

## New Procedures in the Court of Appeal

The President of the Court of Appeal, the Hon Justice Michael Kirby, AC, CMG, has drawn the Bar Association's attention to proposals to reduce the backlog in hearings in the Court of Appeal.

The Judges of Appeal have decided to take a number of steps to reduce the backlog which has increased with the growing workload of the Court.

The President has sought the co-operation of the Bar in the initiatives of the Judges outlined below.

A recent analysis of filings in the Court of Appeal registry has shown that, as at 25 August 1994, there were large backlogs in three identifiable categories of appeals awaiting hearing:

Supreme Court Quantum Appeals	113
District Court Quantum Appeals	170
Compensation Court Appeals	246

### Quantum Appeals

The recent enactment of Section 46A in the *Supreme Court Act* 1970 permits the hearing of quantum appeals by two Judges of Appeal assigned by the President if the Chief Justice is of the opinion that the appeal is not likely to require the resolution of a disputed issue of general principle. It is intended, during November 1994, to call over the Common Law and District Court quantum appeals with a view to isolating those which do not raise a disputed issue of general principle and which are otherwise suitable for hearing in March 1995. In respect of those appeals which do not raise an issue of general principle, the Court proposes to sit two Divisions of three Judges, commencing on 6th March for approximately a month. It is intended to list four quantum appeals before each court each day. The expectation is that, allowing for settlements, by April 1995 the existing backlog of quantum appeals will have been heard and judgments given.

To prevent a new backlog accumulating, a changed procedure is envisaged for quantum appeals filed after 1 January 1995. It is the aim of the Court to hear all such quantum appeals within ninety days of the filing of a notice of appeal with appointment. One Division of the Court of Appeal will ordinarily sit for one week commencing on the first Monday of each month to hear and determine quantum appeals. This will occur from May or June 1995.

To achieve the foregoing reforms the following procedures are envisaged.

- (a) An appellant must file with a notice of appeal with appointment:
  - (i) A draft index
  - (ii) A document in the form prescribed setting out the manner in which the trial judge (or jury insofar as it may be determined) calculated the damages awarded, the aspect of damage appealed against together with a brief statement of how

those sums contended for are determined. The document is to be signed by the solicitor and counsel for the appellant.

- (iii) Notification to the Registrar if a transcript of the hearing and judgment is not available.
- (b) The respondent must within 14 days indicate on the prescribed form whether it seeks to sustain the judge's damages determination, or if not, the award contended for and a brief statement of the manner in which any amended determination is sought. The document is to be signed by the solicitor and counsel for the respondent. The respondent must also within 14 days indicate whether it accepts the draft index. Absence of objection will be deemed to be acceptance of the index.
- (c) If there is any dispute regarding the index, the Registrar will settle the index without the attendance of the parties, on the working day following the filing of the respondent's documents.
- (d) The appellant will be required to file appeal books within fourteen days of the agreement to or settling of the index.
- (e) Written submissions of the appellant are to be filed and served four working days prior to the appeals hearing week, with respondent's submissions to be filed and served two days prior to that date.
- (f) The written submissions of the appellant will be prepared in the form of a draft narrative of facts, issues and argument suitable for adaptation by the Court in proceeding immediately to *ex tempore* judgment. They will, within two pages, set out the essential facts, the issues raised by the appeal, any applicable legal authority and the result for which the appellant argues.

The object of these procedures is to remove so far as possible the causes in delays in quantum appeals, to facilitate their determination by the Court and to prevent backlogs re-appearing in the future.

The proposed amended procedures will commence from 1 January 1995. Appropriate amendments to the Rules and any necessary practice note are presently being considered.

### Backlog in Hearing Compensation Court Appeals

To eliminate the backlog in hearing appeals from the Compensation Court, it is proposed that from April 1995 a Division of the Court of Appeal, comprising three Judges, will ordinarily sit for two weeks each month hearing such appeals. Initially it is intended to list three appeals each day. It is anticipated that by December 1995 the backlog in Compensation Court appeals will be eliminated. Once that is achieved, a Division of the Court of Appeal comprising three Judges will sit regularly each month to hear Compensation Court appeals. Procedures similar to those outlined for quantum appeals will be implemented to bring on for hearing of such appeals within ninety days of the trial judge's decision. Appropriate rule changes and any necessary Practice note to

give effect to their reforms are being considered. As the Bar would be aware, where weekly compensation is awarded by the Compensation Court, the Court of Appeal is not empowered to provide a stay. This fact and the nature of compensation appeals suggests the high desirability of expeditious hearings and determinations.

The President has asked that these changes be drawn to the attention of the Bar. The Court hopes that it will receive from the profession full co-operation in its endeavours to reduce court delays, particularly in cases such as have been specified above. Other reforms in procedure are under the active consideration of the Judges of Appeal to improve the disposition of appeals in the general list of the Court of Appeal, outside the categories mentioned above. The Judges of Appeal and the President are always happy to receive suggestions from the legal profession, and others, concerning ways in which the efficiency of the Court of Appeal can be improved, bearing in mind its extremely heavy workload. □

## Senior Counsel for 1994

The President, Murray Tobias QC, has announced the appointment of the following persons as Senior Counsel, effective 4 November 1994:

Gordon John RICHARDSON (ACT)  
David SHAVIN (Victoria)  
Neil John YOUNG (Victoria)  
Geoffrey Arthur Akeroyd NETTLE (Victoria)  
John Timothy RUSH (Victoria)  
David Edmund CURTAIN (Victoria)  
John Robert SULAN (South Australia)  
Ian Gerald Adamson HUNTER (United Kingdom)  
Brian Daniel O'DONNELL (Queensland)  
Peter Raymond CALLAGHAN  
Michael John JOSEPH  
Larry KING  
John Cecil NICHOLSON  
Robert Gabor FORSTER  
Peter Richard GARLING  
Geoffrey Charles LINDSAY  
Ruth Stephanie McCOLL  
Malcolm Bruce OAKES  
John William DURACK  
William Roy DAVISON  
Annabelle Claire BENNETT  
Lindsay Graeme FOSTER  
James Leslie Bain ALLSOP

## Industrial Relations Court of Australia

The Chief Justice of the Industrial Relations Court has advised that the Judges have decided to adopt a new régime regarding robes. The catalyst of the change is the number of cases before the Court in which parties appear in person or by a non-lawyer representative of an organisation.

The Judges have become concerned that such a person may feel at a disadvantage appearing against an opponent robed in similar fashion to the Judge. Accordingly, the Judges have decided that, as from Monday 18 July, 1994 counsel should be requested to appear unrobed. The Judges will wear a new, specially designed robe, but no wig. □

## Opening of 1995 Law Year

Members of the Bar are invited to attend the Annual Inter-Church Service to mark the Opening of the 1995 Law Year in respect of the western region of Sydney which will be held in St Patrick's Catholic Cathedral, Parramatta, on Monday 30 January 1995 at 9.30 am. The speaker will be Miss Freda Whitlam AM, MA, Dip. Ed. MACE, formerly Principal of PLC Croydon, and formerly Moderator of the New South Wales Synod of the Uniting Church of Australia.

This is the fifth such Service, the prior speakers being Keith Mason Esq. QC, Solicitor-General for New South Wales, the Hon. Sir Ronald Wilson KBE, CBE, the Hon. Mr Justice P W Young of the Supreme Court of New South Wales, and the Reverend Father Brian Lucas, Archdiocesan Secretary, Catholic Archdiocese of Sydney. □

## Letter to the Editor

Dear Editor,

In the "Barbytes" column of the Autumn/Winter 1994 *Bar News* it was suggested that Compuserve Pacific, a commercial computer bulletin board, is a useful means of locating suitable expert witnesses from the United States and Canada for use in litigation in New South Wales.

Your readers may also benefit from knowing that the recently formed Australian Plaintiff Lawyers' Association (APLA) operates an expert database containing details of a great number of Australian experts in various fields. APLA is a national organisation of barristers and solicitors which caters to the needs of those who conduct personal injury litigation on behalf of plaintiffs. It is run along the same lines as the Association of Trial Lawyers of America (ATLA), and the English Association of Personal Injury Lawyers (APIL).

Experts are included in APLA's database only upon the recommendation of other APLA members who have some knowledge of their skills and performance in court. The identity of a suitable expert is readily available to members by a call to APLA's Sydney office on (02) 262 6960.

Peter Semmler Q.C.,  
President, Australian Plaintiff Lawyers' Association