The challenges that lie ahead

By Ian Harrison SC

It is a daunting and challenging prospect to be elected President of the New South Wales Bar Association as the successor to Bret Walker. It is a bit like being called off the bench in a Bledisloe Cup match with 10 minutes to go when Australia is leading by 40 points. One could feel fairly confident that the game is in hand, that there is no need for panic and little cause for concern. Unfortunately, the tenacity of the opposition is so well known that it is not possible to assume anything and optimism cannot be permitted to overwhelm caution.

Bret Walker's presidency stands as a monument to intellectual strength and unyielding consistency in the application of right principle. The Bar has been assailed in recent years both in reasonably predictable and totally unforeseen ways. Bret Walker was a man for these times and the present health of the Bar is the direct result of his forceful stewardship. However, the damage to the Bar caused directly by the attitude of a small number of barristers to their taxation obligations cannot be under-estimated. There have been sufficient barristers who were, and are, unable to rely upon genuine medical problems or circumstance beyond their control to germinate an authentic but erroneous community concern that all barristers are arrogant and irresponsible. Continuing the fight to correct this false impression is my first task.

My second is to continue to deal with the problems confronting those members of the Bar whose practices have been, and will continue increasingly to be, affected adversely by the reduction in work by reason of the operation of the *Civil Liability Act 2002* and the closure of the Workers Compensation Court at the end of the year. At a recent Heads of Chambers meeting I sought to make the point that large numbers of barristers affected by these changes were, to my observation at least, in a state of denial. This was emphasised to me in the course of many conversations which tended to emphasise, somewhat optimistically and in a misguided way, that arbitration lists were not retracting as fast as had been expected or that there remained a long tail of matters in the District and Supreme courts which would continue to provide work for some unspecified time.

The difficulty with this analysis is that it fails to confront the reality that an end to this work will come soon and that it will, in fact, be the end. Attempts to convince ourselves that things are not, and will not be, as bad as they seem are misguided.

There will be floors of barristers which will be more severely affected than others. I anticipate several floors will disappear completely and new, but fewer, floors will replace them. There will be many barristers lost to the profession, which will cause hardship for them personally and diminish the strength of New South Wales as one of the largest of the independent referral Bars world wide.

There is abroad a feeling amongst many barristers, particularly those whose livelihood has been influenced by these changes, that the Bar Association failed them in its efforts to staunch the flow of legislative provisions which have led to the present situation. This perception fails to take account of the years of hard work by Bret Walker, and Ruth McColl before him, assisted in their efforts by the Common Law Committee and the tenacious interposition of Philip Selth, the Executive Director. It is important, where possible always to negotiate from a position of strength, a luxury which the Bar Association has never enjoyed in this context. The coming years will deliver our greatest challenge.

Thirdly, the time has long since passed when the issue of the representation of women at the New South Wales Bar is not only promoted, but more importantly, understood. It defies belief that in the third millennium there could be any view held by intelligent people other than that there should be as many women practising successfully at the New South Wales Bar as are qualified, and choose to do so. Some proponents of the interests of women barristers enthusiastically promote the differences at the expense of what I consider to be the far more important similarities between all who are called. Advocacy is at its purest an intellectual exercise where hormones and chromosomes have no relevance. I continue to be troubled by the notion that the fight to equalise the opportunities for women at the Bar so often starts with the proposition that they are a separate group. I consider that equalising levels of representation should be a goal which drives the debate. It is a matter of considerable satisfaction to me that this year's Bar Council, and its Executive, is over-represented by women having regard to the ratio that their numbers bear to members in total. It is significant as well, that the Senior Vice-President Michael Slattery has served with such distinction as the Chair of the Equal Opportunity Committee.

The final challenge for me is more personal. I have always been offended by perpetuation of the stereotype that barristers are the sons, and less happily the daughters, of wealthy families, with memberships of the best clubs and appropriate political connections. This perception is incorrect and has been for a very long time. The egalitarian nature of the New South Wales Bar is perhaps its greatest strength. Unfortunately, from time to time, some of us hold opinions of ourselves which the facts don't support. Some of our number treat clients and solicitors impolitely and often disrespectfully. Although we ourselves work under great pressure at most times, it is wise to remember that the legal system is unfamiliar to a large number of litigants who look to us for guidance and support at times of considerable upheaval in their lives. Every new brief is an opportunity to promote the Bar as a worthwhile institution. My fond hope is to continue to raise community awareness of our true role.