Professional standards now firmly in place

By Ian Harrison SC

The current issue of *Bar News* comes on the heel of approval of a scheme limiting liability for barristers under the professional standards legislation. Members will by now be familiar with the provisions of the Act and the ways in which compliance with its provisions is necessary to ensure that the limitations which it provides are attracted. Some attempts were made to undermine the scheme as it applied to barristers, arguing that the $1 million cap on liability was inadequate. However, approval of the scheme by the statutorily independent Professional Standards Council and then the attorney general was only granted following external consultants' advice which took into account, among other significant factors, that no claims against barristers for professional negligence have succeeded in awards of damages in excess of, or closely approaching, $1 million.

The practice year is also about to come to an end. Applications for renewal of practising certificates will, following 30 June this year, be considered under the provisions of the new national legal profession legislation, expected to be proclaimed on or shortly after 1 July 2005. The *Legal Profession Act 2004* will contain some significant advantages for barristers, particularly those with practices beyond New South Wales. The so-called travelling practising certificate, long foreseen as necessary and desirable, has at last become a reality. It remains to be seen whether or not professional indemnity insurance premium rates will be more or less competitive than in previous years. Received wisdom would tend to suggest that in the light of the limitations on liability, some softening of rates should be expected. At the time of going to press, however, only some rates are available. Members are encouraged to familiarise themselves with all four companies' rates before making any final decision about who to insure with in the coming year.

There has been much media comment recently about the performance of judges and the effect upon the rights of litigants in circumstances where some judges have been thought not to be attending to in-court events as carefully as they should. I mention this only for the purpose of drawing attention to the fact that advocates appearing in courts where problems arise in adversary litigation have an obligation themselves to raise matters which may imperil, or may be thought to have the potential to imperil, a proper outcome in the proceedings. The notion of a sleeping or intoxicated judge is something which the media love to promote. Indeed, an apocryphal story which I told as part of a speech given by me upon the retirement of Justice Meagher has been reproduced more than once in newspapers as if it were true. I doubt that my experience differs from most barristers but I personally have never had any involvement with a sleeping or intoxicated judge or magistrate in over 28 years at the Bar. Nor do the reported decisions of the Court of Appeal or Court of Criminal Appeal seem to have much to say about these types of problems. The reason for that may well be obvious. At all events, it is the duty of counsel to raise such matters if they consider that it is necessary to do so on behalf of those for whom they appear and, quite frankly, in fairness to the judge or magistrate whose performance is being questioned.

I am painfully aware that many practitioners found the last 12 months extraordinarily difficult and that all efforts by them and, to the extent possible, by the Bar Association on their behalf, to ameliorate the consequences of contractions in available work have been only mildly successful. There will undoubtedly be a smaller number of barristers renewing their practising certificates for the coming year, even taking into account the influx of new barristers currently undertaking the reading programme. Recent speeches by the chief justice of Queensland and powerful submissions made on behalf of the New South Wales Bar Association to the New South Wales Legislative Council inquiry into personal injury legislation have served significantly to promote the interests of those members of the public whose rights to compensation for injury have become so limited. I would like to think as well that the oppressive provisions limiting costs in cases which do not succeed in achieving damages awards above $100,000 may be given a reconsideration by the legislature, particularly having regard to the apparently healthy condition of the insurance industry over the last two years.

Corrections

The Summer 2004/2005 edition of *Bar News* included an article; 'Edmund Barton Chambers celebrates its silver jubilee' (p.68). In that article, it was claimed that Edmund Barton Chambers, established in 1979, was 'the first set of chambers off Phillip Street'. That is not correct. Suzie King, the clerk of Ground Floor Wardell Chambers, informs us that her chambers were incorporated on 31 August 1965.

The same edition also included an article; 'Cross examination and international criminal law' (p.39) The article began with a bloc quote from Judge David Hunt in *Prosecutor v Milosevic*, IT-02-54-AR73.4. Due to a typesetting error, the text was not in the style required for a bloc quote, giving the reader the impression that the words were those of the author. *Bar News* regrets any confusion this may have caused.