Ashburner, Richard (1905-1963), ‘1923; sportsman, Rhodes Scholar (1928), President of the TSC OBU; Vice Principal, St Andrew’s College, University of Sydney; barrister, judge (Commonwealth Court of Conciliation and Arbitration) and Deputy President (Commonwealth Conciliation and Arbitration Commission).1

Richard Ashburner was born in 1905 at Heysham, England. His father, also Richard Ashburner, and his mother Margaret Ashburner, nee Bond, both came from the Furness Peninsula, in the North West of Lancashire, an isolated area cut off from easy land access by the Lake district, and its lakes, rivers and mountains. Richard’s great grandfather, William Ashburner, was a shipwright, his male ancestors having been small scale farmers and carpenters, the carpentry perhaps extending to the work of shipwrights. William completed an apprenticeship, and then worked as foreman on a new shipyard on the Isle of Man, before in 1850 setting up his own shipyard at Barrow, on the tip of the Furness Peninsula, building wooden sailing vessels, mainly high quality merchant schooners. Barrow was then a very small village, but over the rest of the 19th century it became a very large port, and the centre for substantial industry, including large steel works and shipyards, initially building wooden sailing vessels, but later steam powered steel vessels.

William’s son, Richard’s grandfather, was trained as a naval architect, the first member of the family to have any training beyond an apprenticeship. He designed the vessels and managed the yard. Some of their vessels were sold outright, but the family kept an interest in many while selling shares to others. His elder brother managed the fleet of these vessels. The resulting businesses were a commercial success, but the brothers did not seek to develop the yard for the age of steel and steam, and by about 1890 it had become an anachronism. Richard’s father, another Richard, was under family pressure to take over the management of the yard and the fleet, but sensibly refused, and followed a career in the merchant marine, acquiring the “tickets” to be captain

1 All photographs are from the Ashburner Family Collection, digital copies of which are held at TSC Archives. Special thanks are due to Alan Ashburner ‘1961, who has provided great insight and assistance in putting together this profile.
of full rig sailing and steam vessels, probably only by on the job training. The shipyard closed in about 1890, and the fleet was sold a few years later.

Richard's mother Margaret came from a family of drapers. Neither her father or grandfather had any education beyond school. Her father's business was in Broughton, also in the Furness Peninsula. It was successful for many years, but then ran into difficulties, and the family finances were tight. A relative paid for Margaret's education, as a teacher, at Downlands College, London. After her marriage, Margaret was not able to continue with her career, a married woman being then not able to work after marriage, but she retained her strong interest in education.

Richard was born in 1905, and his sister Elizabeth in 1908. The family moved to Australia in 1910, and bought a bungalow in Arden St, Coogee, where they lived. His father continued to work as a captain in the Australian coastal trade. After the outbreak of the first world war, he returned to England to join the British Navy, being master of some anti-submarine vessels, before being transferred back to the Australian Navy, which by then had an expanded fleet. After the war, he was in charge of the Navy station on Thursday Island, Torres Straight. The family moved to Wahroonga.

Richard went first to Coogee Preparatory School, under the legendary headmaster Mr Bill Nimmo, with whom he remained in touch long after, and where he received an excellent education. He entered Scots in 1917 (the first reference to his presence is in the Scotsman in 1918). He quickly showed himself highly competent at swimming, cricket and football, and at English, despite being markedly younger than many of his contemporaries. Having also progressed quickly (skipping a number of years) Richard was absent from school, with serious illness, for much of 1921-1922, returning in 1923. In 1921 he suffered a serious illness, osteomyelitis, an infection of the surface of the long bones, which developed in one leg, and spread to the other leg and then both arms. It was, at the time, a very serious illness, with no cure: the only treatment available involved frequent operations to expose the length of infected bones in order to scrape out as much of the
infection as possible. Both the illness and the treatment were painful and disabling, and continued until after the Second World War, when Sir Howard Florey's wartime development of penicillin became more generally available. Prior to the illness, Richard had been a keen sportsman, being particularly keen on swimming and surfing. At Coogee, he and his friends used frequently to swim from the northern headland across to Wylie's Baths, on the Southern headland, and sometimes around Wedding Cake Island, off the southern end of Coogee. Following the illness, his participation in sport was largely confined to coxing (and later coaching) rowing crews, with some swimming when the illness and treatment permitted. The illness threw him towards the academic side. Attracting the nickname 'Spec', in the Intermediate Certificate Results (1918) he obtained all Bs, except in Mathematics II, where he scored an A. He entered form lower VIth (then the fifth year of high school in the NSW system) in 1919. In 1920, he was on the editorial team for the Scotsman, and when Rev. J. W. Grant arrived in the school, he joined "The Scots College Literary and Debating Society". The future Judge in the Court of Arbitration had his first experience debating topics such as 'Should women be allowed to compete freely with men in all occupations?', 'Should the working man receive a share of the company's profits?' and 'Should Trial by Jury be Abolished?' (during which he was required to withdraw a statement he made about the opposition). 'Arbitration vs. Direct Action' saw him leading the 'Arbitration' case. In his report for his magazine on his own club, Ashburner noted the marked improvement both in the quality and number of speakers over its first year. When time ran short, Grant offered the Debaters one of his Bible periods. (Scotsman, 12.1920, 15) In their first outing against Grammar, the fledgling society was proud of being able to come home with a draw. (Scotsman, 6.1921,20) In the same year he topped Classics, as he would again in 1923. In Form VI.A in 1921, he headed the prize list, and was granted the Memorial Prize - though in the second half, he was absent for a lengthy period due to illness, something which (it was thought) affected the Scots GPS Debating team in the finals against Sydney High. On his return, in his final year (1923) he was Associate Editor of the Scotsman, secretary of the Dramatic Society, 'Premier'/ Leader in the Debating Society, and a Prefect. Ashburner and the Edwards brothers (Marcus and Ian) formed the team which bought home to Scots the GPS Debating shield. He matriculated from The Scots College in 1923 with three Honours and three A's, Dux of the School, and gaining an Exhibition to the Faculty of Arts from the NSW Bursary Endowment Board. He entered the University of Sydney the next year with "an academic record which all of us envied and which shone more brightly with passing years" (A. Dougan, Address at the funeral of Richard Ashburner.) - but also promptly allowed himself to be drafted as 'one of the keenest' members of the Scots Old Boys Union committee. He headed the OBU committee to raise funds for the Rose Bay Boatshed.
In his undergraduate degree, Ashburner gained high distinctions in law, history and philosophy, and won the University Medal for History over stiff competition. He was also awarded the Wigram Allen Scholarship as the most distinguished student entering the law school. He continued his debating at ‘the Varsity’ and brought the University team back to Scots to provide them with training. In 1925, he was awarded the Lithgow Scholarship no. II in Philosophy. In 1926, Richard gained first place in History II. with high distinction (thus winning the "Professor Wood Prize"), a high distinction in Philosophy II, and the "Wilfred E. Johnson Prize" in Economics. There was plenty of social and sporting life as well: he was cox of the St Andrew's College VIII, sub-editor of the "Arts Journal" and of Hermes, secretary of the Public Questions Society, and assistant secretary-treasurer of the local branch of the Australasian Society of Psychology and Philosophy. "A busy man is "Spec" ", the Scotsman noted of its increasingly distinguished alumnus. Scots alumni were a constant factor in his life: Mark McAlpine, later Moderator of the Presbyterian Church of Australia in NSW, remembered (by way of an object lesson to a College Speech day audience):

We were together not only at School, but at the University where he was a resident of St. Andrew's College. Dick had to work hard and with great courage. During his University career he had an injured arm and couldn't write at a time when he was due to sit for an honours examination in Latin. I was invited to write the examination for him, so while Dick dictated, I wrote and he was in very great pain. In spite of that he got first class honours. (The Scotsman, 12.1964, 8)

A year apart, Ashburner and Ian Edwards (both at St Andrews) shadowed and reinforced one another in the Public Questions Committee, and in key functions at St Andrews College. More broadly in the University, he was a director of the University Union (1927-28). In 1927, Ashburner was unanimously named the NSW Rhodes scholar for 1928 - a role in which Edwards followed him the next year. It was a surprising appointment to some: 'the Rhodes' had been dominated by sportsmen rather than scholars. It was perhaps out of a desire to reverse that reputation in Oxford that Richard found himself appointed to one of the most prestigious international scholarships available to Australian graduates.

Ashburner, however, nearly didn't make it - driving the Registrar of the University (Walter Selle) and his wife (Elizabeth) back home one night, he misjudged the punt (ironically between Rhodes and Ryde) and ploughed into the water. Elizabeth Selle later died in hospital, but Ashburner and the others survived. In the subsequent inquiry, despite having lost his wife, Walter Selle declared to the Coroner "I have the affection and love for him that I would have
for a son, not only for his scholarship, but for his manly conduct.” (SMH 3 July 1928, 8) He chose to study Law at Balliol College, Oxford with people such as Andrew Garvan. (After graduation with the BCL, he was admitted to membership of the Middle Temple and to practice at the English bar.) While there, he coxed for the Balliol rowing crew - though had to give up the position when, for the first time in his life, he passed 10 stone. He used his free time to visit surviving relatives, such as the Rev Fred Ashburner, and other parts of England. On completion of a Bachelors degree in civil law, he worked his way back to Australia as a deckhand to Australia, where he commenced a distinguished career in law. On his return, he took up a residential position (Vice-Principal) at St Andrew's College, at the University of Sydney, where he also acted as coach of one of the Vllls (where he raised eyebrows by promoting the 'Fairbairn style'. There is in the hands of the family an EPNS mug won by his brother as cox of a University Vlll at the Glebe Regatta that year). After success there, he returned to Scots to help Alan Brown coach the College crews - in recognition, a Scots racing IV would be named after him. He was called to the Bar in 1933, after which he practiced as a barrister and taught Commercial and Industrial law at the University Law School. In the aftermath of the Depression, it must have been slow and difficult to establish a practice, and it is likely that it took some considerable time to do so.

In 1937 Ashburner married Joan Nobbs at St Philips, Church Hill. They had met when Ashburner travelled to Norfolk Island to conduct a case for Joan’s father, the President of the Advisory Council of Norfolk Island. Together they would have two surviving children, Janet (later Coombs) and Alan. Rising through the legal ranks, Ashburner appeared in many important cases, including being junior counsel to W. R. Dovey KC (the father of Margaret Whitlam) assisting the NSW Royal Commission into the Liquor Industry, counsel assisting the NSW Royal Commission into the Bread Industry, and one of the counsel appearing in the High Court in the important constitutional case on the legality of the nationalisation of the banks. He also appeared in many industrial cases before the various NSW and national Industrial Courts and Commissions. He “had, in full measure, all those qualities so necessary for success at the bar. Energetic, painstaking, excellent at cross-examination, and endowed with a keen, incisive mind.” (Union Recorder, 17 Oct 1963, 249).
In 1951 Richard was appointed KC, and in 1954 was appointed the seventh judge of the Commonwealth Court of Conciliation and Arbitration. After the Commonwealth Conciliation and Arbitration Commission was formed in 1956, he became a Deputy President (1956-63). In taking up his role on the Bench, Ashburner replaced another Scots boy and University of Sydney Medallist, Malcolm W. D. McIntyre, who died unexpectedly after serving only two years on the Bench. (The court to which he was appointed was held by the High Court of Australia, in the Boilermaker's case in 1956, to have been invalidly created by Parliament, the mix of judicial functions with arbitral functions breaching a supposed implied constitutional requirement of a separation of judicial and non-judicial powers. Parliament then created a new Court, for the judicial functions, and The Commonwealth Conciliation and Arbitration Commission, for the arbitral functions. The members of the old court were offered the choice of which one to be appointed to, and Richard chose the Commission, of which he became a deputy President.) Richard was particularly known for his patient, balanced work 'in conjunction with the Australian Waterfront industry', 'that turbulent industry' the work with which took him to all parts of Australia and which resulted, in 1960, in a new award (Union Recorder, 17 Oct 1963, 249).

Richard remained closely attached to the life of the Scots College, becoming President of the Old Boys Union, in which position he was called upon to speak in tribute on the sudden death of Principal A. K. Anderson. Having a judge close at hand was occasionally useful - as a source for the “Lord Chancellors’” full bottom wig used in the College production of Iolanthe, for example. (The Scotsman 12.1957) In 1956, his son, Alan, came into the College, and upheld his father's tradition, rowing as stroke in the First VIII, Dux of the College (1961), and taking Council's Prize for First Two Hundred in the State and The Soutar Prize for Mathematics.

Ashburner was a fine example of a Scots Old Boy who combined the best in firm moral principles, intellect and vocation. This was the case even when he felt his intellectual development took him away from the religious convictions on which Scots and St Andrew's were founded. While being respectful of sincere religious beliefs, and having many friends who were
religious, he himself was an atheist, being unable in conscience to believe the
truth of the dogmatic beliefs of Christianity, or of any other religion. ‘Apart from
deep scholarship, his life was characterised by great personal courage, a
humanity which knew no barriers, a keen wit and a forthrightness which
penetrated shams and hypocrisy.’ When he discovered, for example, that an
invitation to stand for the council of St Andrews College (a position in which he
dearly wished to serve) would require him to be a member of the Church, he
decided to stand. He could not accept the suggestion that all he had to do was
attend church occasionally, and sign a piece of paper which was of no
consequence. Ailing for the last months of his life, he refused to give up ‘his
many tasks’ to which he was committed. He died of a heart attack on 11
September 1963, in the midst of considering a number of weighty issues before
the Commission. A week later, the Commission met in special session, to
provide the nation’s senior law officers (including the Solicitor General, who
appeared for Sir Garfield Barwick, with whom Richard had enjoyed a long and
warm relationship, and later Governor General, Sir John Kerr) to mourn the loss
of “a man of honour who never deviated from the code he laid down for
himself.” (Sir Richard Kirby, Special Session of the Commonwealth Conciliation
and Arbitration Commission, 16 September 1963, 3)

Richard Ashburner was a warm hearted, good humoured, amusing, and
generous man with a wide circle of friends from many backgrounds. He had
had, Sir Kenneth Bailey remembered, ‘an unusual mind, at once tough and
sensitive, and was endowed with a strong sense of consistency and continuity.’
(Special Session, 6). He held to firm moral principles, especially the importance
of strict intellectual honesty, of tolerance for different ideas, beliefs and
cultures, and of the importance of attempting a sympathetic approach to
understanding the facts and arguments supporting them. He abhorred the use
of any personal attack on those of a different view, rather than a calm, good
mannered, respectful and reasoned approach. These characteristics enabled
him to be a very successful industrial arbitrator for the waterfront industry,
certainly one of the most difficult of all to handle at the time. Slowly he gained
the parties’ trust, and was able to find solutions from which both parties gained
benefits. He by no means solved all of the problems which beset the waterfront
in 1954--it would remain a problematic element in the globalizing Australian
economy for years to come. Richard, however, made a very important start,
though cut off by his premature death, on which others were later able to
build. In Sir John Kerr’s words, he “made history in his own difficult and
disputatious industry and helped to make history in the wide industrial field.”
(Special Session, 10) At his funeral, long-time friend the Rev Alan Dougan
acknowledged the “vast company of men and women, scholars, Ministers of the
Crown, Lawyers, professional and business men, school friends from Scots,
College men from Oxford and Sydney, Balliol and Andrew’s, Trades Union
officials and humble men of heart” who gathered to farewell Richard Ashburner. (Dougan, Address.) He was survived by his wife, his son (Alan Richard, ’1961, who became a barrister, m. Christine Margaret Colvin) and his daughter (Janet, m. John Coombs QC, d. 2008).

**Genealogical:**

William (b.1809, Ulverston, Lancashire - d. 1881, Barrow-in-Furness, Lancashire), m. Elizabeth Kaighin

| Richard (b. 1837, Douglas, Isle of Man, shipbuilder and owner, d. 1922, Barrow in Furness, Lancashire), m. 1.Elizabeth Ann Cornthwaite and 2. Annie Bond
| Richard (b. 1867, Barrow, Lancashire, d. 1930, Sydney) m. Margaret Bond
| Richard (b. 1905, Heysham, Lancashire, d. 1963, Sydney) m. Joan Nobbs
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