

From the President



THE FUTURE

Every once in a while those of us who are concerned with the administration of the Bar's affairs need to stop and assess the future needs of the Bar. Will an independent Bar still be here in 20 years time? What will it be like? Will the Bar Council of 2008 look back and note a lack of foresight and initiative on the part of those with responsibility for the Bar's affairs in 1988?

We admire the vision and courage of Barwick Q.C. and Manning Q.C. who established Counsel's Chambers Limited in the 1950's. However, looking back over the 30 years since, we can but note lost opportunities, the current fragmentation of the Sydney Bar, and the high capital or rental cost of Chambers.

Those who attended the talk by Sir Michael Kerr of the English Court of Appeal will have heard of an English Bar under siege seeking to defend its exclusive rights of audience against solicitors who have themselves recently lost their legal monopoly over conveyancing. The talk prompted me to think about our corporate future. We do not have and do not need any legal monopoly and we are not under siege. However we cannot take for granted the future of our independent Bar. The rise of the mega firms of solicitors has created for the first time in our history the potential for groups of solicitors to practice "in house" as full time advocates. The mega firms seek to recruit and retain all graduates of ability. They can and do offer attractive salaries, security, and early partnerships.

Until comparatively recently young people with ability and ambition have been able to start at the New South Wales Bar without capital and without connections and rapidly establish successful practices. Recent developments however have for the first time raised significant economic barriers against entry to the Bar.

The history of this State, and indeed Australia, is crowded with the names of members of our Bar who started with "nothing" such as Holman, Hughes, H.V. Evatt, Barwick, McKell, McTiernan, Martin, Kerr, Wran, McHugh and many others.

How difficult is it for young graduates today who have "nothing" but ability and the wish to practise as an independent advocate to come to the Bar? How much more difficult will it be in 10 or 20 years time?

I am confident that the independent Bar will continue to attract young people of ability so long as we are able to keep barristers' overheads "reasonably" low compared with solicitors and prevent the capital cost of entry from becoming prohibitive.

At the same time we cannot afford to neglect computer technology as a tool of legal research and as a means of handling long cases. The mega firms are computer literate and we must be willing and able to change our methods of practice to take advantage of the benefits of changing technology. Our ability to provide reliable service in many areas of rapidly changing law depends on our success in this exercise. I was saddened therefore to learn that ESTOPL is not being used as it should. The bush telegraph and regular Court appearances used to be good enough. One may still get by with these methods but not for much longer I fear. The Bar Council strongly supports the ESTOPL project and we propose to take action to effectively promote the use of computer technology by the Bar.

The Special General Meeting of the Bar called to discuss the fee scales in Criminal Legal Aid matters revealed a most unsatisfactory state of affairs. Junior Counsel doing criminal work are heavily dependent on legal aid but the fees have been low and did not increase for some years. Overdue increases voted by the Legal Aid Commission in December 1987 could not be paid because of budgetary constraints. Eventually a 20% increase took effect from 1st July.

An independent Bar is underpinned by its financial independence. The erosion through inflation of the incomes of those doing criminal work on legal aid poses a major threat to the ability of non-salaried barristers to continue to do this work. What sort of independent Bar would we be if only salaried public defenders appeared for accused persons in criminal matters? The public defenders do a good job but I trust that other members of the Bar will continue to appear for accused persons in the Criminal Courts in the years to come.

Since writing the editorial for the Autumn issue the Bar Council has been moved to take a public position against proposed State legislation to curb the powers of the Ombudsman to deal with complaints against the Police and to establish an Independent Commission on Corruption. I wrote to all members of the Upper House, once on the Ombudsman Bill and twice on the ICAC Bill. The Ombudsman Bill is now before a Select Committee of the Upper House, and the Government has twice brought forward amending ICAC bills, first in June, and again in August which have removed some of the matters of concern to which we drew attention.

I acknowledge with gratitude the help of many barristers on and off the Council who have drawn attention to matters of concern or who have assisted with necessary research. The President cannot be a one-man band. Fortunately the Bar has tremendous resources of goodwill and expertise which are available to be drawn upon by the Bar Council on such occasions. We intend to remain active on civil rights issues and to take an independent and public stand on such issues as and when the need arises. □

K.R. Handley