



As another busy year draws to an end, there is in the air a spirit of change and anticipation. Shortly before going to press, the appointment of the crown advocate, Richard Cogswell SC to the District Court, and of Ian Harrison SC to the Common Law Division of the Supreme Court of New South Wales were announced, to take effect from February 2007. (Whilst the wisdom of the appointments is not in doubt, the wisdom of giving Harrison almost three months to prepare his swearing in speech may be doubted – but it will guarantee a packed Banco Court on 12 February 2007.) Harrison is to replace that model of judicial propriety and integrity, Mr Justice Sully, who has served on the Bench since 1989. Justice Handley also reaches the statutory retirement age early in the New Year, after 16 years of unbroken service on the Court of Appeal. The launch of his Honour's most recent extra-judicial publication, *Estoppel by Conduct and Election*, is covered in this issue of *Bar News*, and his Honour's actual retirement from the Bench will be more fully noted in the next issue of *Bar News*.

At the time of writing, rumours also abound as to the imminent retirements of a number of other long-serving and distinguished judges of the Supreme Court, with corresponding rumours as to potential replacements. Phillip Street rumours are, of course, notoriously reliable!

If there is to be a rash of appointments to the Bench, those appointments will not be affected by but may promote the swirling debate as to the desirability or otherwise

of a judicial appointments commission, a topic raised by Justice McColl in her paper reproduced in the last issue of *Bar News*. In his opinion piece in this issue, Arthur Moses brings this debate forward by reference to the detailed paper by Dr Evans and Professor Williams entitled *Appointing Australian Judges: A New Model*.

Coupled with the possibility of significant personnel changes in the judiciary is the impending retirement of the Hon Bob Debus MLA as attorney general. Mr Debus has held that position since 2000 and has, in the opinion of many, been a very fine attorney general. He has worked closely with a series of Bar Association presidents as well as the Bar Council Executive over that time, has spoken regularly on behalf of the Bar at swearings-in, and has been a regular and willing contributor to *Bar News*. His speech to the Bench and Bar Dinner in 2002 will be long remembered. His successor, from whatever side of politics following next year's state election, will have large shoes to fill. (Followers of New South Wales politics will also enjoy David Ash's most recent foray into the world of the clerihew.)

The current issue of *Bar News* focuses on the role of expert evidence in a suite of articles which, it is hoped, readers will find of immense interest and assistance. There are papers by Justice Branson of the Federal Court, Henry Ergas, the prominent economic commentator and a regular witness in Part IV TPA cases, together with detailed papers by Hugh Stowe, Liz Cheeseman and Gregory Nell SC. An enormous amount of work and effort has gone into these papers and *Bar News* records its appreciation to each of the authors for their contributions.

Apart from containing valuable analyses, a number of the papers, particularly those by Henry Ergas and Hugh Stowe, are designed to and will stimulate debate as to, in the one case, the role of economic evidence in court proceedings and, in the other case, the complex ethical questions concerning the legitimate and permissible extent to which barristers can and should be involved in the preparation of expert reports. In this regard, there is a degree of tension

between the importance of the expert maintaining his or her independence – one of the cardinal concerns of the various expert Codes of Conduct, usefully surveyed by Alexandra Bartlett and analysed by Liz Cheeseman – and the need, in the client's interest, for any expert report to comply with the strict requirements associated with the decision of Heydon JA (as he then was) in *Makita (Australia) Pty Ltd v Sprowles* (2001) 52 NSWLR 705. In this context, readers will benefit enormously from Gregory Nell's analysis of that decision and the contrast drawn with a number of decisions of the Federal Court and, in particular, that of Justice Branson as a member of the full court in *Sydneywide Distributors Pty Ltd v Red Bull Australia Pty Ltd* (2002) 55IPR 354. Her Honour's own contribution to this issue, being a paper presented to the Inaugural Australian Women Lawyers' Conference in September 2006 (separately noted in this issue by Catherine Parry), gives an invaluable and practical insight to practitioners of what is expected by the Bench in terms of the presentation of expert evidence.

It is hoped that the publication of the various articles on and relating to expert evidence will provoke discussion and debate on these topics. Ideally, that debate would continue in the pages of *Bar News* and contributions in the form of opinion pieces and/or letters to the editor are encouraged.

Finally, I wish to thank all of the members of the *Bar News* committee and, particularly, Chris Winslow, of the Bar Association, for their invaluable assistance in the production of two excellent issues of *Bar News* in 2006. As with Bar Council and all committees of the Bar Association, members of the *Bar News* committee devote considerable time and energy to the production of *Bar News* in the interests of and for the benefit of all members of the Bar Association. Their work is gratefully acknowledged.

**Andrew Bell**