From the Immediate Past President

I have just received the Terms of Reference for the work of the "*Access to Justice Advisory Committee*" recently announced by the Commonwealth Minister for Justice, The Hon Duncan Kerr MP and the Attorney General, the Hon Michael Lavarch.

A particular function of this Committee is to review and draw upon the recommendations of recent Federal and State reports into the justice and legal system with a view to identifying those proposals for reform to which the Commonwealth should afford priority.

The Committee is also to advise on, inter alia, Legislative initiatives which the Commonwealth could take to make the justice system fairer, simpler and more affordable, and in particular (for example) the creation of an integrated national legal profession to the extent that such can be fostered within Commonwealth power and the removal of anti-competitive restrictions upon practice by lawyers in federal areas of jurisdiction.

As well, it will consider issues where the Commonwealth should co-operate with the States and Territories on joint initiatives to make the justice system fairer, simpler and more affordable, including the extension of the *Trade Practices Act* to the legal profession and the formation of Multi-Professional Practices.

The Reports to be reviewed include:

- Report of the Senate Standing Committee on Legal and Constitutional Affairs: *The Cost of Justice - Foundations for Reform*
- Trade Practices Commission: *Study of the Professions - Legal*
- New South Wales Law Reform Commission's Reports on the legal profession
- Victorian Law Reform Commission Reports on Access to the Law
- Legal Profession Reform Bill 1993 (NSW)
- The Law Society of New South Wales: *Summary of Proceedings and Selected Papers: Accessible Justice Summit.*

I know that the Committee's Chairman, Ron Sackville QC, will be rigorous. He will need to be. The Victorian Law Reform Commission's *Report on Restrictions on Legal Practice* was based on a report by the Tasman Institute, itself commissioned as a result of criticisms levelled at the lack of economic analysis and empirical evidence in the Victorian Law Reform Commission's initial proposals.

The Tasman Institute defined its task as "to ascertain whether the Commission's proposals will lead to a decrease in the price of services provided by barristers". The Institute said that it would carry out its task by undertaking the following exercises: first, an empirical analysis of the cost of certain legal services in Victoria by comparison of the cost of those same services in a jurisdiction where a fused profession exists, such as Western Australia; secondly, an examination of the US research on the effects that deregulation has had on the cost and quality of legal services in that country; and thirdly, an application of some aspects of the theory of regulation and competition policy to the Commission's proposals.

The Institute did report to the Commission on 25 March 1992. Its report contained no empirical analysis of the cost of legal services in Victoria by comparison with the cost of the same services in a jurisdiction where a fused profession exists. It did contain, in one paragraph, a reference to a 1984 US Trade Commission Report which presumably stood as the research in that country on the effects that deregulation has had on the cost and quality of legal services in that country. It did venture into the theoretical areas of regulation and competition policy. In that respect the Report was subsequently criticised by Dr Ian McEwin, who was engaged by the Bar to make an assessment of the Report. The only empirical research which, according to the report itself, was carried out by the Tasman Institute consisted of enquiries made of 10 solicitors as to whether certain simple Magistrates' Court policy matters could be conducted more cheaply by the solicitors themselves than would be the case if barristers were briefed. Whether or not this research was reliable and/or accurate, it demonstrates at best what is possible, and what regularly happens, under present arrangements and was, accordingly, of little value as a test of the proposals for change made by the Commission.

For the most part, however, the Tasman Institute Report amounted to little more than a regurgitation of the propositions originally put by the Commission in its Issues Paper, together with some fairly desultory historical observations concerning the origins and culture of the Bar (about which the Institute had not been asked to enquire and as to which it could scarcely claim to be an international authority).

The Report was released on about 28 April 1992. On that day its authors, Dr Moran and Dr Barns, spoke about the Report on no less than 5 separate radio programs. This was a remarkable feat of organisation on someone's part.

From the above short history of the involvement of the Tasman Institute in the reform of the Bar in Victoria, the following conclusions may be drawn:

1. The Law Reform Commission never had any evidence that the current rules and methods of the Victorian Bar added to the cost of legal services.
2. Although this was probably the most obvious investigation to make in response to the reference by the Attorney General, the Commission carried out all its work, and prepared a draft Final Report, without making that investigation.
3. When eventually the nature of the investigation to be made was identified, either the investigation was not made at all or the results of the investigation did not

warrant inclusion in the report of the Tasman Institute.

4. In its own Final Report, the Commission mentioned neither the fact that it had attempted to obtain empirical evidence on the relevant matter, nor the failure or the inability of the Tasman Institute to produce such evidence.

The Tasman Report itself, and Dr McEwin's criticisms of it, are available through the Bar Association's office for anyone who wishes to peruse them. Any barrister who thinks the Report inconsequential (however much its substantive content may justify such a conclusion) should realise that it is part of a much broader canvas. It was bound into a nice little booklet (in which it occupied 23 pages, including bibliography) and no doubt had wide distribution. It very soon found its way into the footnotes of the Trace Practices Commission's own Issues Paper with respect to its study of the legal profession. There is a substantial risk that, notwithstanding the failure of its authors to produce empirical evidence on the matters to which their attention was directed, its conclusions and recommendations (which were, coincidentally, largely the same as those published 18 months previously in the Commission's own Discussion Paper) may become indelibly engraved within the pages of the social engineers' handbook."[1]

By the time you read this, the Legal Profession Reform Bill (No 2) will probably be law[2]. It has no more empirical a base than the Tasman Report. The Trade Practices Commission Report, described by Professor Fels as "establishing" things refers to none, despite its two years in gestation.

We must keep up the work of writing submissions and making representations, but with a clear-eyed cynicism: no-one is interested in the facts or the evidence. Populism rules, OK.

I firmly believe that separate Bars perform vitally important roles in the interests of justice: that they are efficient and economic. We, as members of the Bar, have an obligation to preserve what is good and in the public interest.

No-one can force us into partnerships, multi-disciplinary or otherwise, nor to accept instructions direct from the lay public. We can continue to insist upon proper training for barristers and upon the highest ethical and professional standards.

Our rules, unless disallowed, will reflect that. Our ways should continue to reflect our ideals whatever the politicians do. The Victorian Bar survived the 1890s and prospered by delivering quality at competitive prices, and also at least in part by stubborn, even obdurate, disregard of the wishes of politicians, who have no agenda but re-election and who, after all, are but temporary players.

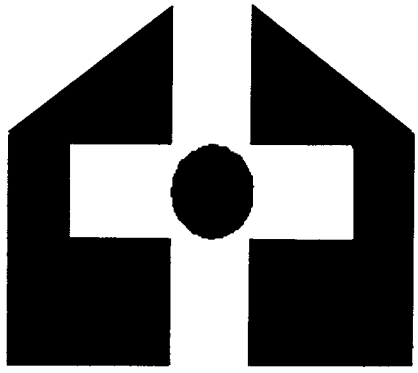
We must do the same for the sake of the great institutions which constitute the cement which gives our society order: the rule of law, the independent judiciary, and an independent profession.

I leave the Presidency with my belief in, respect for, and commitment to the Bar totally intact. I also leave it with an heightened respect for my fellow barristers who have struggled through the most difficult time the Bar has seen since the Great Depression.

I owe gratitude to so many, barristers and others: my sincere thanks to all who have helped me in the work. ❑

John Coombs QC

1. I quote from a critique by Dr Chris Jessup QC, immediate past Chairman of the Victorian Bar.
2. At the time this article was written the Trade Practices Commissin amendments to the Bill had not been mooted.



Enquiries : Richard Cogswell
285 8813 (W)
810 2448 (H)

Two ecumenical Christian Meditation groups meet in the crypt of St James' Church at the top of King Street in the city.

One meets on Wednesday mornings at 7.45 am and concludes at 8.30 am. The other meets on Fridays at 12.15 pm, concluding at 1.00 pm.

The groups follow the method and teaching on Christian Meditation of Benedictine Monk John Main and are affiliated with a network of similar groups.

Anyone who already meditates, or who is interested in starting to meditate is welcome.