This issue of *Bar News* goes to press at a time when public liability reform, or more generally tort reform, is a topic of considerable public attention. Henry Ergas, a well-known economist, brings us an economist's perspective on the question. The President, Bret Walker SC, in his message, provides a response.

Some of the other features of this issue include Gary Gregg's item on Grace Cossington-Smith, Justice Meagher and the Bar Association art collection. The cover of this issue contains a photo of her work, *from David Jones' window*, which came into the collection of the Bar Association due to the efforts of Meagher in 1974.

Reno Sofroniou brings us an interview with Justice Peter Young which should confirm that he is not as terrifying as he may appear to many.

Geoff Lindsay SC has recently produced, through considerable endeavour, the New South Wales Bar's centenary essays, which will be launched at the end of May. The collection will be well worth acquiring. We have in this issue an extract from Justice Heydon's piece on the history of the equity Bar in New South Wales.

It is with sadness we record the deaths of Penny Wines and Peter Comans. Their passing has greatly affected many members of the Bar.

This issue concludes with an extract from the *Common law phrasebook* written by Professor Wiesel Werds of Munchen Polytecnik. Professor Werds is a well-known commentator in the area of the common law and sometime visitor to Wentworth Chambers.

Justin Gleeson SC

Personal injuries:
Balancing individual & community obligations

By Bret Walker SC

What a mixture of motives, sources and solutions has been spread over the topic now called 'tort law reform'. Given that its most recent wave of public interest started in the silly season of summer, it is actually a good thing that the latest discussions, in autumn, are somewhat more serious. Recall, if you can bear it, the nonsense pushed by the ambiguously titled Minister for Small Business, the Hon Joe Hockey MHR, from which a deal of the least sensible press and broadcasting material has stemmed.

That litigation expert identified two aspects of what he encouraged people to regard as recent reform of the legal profession, as the twin authors of the threat to community activities by reason of steep increases in public liability insurance premiums. The first was advertising by litigators, and second was the so-called 'no-win-no-fee' retainer arrangements. And the Minister can claim a political victory of kinds in that the Government of New South Wales promptly altered the law governing advertising, effectively restricting public commercial messages by personal injury litigation solicitors to plain statements of their names, addresses and areas of practice.

The Bar could afford to stand aloof from that cameo controversy, because advertising of the kind which excited the opprobrious description 'ambulance chasing' is not done by barristers. For reasons which owe far more to the nature of the market for our services than hopeful conservatives concede, very few of us have perceived value in expenditure on messages about our availability, skills and prices directed to the public at large. Notwithstanding the irrelevance in practical terms of advertising regulation for the Bar, as President I protested to the Government on certain matters of principle.

They revolve around access to justice, if I may be forgiven for continuing to use that vague but honoured phrase about which others involved in the politics of the legal system now seem embarrassed. Big business, government, and the worldly middle-class generally have little difficulty in choosing from a range of appropriate lawyers to advise or represent them in the kind of transactions and circumstances which may end up in litigation. Not so for everyone else, whose numbers are vastly greater than the big end of town and the comfortably well-off. Contrary to myths earnestly believed in the last few decades about the reservation of litigation as an activity of the rich, the best of the few available empirical studies suggest that the demographic profile of litigants in our trial courts are a fair or near reflexion of society at large. If one removes avowedly commercial cases, the picture is even more one of ordinary people involved in ordinary cases.

An objection, of principle, to a ban on price information in advertising of any services is that it prevents the buyers' side of the market from obtaining the kind of information - of the most basic kind - that any buyer should have. Even doctors, by messages such as 'bulk billing', are permitted to signify their prices to people who may not yet have decided whether to obtain their professional services. Not so for personal injury litigation solicitors any more, who can no longer compete except to the point where a would-be client has actually come into his or her premises and is on the point of retaining the solicitor.

This distortion of ordinary commercial freedom of speech has been justified on a number of flimsy grounds, of which taste is merely the least relevant. Its detrimental effects are not merely those which are anti-competitive - although they are among the least rational. Given that there is simply no body of disciplinary case-law demonstrating common misleading or deceptive practices by the litigators who used to advertise their prices and other financial terms, one justification which should never have been advanced was that the dreaded ambulance chasers were conning their prospective clients.

That said, of course, the Bar also pointed out to the Government that the liberalisation in 1993 of advertising by lawyers was in terms which very carefully prohibited not only misleading and deceptive conduct but also advertising which might reasonably be regarded in that light. That legislation was supported by both sides of politics. Apparently, without telling anyone so, both have recanted.

To have achieved this, without ever providing even a scrap of statistical or empirical evidence to justify attributing a rising unmeritorious and expensive personal injury litigation to increased advertising by personal injury solicitors, was a real feat of advocacy by Mr Hockey.

Mr Hockey's second point had no merit at all. It was also grossly at odds with the history of