

Standing up for first class justice

By Phillip Boulten SC



The Bar Association recently forwarded its submission to the Productivity Commission in response to the issues paper, *Access to Justice Arrangements*. The commission is conducting a wide-ranging inquiry into issues that touch upon the economic costs and benefits of the civil justice system. The association submission focussed on matters that related directly to barristers' practice and emphasised what good value barristers bring to the justice system.

Justice is not a commodity. Legal rights have inherent value. They do not always have a dollar value. An accessible and independent system of justice is essential in a civilised state.

The Bar Association argued that an independent bar adds value to, and subsidises, our system of justice. Barristers assist the courts and tribunals to handle complex legal and factual issues. We provide efficiencies to the court both in terms of time and process. Barristers shape court cases,

identify issues and steer litigants towards an appropriate outcome. Without barristers, litigation would be a complete mess.

The association made it clear that we support and encourage moves to make the delivery of justice more efficient through the application of alternative dispute resolution processes in appropriate cases. But, it is necessary to ensure that efficiencies do not undermine legal rights.

It is to be hoped that economic rationalism does not dominate the Productivity Commission's report.

Our submission demonstrated the important role that barristers play in providing pro-bono work through formal pro-bono schemes and through barristers' own informal arrangements. We also pointed out that barristers' fees are very reasonable when compared to other legal practitioners.

The Bar Association will continue to engage with the Productivity Commission throughout its inquiry. It is to be hoped that economic rationalism does not dominate the Productivity Commission's report.

Meanwhile, I was extremely pleased to hear the new federal treasurer, Joe Hockey, announce that the government had abandoned plans to cap tax deductible education expenses for

self-employed people at \$2,000 per annum. The legal profession lobbied hard on this issue through the Law Council and the Australian Bar Association. The proposal threatened to cause significant problems for self-employed lawyers, especially barristers. I am very grateful the government abandoned this misguided proposal.

Regrettably, though, I recently received advice from the minister for immigration and border protection, Scott Morrison, that the government has discontinued the Refugee Review Tribunal Legal Advice Scheme. The Bar Association has been administering this scheme since 2000 which has provided legal advice to over 6000 people throughout that time. I wrote to the minister expressing regret about the decision. Denying unrepresented and vulnerable litigants access to specialised legal advice will inevitably lead to injustice and will create extra costs to the federal court system. It is to be hoped that the government soon identifies the benefits in providing reasonable advice to litigants appearing before the tribunal. The abolition of the scheme is a false economy.

In the wake of the frenzy of uninformed criticism and personal attacks upon Justice Stephen Campbell following his judgment in the Loveridge manslaughter case, I mounted a defence of the judge through the media. Whilst courts are not immune from criticism, it is necessary that critics should understand the proper role of

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courts. The media attacks went so far as to suggest that all our sentencing judges were out of touch and lacking in independence. Nothing can be further from the truth.

There is a widespread misunderstanding of the sentencing process. It is helpful for barristers to explain it wherever possible. The association is one of the few voices providing

any informed commentary on sentencing issues. Perhaps we need to find new and inventive ways to spread the message that our judges provide first class justice in a world where true justice is a rare commodity.

Finally, I was pleased to announce the appointment of two new life members. In October the Bar Council resolved to appoint Chief Justice James Allsop and

her Honour Margaret Beazley, life members of the association. Both Allsop CJ and Beazley P have made and continue to make extremely valuable contributions to our jurisprudence. We are all proud of them. It is an honour that they accepted the association's offer of appointment.



Invitation to make submissions on the new consorting provisions

The NSW Ombudsman has a statutory function to review the use of the consorting provisions by the NSW Police Force.

These provisions make it an indictable offence to habitually consort with convicted offenders after receiving a warning from police. More than 1,000 warnings were issued by police in the first 12 months.

Our issues paper is available on our website.

Provide your submissions to us by 28 February 2014.

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