

From the Chief Justice of the High Court of Australia

The Chief Justice of the High Court of Australia, the Honourable Sir Gerard Brennan AC KBE has written to the Society, regarding the New Order 69A governing the procedure for applications for special leave to appeal and Practice Direction 4 governing the practice in the hearing of appeals.

In his letter he states: *The new arrangements are intended to sharpen the issues for consideration by the Court and to permit the presentation of more focused oral argument. Although written material will play an important part in the Court's consideration of cases, it is not intended that oral submissions should merely consist of a recitation of the written submissions. Rather it is intended that the provision of written submissions will permit counsel to move directly in the hearing to the crucial points that they wish to make.*

His Honour presents the following excerpt from a paper delivered by him to the Australian Institute of Judicial Administration on 21 September 1996 as a reflection of the Court's thinking on written and oral advocacy.

Written material is often the most effective way of communicating information in a form which leads cogently to the conclusion advanced, predisposing the judicial mind to acceptance of that conclusion.

"Written material and oral argument are not alternative means of advocacy - at least in our tradition. They are complementary, and both call for an application of the advocate's art and skill."

Staccato propositions seldom achieve that objective. On the other hand, oral argument is essential both to the dialectic which refines the issues and points to the solution and to the persuasion of the judicial mind to the submitted conclusion. Written material and oral argument are not alternative means of advocacy - at least in our tradition. They are complementary, and both call for an application of the advocate's art and skill. Written argument should not be regarded as a formality to be ob-

served before the real task of oral advocacy begins: that could be a tactical error and its fruits might be manifested in the reserved judgment. Written argument can provide the intellectual building blocks for the conclusion advanced. But written argument does not exhaust the advocate's function. In oral argument, the advocate is to display the issue for determination in an attractive way, to respond thoughtfully to judicial questioning, to rebut firmly adverse judicial pre-conceptions, to captivate the judicial mind by reasoned argument concisely and courteously expressed and to lead it on the true path of judgment. This is a high and satisfying technique which cannot be attained without experience and industry. The use of written and oral argument to complement each other can shorten the time of hearing and enhance the impact of essential points. The High Court of Australia is presently engaged in revising its special leave rules and its practice direction on appeals to provide the framework in which effective advocacy can be practised by use of both forms of argument.

Wellington, 1996

Discussion Draft on Waste Management and Pollution Control

The Minister of Lands, Planning and Environment, the Hon Mike Reed recently released a discussion draft of the Waste Management and Pollution Control Bill for community comment

The Department has now issued an information kit containing pertinent documents, including explanatory in-

formation, a comments form and the draft legislation.

The Department has expressed its desire to have a full range of community views on this issue and submissions are invited in writing to:

Mr Randal Scott

Department of Lands, Planning and Environment

GPO Box 1680 DARWIN NT 0801

Comments on the draft discussion are required before 28 February 1997 and the Law Society has a copy of the information kit which it can supply to anyone interested.

The Department can also supply copies of the information kit - telephone: 8924 4126, fax: 8924 4126.