

# The law, like the traveller, must be ready for the morrow

Michael McHugh SC

It is an honour and a privilege to be elected as President of the New South Wales Bar Association for 2020-21

US Jurist Benjamin Cardozo once said “The law, like the traveller, must be ready for the morrow”. The Bar is no different, as this year has shown.

Our Bar has weathered the unprecedented challenges of 2020 with its characteristic dignity, collegiality and tenacity.

Many of us continue to face very difficult times.

Together, as a profession, we have learnt to harness remote technologies to adapt and continue our important work in serving the courts, the community and the Bar – whether through our practice, interactions with the courts, Committee meetings, CPDs, even our Bar Practice Course.

Despite everything COVID-19 has thrown at us, we should not forget that while this year has been a year of many firsts for our Bar, many have been good.

We made history by becoming the first bar examiner in Australia to conduct the Bar Exam by computer, not paper. We launched our first virtual twitter photo wall to mark International Women's Day. Our first partnership with NIDA helped us hone effective advocacy to camera skills for video appearances. Our first online Female Law Students Open day enabled us to engage with significantly more students across the state than in any year before. Conducting our Committee meetings via Zoom enabled us to work collaboratively with members of the regional Bar to a greater extent than was ever possible before. Our very first Zoom webinar CPD was so well received it has been followed by many others. And October marked the first anniversary of the establishment of our Accessibility Panel, which has already made tremendous progress in raising awareness of and addressing accessibility matters at the Bar and the courts.

Technological leaps borne of necessity have come with challenges to our open system of justice but also opened our eyes to new ways of working collaboratively and more flexibly moving forward post-COVID, for all barristers.



I would like to extend my thanks and gratitude to Tim Game SC, President 2018-20, Executive Members and Bar Councillors for their leadership, hard work and counsel during this challenging time. Tim's outstanding and selfless contributions, in particular, has left the new Bar Council a solid path forward. Thank you also to our Committee Chairs and Committee members who have worked diligently and tirelessly to provide quality advice to inform responses to all manner of requests, often at extremely short notice. And thank you to the staff at the Association for their dedication and creativity in providing support to members in the changing environment..

## Advocating for our Bar

I am committed to working with our new Bar Council, members and the Association to position the Bar to seize opportunities in the year ahead to better promote and explain our work and important role as specialist, fiercely independent advocates. To be quite upfront about it, I intend spending considerable time and energy on ‘marketing’ the Bar.

This year a tremendous amount of work has been undertaken to prepare the Association's next five-year Strategic Plan. I would like to express my thanks to the Strategic Plan Steering Committee and to all those who have helped to inform the plan's development. We have listened to your feedback about what we are doing well, and

where we need to do better. We are currently in the last stages of finalising the plan, which will shortly come before the Bar Council to settle. I very much look forward to sharing the new Strategic Plan with you and working together to put it into practice.

Our Strategic Plan is one of the tools we arm ourselves with to face the challenges and opportunities of the future.

There is no doubt that more can be done to better market the Bar and differentiate our services as specialist independent advocates. Our members are our greatest asset: our greatest strength, providing our knowledge and expertise.

For these efforts to succeed, and for the community to have trust in our Bar, our Bar must reflect the diversity of the community we serve. We have taken significant strides but there is some distance left to travel.

As one of my first acts as President, I had the privilege of writing to our incoming Advocates for Change to advise them of their Bar Council nomination to serve in these offices. I very much look forward to working alongside incoming Advocate for Gender Diversity, Anthony McGrath SC, and Advocate for Cultural Diversity, Lee-May Saw, and with our continuing Advocate for LGBTIQ Diversity, Andrew Pickles SC, and Advocate for Accessibility, Robert Dubler SC, to promote an inclusive, vibrant and diverse Bar where all practitioners feel valued.

An inclusive profession hinges on cultivating conditions and cultures that enable people with varying backgrounds and attributes to succeed. Giving instructing solicitors, clients and the community access to the full talent pool, such as through the equitable briefing policy, is a commercial, social and economic imperative.

On behalf of members I thank outgoing Advocate for Gender Diversity, Jane Needham SC, and Advocate for Cultural Diversity, Hament Dhanji SC, for their tireless service and contribution. I also thank our Diversity and Equality and Wellbeing Committees and the Women Barristers Forum for their ongoing efforts in this critical space.

Important work continues by many to combat sexual harassment at the Bar. I personally subscribe to the principle “the standard you walk past is the standard you accept”. Each and every one of our members and each and every person who works at or with the Bar deserves a safe workplace, free from harassment or discrimination. No one is above the law; we must hold each other to the highest standards of ethical and professional behaviour.

We are very fortunate at the NSW Bar to have some of the country's leading experts in equality, diversity and anti-discrimination law. I want to work with and learn from you to ensure we do absolutely everything we can to eradicate sexual harassment and bullying in our profession.

### Advocating for justice and the community

Another important part of the Association's work is our mandate to promote the administration of justice, including through advice and advocacy on policy and public affairs.

Unusually, the NSW Budget was handed down in November this year. In the lead up to and the fallout from the Budget, we have continued the Association's longstanding calls to fund the Walama Court in the District Court of NSW and implement the Australian Law Reform Commission's 2018 *Pathways to Justice* recommendations.

The 2020-21 NSW Budget was regrettably another missed opportunity to invest in critical aspects of justice for First Nations Peoples and to address the systemic over-representation of First Nations Peoples in custody. I recognise the significant contributions of the Association's First Nations Committee and Joint Working Party on the Over-Representation of Aboriginal People in Custody in NSW in leading our continued work to press these important priorities, in concert with many others.

While there is a significant volume of ongoing policy work across all areas of practice, there are four specific and pressing policy priorities that I would like to mention briefly.

First, as I mentioned above, our ongoing work to combat sexual harassment involves a significant body of policy and organisational change work on multiple levels: within the Bar, the legal profession and our broader community.

We cannot tackle this problem alone, and are working closely with the Law Council, Australian Bar Association, Office of the Legal Services Commissioner and many others to address these matters, and to advocate to Attorneys-General to address existing lacunas in the law regarding sexual harassment.

Second, the Association is working closely with the Law Council of Australia to continue our longstanding opposition to the Commonwealth Government's flawed family court merger out of concern it will hurt, not help, NSW families and children in need of specialist family law assistance.

Despite some amendments, the Federal Circuit and Family Court of Australia Bill 2019 (Cth) will still result in the abolition of a specialist, stand-alone Family Court as we know it, by collapsing it into the generalist, chronically under-resourced and over-worked Federal Circuit Court, to the detriment of children, families and victims of family violence.

These concerns are shared by more than 110 stakeholders including Women's Legal Services Australia, National Aboriginal and Torres Strait Islander Legal Services, Community Legal Centres Australia, and former Chief Justice of the Family Court, Elizabeth Evatt AC.

Instead of the merger, the Association has proposed the *Family Court 2.0 model* which has the significant advantage of bolstering, not undermining, a stand-alone specialist court and court services. The *Family Court 2.0 Proposal* remains the preferred approach of the majority of stakeholders, with whom the Association continues to work closely, and was favourably referred to by Opposition and Greens members' reports in a recent Senate inquiry into the merger.

Third, the Association continues to raise concern with the NSW Parliament and State Government about the operation of the motor accident claims scheme established in 2017 by the *Motor Accident Injuries Act 2017* (NSW) (*MAI Act*). Three years on, this scheme is significantly under-delivering benefits to injured motorists, while insurers pocket profits.

In 2017 the value of CTP insurance for those injured on the road was substantially reduced based on actuarial claims made by the government. The then existing scheme was said to be “inefficient” as it put less than 50% of the premium collected into the hands of the injured. However, the Association has consistently raised concerns that the new Scheme has performed even worse. Overall figures indicate that barely 5% of premium dollars are now being received by injured claimants under the *MAI Act*. By way of contrast, CTP insurers have kept over \$8 billion dollars, with no chance of clawing back any super profits for years to come, if at all.

The power imbalance between the injured and insurers is striking. Those injured on the road are at the mercy of a motor accidents scheme that suffers from many of the same flaws as those exposed in workers compensation.

The public should be able to have confidence that state agencies and the schemes administering both workplace injury and motor accidents injury compensation are accessible and transparent, and will afford the injured a fair opportunity to uphold their lawful rights. Unfortunately, the reality of the state's workplace compensation and motor accident laws and schemes is very different. Both systems are failing to care for or adequately support the injured. Both schemes have the effect of leaving the injured to fend for themselves against insurance companies and scheme agents who have access to lawyers experienced in the areas in question. The legislation governing each aspect is extraordinarily complex, involving cross references to other pieces of legislation, regulations, claims and medical guidelines.

Both schemes have become increasingly technical, unnecessarily bureaucratic and difficult to navigate without legal assistance. The public are not informed of their rights, including the right to seek legal advice. In fact, victims are actively encouraged to seek to resolve the matter themselves, resulting in increased stress and emotional strain, and ending up with an unfair outcome.

We will continue to raise these concerns on behalf of the vulnerable members of our community left to wrestle with a system that favours insurers, not the injured.

Fourth, the Association remains committed to advocating for proper resourcing of Legal Aid and legal assistance at a State and Federal level. The recent gains in this area are simply inadequate.

We will continue our work on these, and many other policy issues, in 2021 in concert with our hard-working Committees.

Once again, I cannot thank enough our many great members and staff who have stepped up during COVID-19 to help. Your efforts have not gone unnoticed and have been very greatly appreciated.

I hope everyone has an opportunity to enjoy a safe and well-deserved rest over the summer break with friends and family.

I look forward to working with you in 2021. **BN**



NEW SOUTH WALES  
BAR ASSOCIATION