

State government must reform personal injury laws

By Bernie Coles QC



The advent of spring brings with it the annual senior counsel selection process, and on Thursday, 3 November I had the honour to attend the presentation ceremony for new silks. Chief Justice Bathurst presented this year's silks with their scrolls at what was a warm family occasion in the Bar Common Room. The twenty four barristers appointed as senior counsel this year comprise a cross-section of the great talent at the New South Wales Bar, with a broad range of experience and expertise. Their well-deserved appointment has been particularly well received.

I would also like to highlight the extensive and invaluable cooperation from the large number of respondents from the Senior Counsel Consultation group to whom considerable thanks are due. I would also like to extend my thanks to the other members of this year's committee, the senior vice-president, Phillip Boulten SC, Barry Toomey QC, Angela Bowne SC and Richard Button SC for devoting their time and energy to what is always an extensive and intensive process.

Over the past few months, the

association has been active on a number of important issues of public policy. Following the conviction of Mark Standen on drug conspiracy charges by a Supreme Court jury in August, the association made a public call for an inquiry into the New South Wales Crime Commission. The civil liberties implications of aspects of the commission's operations have been a matter of longstanding concern. The association called for a full public inquiry into the operations of the commission and into cases in which Mr Standen had been involved. The state government has since announced the establishment of a Special Commission of Inquiry into the New South Wales Crime Commission to be conducted by the former District Court Judge David Patten.

In accordance with its established policy in relation to New South Wales personal injury laws, the association has been active of late in drawing attention to the excessive profits made by motor accidents insurers under the Motor Accidents Scheme, in order to emphasise that there is scope to provide those injured in motor accidents with better access to compensation for non-economic loss. The association's position is that there should be a single consistent regime for the award of personal injury damages in this state, based upon the system which applies to Civil Liability Act claims. The association will continue to take opportunities to highlight the plight of injured people under our current patchwork of inconsistent and in some cases arbitrary personal injury laws, and we are calling on

the relatively new state government to take heed.

The New South Wales Law Reform Commission has been given two important references by the attorney general, references in which the association is taking a keen interest. The Hon Greg Smith SC MP has asked the commission to inquire into and report upon bail laws in this state, as well as the law of sentencing. It is the view of the Bar Council that current laws operate indiscriminately in creating various presumptions against bail, and the association has submitted to the commission that 'the association supports a significant shift in emphasis in the Bail Act. There are good public policy reasons for a set of legislative amendments, the effect of which is to reduce the numbers of people being held in custody on remand'.

Similarly, the commission's current reference on sentencing laws provides an opportunity for the government to bring greater consistency and certainty to our sentencing laws. The Criminal Law Committee has been heavily involved in both references, and the association will continue to pursue these inquiries in the interests of the better administration of criminal justice in New South Wales.

In September the association's Oral History Project was launched in the Common Room. The aim of the project is to preserve the rich history of the New South Wales Bar through recorded interviews with retired barristers in order to provide an audio record of their memories and reflections upon practice at the bar. The project was developed in conjunction with a similar initiative

of the Women Barristers Forum which features featuring audio interviews and photographs of the women who practised at the Sydney Bar during the years to 1975.

The general bar project to date comprises audio interviews with Chester Porter QC, the Hon Margaret Beazley AO, the Hon Kenneth Carruthers QC, the Hon John Slattery AO QC, Derek Cassidy QC, Ian Barker QC and Priscilla Flemming QC. Excerpts of these interviews have been produced with accompanying photographs and transcripts in the form of icons which now appear on the oral history section of the association's website. Speakers at the joint launch of both projects included the chair of the WBF Julia Baird SC,

the Hon Margaret Beazley AO and Chester Porter QC.

I am pleased to advise that the Bar Council has approved \$25,000 in additional funding for the two projects, to enable further interviews to be conducted. I commend the project to you, and recommend that you visit the Oral History page on the association's website to get a full appreciation of the work that has been done in preserving the NSW Bar's heritage.

This edition of *Bar News* includes a range of material from pieces on aspects of law and practice in evidence to defamation to military justice to this year's Garfield Barwick Address delivered by the Hon R J Ellicott QC.

This edition will be the last *Bar News*

published under the editorship of Dr Andrew Bell SC, and I would like to extend my sincere thanks to Andrew for his efforts as editor of *Bar News* since 2005. One of the highlights of Andrew's tenure has been the introduction of special editions focusing upon discrete areas of law such as expert evidence and criminal law. These editions have spurred an extraordinary amount of interest among readers, and I congratulate Andrew on his contribution over the past six years.

I would also like to take this opportunity to thank the Bar Council, executive director and staff of the association for their efforts during the year and wish all of you a very Happy Christmas and enjoyable holiday season.

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