

Practice and Procedure

A special edition

While this might come as a surprise to our large and regular readership, the editor of *Bar News* is not normally inundated with correspondence. It is comparatively rare for an edition to generate more than a single letter or note. As a result, those I do receive I cherish.

For example I remember fondly a letter I received in response to Autumn 2018, a special edition on First Nations on the Bar, which the author described as bearing an overall theme of victimhood, containing descriptions of our world-enviable democracy as a 'tyranny of the majority', proselytising Marxist Gender Theory, and actually deriding serving politicians.

So you can perhaps understand why I was pleasantly surprised by the reaction to our last edition (Autumn 2019, *We are the Bar*, a special edition on Diversity). Instead of one or two well-meant missives, I received dozens of notes, emails and phone calls commenting on the edition. Beyond pointing out that the fold-out *Vanity Fair* cover featured models that in a couple of cases fell short of being entirely convincing as barristers, the response was entirely positive. Amongst them I counted more than six personal notes from Supreme Court Judges congratulating the committee. One Queensland Judge was so impressed he had an electronic copy forwarded to the entire Queensland judiciary. And the President of the Court of Appeal, Justice Andrew Bell (past *Bar News* editor and a fine judge of a good cover) invited the whole committee to drinks so that the members of the Court of Appeal could thank them in person.

I have to say it *was* a good edition, for which substantial thanks must go to the Association's Diversity and Equal Opportunity committee who helped identify and curate many of the articles. What made it so good was that it revealed the stories behind members of the Bar – demonstrating what the Bar is like now and what it is becoming. It is a more inclusive place.

I was pondering this while reading one of articles for this edition, the interview with Andrew Pickles. The interview addresses a glaring omission from the last edition, namely a substantial piece on LGTBI barristers. That



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omission came about as a result of the untimely if richly deserved appointment of Richard Weinsten to the Bench just as we reached our copy deadline. But I digress.

In Andrew Pickles's interview he speaks of his role as an Advocate for Change, being a prominent advocate for the LGTBI community. It reminded me of something I was told by a Judge who came to the Bar in the early 90's. He said that when he successfully applied for readership at one of the Bar's leading floors (they would say The leading floor) he had been careful not to reveal he was gay. He is certain that if he had told them he would not have been offered a readership.

That anecdote is both outrageous and telling. Outrageous because that was barely 25 years ago; telling because in today's Bar such attitudes are seen as prehistoric – a glimpse into another era when women were novel, dark

skin a rarity, and men were, well, only one way inclined.

Let me turn from the last edition to this one. As our loyal readers can attest, I appreciate a special edition. Following in the mould of the excellent (and for many now well-thumbed) special edition on Expert Evidence, the committee decided to publish an edition focusing on Practice and Procedure.

This gave us a wide canvass to work with, and we have married together some wonderful pieces written by our leading jurists on practice at the Bar today and tomorrow, with more practical pieces ruminating on practice and procedure in specific jurisdictions which we hope will be of assistance to those who are seeking to practise in those areas.

Leading the charge are three wonderful pieces by Chief Justice Kiefel (*The Australian Bar – Change and Future Relevance*), Chief Justice Allsop (*The Future of the Independent Bar in Australia*) and Chief Justice Bathurst (*The Role of the commercial bar in the mid-21st century*). The latter envisages the Bar of the future, made up of counsel who are more empathetic and better listeners enabling them to obtain a greater familiarity with clients' business environments and an understanding of what it is like to work in the particular industry. Bathurst CJ foreshadows the impact of technology, going beyond online Courts to online ADR and virtual appearances, presaging a time when '*physical appearances in Court might start to become a rarity*'.

On the practical side there is a fascinating examination of one the most significant procedural changes in criminal law in NSW in recent decades, the Early Appropriate Guilty Plea reforms. I am very grateful to Belinda Baker who obtained views, one year on, from those best positioned to consider the impact of the reforms, including Chief Judge Justice Price, DPP Lloyd Babb, Richard Wilson Deputy Senior Public Defender, and three defence counsel.

Further, there are a number of wonderfully instructive pieces, such as Judge Scotting's concise note as to how to approach a sentencing hearing in WHS matters, Penny Thew's guiding

to obtaining leave to appear before NCAT and Justice Sackar's note on proceedings in the Equity Division's expedition list.

This edition also carries a number of other important articles, including a thoughtful piece titled *The Psychological Impact of Judicial Work* by Kylie Nomchong and Peter McGrath, which starts by identifying the shockingly high incidence of judicial bullying and goes on to examine what might be thought as the causes of such behaviour, leaving the reader all but convinced that Judges are human too.

Another important article is Penny Thew's piece summarising the International Bar Association's findings on bullying and harassment in the legal profession.

There are also a number of entertaining pieces, including a wonderful interview with Justice Kelly Rees, who is widely admired as a lawyer and a person. Her response to the opening question is worth the cost of this edition alone.

I finish by thanking the committee for their sterling work in pulling together another edition, including Farid Assaf for collating much of the practice and procedure pieces, Kevin Tang for his beautifully written appointments and obituaries, and Victoria Bridgen and Daniel Klineberg for obtaining notes on an



The August 2019 *We are the Bar* edition

interesting collection of recent cases, going beyond just the most important High Court decisions.

Every year there must necessarily be some turnover of the committee. It is always difficult when committee members leave, however necessary given the many applicants. I would like to thank the two outgoing and highly valued committee members, Juliet Curtin and Lyn-

delle Barnett, for their contribution over recent years to the committee.

I look forward to receiving your views on the current edition. And for those inclined to write for the benefit of a wider audience, I also welcome by 1 November draft articles for the next (Summer) edition.

Ingmar Taylor SC

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