

# The Wellbeing Special Edition

## *Ne quid nimis*

Ingmar Taylor SC

Over the last decade wellbeing has moved from a fringe concept often disdained by serious hard-working barristers to being considered essential to practice. To boast of how little sleep you have had because of work is now almost as old-fashioned as smoking. Increasingly barrister on-line profiles list not just cases won, but hobbies and preferred form of exercise. The profession now overwhelmingly acknowledges that the most effective barrister in the medium to long term is the barrister who exercises, eats well, regularly gets 7 or more hours sleep and pursues interests outside work.

Promoting, if not leading, this change, has been NSW Bar Association's Wellbeing Committee, and its chair Kylie Nomchong SC. I was very pleased that Kylie agreed to take on the role of guest editor of the Wellbeing section of this special edition. With the help of her Committee she has curated a series of articles covering diet, exercise, sleep, posture, mental health, financial stress, vicarious trauma and judicial bullying, written by doctors, a physiotherapist, a psychologist and fellow barristers. The edition also carries articles that will entice you to join your colleagues in a variety of activities including yoga, rock climbing, bush walking, cricket, running, netball, football, dog-walking and more.

### The current lockdown

A focus on wellbeing seems particularly important during the current extended lockdown when we are once again cut off from colleagues and friends. I was taken by the following quote from Dr Murray Wright, NSW Chief Psychiatrist at a press conference in August 2021:

*We all know from a public health perspective that the lockdown is for the purposes of reducing the spread of the virus during the pandemic, but it is really important for me to take this opportunity to remind everyone that this is probably the most sustained and serious stress that many of us are going to face in our lifetimes and how this impacts on us and how we manage it is going to be really important*



*in minimising the wellbeing and mental health impacts of the stress.*

*There are some fairly simple and straightforward things that we all need to keep front of mind on a daily basis in order to manage these stresses, keep track of how it is affecting us and the people around us and also to access help if needed.*

*The simple things we can all do is firstly have a plan and to create structure in your lives, particularly in a lockdown, many of us have lost that structure and it is important to recreate it. That includes having regular daily exercise of some kind, having contact with the people who are important in your life and talking about meaningful things including how they are coping and how you are coping. It is important to monitor things like your diet, like your sleep, like your alcohol intake, and also to set goals every day and review that.*

*None of us always execute the perfect plan, but it's important to review it and renew it on a daily basis. If things are not working, and the signs of things not working include difficulties with sleep, difficulties with concentration, feeling unduly fatigued, feeling overwhelmed, irritable, or consuming too much alcohol, and if any of those things are happening either to you what people around you, you should make it a subject of consideration.*

*What can I do to change how I am approaching the day or do I need help? Ask people if they are OK. That never does harm, it often does a world of good and making it a regular subject, as well as talking about the pandemic and talking about well-being is really critical for all of us.*

### Virtual Justice

Another aspect of the extended lockdown is the pivot back to on-line hearings. The efficacy of on-line hearings is a subject taken up by our resident opinion columnist, Anthony Cheshire SC, who in *Social contracts for the bar?* moves effortlessly from the history of the philosophical concept of the social contract to an examination of the preferred model for hearings – when should they be online and when should they be in person?

This is a subject that each Court will grapple with post-pandemic. There are Judges who strongly support the increased flexibility and efficiency that on-line hearings provide. There are others who feel equally strongly that, post-pandemic, hearings should revert to always being in-person.

While these debates play out behind the scenes there remains a distinct lack of guidance, by way of practice notes or the like, explaining what types of hearings will be considered suitable for on-line hearing outside of a lock-down situation so that clients can be told in advance what procedure is likely to be adopted (and the associated costs).

The Federal Court has been remarkably good at conducting on-line hearings, and given the nature of its jurisdiction, is particularly well placed to reduce the costs that can arise where parties come from different States and would otherwise have to travel and reside in one location to appear in person.

Courts should consider advising that a virtual hearing may be conducted: a) when requested by a party for directions hearings or case management conferences where one or more parties are located in another city; b) when requested by a party for hearings where no oral evidence is to be called and one or more of the parties are located in

another city; c) for urgent interlocutory matters where the available Judge is located in a city other than the one where the parties are located; and d) otherwise where jointly requested by the parties.

Guidance would also be helpful as to whether matters should be allowed to proceed with one party in Court and the other appears by AVL, as has occurred during asymmetric lockdowns. There is much to be said for the proposition: all in or none.

Care must be taken to ensure that any move to embrace on-line hearings does not create additional barriers to justice. There are many litigants who do not have ready access to technology, or the capacity to use it. Even where they have the technology, appearing from a crowded home or, as I am reliably informed has occurred, by phone from a car, has the potential to disadvantage.

To that end the Federal Court is to be commended for its plan to build in Sydney 'zoom rooms' that will allow litigants to attend and have a court officer operate the technology to allow an appearance on-line before a Judge sitting in another State.

Justice Ross, President of the Fair Work Commission, has identified the potential to take that notion one step further, by hiring office space in buildings in regional centres fitted with the necessary technology to allow litigants to appear without having to travel to a capital city.

Justice in this country is of the highest standard but is expensive. A change that would allow those in regional communities the opportunity to appear in a proceeding at no greater cost or inconvenience than those that live in a capital city is an example of a potential change for the better.

While the pandemic was not the disruption the courts wanted, it is perhaps the disruption the courts needed to rapidly introduce changes that will ultimately improve efficiency and access to justice.

### More reasons to read this edition

First amongst them, and a reason to keep this edition ready to hand for years, is a lightly edited transcript of a masterclass on written advocacy delivered by Bathurst CJ,

Bell P and Justin Gleeson SC. The seminar contains detailed and extremely useful insights into the art of written submissions at different levels (interlocutory, final hearing and appeal), examines how to use them as part of oral submissions and addresses a series of questions.

Justice Lucy McCallum and Erica Timmins have allowed us to reprint *Black Letter Law*, an important examination of how the current application of bail law contributes to the grossly disproportionate rates of incarceration of First Nations people.

There are a series of interviews with fascinating subjects. I had the great pleasure of interviewing Andreas Heger, author of one of my favourite recent books, *Cooktown*, during his second week as the new Executive Director of the NSW Bar Association. I am sure you will agree that this 35yr old, Rhodes Scholar, policy lawyer, author, painter, para-athlete and devoted father of three is a remarkable man whose appointment is to be warmly welcomed.

Douglas McDonald-Norman interviews Stephen Lawrence of *The Wigs* podcast. Naomi Wootton discovers what life is like practicing as a barrister while living on the Central Coast in her interview with Dennis Stewart. While Kavita Balendra continues her great work writing about practice outside Sydney with a wonderful interview with DCJ Gordon Lerve, based in Wagga

We love to carry history pieces. We are fortunate to be able to publish the Forbes Lecture by Gideon Haigh, journalist and author of many books including the recent *The Brilliant Boy: Doc Evatt and the Great Australian Dissent*. The lecture tells the story of Justice Evatt's dissent in *Chester v Waverly Corporation* which foreshadowed the recognition of damages for nervous shock caused to relatives. Gideon tells the story in a highly entertaining manner befitting a sports journalist, and explains why it was a great *Australian* dissent, including as it did quotes from Australian literature.

We reproduce the Hon Paddy Bergin's speech marking 100 years since Ada Evans became the first woman to be admitted to the NSW Bar following the repeal of a statutory gender barrier. Given the focus of this special edition it is interesting to read

that Ada Evans said nearly a century ago that "professional women know the value of exercise".

Dr Sara Dehm of the UTS Faculty of Law writes of another historical barrier to practice at the NSW Bar, not removed until 1977, which required the applicant to be a British subject. Her fascinating account traces the unsuccessful attempts of Dr Edward Korton, a stateless Jewish lawyer from Austria, to gain admission to the NSW Bar.

Belinda Baker continues her great series *With my own two hands*, which profiles barristers and judges whose volunteering work contributes to communities, on barrister Theresa Baw and her Pop Up Art School Exhibition to raise funds for pro-democracy protestors in Myanmar.

We have three obituaries well worth reading: Mark Tedeschi SC on Chester Porter SC; Jeremy and Julian Gormly on their sister Phillipa Gormly; and Kevin Tang on Priscilla Fleming the first female QC of the private bar.

You will also enjoy the book reviews, including a great pen portrait of Graham Boal QC of the English Bar by Jocelyn Sparks, Director, Professional Conduct of the NSW Bar Association, also previously of the English Bar. Her description of a man who was viewed by all to be at the top of his profession but who was afflicted by alcoholism, depression and suffered from imposter syndrome, is particularly apposite for this edition.

I can think of no better way to finish than by quoting Bullfry:

The Bar can be a lonely place. Immured in a windowless room for ten hours a day, wading endlessly through papers and submissions. . . . Seek out a companion; have a temperate lunch (*ne quid nimis*) – recall the morning's triumph and the days of wine and roses; the advocates who have come and gone; the latest humorous outing in the District Court – keep all in perspective – and remember what isn't the small stuff: keeping healthy and happy; enjoying the company of family and friends; retaining a simple tenacious love of doing a good job.