

The national conference

rise2018

By Penny Thew

Relevant. Resilient. Respected. In his opening address to the ABA's national conference, rise2018, the president of the Australian Bar Association Noel Hutley SC spoke of these three themes of the conference in the context of emerging national and international legal issues.

The themes of relevance, resilience and respect were chosen by the ABA in an attempt to focus the work of women and men in the legal field on addressing divisive and disruptive issues confronting the profession.

The notion of **relevance** was aimed at evoking the role of the profession not only in the practise of law but also in law reform, with practitioners being both advocates for justice as well as technicians assisting with developing practical legal solutions. In an era of the profession being awash with often contentious law reform



proposals from Royal Commissions and other inquiries, the solutions available in response require not only political will but also legal knowledge and expertise.

In this context there were conference sessions, given by both members of the judiciary and the bar, aimed at law reform and other political and social issues, including issues impacting First Nations people and the case for treaties, the Australian Law Reform Commission inquiry into the role of the Federal Court of Australia in supervising class actions and litigation funding, the Royal Commission into Institutional Responses to Child Sexual Abuse, criminal liability of corporations and individuals and managing civil litigation in the 21st century in an

increasingly electronic era.

The notion of **resilience** was aimed at the need for and ability of the profession to adapt to change and disruption, including in response to the 'drumbeat' of the threat of technological change, in order to retain its relevance and respected position. In this respect, the Honourable James Allsop AO, chief justice of the Federal Court of Australia, spoke about the future of the independent bar in Australia. The president said that the ABA in this context has a duty and is committed to identifying opportunities for, and promoting the skill and competence of, Australian counsel and judiciary in international jurisdictions. To that end a number of sessions were dedicated to international commercial arbitration.

The essential element of **respect** referred to the profession maintaining the highest standards of practice, with the conference presenting an opportunity to discuss best practice and developments in taxation, commercial and criminal law. The president spoke of the convergence of all areas of law, with all areas moving closer together and the need for the bar to be seen as, and to be, a continuum rather than be divided into separate sections.

In line with these themes, the first keynote speaker, chief justice of the High Court of Australia, the Honourable Susan Kiefel AC, addressed the conference on *Change in the Legal Profession*. The central theme of her Honour's address was that the maintenance of respect for the profession was essential to the rule of law and that garnering this respect dictates our continued relevance.

The chief justice referred to a prediction that the next two decades would see more change in the legal profession, including as a result of the impact of technology, than



Past-president of the ABA, Noel Hutley SC

the profession has seen in several hundred years. Her Honour drew an analogy between the demise of the centuries-old order at the English Bar of serjeant-at-law (*servientes ad legem*), and the threats currently facing the bar today. The chief justice noted that the high professional and ethical standards imposed on the serjeants, who appeared in the Court of Common Pleas, to the exclusion of others during their peak from the time of Edward I, were very similar to the standards now imposed on barristers. Chief Justice Kiefel said that the lesson that can be gained from examining the decline of the serjeants, is that not all things last forever. Their demise came about as a result of strong competition from the 'lower' (and ultimately successful) ranks of barristers of the day, the emergence of written rather than oral pleadings, and the increasingly excessive number of those permitted to enter the order of Serjeant-at-Law.

In the context of tracing the recent history of the development of the legal profession and its regulation in England and Australia, Chief Justice Kiefel reminded us that 2018 is the centenary of the admission of the first woman in New South Wales [Victoria, Tas-

mania, Queensland and South Australia having allowed it earlier]. The New South Wales admissions board refused women the right to practise on the basis that the word 'person' in the expression 'suitable person' to practise as a lawyer did not include women. Legislation was required to overcome this interpretation.

The chief justice foreshadowed that two aspects of the legal profession will dictate its survival, particularly in the face of technological change. The first of these is the ability of lawyers to evaluate complex evidence, the process of which is so informed by human experience as to defy the capacity of technology to entirely replace human analysis. The second is the continued necessity for litigation involving legal reasoning and logic allowing for more than one possible outcome, which again defies the application of technology.

Chief Justice Kiefel noted that these skills alone do not ensure the ongoing relevance of the bar. The continuing relevance of the bar will depend largely on society's perception of the bar and what it stands for. The unique characteristics of barristers that must be maintained are integrity, independence, intellectual rigour, obedience

to the duty to the courts and a strong sense of public duty. Her Honour expressed the view that the rule of law essential to our society depends upon the enduring survival of a strong bar.

The Honourable Tom Bathurst AC, chief justice of the Supreme Court of NSW, addressed the conference on *The Role of the Commercial Bar in the Mid-21st Century*, adhering to the theme of current and future rapid change. Chief Justice Bathurst spoke of the days when he commenced at the bar in 1977; days when trolleys were only for shopping, phones were fixed to a desk and briefs were delivered in folders (as opposed to by digital means). He said that his practice had changed entirely by the time he was appointed chief justice of the Supreme Court in 2011 and was of the view that the bar will be unrecognisable in another 35 years, in likelihood not involving wigs, trolleys or wood-panelled courtrooms.

Chief Justice Bathurst spoke of the market now being a 'buyers' market', by which he meant that corporate clients in particular have a far greater say in the choice of work carried out on particular matters, and that being in a buyers' market means that barristers must be aware of the needs of clients to be able to provide holistic legal solutions. This in turn means that the range of 'softer skills', such as empathy and the capacity to listen, would become increasingly relevant, as would the characteristics of being independent and ethical, as clients increasingly expect views about what is feasibly to be achieved by litigation and other forms of dispute resolution and holistic solutions. He noted that clients increasingly dislike '11-page detailed advices', where five pages are dedicated to why a particular position is right, five pages are dedicated to why it is not 'and the eleventh page blank'.

The Hon Susan Kiefel AC,
chief justice of the High Court.

The Hon Tom Bathurst AC, chief justice of the
Supreme Court of NSW

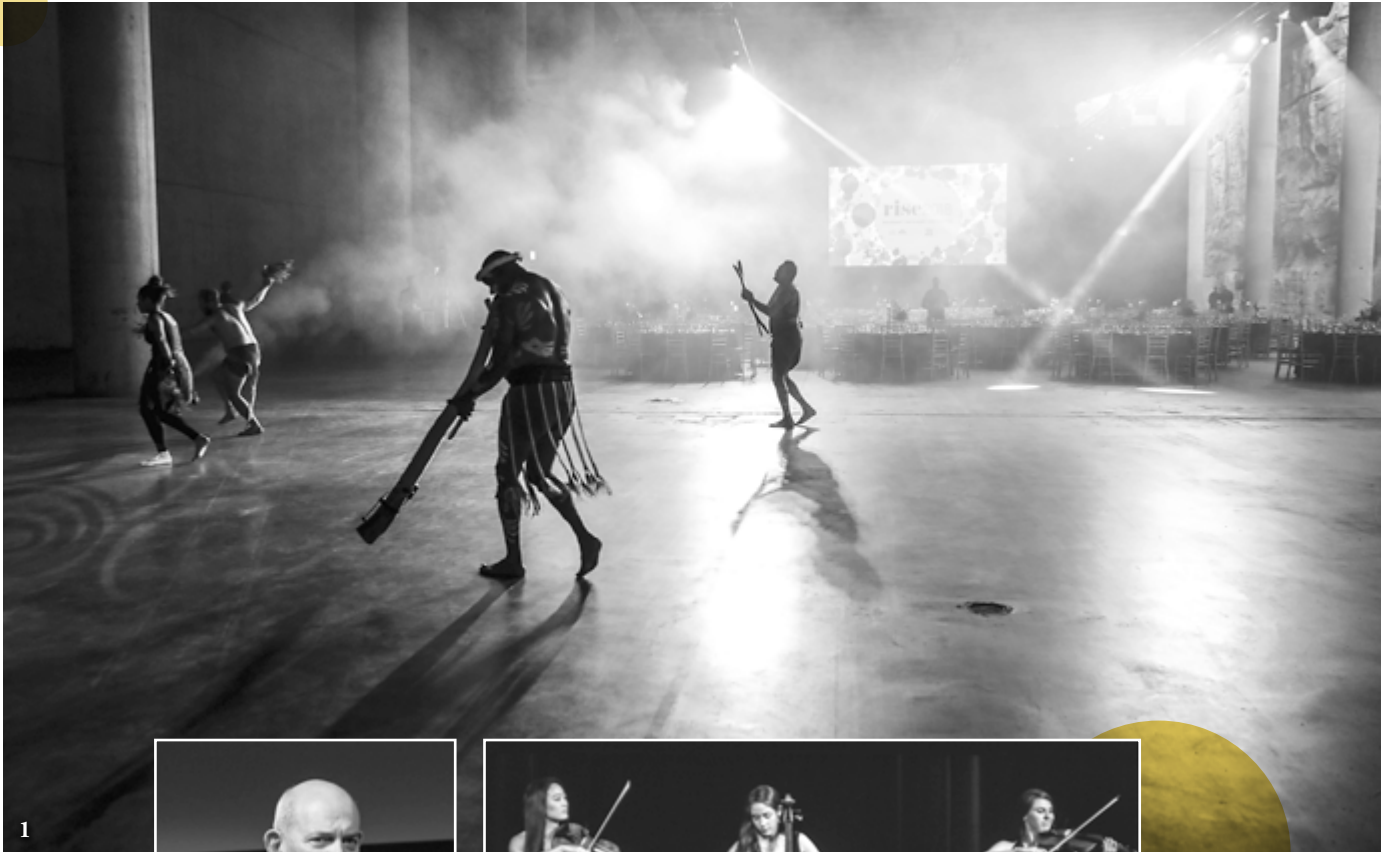


conference dinner**Conference Dinner**

The black tie dinner was held on the evening of Friday, 16 November at The Cutaway Barangaroo.

More than three hundred guests heard the guest of honour, Malcolm Turnbull, engage in a frank discussion about recent events.

conference dinner



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- 1 Diramu Aboriginal Dance Troupe welcome guests to the venue at The Cutaway Barangaroo
- 2 Tim Game SC, president of the New South Wales Bar Association
- 3 Strings En Vogue entertain the guests
- 4 The Hon Mark Dreyfus QC MP; immediate past-president of the New South Wales Bar Association
- 5 Arthur Moses SC



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As was reported in the *Australian Financial Review* on 16 November 2018, Chief Justice Bathurst predicted that current ‘online reputation systems’ providing annual lists of leading advocates could be the precursors to other online rating methods. He predicted a ‘Bar Advisor’ app, similar to Trip Advisor, in which clients would post about performance and price, allocating ‘stars’ or ratings and providing commentary about barristers to the effect of ‘I got good value from X today, pretty cheap’ – or the opposite. The chief justice

said that ‘it can and will happen’ and that the bar ought not allow itself to be seen as old fashioned, anachronistic and elitist but should instead rely upon its ‘flexibility and absence of bureaucratic structure’ to showcase its ongoing relevance.

In terms of the automation of basic legal tasks from which the chief justice says the bar must not think it is immune, the chief justice referred to IBM’s artificial intelligence legal research tool, ROSS, powered by Watson. Chief Justice Bathurst was of the view that repetitive and routine legal

work is far more susceptible to technological change than work that is bespoke and unique, giving as an example the introduction of electronic case management which, while eliminating the need (and cost) each week of hundreds of directions hearings about uncontroversial matters, has already impacted on the work of the junior bar, which once consisted largely of such briefs.

This observation was echoed in a later session, when the Honourable Justice Julie Ward, Chief Judge in Equity, and the Honourable Justice Jacqueline Gleeson of

conference welcome function



Welcome function

The conference welcome reception was held at Pier One Sydney Harbour.

The guest of honour was the Hon Mark Speakman SC MP, attorney general for New South Wales.



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- 6 Welcome drinks
- 7 The Hon James Allsop AO, chief justice of the Federal Court; Gabrielle Bashir SC; Angus Stewart SC
- 8 The Hon Mark Dreyfus QC MP; Tim Game SC; the Hon Mark Speakman SC MP
- 9 The Hon Mark Speakman SC MP, attorney general of NSW
- 10 Kristen Deards SC
- 11 Jessie Rudd, Adrian Ryan SC, Katrina Howard SC and Jennifer Batrouney QC, president of the ABA

the Supreme Court, in a panel session titled *Managing Civil Litigation in the Courts of the 21st Century*, spoke of the use of technology and the online court system in the efficient management of civil litigation, identifying that such changes reflect the mandate to conduct hearings in a manner that is 'just, quick and cheap.'

Like Chief Justice Kiefel, Chief Justice Bathurst ultimately predicted that while technology will bring about change, written and oral advocacy, as well as other high-level, more complex skills of barris-

ters, would remain vital. These views were picked up by the Honourable Justice David Hammerschlag and the Honourable Justice John Middleton of the Supreme Court in the session *The Fate of Old Time Advocacy Skills in Modern Commercial Litigation*, in which both emphasised that good advocacy remains critical, providing clarity and simplifying issues so that they can be efficiently determined.

Chief Justice Bathurst finally foreshadowed that, in line with the shift in the UK to civil litigation being conducted increas-

ingly online and with mediation a compulsory step, the 'A' in alternative dispute resolution would be replaced with an 'O', for '[compulsory] online dispute resolution'. He said that changes such as these represent an opportunity for barristers to show that they can add value to these processes and that barristers will need to develop the skills necessary to use these technologies.

conference day one



Conference Day One

Day one of the conference began with the Celebrating Women in Law Breakfast, with guest speaker Julia Baird.

- 1 Julia Baird
- 2 Karen Espiner (Younes & Espiner Lawyers), Cindy Penrose, CEO of the Australian Bar Association, Jessica Meech (Younes & Espiner Lawyers)
- 3 Fairfax and Roberts at the Celebrating Women in Law Breakfast
- 4 Lee May Saw, Penny Thew, Brenda Tronson, Ingmar Taylor SC, Sonia Tame

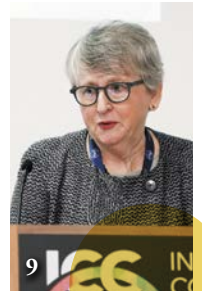
conference day two

Conference Day Two

Saturday, 17 November opened with an address by the Hon Christian Porter MP, Commonwealth attorney-general, followed by Chief Justice James Allsop AO.

Breakout speakers included, among others, the Hon Justice Virginia Bell AC and the Hon Michael McHugh QC.

The conference ended with a Q&A panel chaired by the ABC's Tony Jones.



- 5 The Q&A panel with Tony Jones
- 6 Chief Justice James Allsop AO
- 7 The Hon Christian Porter MP, Commonwealth attorney general
- 8 David Marr and Phillip Ruddock do battle in the Q&A
- 9 Hon Justice Virginia Bell AC