

## LAW COUNCIL OF AUSTRALIA

### CHAIRMAN'S MESSAGE

David E Allan

A Japanese legal friend of mine once remarked: "Two lawyers - three opinions!"

It is important that our profession should defend the right to hold a variety of opinions on any topic; the problem is how to ensure that they all get a fair hearing. This is of particular importance today when there is no single prototype of an Australian lawyer. As legal practice has diversified, so have both the attitudes of those who practice the law and the structures of the firms or bars through which they practise it. I believe diversity is a healthy thing in our community. But it does raise problems when any organisation claims to represent the views of the profession as a whole or the profession in a particular geographic area. How do barristers and solicitors (not to mention judges or law professors), whether in fused or separate professions and whether in large, medium or small firms, whether country or city - how do they find a medium through which their views can be fairly expressed and their interests safeguarded?

### THE LAW COUNCIL AND ITS SECTIONS

With this in mind, it is sad to record that there is a move to abolish individual membership of the Law Council at a time when what is needed is a strategy to expand it. If individual membership goes, then the Sections can scarcely survive as organs of the Law Council. And if the Sections go, the role of the Law Council becomes insignificant.

So, this Message is a statement of my views about what the Sections have to offer individual members of the Law Council - and about the role of individual lawyers expressed through the Sections. It is about the importance of the Law Council's Sections; not just the International Law Section but about all the Sections. It is about individual membership of the Law Council.

We must all as lawyers at some time or times have asked ourselves what our role and purpose are. I doubt if many of us would settle for the most simple solution, namely, making a good living for ourselves and our families. But if we believe that we do have a wider role within the community in which we live - local, national, and international - we must go on to ask what that role is and how we can discharge it.

It is now common knowledge that representatives of the Law Council's constituent bodies and the Chairmen of its Sections recently spent a weekend in retreat, considering the future role and structure of the Law Council. At one extreme, the Law Council could be seen simply as a federal body with representative and lobbying functions in Canberra on behalf of the Constituent Bodies. At the other extreme, it could be seen as the conscience of the

profession, expressing opinions on all manner of public issues. Fortunately, neither of these extremes seemed to have had serious proponents and there was general recognition of the need for a middle way. The difficulty was to find that middle way - a task not rendered any easier by the need constantly to consider the financial implications of all proposals.

The problems with the first extreme are two-fold: first, how any one Constituent Body, given the diversity of legal practice today, can legitimately claim to be truly representative of legal opinion among all its members; and second, that it ignores the claim of the profession to be a learned profession with a strong commitment to the ideal of service and a recognition that that service needs to be rendered at a national level. The problem with the second extreme is similarly mainly one of representation. How can the Law Council purport to speak on policy issues with one voice for a profession that, by its very nature, never speaks with one voice?

To some extent it is true the Constituent Bodies should be able to provide a middle way, both representing the professional interests of their members, and expressing through their committee structures opinions on public issues. The difficulty is that the structure of the professional bodies, based both on the division between bar and solicitors and on the state and territory division of the country, does not equip them to speak on national issues. The signals are likely to be mixed and the messages not truly representative.

#### **AUSTRALIA DESERVES BETTER THAN A PAROCHIAL RESPONSE FROM ITS LAWYERS**

The middle way has to be that the role of the Constituent Bodies is to represent the professional interests of their members as best they may and, where a national position is desirable, to achieve it through the Law Council. But on general and public issues, the middle way is through the Sections of the Law Council, which are able to mobilise and assess the opinions of their members and express them as the views of those members. And where there is a range of views, there is responsibility to indicate that there is such a range.

Where a national response is required, the Law Council needs to supply the machinery to enable a full discussion of the range of opinions and to seek a consensus. The Law Council has such machinery - the Policy Advisory Group, consisting of members of the Law Council Executive and the Chairmen of Sections. My own experience of this body is limited, but I feel very strongly that, if it is properly used, it has a most valuable function to perform, not merely as a clearing house of ideas, but a forum in which policy can be intelligently formulated, taking into account any diversity of views and interests. This, after all, is a skill we profess. Unfortunately, the Policy Advisory Group has attracted the wrath of some of the Constituent Bodies, and the Task Force which last year examined the structure of the Law Council recommended its abolition. This recommendation has not yet been implemented, although the Group has ceased to meet. I hope that the value of the Policy Advisory Group and the importance of its role may yet be perceived by the voting members of the Law Council.