

From the President

"MAY YOU LIVE IN INTERESTING TIMES!" is said to be a Chinese curse. The Bar is certainly living in interesting times.



Some of my predecessors spent much of their time in office fighting for the existence of an independent Bar against Government proposals for fusion or common admission.

As soon as this issue was resolved my

immediate predecessor was faced with the Workcover and Transcover legislation of 1987 and the controversies and public attacks which accompanied that legislation. The last two years of the Bar Council's work have been overshadowed by the issues surrounding that legislation. However, we have not worked in vain. The Transcover legislation was repealed, with retrospective effect, and the new legislation came into force on 1 July 1989. During August legislation to extensively amend the Workcover legislation of 1987 was introduced into the State Parliament and eventually passed after some uncertainty and drama in the Upper House. The jurisdiction has been restored to the Compensation Court and the Commissioners henceforth will function as officers of that Court. Limited common law rights for injured workers have been restored retrospectively to 1 July 1987, with more liberal common law rights for injuries sustained after 1 July 1989. However, workers injured at their place of work (otherwise than by a registered motor vehicle) are still dramatically disadvantaged in comparison with road accident victims. The Bar will continue to work towards restoring a fair measure of common law rights for work accident victims. The thanks of the Bar are due to the members of the Workcover Committee, particularly Coombs Q.C., McCarthy Q.C., Poulos, Ferrari and Johns for their efforts in achieving this limited result.

In Barton v. The Queen (1980) at 147 C.L.R. 75 at 99 the High Court described committal proceedings as an essential safeguard against wanton or misconceived prosecutions. The 1987 legislation providing for largely "paper" committals was proclaimed during 1988. It has not yet been given a fair trial. The right and duty of a Magistrate to decline to commit in cases where he or she considers that a jury is not likely to convict has only recently been vindicated by the Court of Appeal in its decision in D.P.P. v. Saffron (7/6/89 not yet reported).

The Bar Council is currently faced with proposals in both the Coopers & Lybrand Report and the Attorney General's White Paper on criminal law reform for the abolition of committal proceedings. It is proposed that they be replaced by an internal

review of the case conducted by the D.P.P.'s office with the defence receiving the prosecution "brief" in due course. There would also be a limited right to conduct a pre-trial cross-examination of some of the prosecution witnesses. The Bar has made strong representations to the Attorney General in favour of retaining committal proceedings in a recognisable form.

Unfortunately that is not all. On 10 May the Senate resolved to establish a Select Committee with wide terms of reference to enquire into "The Cost of Justice in Australia". Hearings before the Select Committee are due to commence in December this year and will no doubt occupy most of 1990. At this stage it looks as if the Senate will retrace much of the ground previously covered in this State by the N.S.W. Law Reform Commission and the Government between 1976 and 1987.

It is clear that the Bar will remain under close public scrutiny in the foreseeable future and will be constantly called upon to justify its existence. In such a climate it is therefore vital for the Bar that all its members work to safeguard and improve our ethical and professional standards.

Meanwhile on the other side of the world the English Bar has been called upon to defend its existence against proposals for radical change contained in Lord Mackay's Green Papers. The British Government's final decisions in the resulting controversy are now awaited. The effect of the projected legislation on the English Bar over the next few years will be watched with great interest in this part of the world and not only by the Bar. However, unlike the English Bar, the independent Bars in this country do not have any legal monopoly of the right of audience in the higher Courts. It was the absence of any such monopoly and the freedom which Solicitors enjoy to act as advocates and to compete with the Bar which enabled this Bar to defend itself successfully against proposals for fusion or common admission during the period between 1976 and 1987.

During recent years the Council has set its face against the self promotion that is now rampant among solicitors, particularly in the case of the larger firms. Recently a large newspaper wished to run an article on a "Q.C.'s Q.C." i.e. an article on the Queens Counsel that other Queens Counsel respect and admire. It was suggested to the Council that articles such as this represented a great opportunity for the Bar to secure good publicity and present a human face to the public. The Council however took the view that such articles should not be endorsed. Either the Q.C.'s Q.C. would be the President or one of the Silk on the Bar Council, or it would be some other Silk more or less nominated by the Council. The first would be nauseous and the second invidious.

The Bar Council now requires its President and Executive to speak to and through the media on the issues of the day or on other issues on which the Bar has taken a public position. This role cannot be avoided in the present climate. Personal publicity for the individuals concerned is inescapable. A similar

situation obtains with barristers who speak out on behalf of bodies such as the Council for Civil Liberties and the International Commission of Jurists etc. The Council takes the view that apart from these exceptions members of the Bar should only receive publicity for their professional activities as a direct result of their appearances before Courts or Tribunals or in presenting papers to law conferences, seminars etc. On the latter topic the Council has taken the view that members of the Bar should not speak at private or in-house seminars conducted by firms of solicitors or legal departments. On the other hand, members of the Bar are actively encouraged to present papers at seminars or conferences which are open to all interested members of the profession or the public. The latter activity is compatible with our existence as an independent Bar, the former is not.

In the last Federal Budget the Government moved to remedy the long-standing discrimination against the self-employed in the field of tax deductible superannuation. In February this year the Council of the Australian Bar Association, at my suggestion, engaged a firm of actuaries to report on the extent to which the current tax laws discriminated against the self-employed. I enlisted the help of Graham Ellis, who is also an actuary, and we worked on the final report with the consulting actuaries. It was ready for submission to the Commissioner of Taxation at the beginning of June. It is pleasing to note that our submissions on the basis of calculating reasonable benefit levels, the removal of the present fixed ceiling for annual deductions, and deductibility on a basis comparable with a corporate employer have been substantially accepted. The new regime will be in force when you write your cheque in favour of Barristers' Superannuation in June 1991.

We do live in interesting times. □ Ken Handley.

Christmas Charity

This year the Bar's selected Christmas Charity is the Richmond Fellowship of New South Wales (tax deductible). The Fellowship provides therapeutic housing in group homes and in unsupervised accommodation for the reintroduction of psychiatric patients to the community. Its work is invaluable, its need is desperate. This year your contribution to the Bar's charity will help to keep alive an urgently needed alternative to Government institutions.

Please support your Charity. Cheques made out to the "Richmond Fellowship of New South Wales" should be forwarded to the Registrar by 4 December 1989.

For further information contact Greg James Q.C. on 229.7333. □

Letter to the Editor

Dear Editor,

Re: Association of Barrister Civil Arbitrators

I am writing to inform you of the recent formation of an Association of Barrister Civil Arbitrators, membership of which is presently available to Barristers who have been appointed Arbitrators under the provisions of the Arbitration (Civil Actions) Act, 1983.

The objects of the Association are as follows:-

- 1. To operate as an organisation of barrister civil arbitrators which will enable members to discuss, compare and formulate matters of common interest and, particularly, to consider the extent to which consistency in the conduct of arbitrations is desirable.*
- 2. To discuss and consider particular problems relating to arbitration - whether procedural or otherwise.*
- 3. To liaise with the Bar Council and the Law Society as a body in all matters concerning civil arbitration.*
- 4. To promote and control the activities of barrister civil arbitrators with a view to maintaining the status and worth of civil arbitrations.*
- 5. To provide links between members in both formal and social aspects.*
- 6. Such other activities as shall be determined from time to time.*

At the time of writing, there are 30 financial members. The President of the Association is Evan Lewis.

The formation of the Association of Barrister Civil Arbitrators is not intended to duplicate the supervisory roles of the Arbitration Committee or the Bar Council of New South Wales in relation to the performance of the duties of barristers who are appointed Arbitrators under the provisions of the Arbitration (Civil Actions) Act, 1983, but is intended to satisfy a need which was felt to provide a forum for the exchange of information and views among barristers who are discharging those duties, particularly in relation to various problems which arise from time to time in the conduct of arbitrations under the Act.

If any barrister who has been appointed an Arbitrator under the Act has not yet heard of the formation of the Association, or wishes to join, he may contact me on 235 3033 or via DX 650, Sydney, for further information.

*Yours truly,
Paul R. Glissan
Honorary Secretary.*