

Direct briefing a growth area for the New South Wales Bar

By Noel Hutley SC



It is a great privilege to assume the role of president of the New South Wales Bar Association. This organisation has a proud history of representing the interests of its members, both in the public sphere and in dealings with government, members of parliament, the courts and the wider legal profession. I am honoured to have the opportunity to represent the interests of New South Wales barristers and continue the Bar Association's traditions of promoting the administration of justice, the rule of law and the importance of a strong, independent bar in this state.

I wish to pay tribute to the outstanding contribution of my predecessor as president, Jane Needham SC. Jane performed her difficult role with

great skill and grace, often in trying circumstances. Jane can rightly look back at her time as president with considerable pride and satisfaction. It has been a pleasure and a privilege to work with her.

In the course of the Bar Council election period it became clear that there are differing views as to the Bar Association's public profile. I take the view that the Bar Association has an important role to play in public life, by explaining the role of the justice system and the courts and supporting fundamental legal rights and freedoms. Over the years the association has provided a respected independent perspective in public debate on legal issues and I see that function as an inherent part of this organisation's activities.

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One of the most pressing issues facing the New South Wales Bar is the increasing competition for work we face from solicitors. This, combined with falling filing rates in civil matters in our courts, means that finding sources of work for the bar must be a major priority. My first duty as president involved taking part in a panel presentation, along with other members of the Practice Development Committee, to in-house lawyers at the ACC/ACLA National Conference on the Gold Coast in early November. That presentation, entitled 'Direct briefing as a modern strategy' focussed upon the utility of in-house counsel briefing the bar direct in suitable matters and the cost savings that can result where the need for external solicitors is eliminated in appropriate cases. In many cases the specialist expertise of barristers, and the junior bar in particular, offers a cheaper alternative to law firms.

It is clear that corporate and government counsel are making increased use of direct briefing arrangements and this is a growth area of work for the bar. The Bar Association will continue to build on its relationship with Australian corporate lawyers, as well as pursue other new opportunities for work for NSW barristers.

Proper resourcing of the justice system needs to be a priority for governments. Insufficient funding of judicial positions is an emerging issue at both state and

federal levels. The current arrangements regarding family law judges provide a telling example. There is a serious shortage of judges in the area of family law which is resulting in increasing delays and in turn causing real problems for families in crisis, as well as imposing concerning burdens on the judges.

For some time the Bar Association has expressed its concerns at the state of legal aid funding, particularly with regard to criminal matters. The situation worsens with each year that goes by. The current Commonwealth/state legal aid funding arrangements are clearly inadequate, and there appears to be no appetite on the part of government at federal or state level to satisfactorily address the problem.

Although the Australian Government restored a proposed funding cut regarding complex criminal trials at the beginning of the year, this is a band aid solution at best. A comprehensive strategy must be developed to safeguard the long-term future of legal aid criminal matters in this state.

The entitlement to a fair trial within a reasonable time is fundamental. But in many cases, the accused cannot afford a lawyer, so they are faced with the alternative of seeking legal aid or attempting to conduct their own defence.

Inadequate funding for criminal trials runs the risk that matters may not be able to proceed in circumstances where

an accused does not have representation. There are recent instances of such delays, and without the prospect of a resolution to the funding crisis such issues will become all too common. This is clearly unacceptable from the perspective of the accused, the prosecution and victims of crime.

Government reliance on pro bono work to address the shortcomings of the legal aid system is unrealistic. Our members spend thousands of hours each year undertaking pro bono work, but government should not regard that as a basis for not dealing with those deficiencies of that system.

A co-ordinated and long term solution is required. The restoration of legal aid funding to sustainable levels, along with the pursuit of new areas of work for the New South Wales Bar, will be priorities for the Bar Council over the coming year.

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