

Detailed Statement of Proposed Reforms to the Structure of the Legal Profession

1. The Bar Association and the Law Society will continue to be responsible for regulation of the legal profession, and will be given enhanced powers to effectively carry out this function.
2. The Bar Council and the Law Society will submit to the Attorney General each year a list of the standing committees of each Council and at least one community representative (not legally qualified) will be appointed by each Council to such of those committees as the Attorney General after consultation considers appropriate.
3. Every person admitted as a barrister or solicitor and who wishes to practise as such will be required to hold a current practising certificate issued by the relevant Council. The Bar Council will be vested with powers similar to those currently held by the Law Society in relation to practising certificates. This will give the Bar Association power to control practising barristers which it does not presently have.
4. A two-tiered disciplinary system will be established comprising:
 - A Disciplinary Tribunal with the composition and powers generally recommended by the Law Reform Commission (primarily a judge, 2 practising members appointed by the governing body of the practitioner who is the subject of the complaint and 2 community representatives appointed by the Attorney General). It would determine matters of serious professional misconduct and questions of fitness to continue as a member of the profession with power to strike practitioner's names from the roll and to impose substantial fines.
 - A Professional Standards Board with the composition and powers generally recommended by the Law Reform Commission (2 practising members appointed by the governing body of the practitioner who is the subject of the complaint and 1 community representative appointed by the Attorney General). It would examine conduct which is unsatisfactory but which does not show a temporary or permanent unfitness to practise.
5. Where the Board makes a finding against a practitioner it will be able to make a broad range of orders, including:
 - * that a restricted practising certificate be issued for up to one year;
 - * that the practitioner complete a course of further legal education;
 - * that the practitioner make his or her practice available for inspection;
 - * that the practitioner cease to work in a particular field;
 - * that the practitioner reduce his or her fees for a particular client;
 - * that the practitioner be fined an amount not exceeding \$5,000; or
- * that the practitioner be reprimanded.

A party aggrieved by a finding or order of a Board will be able to appeal to the Disciplinary Tribunal, where there would be a new hearing.
6. A procedure will be established by both the Bar Council and the Law Society for complaints to be investigated by a Complaints/Conduct Committee which will recommend appropriate action to the respective Council. That Council will be empowered to refer matters to either the Tribunal or the Board;
7. A complainant dissatisfied with the handling of a complaint by either professional Council will be able to request the Professional Conduct Review Tribunal to review the matter. That Tribunal having reviewed the Council's handling of the complaint will be required to report and make appropriate recommendations to the relevant professional Council, and if the Tribunal remains unsatisfied it will be required to report and make appropriate recommendations to the Attorney General as to whether the complaint should be referred to the Tribunal or Board or simply dismissed.

The Review Tribunal will comprise 5 members appointed by the Attorney General of whom:
4 will be community representatives (non-legally qualified) appointed after consultation with the non-practitioner members of the Legal Aid Commission, the Law Foundation, the Consumer Affairs Council and with such other organisations and persons, if any, as the Attorney General may consider appropriate;
1 will be a practising member nominated by the governing body of the practitioner who is the subject of the complaint (the nominated member could not be a member of his or her governing Council).

The Review Tribunal will have no power to refer matters to the Tribunal or Board but would review the handling of complaints by the Bar or Law Society Council. It will have a quorum of 3 members, of whom one must be the relevant practising member. If the Review Tribunal is dissatisfied with the handling of a complaint it will report to the Attorney General who will be able to refer the matter to either the Disciplinary Tribunal or the Professional Standards Board.
8. A Legal Profession Advisory Council would be established to advise the Attorney General on matters relating to the regulation of the Legal Profession.

The Advisory Council will be able to consider and make recommendations on any matters relating to the regulation of the legal profession, including those recommendations of the Law Reform Commission not specifically addressed by the present proposals. The Council will also be able to consider matters specifically referred to it by the Attorney General and by the professional bodies.

The Council would comprise 9 members appointed by the Attorney General of whom:

5 shall be legal practitioners (2 of whom shall be practising barristers of whom one shall be a barrister nominated by the Bar Council, and 3 of whom shall be practising solicitors of whom 2 shall be solicitors nominated by the Law Society Council);

4 shall be appointed as members representing the community interest (only one of whom may be legally qualified);

9. Recommendations to the Governor on the appointment of Queens Counsel would remain within the Attorney General's prerogative;
10. The Bar Council and Law Society Council would be given power to recommend regulations;
11. The Bar Council and Law Society Council would each be required to submit an annual report to the Attorney General on the discharge of its regulatory functions, for presentation to Parliament (the Report would include any prescribed information);
12. The Bar Council and Law Society Council or their respective representative would be consulted in settling the detail of these proposals and in the drafting of the necessary legislation to implement them;
13. The wearing of gowns by solicitors appearing as advocates in the Supreme Court or District Court would be optional, whilst the question of the appropriateness of wigs and other dress would be left to the Courts to regulate.

While the Law Reform Commission proposed common admission, it is not intended to proceed with this recommendation at the present time. The major reasons for this decision are:

The Law Reform Commission proposals envisage a separate and independent Bar, subject to control and regulation by the Bar Council and rulings by the Bar Association. Similarly, the Commission proposed the Law Society would be responsible for the regulation of members of the profession practising as solicitors or practitioners wishing to operate trust accounts.

In effect, under the Commission's proposals there would be common admission to the profession, whilst in practice there would be two distinct groups of practitioners regulated by two bodies exercising similar powers but ensuring that each branch of the profession fully performed its duties to the law and the community.

The present recommendations will achieve all the aims of the Law Reform Commission so far as the responsible regulation of the legal profession is concerned and it is considered that the proposals also contain sufficient safeguards by means of community representation. In these circumstances, it is not considered necessary to formally provide for the common admission of practitioners as "barristers and solicitors."

Letters (cont.)

Re Golden Jubilee Grand Ball

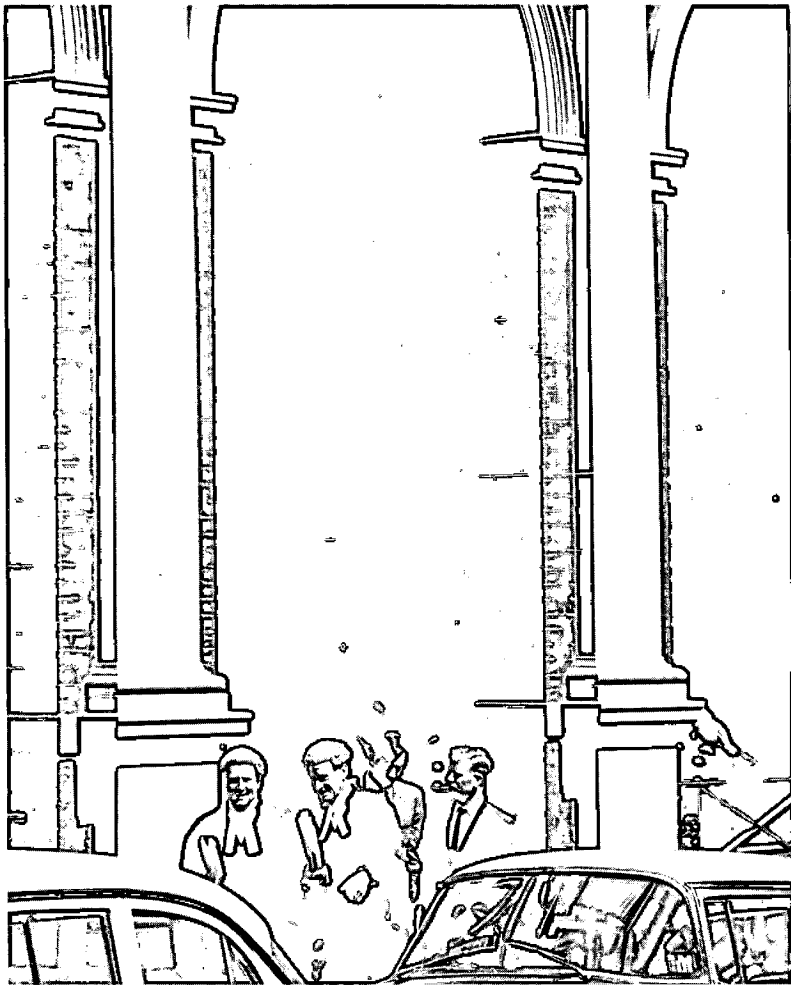
The Council received a gracious and informative response to its invitation to the Golden Jubilee Ball from the Honourable Sir Gordon Wallace:

"The reference in the recent circular to "marks the half century of incorporation" and "this notable occasion" surprise me. It is true that the New South Wales Bar Association was incorporated in 1936 (mainly I think, to clarify and legalise ownership of property — and there had long been an "Incorporated Law Institute of N.S.W.") but a Council of the Bar of New South Wales had previously existed for many years, as a reference to (for example) the 1932 and 1912 Law Almanacs will clearly indicate — a Council which was elected annually, and included the AG (ex officio) and 20 barristers including 5 K.C.'s of note. In short, the 1935 "incorporation" was not constituting a new and previously non-existing Council of the Bar as the circular seems to imply. I had been at the Bar 8 years when it took place and so far as I remember it made no difference to the status of barristers or their conduct or discipline.

I fancy Spender, Q.C. (with whom I was then writing a book on Company Law published early in 1937) may have prompted the "incorporation" — which was undoubtedly a wise thing to do — but my reference to Spender is little more than a surmise.

At all events the incorporation was clearly wise, but with deference, I could scarcely describe it as a "notable occasion" attracting "a golden jubilee grand ball." However, it is excellent for the Bar to meet on social occasions, and I much regret owing to my age (86) I am unable to attend on this occasion.

With my best wishes,
Yours sincerely,
Gordon Wallace."



*Barristers in Phillip Street
October 1966*

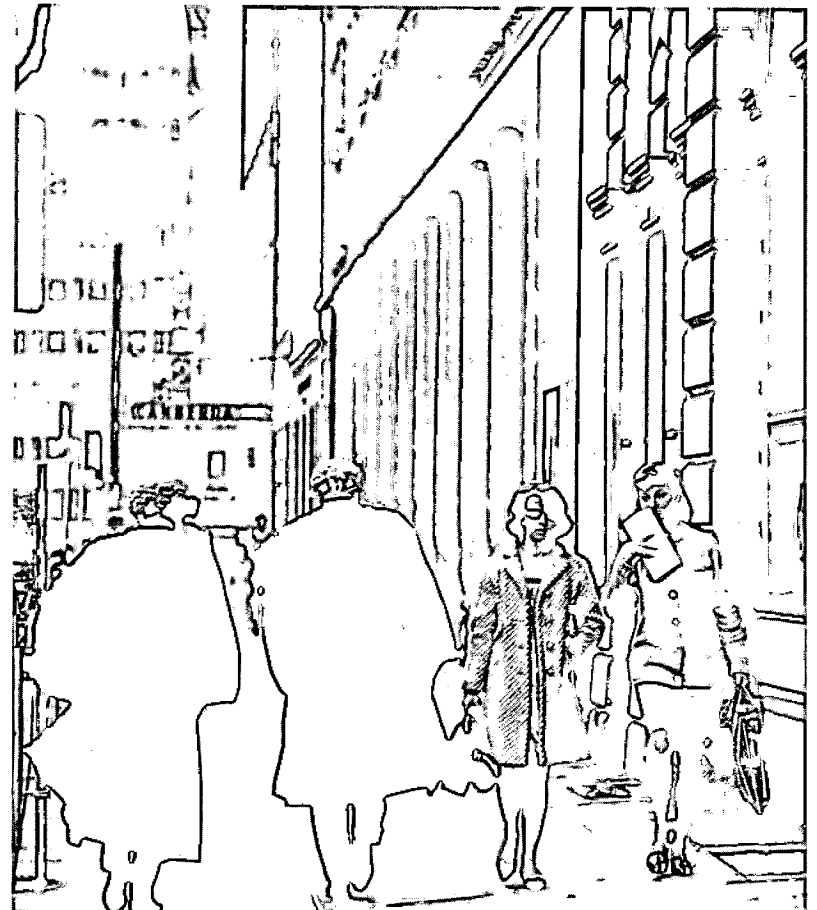


T. Falkingham (dec'd) and A.W. Mayne



*Corner King and
Macquarie Streets, Sydney
October 1966*

His Honour Mr. Justice Beaumont and E. Bowen-Thomas



Phillip Street