



## SPEAKING OUT BY THE BAR

The contribution to this issue of *Bar News* by the Honourable Athol Moffitt CMG, QC, the former President of the Court of Appeal, asks us to pause and consider whether the Bar has sufficiently performed its public function and maintained its independence by speaking out on issues. As it happens this is a very topical question.

Before dealing with that I should remind members that the Association has expressed views publicly on a great many recent issues of significance. I do not attempt to catalogue them. They include the Law Reform Commission's Proposals upon the Structure of the Legal Profession; the proposed National Crimes Commission and then the National Crime Authority, including the appointment of a Judge as its head; the Special Commissions of Inquiry Act; legislation retrospectively affecting Court decisions concerning land development; the New South Wales Drug Commission, and the appointment of a new District Court Judge as its head; publicity concerning the trial of Mr Justice Murphy; Judges as Royal Commissioners; changes to the Workers Compensation Court; publicity as to the arrest of those charged with the murder of Anita Cobby; amendments to the Supreme Court Rules and Accident Compensation. Private representations have been made to Government and the Courts on a myriad of other topics. Indeed, more is usually to be achieved by private representation and negotiation than by public confrontation. Then again, it is not every issue which warrants a stance.

It is also realistic to recognise that it is in the interests of the Bar to have good relations with Governments of the day and the Judiciary. The recognition of this, of necessity, acts as a brake upon confrontation, public or private. The trick is to decide when diplomacy becomes appeasement and when the watchdog has become a spaniel lying on its back waiting to be tickled.

Never has the dilemma been more acute that it has over the Murphy saga.

Since the verdict in the first trial there has been a series of extraordinary events. I mention some.

The members of the first jury were subjected to sustained public criticism for their verdict. The Director of Public Prosecutions has received persistent trenchant public criticism for his decision to prosecute. Mr Justice Murphy publicly criticised the first trial judge. The Premier was charged with contempt of Court. The Premier has attacked the Chief Magistrate in and out of Parliament. Certain Supreme Court judges, including the Chief Justice, wrote to the Premier in defence of the Chief Magistrate. Mr Justice Murphy publicly described his trial as a political show trial. The Chief Justice of the High Court has issued a press statement, and the judges of that Court are individually considering their position. The leader of the Australian Democrats has publicly said that no new South Wales judges were to be considered for the proposed Parliamentary Commission of Inquiry because some of them were "sus". This unprecedented Inquiry has been set up.

In normal times each of these events would have attracted much attention. Together, they reflect a crisis of major proportions concerning the administration of justice, and the conduct of those concerned with it, in which the Bar has a fundamental concern. A combination of pending trials, inquiries and actions has made comment difficult. The constantly changing scene, and the difficulty of ascertaining underlying facts adds to the difficulty. It would also be unduly naive not to recognise that the party political implications involved, and the high offices held by many whose conduct is under scrutiny, have called for more than usual caution and restraint. So far we have spoken only when plainly necessary.

When the proper time comes, however, the Bar will not shirk its duty to speak.

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