

The alternative view across the rabbit-proof fences

by David K. Malcolm QC

In the Winter 1985 issue of *Bar News* I.D.F. Callinan QC (*The View from Across the Dingo Fence*) set out to justify "the resistance of Queenslanders to the intrusion of southern practitioners into the Queensland Courts".

It may well be that the Queensland attitude to reciprocity of admission is in part a consequence of geographic proximity to the large bars in Sydney and Melbourne. It is significant that Mr Callinan suggests:

"The Queensland Bar's view, and indeed as I understand it, the views of the Queensland Government are that there should be a strong Queensland Bar, and ready access by the Queensland Public to that Bar, that that strength and access should not be put in jeopardy by an unrestricted right of practice by other barristers from out of Queensland."

The Western Australian Bar is an independent Bar, but unlike Queensland, Victoria and New South Wales, it is not a separate Bar. Practitioners from the amalgam have the same right of audience as the members of the independent Bar.

The latter comprise practitioners who have elected to practice solely as barristers and whose undertaking to do so qualifies them as members of the Western Australian Bar Association.

Until the early 1970s only persons who had been resident in Western Australia for a minimum of six months were eligible for admission in Western Australia. Following an intense debate the legal profession in the State agreed to abolish this requirement and to adopt an "open door" policy.

The Government supported this approach and the relevant legislation was duly amended. There were dire predictions that the Western Australian profession would be swamped or taken over by solicitors and barristers from other States and in particular from Sydney and Melbourne.

I was one of those who rejected these predictions and argued that the greater the contact and interplay between the Western Australian profession and their colleagues elsewhere the stronger the profession as a whole would become. The predictions have not turned out to be correct.

I support the principle that a litigant in Australia should be able to choose his solicitor and counsel from among the Australian legal profession. This is not to say that I do not support the view that there should be a strong Western Australian Bar and ready access by the public to that Bar.

I do support that view with enthusiasm. It is a view which is shared by the Western Australian Bar Associa-

tion and I believe, the Government and Judiciary in this State.

It does not follow that the strength and access of the Western Australian Bar will be jeopardised by the existence of an unrestricted right of practice by other barristers from out of Western Australia.

Western Australia remains a growth area. The developments which have taken place in the last decade have resulted in something of a boom in litigation and heavy demands on the commercial firms.

The Bar has grown, but it had a narrow base. The Western Australian profession now exceeds 1500 of whom more than two thirds are under the age of 35.

The fact there is only a small independent Bar and a comparative handful of silks is a reflection of the narrow base from which the profession has expanded in the past decade or so.

While there are approximately two visiting silks from other States admitted in Western Australia for every local silk, it does not follow that opportunities for local silk or for local barristers to take silk have become significantly diminished. On the contrary the exposure of the local practitioners to visiting silk has been a professional benefit.

It is important, however, that those who visit Western Australia reflect about the need to preserve the warmth of their welcome. Because the local Bar is small it needs the support and encouragement of visiting barristers.

Membership of the Western Australian Bar Association is the first step. Another step which visiting silk should consider is to request the assistance of a local junior wherever the opportunity arises or the circumstances permit.

Not only will the local knowledge be of assistance to the visitor, but he will also be making a leader's contribution to the development of the local Bar. The Western Australian Bar Association would like to think that the acceptance of some responsibility for the strength and development of the local Bar goes with the acceptance by a visitor of a Western Australian commission as silk "in and for the State of Western Australia".

I write as a Western Australian who has had the privilege of being admitted to the Bar of New South Wales and taken silk in that State. I have personally enjoyed and benefited greatly from the support, encouragement and friendly rivalry of my colleagues in New South Wales, both in Perth and in Sydney.

So long as barristers from out of Western Australia, and in particular those who have taken silk in that State, remember that they accept responsibilities to the local Bar on admission they may be assured of a continuing welcome in Western Australia. This will be so whether they appear in the Supreme Court or the Federal Court.