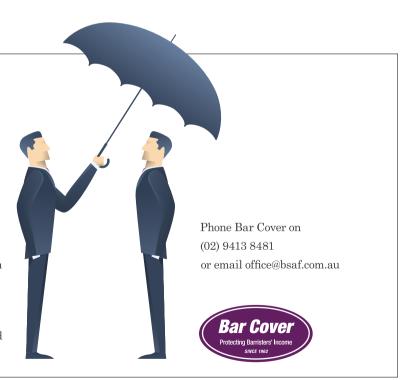
MIDDLE ROW: Andrea Skinner, Rachel Chrapot, Amanda Carruthers, Caroline Dawes, Julie Zhou, Abilene Singh, Simone Tatas, James Claridge, Matthew Tennant, James Stoller, Paul Reynolds, Nicholas Walter, Lachlan Molesworth, George Glezakos, Sally Bastick, Lachlan Carter, Maryann Gassert, Mitchell Grady, Nonni Sdraulig, Wendy Pollock

SEATED: Alexandra Metherell, Timothy Smurthwaite, Edwina Keynes, Tanya Skvortsova, Pauline Chia, Simon Kelly, Veronika Drago, Amit Malik, Hugo Moodie, Amy Hando, Joanne Poole, Benjamin Hill, Serena Armstrong



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## Boilerplate

### A BIT ABOUT WORDS

# Shakespeare

JULIAN BURNSIDE

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Shakespeare is arguably the best-known of English writers. There

is a fashionable debate about whether the person named William Shakespeare was the person who wrote the works attributed to him. Various suggested candidates include Sir Francis Bacon; Edward de Vere (17th Earl of Oxford); Christopher Marlowe; and William Stanley (6th Earl of Derby). As Patrick Cheney says:

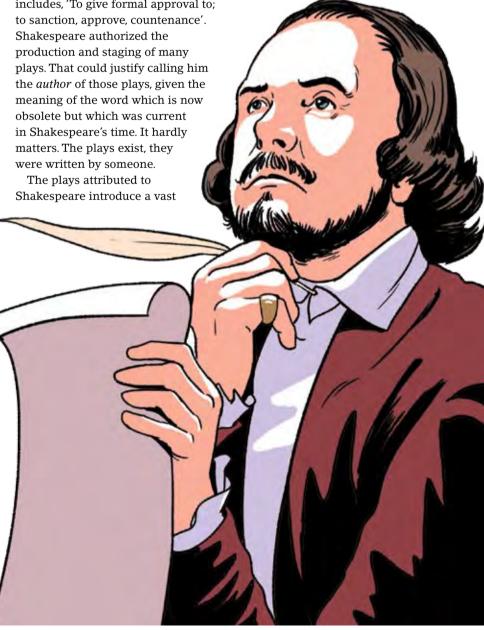
> It is true, when students come into my Shakespeare courses, they typically want to ask only a single question: 'Did Shakespeare really write all his plays?' When they leave, I hope they're more inclined to ask, 'How did it come to be that the world's greatest man of the theatre also penned some of the most extraordinary poems in English?' Shakespeare wrote those plays—and poems. Read them; see them: listen to them. They are our great cultural inheritance, the real legacy of William Shakespeare.

Part of the confusion may come from the word *author*. Its principal meaning is 'The person who originates or gives existence to anything ... He who gives rise to or causes an action, event, circumstance, state, or condition of things'. A bit of ambiguity is found in an obsolete meaning: 'He who

authorizes or instigates; the prompter or mover'. This meaning was current in the time of Shakespeare, and is still found in the related verb authorize the meaning of which includes, 'To give formal approval to; to sanction, approve, countenance'. Shakespeare authorized the production and staging of many plays. That could justify calling him the author of those plays, given the meaning of the word which is now obsolete but which was current in Shakespeare's time. It hardly matters. The plays exist, they

number of words which were new or which the author used in new ways. A (very) short list of Shakepeare's new words includes: academe, arouse, beached (that is, having a beach: a 'beached house'), barefaced, caked, compromise, dawn, dwindle, exposure, frugal, gust, impartial, laughable, madcap, monumental, obscene, panders, rant, tranquil and worthless.

The full list is staggering: Shakespeare appears to have taken the Humpty Dumpty principle to its furthest reaches: 'When I use a word', Humpty Dumpty said, in rather a scornful tone, 'it means just >



# **(**6 It is a reminder that *gruntled* is a useful word, which ought to be revived. **)**9

what I choose it to mean—neither more nor less'. 'The question is', said Alice, 'whether you can make words mean so many different things'. 'The question is', said Humpty Dumpty, 'which is to be master—that's all'.

However that may be, 'To be or not to be...' is probably the bestknown phrase from any of the plays attributed to Shakespeare.

It hints at, but does not reveal, that there is a grammatical construction in English which is quite old, but common enough that it passes unnoticed. A noun has be- added as a prefix to create a verb: siege (noun) leads to besiege (verb); devil leads to bedevil and smudge leads to besmudge.

There are quite a few words which use the *be*- construction. Some examples of this form are familiar: *befriend*, *beguile*, *behold*, *berate*, *belabour*, *bequeath*.

There used to be many more. The OED, with its passion for completeness, identifies a number of different functions which this handy construction can perform.

First, forming verbs (*derivative verbs*) with the sense of *around*. In this sense, it offers all manner of curiosities such as *bebang* (to bang about); *bejig* (to jig about: how times change); *befleck*. And these are words which are (in theory) still in use.

Second, forming intensive verbs: verbs which suggest a complete achievement of the (noun-based) objective, including such oldfashioned but still comprehensible verbs as *bewomanise*.

The prefix be- can create a transitive verb from a noun or adjective and can also make intransitive verbs transitive. So: belittle; bepiss (to piss on something; and in parallel beshit and becack); bestraddle; and the more familiar befuddle. And these are words which are, theoretically, still in use. Obsolete words on this pattern include:

berow (to row around something: not quite so useful); and bescumber (to scumber on something: scumber is the dung of a dog or fox). Other obsolete expressions in these categories include such splendid verbs as becurry (to curry a person's hide); befrounce (to frounce about); behorewe (to befoul); bequirtle (to besprinkle) besperple (to bespatter: this is from times when horses were the main means of conveyance on muddy, bescumbered streets in London. I say bescumbered, because beshit and becack are doubtful, but the source of the problem was not dogs or foxes but the horses themselves).

Another obsolete word is begruntle (to make uneasy). It is quite useful, and it sounds good. Its most recent recorded use is in P.G. Wodehouse's, The Code of the Woosters, in which Jeeves says: 'He spoke with a certain what-is-it in his voice, and I could see that, if not actually disgruntled, he was far from being gruntled'. It is a reminder that gruntled is a useful word, which ought to be revived. And the way to revive it – applying the Humpty Dumpty principle – is to use it, and use it often.

Another word from Shakespeare's time is for sooth. Sooth as a noun is an old anglo-celtic word for truth. It has had many forms including soth, south, suth, swth, suith and soyth. From as early as 950 it is found in such works as Beowulf, the Lindisfarne Gospel and the Old English Chronicles. It was also used in phrases with modern equivalents which more or less follow the old pattern: in very sooth (in truth), sooth to say (to tell the truth), to come to sooth (to come true) and by my sooth (upon my honour). Originally, forsooth was a genuine declaration of the truth of a statement. Shakespeare used it this way frequently:

"Prince. How long hast thou to serve, Francis? Fran. Forsooth, five years..." (Henry IV,

I more incline to Somerset than York: Both are my kinsmen, and I love them both.

As well they may upbraid me with my crown.

Because, forsooth, the King of Scots is crown'd.

(Henry IV, Part I)

SIMPLE. Ay, forsooth.

QUICKLY. Does he not wear a great round beard, like a glover's paring-knife?

SIMPLE. No, forsooth; he hath but a little whey face, with a little yellow beard, a Cain-colour'd beard.

QUICKLY. A softly-sprighted man, is he not?

SIMPLE. Ay, forsooth; but he is as tall a man of his hands as any is between this and his head; he

For some curious reason, Shakespeare uses *forsooth* much more often in *Henry VI*, *Part II* (1590) and in *The Merry Wives of Windsor* (1598) than in any other of the 21 plays in which he uses it.

hath fought with a warrener.

(The Merry Wives of Windsor)

Since Shakespeare's time forsooth has become less common. Perhaps he wore it out. It was used by John Locke (A Letter Concerning Toleration, 1689), by Tom Paine (The American Crisis, 1780), by Mark Twain (The Prince and the Pauper, 1881), several times by Rudyard Kipling (The Jungle Book, 1894; The Second Jungle Book, 1895; and in Kim, 1901). Jack London used it a few times in White Fang, 1906 and once in White Heel, 1907. It still lives at the edge of memory, as a word not used but still recognised.

Some lawyers cause their clients pain by their concern about truth. For some clients at least less *sooth* will more *begruntle*.





of polyester or rayon, hosiery worn with open-toe sandals, unpolished shoes and ready-made bow-ties, can potentially distract the judge and/or jury's attention from Counsel's argument, sometimes resulting in a gross miscarriage of justice. ??

RED BAG BLUE BAG

'What are the limits of sartorial respect in the courtroom?'

BLUE BAG - a view from junior counsel

Tve been having a look at executive menswear trends for Winter '18, and am pleased to see that shearling 'has made a subtle advance', that the season's colour is 'baguette' (cf. 'boring brown'), and that the funnel neck sweater is finally making a come-back. And yet, I'm not convinced that my attempt to be on-trend will find favour in the courtroom

I would therefore appreciate your advice on 'best practice' courtroom dress code. When doing so, could you please explain (a) what's with the wide striped suits? (b) a pocket square - Yes / No, (c) the pros and cons of bow ties, and (d) novelty socks. Also, would your advice be the same if I were briefed in the Magistrates' Court? Please note, I have not addressed women's dress code due to reasons of first, space, and secondly, risk (but please do so if you wish).

If you need practical context, please see Figure 1.

Rlua Rad

#### RED BAG - a view from senior counsel

Dear Blue Bag.

Why so troubled mon ami?

Don Dunstan (former Premier of South Australia for our Gen Y readers) used to cut quite a dash while wearing a polo-neck sweater with a suit during the winter months and as they say in fashion, everything old is new again. That funnel neck sweater of yours may be well received next time you pop it on under a suit on your next trip to VCAT or other progressive forums.

Except though in the Supreme Court it seems, where

it has been rumoured recently that Court Dress may go in the same direction as barristers' wigs – to the dustbin of history! I am not quite sure of the current status of the Court Dress 'discussion', although the need for Court Dress was robustly defended at the Bar's Law Week event last month, 'Facing the Law: Wigs and Robes Today', where the overwhelming majority of attendees seemed in favour of advocates appearing robed in court, as they presently do.

There are of course two compelling reasons why Court Dress (as it is and preferably with wigs) should remain as the gold standard for advocate's apparel. First, there is the blindingly obvious contention that, irrespective of gender, race, age, appearance (yes, there is university research that so-called good looking people seem to do better in life), wealth, prosperity or social status, all advocates appear uniformly equal before the Court, as their clients are

in the eyes of the law, which is all the more important in a diverse society and an equally diverse Victorian Bar.

Second, fashion faux pas in the form of safari suits, baguette coloured suits (that's right, we all remember Leonard Teale [Eds: perhaps not Gen Y]), any garment or accessory made of polyester or rayon, hosiery worn with open-toe sandals, unpolished shoes and ready-made bow-ties, can potentially distract the judge and/ or jury's attention from Counsel's argument, sometimes resulting in a gross miscarriage of justice.

Out of court and in the more exotic jurisdictions though, the guidelines are pretty simple when client interaction is involved. If a client is paying you, their barrister, a daily fee, then you give them 'Barrister'. This means thinking of the client, taking a professional approach and meeting public expectations, which more often than not involves (irrespective of gender), a well-cut and properly made suit made of

natural fibres (either tailored, or bought off the peg from any good retailer which doesn't have the word 'warehouse' in its brand name), a decent shirt/top and good quality leather footwear (not sure what vegans do here).

As for blokes and ties, yes do wear when in court but when not in court, the presidential 'Collins-look' of no tie is perfectly fine. Although if a tie is chosen, then it must be silk and must not display cartoon characters, naked persona or any prose (the words 'carpe diem' interspersed amongst random goldfish on a very cheesy looking tie once seen in the County Court morning line up, worn by a person whom I suspect was a solicitor-advocate, remains an indelible and traumatising memory). Break this rule and you'll soon discover what it is like for a barrister to be confused with a police prosecutor, or worse still, a detective! Yours ever,

Red Bag.



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### TRAVEL

How this gringa traveled solo and avoided bad hombres in Mexico

JENNIFER BATROUNEY

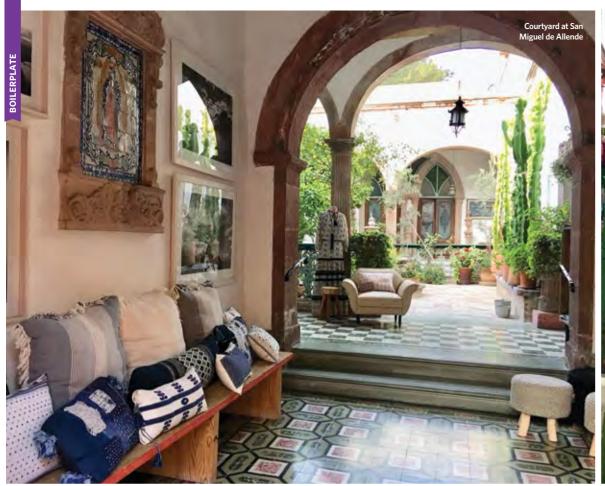
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aving weathered the whirlwind of the Victorian Bar's presidency last year, I had to find a way to distract myself from

the relevance deprivation syndrome rapidly engulfing me. A month in Mexico sounded about right. I might be a metaphorical feather duster, but my modus operandi remains, "do one thing each day that scares you". The thought of a solo trip through Mexico terrified me. So I decided to do it.

I thought it best to avoid the bad hombres fighting it out in drug wars leaving innumerable dead in Acapulco (according to Sky News, 30,000 people were murdered there last year). Instead, I headed to the beautiful 15<sup>th</sup> century towns scattered throughout central and eastern Mexico.

I kicked off my travels in Mexico City. The city is built at an altitude of over 200 metres on a swamp. It is slowly sinking. My first outing was a walking tour of the markets. These enormous shanty shambles sell everything from a curse at the sorcery market to a massive albino boa constrictor at the live animal markets. Perhaps some crickets to snack on? Chillies of every possible shape and size, cacti, the ubiquitous mole sauce and, of course, wall to







# **66** Mexicans have a very different relationship with death than we do. **??**

wall skeletons. The Mexicans love their skeletons. They dress them up in beautiful clothes and put them everywhere. Mexicans have a very different relationship with death than we do.

As I headed out to Coyoacán to see Frida Kahlo's Blue House (the Mexican equivalent to Sunday Reed's Heart Garden at Heide), I asked my driver if there was a drug problem in Mexico City. "No", he said sagely, "we are producers not consumers". Fair enough.

I proceeded north to the delightful little town of San Miguel de Allende. This, like most of the towns I visited, was a cross between Sovereign Hill and Disneyland. The old part of the town (protected by UNESCO) is impossibly quaint, tidy and polite but surrounded by the reality of a Third World country. I stayed in a gorgeous

hotel with an open fire crackling next to a bottle of red wine in my sitting room (Belmond Casa de Sierra Nevada, Hospicio 35, San Miguel de Allende). Bliss.

Next on my list was Guanajuato. An old silver town, it is famous for its mummies. In about 1870, the town decided to impose a local tax on burial sites. If you could not pay the tax, your dearly beloved was soon disinterred. It was discovered that many of these bodies had become mummified, apparently due to natural climatic conditions. I was amazed and horrified to see all manner of mummies on display at El Museo de las Momias (The Museum of the Mummies): a mother with her newborn child, a woman with long plaited hair wearing cowboy boots, and many other chaps buried in what was no doubt their "Sunday best" suit.

My next stop was San Pedro, a tiny island off the coast of Belize. Why? I had been graciously offered the opportunity to finance part of my son and his girlfriend's threemonth backpacking tour through Central and South America. I was instructed to meet them in Belize, which was not on the way to anywhere. The quickest way for me to get to Belize was via Houston. It was unnerving transiting through Houston. As I milled my way through the cattle runs in the airport so that the dogs could sniff out any irregularities in my luggage, I was confronted by pictures of the planes flying into the buildings on 9/11 with the slogan "Not on my watch" underneath. Got it.

Belize is home to the "other" Great Barrier Reef and the famous Blue Hole. It was full of Americans.

Next stop: Tulum. This is a boho coastal town with dozens of interesting hotels and restaurants lining the glorious white beach and azure waters. Not a Hilton or Hyatt to be seen anywhere. Beautiful. There are also some Mayan ruins in Tulum—a curtain-raiser for the truly stunning ruins at my next stop: Chichen Itza.

The Mayans were an incredibly industrious race. They built massive pyramids, perfectly calibrated to the solar system, from whence they worshiped their gods—particularly the rain god, Chaac. The vast ancient city at Chichen Itza was replete with an enormous stadium, an observatory and a school. There must have been a miscommunication with Chaac somewhere along the way, as it is said that the Mayans deserted Chichen Itza when drought struck and devastated the civilisation.

Merida was my next stop. This is a classic 15<sup>th</sup> century Spanish Colonial town with beautiful, sweeping, balustraded mansions lining their grand parade. Sitting comfortably amongst these beauties of history were many fabulous chic restaurants turning out food to die for. I fell in love with smoked provolone cheese

served at the sleek but homely Oliva Kitchen & Bar (Calle 49-a 56, Merida). This place ticked all the boxes.

My final stop was at Oaxaca (pronounced Wah-haak-kah). In the tiny historical centre there are 29 churches. They all cater to Catholicism but with various bits of local idolatry bolted on. I stayed in the Santa Catalina de Siena Monastery (now a schmick hotel with the only down side being the three amigos serenading me for ... breakfast) (Quinta Real Oaxaca, Calle 5 de Mayo 300, Oaxaca). This was such a friendly town. There were people dancing in the street at night for the sheer joy of it.

Every one of the Mexican people that I came into contact with was kind, knowledgeable and gentle. Those parts of their country that I visited were extremely interesting and beautiful. I would not hesitate to recommend a trip to Mexico. Just stay away from the bad hombres in Acapulco and enjoy the show.

Suited mummy at Guanajuatov

82 VBN VBN 83



# Lord Howe Island: A simpler, sunnier choice

**NATALIE HICKEY** 

t is not difficult to convince barristers of the need for a break. We choose self-employment for its 'flexibility'. Our job is stressful. And a brief fee often burns a hole in the pocket when it could be put to more sensible use.

For these reasons, and more, I recently found myself stepping off the plane at Lord Howe Island (or "LHI" as the locals refer to it), which is an island (no surprise) off the New South Wales coast, essentially in the

LHI is a 'volcanic remnant' and UNESCO world heritage site, protected due to its extraordinary biodiversity. It is an Australian version of the Galápagos Islands. It is also home to the world's most southern coral reef, inhabited by tropical and sub-tropical fish and turtle life.

It is challenging to travel to LHI because it is small, and so the planes must be small. Ours was a Dash 8 which, to this rather uncertain flyer, felt not far removed from a Wright Brothers prototype.

The weather can be wild. That is how I found myself at Sydney airport with a day of cancelled flights to LHI. A five-night stay had become four. I was lucky to lose only a day. As I read the TripAdvisor reviews in the comfort of

a complimentary stay at an airport hotel, I learned that it is not unusual for people to find themselves unable to arrive, or leave, the island for days on end. Travel insurance is a must. Booking with Oxley Travel is also recommended because they specialise in LHI and are confident managing these issues (oxleytravel. com.au; 1800 671 546).

When our Dash 8 plane arrived a day later than planned, we were greeted at a picket fence by a person who asked where we were staying, and who directed arrivals to their bags and pickup point. My partner tried to put on his seatbelt in the mini-bus and was told to take it off: "We don't use seatbelts around here", we were told. With a speed limit of 25 km/hour, this is understandable.

It also appears we can drink and drive with impunity at nighttime, although we were warned that "he" (a reference to the Island's local policeman) had recently introduced random breath testing in the mornings. Given there are only 350 residents, a maximum of 400 visitors at any one time, and a sprinkling of cars on the road, "he" must have someone particular in mind.

Thoughts surface of the television shows 'Death in Paradise' and 'Midsomer Murders'. LHI would be a fabulous place to shoot a show in an idyllic setting with a small community, but with sinister undercurrents.

Fortunately, evidence of sinister undercurrents was a bit sparse. Indeed, all the evidence was to the contrary. We learnt quickly that every time you walk past someone, you can't just walk. You have to comment on the day, the weather, or if feeling inarticulate, limit yourself to a broad smile. On one occasion, seeing that we were looking at our map, a bit lost, a woman jumped off her bike and insisted on giving us her map which she said was "much better".

Two nights of our stay were spent at Earl's Anchorage (https:// earlsanchorage.com; o2 6563 2029). These are contemporary, large self-

# **66** If you want to make a phone call, use one of the few phone boxes on the island **99**

catering villas and a 15-minute walk from town, up a hill. The location was a deliberate choice because I was hoping the incidental activity would lead to a miraculous slim down. Against me was that The Anchorage restaurant (linked to our accommodation and located 'in town', such as there is one) serves delicious food and has a remarkable wine range for a remote island. To get to The Anchorage at night, one has to carry a torch because there are no street lights. On the way, one says hello to fellow travellers, identified only by their disembodied voices and bobbing patches of light. Coming home, one marvels at the stars.

Table bookings at 7pm are regarded as 'late'. Most people eat at 6.3opm. This is definitely not Mykonos, and the demographic is older than I expected. There are many people for whom retirement means a few weeks spent hiking, walking, cycling, eating and drinking on LHI. Were it not for my imminent tax bill, I could be attracted to this lifestyle permanently.

There is no mobile phone coverage on LHI. If you want to make a phone call, use one of the few phone boxes on the island. This had been part of the initial attraction because I thought a digital detox was in order. In practice, this was really hard. It meant that The Anchorage (open all day, excellent Wifi) became a critical hub, often visited every few hours to check in on emails and generally feel 'connected'. My caffeine levels went through the roof as a result.





middle of nowhere.

Therefore, whilst the concept of staying on a film-set location in a simpler and friendlier time might sound great in theory, it was challenging in practice, at least initially. In a typical day, we are assaulted by information from social media, emails, phone calls and texts. It becomes an addiction. 'Dropping out' from this was initially frightful. I wondered if every day of the stay would feel like Good Friday.

Fortunately, the mood became more upbeat after a 15km walk on day 2, with a mix of incidental activity—nine holes of truly lousy golf in a spectacular setting—and bird watching. I can't tell you what the birds were. I have never seen them before.

Gradually, I settled into the daily pace, and loved it. Things I loved included the honour system, which applied almost to everything. The honour system applied to rounds of golf and the hiring of golf clubs. The money just went into a box. It also applied to hiring wetsuits, snorkeling gear and fish food at Ned's Beach, with written instructions on a board reminding the user to wash out their suit before they put it back.

I also loved simple pursuits like watching the Island Trader, the regular supply boat, which had come in and unloaded its cargo over a few days (this was a big attraction with many onlookers). We also inspected the kayak of a man who had come to LHI from New Zealand. His kayak's solar panels, tiny sleeping cabin and high-tech navigation system proved quite a talking point with locals.

Ned's Beach is listed as the number 1 attraction on TripAdvisor for Lord Howe Island—for good reason. On its face, it is just a gorgeous, very quiet beach with a few barbecues and almost no people. The \$1 coin required for fish food hints at much more. There is no fishing allowed there. The local fish population is therefore tame. They are also hungry. With fish food in hand, one walks into the water—

knee deep is best. After dropping a few pellets in, the feeding frenzy begins. Fish jump over each other to fight for the food. Some are like seagulls and very rude. The tropical fish in brilliant purples and pinks swim around more elegantly. Large blue fish bump into your ankles as they open their mouths above the water, so that you can feed them directly into their mouths. There was a Piranha-style moment though, when, encouraged to let them nibble at me, one blue fish chomped down with the result being extreme pain (okay, it wasn't that extreme) and blood dripping down my finger (okay, it wasn't really dripping).

The other two nights of our stay were spent at Arajilla (arajilla.com. au; 1800 063 928) which has the feel of a yoga retreat, with alcohol. All meals are included, and guests are provided with bikes (which is great, because we had decided walking was overrated), and offered barbecue packs for lunch. The barbecues are cleaned every day on the island. We returned to Ned's Beach and cooked local fish, prawns, steaks and sausages, enjoying them in the sunshine with a salad and home-



made brownies before I braved the Piranhas again. Repeating the same activity two days in a row felt good.

For some, four days at LHI could be long enough, or it could mean one is just settling in. To be frank, we barely explored the 11 km of the Island because we didn't feel like it. Next time we will make the effort.

After returning to my daily walks at home, I have been smiling at those approaching me from the other direction. I have not received smiles in return. This is why I will return to LHI. It will not just be for the beautiful natural environment. Rather, time spent at LHI reminds us that to surround ourselves with competing demands, a cynical mindset and technological clutter involves a level of choice. It is worth choosing a sunnier, more uncomplicated approach to life.





# A charcuterie diary by P J Booth

NATALIE HICKEY

eter Booth is a commercial barrister at the Victorian Bar. His matters involve contract, equity, company law and trusts. He is a bit like Clark Kent. This is because it is in his guise as 'P J Booth' that his secret talents have become fully realised. These concern all manner of methods for preserving meat. His passion for charcuterie has resulted in a book, called *A Charcuterie Diary*, which is 365 pages long, contains about 150 recipes, and is approximately 75,000 words in length. It is a beautiful work, with numerous gorgeous photographs accompanying stories and instructions.

Peter Booth thinks the book is expensive at AUD \$75, and apologises for the cost ('P J Booth' may be less humble). In any event, if you are an enthusiastic cook (and not a vegan), this cook book is for you.

John Lethlean, recently reviewing A Charcuterie Diary

for *The Weekend Australian Magazine*, wrote, "for anyone interested in making sausages, ham, bacon or you name it, at home, this quirky DIY book will be a necessity". He added, "By the time you get to the end, you'll have an appreciation of the obsession that must have gripped this mild-mannered lawyer for the last 10 years".

Several years ago, and as the book explains, P J Booth became interested in charcuterie. He says it is a record of four years of trial and error, fear and loathing. He says his first products were inedible. After reading as widely as he could, he then spent several years experimenting with recipes and techniques suited to his circumstances. He wrote *A Charcuterie Diary* mainly because the books available to him, he did not find helpful. They were either based on imperial measurements (not metric) or just really old. They used products he could not source reliably or at all ("saltpetre" for example) or which he did not understand ("Boston butt" which comes from the

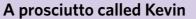
P J Booth's writing style is anything but mild-mannered. It is passionate, direct, and to the point. His comments on the rear cover of the book conclude, "Never trust a vegan". He does not apologise for this. Rather, whilst he frankly acknowledges that his approach may be idiosyncratic (he is not a chef, either by training or inclination), he figured it was undesirable to write an anonymous cookbook. He leaves it to others to judge whether his approach was correct.

Family members do not emerge unscathed. He thanks his wife Helen for her editorial and proof reading expertise. He grudgingly acknowledges "No. 1 Daughter" who spent "quality time in a final, often quite hurtful, editorial proof read". He thanks "The Hairy Nephews for being crash test dummies with a variety of charcuterie". He is positive about "Lucy, the black dog" which benefited from some failures. He is not so positive about his other dog, "The Rat, an evil Jack Russell Terrier for whom I have no regard".

This book is a record of P J Booth's experiences and drawn from a diary in which he kept recipes, observations and results over the past four years.

To judge for yourself, here is an extract from *A Charcuterie Diary*, including a recipe which P J Booth recommends to those wanting to impress friends with minimal effort.

In P J Booth's own words, "Meat the family".



was determined that this charcuterie thing would not beat me. Frankly, I had mixed success. For reasons which I do not now recall, I decided to jump into the deep end and embark on a prosciutto. I certainly did not understand what I was doing, but it felt good nonetheless. I was becoming a charcutier, (well sort of) although I did not know it at the time.

It just seemed like a good idea at the time. Kevin was the start of the more scientific approach.

If you feel the need to apportion blame for all that has followed, then most must fall to Kevin.

Although, you already knew that. But I digress.

Kevin was the first prosciutto. I asked Frank
The Butcher (his real name) when it would be good to start preparing a prosciutto. He said

"When you see me wearing a beanie in the shop, then it will be time". It sounded pretty scientific to me. I waited. I waited some more. Frank The Butcher did not wear the beanie until mid-June, to my mind a bit late. In any event, I did what he said.

When I saw the beanie being worn, I attended the shop to purchase a leg of pork. Frank The Butcher trimmed the leg of pork for prosciutto and I was all set to start the journey. After careful consideration, it was decided that the inaugural prosciutto would be called Kevin. Kevin was lovingly rubbed with a mixture of salt and Curing Salt and put to bed in a salty sleeping bag (a big plastic tub actually) for two days/kilogram. Far too long as it turned out but it seemed like a good idea at the time. Thereafter Kevin was put into some nice muslin pyjamas for the big sleep. Kevin was hung high up on the veranda out in the direct sun but with good airflow. I checked Kevin every few days and things were good. Kevin was happy. I was happy.

As things transpired, there were some unseasonably warm days in August. That was a problem because things got quite warm on the veranda up under the eaves. My hygrometer told me so. Accordingly, I put Kevin in the fridge for a few days. Kevin seemed happy enough. When things cooled down a bit I returned him to the veranda. Sadly the days got warmer more often. Kevin still had so much time to spend maturing that I decided drastic action needed to be taken.

I decided to relocate Kevin to Camp Otway, on the west coast of Victoria, about 3 hours' drive from Melbourne. Kevin was left in a cupboard in the house which is situated at 300 metres above sea level with plenty of breeze. It seemed like a



good idea at the time. Indeed it was a good idea until, once again, things got warm. I got nervous and decided that I had to check on Kevin. I travelled for three hours to Camp Otway to see how Kevin was progressing. Nervously, I opened the door, expecting to see Kevin watching my television and drinking my wine. All was good, much to my relief. Kevin was happy and so was I. Nonetheless, I figured that it was not good to be so far away from Kevin, so we returned to Melbourne together. The question now was what to do, the weather becoming warmer each day. I suggested that Kevin might enjoy time in my modest

cellar. Kevin agreed. Sadly, although the temperature was good, the humidity was too high. Things went bad very quickly. We fought off the MOMC<sup>1</sup> bravely together. It was a close run thing. What to do?

The answer was at hand,
Sebastian (a local gastronome),
has a cellar. Well alright, it was just
a space under his house, but which
had more airflow than my modest
cellar. Kevin was agisted at Chez
Sebastian quite happily for much
of the remainder of his days. Kevin
ended up being a remarkable
success, especially as a first time
effort (albeit a bit salty).

#### Stockists include:

- Books for Cooks (Melbourne, Victoria)
- Dymocks (Camberwell, Victoria)
- Tim's Bookshop (Kew, Victoria)
- Readings (Hawthorn, Victoria)
- Readings (Carlton, Victoria)
- The Artisan Bottega (North Melbourne, Victoria)
- Smoked and Cured (Melbourne, Victoria) You can read some extracts from the book at acharcuteriediary.com.au.



- 'Moulds of Many Colours' which is to be contrasted to 'WMOH' the 'White Mould of Happiness'.
- 2. For example Elizabeth David in "French Provincial Cooking" or Rick Stein in "French Odyssey".
- The quantities are a guide only, this is a quick cure so the precise measurements really do not matter. Go wild. But not too wild.

#### RECIPE

#### Petit salé

Petit salé is a lightly salted pork belly which is poached and served with puy lentils. "Petit sale" means lightly salted; referring to the short time the meat is cured before cooking. Recipes for the dish² usually do not use a curing salt as well. I think the dish benefits from a small amount of Curing Salt No. 1 if for no other reason that it gives a pleasing pink colour to the finished dish. Without the Curing Salt it is not so attractive to the eye. If you like corned beef, then you will like this.

If you do not like corned beef, then there is something wrong with you.

This is one of my all time favourite dishes. If you make nothing else from this book, you should make this. If you do not make this dish, I will find you. There will be nowhere to hide.

#### Ingredients:3

Pork (belly, skin on, bones removed) – 1 kg.
Salt – 45g.
Brown sugar – 15g.
Curing Salt No. 1 – 2g.
Bay leaves (crushed) – 2.
Juniper berries (crushed) – 4.
Thyme (fresh) – 1 sprig or if using dried thyme, 1 tsp.

#### Method:

Place the pork in resealable plastic bag together with all the other ingredients for 2 hours in the refrigerator. Thereafter remove and rinse the meat well.

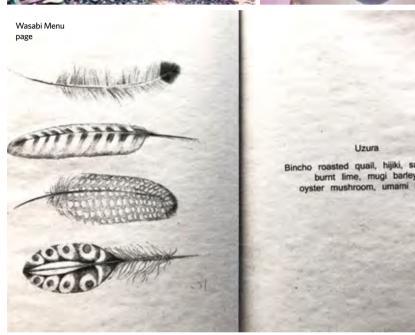
Gently poach the meat in a court bouillon (water with 1 carrot, 1 celery stick, ½ onion, 1 bay leaf, 4 pepper corns) until well-cooked but not falling apart (treat it like corned beef but a bit more gently, it is not as robust). Slice thickly and serve with puy lentils which have been cooked in the poaching liquor from which the petit salè has been removed.

If you do not like this then I cannot help you.

Note: Curing Salt No. 1 contains 6.25% nitrate and is used for shorter term products. It is available from suppliers such as The Essential Ingredient, Butcher at Home, Cellar Plus – The Artisan's Bottega, Smoked and Cured, and Costante Imports.









### FOOD

# Noshing in Noosa

**CAMPBELL THOMSON** 

n March, my partner is minding her sister's place in Noosa. My trial is adjourned, so I join her for a few days. During school holidays in the Melbourne winter, half our Bar can be found lounging on Main Beach. Backpackers and European families also sprinkle the sand. Marquees are going up for a surf carnival but squalls spinning off a late wet season to the north send tourists dashing into the cafés on Hastings Street.

By dinner time, the monsoon is belting down as we make our way to Maisie's Seafood and Steakhouse on the river at Noosaville. Maisie's proudly advertises itself as the first eating house in the area, established by the Massoud family in 1920. They say that, in World War II, diggers stationed nearby drove their amphibious army ducks out of the river to the front door to collect their takeaway tucker.

The restaurant walls are decorated with old black and white photos of men with huge catches of fish. We could order Clancy's Overflow, a 200g eye fillet wrapped in bacon with two oysters Kilpatrick and two oysters mornay; Surf & Turf, a 300g rib fillet with creamy prawn, scallop, calamari and mussel sauce; The Waltzing Matilda, a 300g rib fillet with mushroom and asparagus; or Banjo's Fillet Steak, a 250g fillet steak topped with half a grilled lobster, Moreton Bay bugs or prawn cutlets. We opt prosaically for the cold seafood starter and half a lobster each with a bottle of the only riesling on the wine list, from the Clare Valley in 2017.

Keeping in mind that the Blue



Angel restaurant in Sydney won \$100,000 damages in defamation when Leo Schofield described its lobster as close to culinary crime, I will be brief.

A freshly opened oyster squirms when you squeeze lemon juice on it. Ours are sullenly unmoved. The tropical rock lobster of the panulirus family is better described as a crayfish. It has no claws like its northern hemisphere cousins. The succulent flesh is in the tail. Overcooking it should be an indictable offence.

2017 was a good year for Clare Valley riesling. This one will be terrific in a decade but its acidity, less than a year after bottling, is mouth puckering now. Our bill is a modest \$116. We do not tip.

The next morning is bright and clear and we work up an appetite with a walk around the National Park. Surfers do their best to turn tricks on two-foot waves. The scrub turkeys are so tame you could throw a towel over one and take it home for the Sunday roast. When Hemingway was struggling to sell his stories in Paris, he used to take his son in a pram to the Tuileries Gardens. He'd scatter breadcrumbs to attract the pigeons, drop the rug from the pram over one, wring its neck and then shove it in the pram before a gendarme noticed.

Not so desperate, in the evening we head to Wasabi.

This is a temple for serious foodies. They have their own farm at Honeysuckle Hill, where they grow Japanese ingredients such as myoga, Japanese ginger flower and shishito,

### **(**6 The scrub turkeys are so tame you could throw a towel over one and take it home for the Sunday roast. ))

Japanese chillies. On the Noosa side of the river, the serenity of the staff assures us we are in good hands. We order the Omakase menu: seven dishes chosen by the chef with seven matching beverages.

The tsukidashi, six seasonal amuse-bouches, come with a natural orange wine from WA. Our waitress recites the various ingredients with practised poise but the words float over our heads as we take in the varied colours, textures and flavours. They make this mouth smile.

Then the parade starts with hotate, scallops with finger lime, bamboo shoots and konbu radish. Accompanying is an Austrian pinot gris. Next is the tempura dumpling of king prawns over which our waitress grates the zest of Bhudda's hand, a citrus fruit like a lumpy lemon with fingers and a delicious scent. The combination of taste and texture excites a palate lubricated with chablis.

Shiromi ponzu, cured kingfish with toasted sesame, ginger and green onion, comes next. Three exquisite pieces of sushi with Tasmanian wasabi follow. The uzura, roasted quail served with a lovely barbaresco, leaves you wanting more. We finish with yukimi, a dessert with dried pineapple and shiro-an (sweetened white bean paste) crisps. A Japanese whisky in a crystal tumbler cuts through the sweetness.

I am reminded of Per Se in

Manhattan because of the subtle flavours produced from local ingredients with consummate professionalism. The reckoning, \$524 for two including tip, is worth every cent.

The next morning I buy some fresh Morton Bay bugs, my favourite seafood. Cut them in half with a heavy knife, remove the viscera, fry in a mixture of olive oil and butter until the flesh is lightly caramelised. Serve with a squeeze of lemon juice and chopped parsley. Hard to beat.

The Sunday before I have to fly south, we go for lunch at Sum Yung Guys near Sunshine Beach. It's packed and buzzing. Our table is next to a rickshaw propped against the wall. Think Ho Chi Minh City plus Bondi. We share Moo Ping chicken skewers and Mooloolaba prawn toast for starters. The names are groovy, the dishes less so. I then have the salmon with coconut, ginger and turmeric curry. We order a bottle of beaujolais. It comes to the table warm. I have to shout to make myself heard when asking for an ice bucket. Everyone seems to be having a great time. On Saturday night I imagine it's party central but the food is a non-event. \$190 including a small tip.

So on your next trip to Noosa, save up for Wasabi. Otherwise take home some of the outstanding local seafood and tropical fruit and vegetables and cook it up yourself.

### **BOOK REVIEW**

### Justice Michael Pembroke: Korea: Where the American Century Began

TREVOR MONTI

In February 2018, NSW Supreme Court Justice Michael Pembroke published his book KOREA:
Where the American Century Began.
The book is a documented history of the Korean peninsula with particular reference to the period from the division of Korea in 1945 at the 38th parallel.

The book was inspired by the fact that Mr Pembroke's father fought in Korea, as evidenced by his preface to the book.

I absorbed my father's experiences so that their darkest elements became a small part of my own subconscious. I knew they had been grim and frightening. I knew there had been fear and confrontation, desperation and death. Gradually I learned that the outcome of war is rarely good; that its most aggressive proponents are usually those who have never fought with butt and bayonet; who have never heard the moaning of the wounded or the anguished cries of innocent civilians; who have never been required to kill and maim in the name of their country.

The author reviews the events which led to the division of Korea and the war which inevitably succeeded it. His historical analysis of the relevant events should be compulsory reading for every Australian, given that Trump has been beating, and continues to beat, the war drums in relation to North Korea. War in North Korea may well involve Australia—certainly its military—and with a risk that the civilian population will be endangered. These factors should be weighed against the historical events recorded in this book.

The author criticises the American endeavour to obtain UN authority to attack across the 38th parallel,

a decision, he says, that was mired in unconvincing rationalisation, transparent ambiguity, and diplomatic and legal machinations reminiscent of the wrangling over the invasion of Iraq in 2003.

He critically examines the impact of the US-led invasion of North Korea and its population after the North Korean forces had been pushed back to the 38<sup>th</sup> parallel. Not content with the restoration of the status quo, Washington continued the war for three more years, during which time civilian deaths among the Korean population were estimated to have been more than three million.

He explains the "profligate bombing campaign" during that period, the widespread use of napalm, and the flattening, burning and destroying of North Korea. Not surprisingly, he concludes that the experience instilled in the people of North Korea a level of distrust and resentment that has shaped the country's continuing hostility towards the USA. In the rebuilt streets of Pyongyang, he notes the legacy of bombing is bitterness.

He explains that the North was systematically bombed, town by town. Cities and towns were razed leaving a landscape pockmarked by piles of bricks and the foundation of buildings. General McArthur is quoted in 1951 as having said, "The war in Korea has almost destroyed that nation. I have never seen such devastation .... If you go on indefinitely, you are perpetrating a slaughter such as I have never heard of in the history of mankind."

The level of bombing was such that not only were more bombs dropped on Korea than in the whole of the Pacific during World War II, "but more of what Korea: Where the American Century Began by Michael Pembroke Hardie Grant Books, 2018



fell was napalm in both absolute and relative terms".

Pembroke quotes from Gore Vidal's Perpetual War for Perpetual Peace in summarising American policy: "We honour no treaties. We spurn international courts. We strike unilaterally wherever we choose ... We bomb, invade, subvert other states." Thus the decision in October 1950after the North Korean invasion had been repulsed and the war should have been over-to extend the war by invading North Korea. The author analyses the reasoning and concludes that it was driven by an ideological objective: to impose social, political and regime change. He concludes that like the slow-burning consequences of interventions in the Middle East, it has engendered a deeper and long-lasting conflict.

Pembroke observes that the war left North Koreans with a permanent siege mentality, a defensive, embattled, ultra-nationalistic spirit and self-image based on pride at having survived an encounter with the most technically advanced power in the world. North Korea, he explains, lives with a constant fear of invasion, subjugation and occupation. The siege mentality is exacerbated by the Pyongyang regime's knowledge that the United States has a stockpile of between 4,000 and 7,000 nuclear warheads, over a thousand of which are actively deployed on ballistic missiles and submarines. and at air bases, and some almost certainly targeted at Pyongyang.

He explains that in the face of such threats, North Korea regards its nuclear program as "an important deterrent to external aggression and a security guarantee for the regime's survival", a quote from Dursun Peksen from the Korea Economic Institution of America, 23 July 2016.

Pembroke also reviews the position

of the United States and its failure to abide by several international obligations. In 1957 it unilaterally abrogated the Korean Armistice Treaty by introducing nuclear weapons. In 2001 it withdrew from the anti-ballistic missile treaty with Russia. And in 2016–2017, it opposed—and lobbied its allies to oppose—the ground-breaking United Nations resolution for multilateral negotiations designed to achieve a worldwide nuclear ban treaty. It is

obvious, he says, that North Korea's nuclear and missile capability is a response to the American military presence, not the cause of it.

Pembroke makes clear that the regime in Pyongyang is "harsh, authoritarian and repressive" and that there is nothing much to like about it. But the book provides an understanding of the North Korean perspective. After reading this book, no rational, responsible and reasonable-thinking human being

could fail to understand the position of North Korea and not be concerned by the uncompromising American aggression directed at it.

Finally it is to be observed that before writing this book, Michael Pembroke was a Visiting Fellow at Wolfson College, Cambridge in 2015 and a Director's Visitor at the Institute for Advanced Study, Princeton, New Jersey in 2017. He also visited and travelled through North Korea in 2016.

# Lewis & Kyrou's Handy Hints on Legal Practice

MATT COLLINS

Lewis & Kyrou's Handy Hints on Legal Practice 4th ed by Gordon Lewis, Emilios Kyrou and Nuwan Dias Lawbook Co, 2018

ndy HANDT MATS ON LICE PRACTICE

There are known knowns; there are things we know we know. We also know there are known unknowns; that is to say we know there are some things we do not know. But there are also unknown unknowns—the ones we don't know we don't know.

—US Secretary of Defense, Donald Rumsfeld, 12 February 2002

fter 25-odd years as a barrister and, before that, a solicitor, there are some things I know I know about legal practice. However, I am often struck by how much I know I do not know. Known unknowns are, of course, not necessarily a problem, as gaps in knowledge can be filled with research. But unknown unknowns are outright perilous.

Fortunately, Gordon Lewis, Emilios Kyrou and Nuwan Dias come to the rescue in all three categories—knownknowns, known-unknowns, and unknown-unknowns—in the fourth edition of *Lewis & Kyrou's Handy Hints* on *Legal Practice* (Lawbook Co, 2018).

Gordon Lewis is a former judge of the County Court and former Executive Director of the Law Institute of Victoria. Emilios Kyrou is a judge of the Victorian Court of Appeal and a former partner at Mallesons Stephen Jaques (now King & Wood Mallesons). Between them, Lewis and Kyrou have more than 90 years' experience in legal practice. They were the authors of the first three editions of *Handy Hints*. In the fourth edition, they are joined by Nuwan Dias, a solicitor at Herbert Smith Freehills.

Handy Hints walks readers through the gamut of matters that practitioners need to master, or at least be aware of, in everyday practice. For those starting out in the law, there are useful tips on topics ranging from how to approach your first interview with a client, to drafting correspondence in plain English, conducting settlement negotiations, and managing competing demands. For more experienced practitioners, there are answers to the questions one can sometimes feel too reticent to ask (can I take the staple out of an original affidavit before photocopying it?) and useful primers on topics as diverse as privilege, contempt, duties and undertakings. The book does not shy away from

proffering advice on dealing with difficult dilemmas such as the perils of intra-office sexual relationships and how to deal with dishonesty and physical threats by clients.

When the third edition of *Handy Hints* was published in 2004, Facebook had just been founded. Twitter had not yet been invented. Mobile phones were Blackberries, not iPhones. Electronic trials and the paperless office were at best conceptual. In the fourth edition, the authors have addressed the increasing complexity of legal practice as a result of these and other developments.

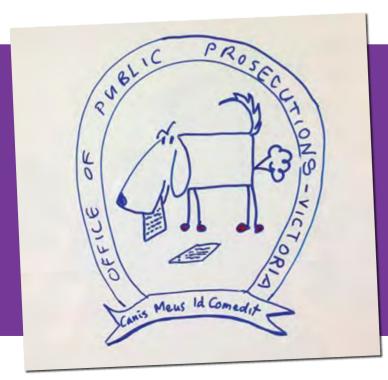
Handy Hints will be most useful to solicitors embarking on a career in the law, but it contains wisdom for counsel at all levels. Many topics are illustrated with practical and often humorous examples drawn from the catastrophes that can befall practitioners, such as the all-too-common experience of inadvertently hitting 'reply all' to an email, or the not-so-common experience of one practitioner who hatched a failed plot to influence a jury by climbing onto the roof of a courthouse in order to inject laughing gas into the air-conditioning system.

We all make mistakes and commit errors of judgment in our professional lives, although most of them do not involve nitrous oxide. Learning from the mistakes of others is clearly preferable to making them oneself. In that endeavour, *Handy Hints* has earned a place on the bookshelf of both the budding and the experienced practitioner.



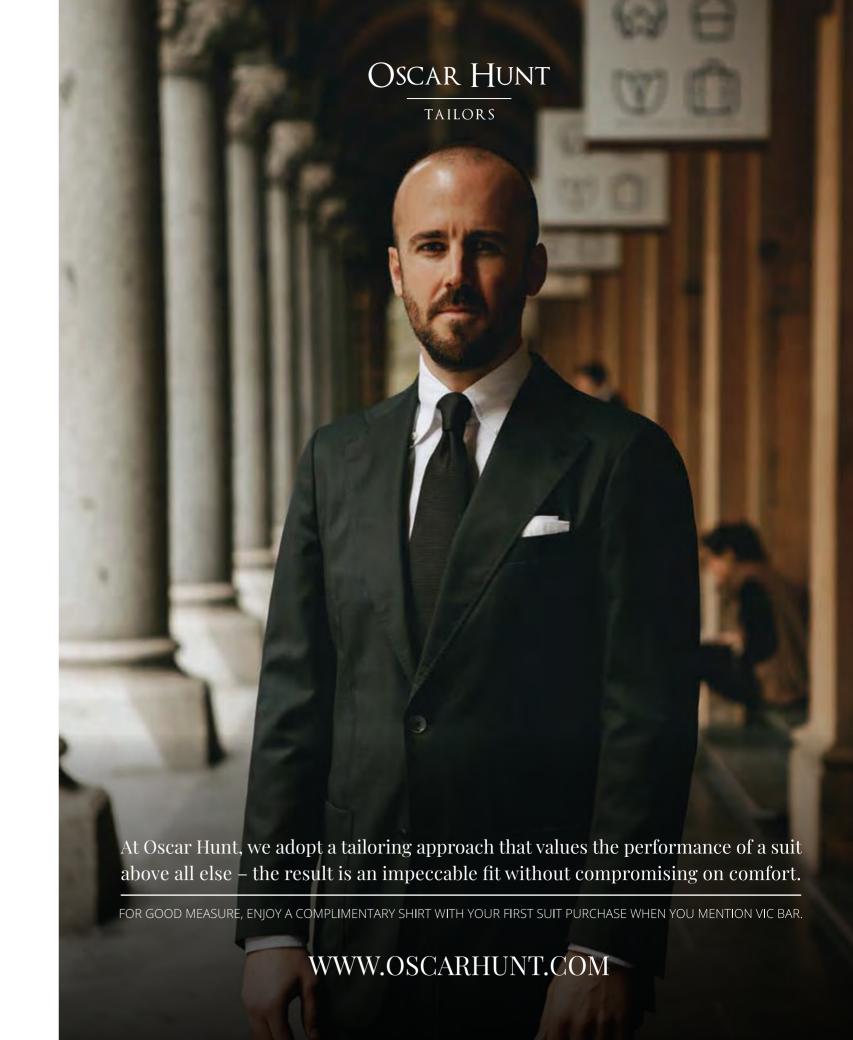


Georgia Berlic has provided Bar News with photos of her one year old daughter Francesca Hume, "taking a break from working up her brief to read the Bar News". The Editors note that any aspirational parent would be pleased to see Francesca's rather more marked enthusiasm for Volume 2 of the 1991 Victorian Reports.



# My Dog Ate It

This work of art which we think was authored by a barrister with a bit of downtime, was observed recently in the Geelong Court OPP office. Bar News decided it had to be captured for posterity. Please come forward if you are the cartoonist and would like attribution. If you're not but believe you are equally talented, do provide us with your contribution, and if we like it, we'll publish.





# BAR JACKET MISSING A BUTTON? GOWN SLIPPING OFF YOUR SHOULDERS?



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