

A Timely Health and Wellbeing Focus

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In my first ever President's column for *Bar News* I wrote about 2020 being a year of firsts. Well, the gifts keep coming in 2021, sadly without the frisson of the original.

Hence, as we find ourselves in another lockdown here in Sydney and now even the regions, there may never be a better time for the Bar to consider the wellbeing of our members and which is the focus of this edition of *Bar News*.

Again, the pandemic has caused unprecedented changes for our profession. With courts and tribunals returning to remote hearings and chambers running on skeleton staff or having sent all their staff home to work remotely, wherever possible, the Bar faces significant challenges in both its professional capacity and its care for our members who thrive on the collegiality of working in chambers.

The manner in which our profession has again adjusted to the COVID-19 crisis in New South Wales in such a proactive and generally positive way is being highlighted again in this current lockdown. Without hesitation the courts, court Staff and jurists were able to quickly move hearings online and our members adapted with expeditious determination to ensure their clients were not unfairly impacted by the rapidly changing environment we were and are all facing. As I write this column, we have been in lockdown for closer to two months than two weeks and with the COVID-19 numbers continuing to rise it is likely we are some time away from seeing any easing of restrictions.

I remain continually impressed by the Bar and its members capacity to maintain the same high standards of professionalism that apply in a real-life courtroom to a virtual setting, particularly one set up in ad-hoc circumstances and where distractions can come in forms unheard of in a real court – young children or pets coming into view is no longer a matter for comment. I am grateful to the good graces of the courts for their increased level of tolerance in these trying circumstances.

Some of the changes the courts have been able to make to virtual hearings over the last 12 months have eased the burden of clients



and witnesses and increased willingness for proceeding to trial in the face of an AVL hearing. The Association recognises the efforts of the Courts and the judiciary to maintain operations during this period and shares their vigilance to ensure our justice system continues to operate under the Rule of Law.

Mental and Physical Wellbeing

In my first days at the Bar, an older member of my floor took me aside and said "Hopefully, you will get busy and you must take time for yourself." These were and are words to live by in our profession – our hard work is a given, yet a proper work life balance is essential and not only for our family and friends but for ourselves.

Our Wellbeing Committee have recently launched some exciting initiatives including the Barrister Safe Place. An online discussion group platform for members to receive support and to express concerns they have with areas of their practice, inappropriate behaviour, bullying, harassment or any number of other issues, be they personal or professional before they escalate. The online platform allows members to adjust their settings to keep their identity confidential, if they wish. A member of Bar Care is present at each group should any of the participants wish to seek their guidance or input.

It is important for us all, particularly in these trying times to prioritise our own physical and mental health and safety as well as those of our client's.

This edition highlights some of the inspirational hobbies of members outside of their professional lives. I am not sure we should all take up hanging off the side of a rockface, however I am sure there is something we can all take away from this edition that would be valuable to our own physical and mental health.

Members are again reminded to seek the assistance of *BarCare* should they need some assistance with their mental health or if they are finding it difficult to cope in this current lockdown.

Bullying, Harassment and Discrimination

The New South Wales Bar Association condemns any form of bullying, harassment and discrimination. Yet, actions speak louder and the Bar Council has considered and approved a number of steps to seek to address these matters – for instance updated Best Practice Guidelines including on grievance handling for chambers; ways to promote informal disclosures of harassment; liaison with the Law Society on the Office of Legal Services' ELKER online platform and one of our own; a short film launched to the last reader's course and to be used in CPD and other training.

LARS

It has been a dynamic year for the Association's Legal Assistance Referral Scheme and Duty Barrister Schemes. The Bar continues in our work assisting unrepresented litigants and the Courts throughout the continued challenges and disruptions that have been brought about by the COVID-19 pandemic. In some respects, the pandemic has enabled us to expand upon the services that we provide as the Bar and the Courts have adapted to and increased their use of technology. A standout benefit has been the increased ability to assist clients in regional settings and to conduct appearances remotely and which has allowed some barristers to accept pro bono work that they otherwise would not have had the time to take on. I would urge all barristers to include pro-bono work in their diary.

There has been an increase in referrals and which may be attributed, in part, to targeted outreach and promotion of the Scheme to Legal Aid NSW and to Community Legal Centres, from whom we received 16 and 44 referrals respectively. Aside from these, the main source of referrals to LARS continue to come directly from the Courts and from the NSW Civil and Administrative Tribunal (NCAT). There were 42 referrals made by Judges, 6 by Registrars, 1 by a Magistrate and 23 by NCAT members. The remaining referrals come directly from the community, word of mouth or upon advice from another referral service eg. Law Access or Justice Connect.

This year barristers contributed an estimated 2,666 hours of work through the Scheme, made up of 1,677 hours in the current period and a further 989 in matters that have continued from previous years. There are more than 30 referred matters that remain ongoing at the time of writing. Since the Scheme commenced operations in 1996, our members have contributed more 64,000 hours of work. Thank you – you know who you are.

Committees 2021

Thanks also to those members who serve and who applied to be a member of a Committee for 2021. As with every year, the number of applicants exceeded the available positions. Those members who were unsuccessful this year, I thank you for volunteering your time and for making the application. I also welcome the creation this year of the new International Committee and the Succession and Elder Law Committee. These will play an important role in providing critical policy advice on emerging issues related to the Bar, the justice system and the wider community.

Policy and Public Affairs

The Association has continued its strong advocacy work on policy and public affairs.

All of the Association's policy-oriented Committees and Panels have been very active throughout the past quarter. While the vast majority of submissions are given in confidential circumstances, the Association

has commented on a wide range of policy and law reform issues at a state and federal level, represented the Association at key meetings and engaged in proactive law reform work. Of particular mention are the following:

- The Association prepared a submission in response to the Select Committee Inquiry into the coronial jurisdiction in NSW – the first comprehensive public inquiry into the state's coronial system and the important work of the Coroners Court since 1975.
- The Association also made a submission to the State Coroner in relation to supplementary arrangements applicable to section 23 deaths involving First Nations People. The Association strongly supported the Courts commitment to increasing engagement with the families of First Nations People through the Protocol and ensuring that inquest into deaths of First Nations People are conducted in a culturally sensitive and appropriate manner.

In relation to family law, the Association made a public submission to the Commonwealth Attorney-General's Department in relation to approaches for simplifying the property provisions in the *Family Law Act 1975* (Cth). The Association has continued to advocate for proper resourcing of the family law system, including the prompt replacement and maintenance of specialist family law judges, and adequate funding of the legal assistance sector.

In the area of criminal law, the Association has recently commented on a Discussion Paper released by the Department of Communities and Justice in relation to its review of sentencing practices for historical offences. The Association opposed the proposed extension of s 25AA of the *Crimes (Sentencing Procedures) Act 1999* (NSW) and proposed an alternative approach modelled on Victorian legislation.

The Association also commented on six options proposed for the implementation of a court-appointed questioner scheme in NSW, as proposed by the Court Appointed Questioner Working Group in the Department of Communities and Justice.

The NSW Law Reform Commission has recently been engaged in consultation in relation to its Open Justice Review. The Association provided a submission in relation to the Commission's draft proposals for reform of the law governing public access to courts and tribunals and the disclosure and publication of information arising from legal proceedings.

Finally, the Association has also been focused on recent developments regarding costs in class actions in Australia – in particular, the changes in the regulation of litigation funding in Victoria to permit plaintiffs' lawyers in representative proceedings to charge contingency fees, which are otherwise prohibited by s 183 of the Uniform Law. The Association's submission was consistent with its longstanding position to oppose contingency fees. It also recommended that a comprehensive, Australia-wide approach to the regulation of representative proceedings should be adopted.

Continuing Professional Development

I would like to congratulate and thank the staff at the New South Wales Bar Association who have over the last 18 months been agile and proactive in their ability to adapt the usual suite of Continuing Professional Development in person seminars to online webinars, information sessions and zoom seminars to ensure that all Members have been able to meet their CPD obligations.

The Regional conference program continued to enjoy strong support from all members and this year included additional regional events aimed to provide opportunities for networking and promoting wellness and collegiality. These sessions allowed members to discuss issues affecting them with members of the Bar Council. The Sydney Conference for the first time was successfully run as a hybrid conference allowing members the choice to attend face to face or online. This format was well received by members, the flexibility allowing for an increase in numbers attending the conference. Indeed, there was a larger uptake of the online option which demonstrates that members have adapted well to online technologies.