

The Bar rises to meet the challenges of COVID-19

By Tim Game SC

The quality and range of articles in this COVID-19 special edition of *Bar News* is a good indicator of the level of cooperation and goodwill within the profession, and between the profession and the judiciary, in addressing the unique threats and challenges presented by the occurrence and spread of COVID-19. Most of those articles were written when there was reason for some cautious optimism and before the recent significant turn for the worse in Victoria. Hopefully that outbreak is brought under control, and fairly quickly at that. Nevertheless, even if that be the case, 'fairly quickly' here means weeks, not days, and we know that the threat of recurrent outbreak will remain present until the disease is brought under genuine community control, by vaccine or otherwise. So, we cannot assume that there will be a return to 'normal' (whatever that now means) in the next few months, or even in the early part of next year.

Depending on the nature of the litigation, be it civil or criminal, and the stage of the proceedings, interlocutory, trial or appeal, a good deal of it has been conducted successfully during the past few months, whether by remote means or (once the medical/health aspects were worked out) in person with appropriate social distancing. Much of that story is recounted in this edition. Where there have been problems, they have to a large degree been due to resourcing issues. We have tended to hear about these problems as they have arisen and (again subject to resourcing issues) they have been able to be addressed when identified.

What we can take from this in terms of the future is also something which is explored in these pages. At the very least a good deal of our work can, if necessary, be done remotely. Just how far that can, and should, be taken is not settled and, no doubt, is something which will have to be worked through in future months. One thing which is quite clear is that we have in the past done a lot of completely unnecessary travel for the sake of meetings which can readily be conducted remotely. For instance, a Law Council meeting I attended to discuss the crisis when



it first struck, was conducted remotely and successfully, with some 30 or more people on the line. In the past a substantial contingent of delegates from around Australia would travel to Canberra or one State, for such a meeting. The savings in time and cost (not to mention the environmental cost of such travel) is obvious, as is the potential for such meetings to be held online in the future.

The Bar Association has been operating remotely since mid-March; all committee meetings have been held remotely, including all professional conduct and Bar Council meetings. The silk selection process is being undertaken on-line, and silk selection committee meetings will, for the most part, be conducted online. Just where all of this lands organisation wise, post COVID, is not yet clear.

During this time I have been honoured to work with so many colleagues who are committed to keeping the profession and the courts 'on the rails'. In that respect I would like to acknowledge the senior staff of the association (including the Professional Conduct Division), committee members, members of the Bar Council, and the Executive of the Council. At the height of the pandemic the Executive met with senior staff (remotely) every afternoon and more recently three afternoons a week just to deal with the evolving circumstances. Online meetings with heads of chambers have been able to be convened at short notice when needed and have been productive.

Good working relations with the courts and the administration have also been maintained, and are essential. The Chief Justices of both New South Wales and the Federal Court have been astute to consult with the profession on measures that have been taken in their courts, as have other heads of jurisdiction.

One aspect of COVID which has not been so noticed is that during the crisis there have been over 800 pieces of legislation enacted across the country. In New South Wales alone, Parliament has enacted 90 laws in response to the public health crisis, only five of which have taken the form of primary legislation. The Association has commented on much of the State legislative material in draft, and many of our recommendations/proposed amendments have been considered and accepted. A common theme of our submissions has been a 'rule of law' based objection to the excessive use of delegated legislation. It is not just a problem of being confronted by constant changes brought about by the making and changing of Regulations, but also the inherent problem, for a democracy, in Executive control of that form of regulation. The real test will be how matters are addressed by government, as and when we emerge from this crisis.

Where the wider context in terms of the progress of COVID-19 and its suppression takes us remains to be seen. What we do know from our own experience of the past few months is that there is an enormous amount of resolve and goodwill to keep our community, our profession and our courts functioning. **BN**



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