From the President

In an age of change, the law has no special immunity. Major changes in both substantive and procedural law have already been effected to Australian legal systems which had not changed significantly for decades, sometimes longer. Just as change in other fields is often cost-driven, so too in the case of changes in the law.

An additional factor underlying much of the change, particularly in procedure, has been the need to speed up justice. The cry that "justice delayed is justice denied" is common. The Bar has recognised the importance of its role in expediting the judicial resolution of disputes between citizens. It has done this by waiving, for a limited period, its traditional and soundly based opposition to the appointment of acting and other temporary Judges and by co-operating in the arbitration system which has been introduced in the Supreme, District and Local Courts. This co-operation by the Bar with the judiciary, together with the allocation of additional resources by the State Government to the Court system, has significantly reduced the waiting time in all Courts, but especially in the Supreme Court and the Local Court.

Whilst the saving of time and money in the administration of justice is a laudable reason for change, it should not be the sole objective. Quality is important as well as quantity. The rights of individuals, be they against each other or in relation to the State, must remain at the forefront. In other fields of endeavour "quick and cheap" are often associated with poor quality. In the law this would result in the rights of individuals being downgraded. The Bar has a duty to ensure that this does not occur.

One area of cost and time-saving which is presently under way is the virtual abolition of civil juries. This has been put forward as a palliative which will be reviewed when Court delays have been reduced to acceptable limits. However, there is a real danger that what occurred in the United Kingdom in the 1930s will be repeated here. Civil juries were abolished in the United Kingdom because of economic considerations. The improvement in the economy in the United Kingdom did not, however, lead to their restoration.

One of the strengths of the common law has been the involvement of the community in the administration of justice. The community brings to the law its knowledge of community affairs as well as Australian common sense. Involvement of lay people in the law also means that the Courts, as a matter of policy, tend to keep the law relatively simple and understandable. This is not just a matter of plain English in contracts and in statutes. It relates to the formulation of principles which are the basis of the Common Law. In an age of increasing community involvement and participation it is extraordinary that the reformers of the law are moving it in the opposite direction and are doing so under the banner of "progress".

The elimination of juries in personal injury cases may well be a step in their more general elimination. There is considerable pressure from the media, as evidenced by the continuing campaign by the legal correspondent of the Herald, to abolish juries in defamation cases. This may well be associated with the disapproval by the community of his form of writing which was so forcefully expressed in a substantial verdict against him in a defamation action. Governments must be cautious and the Bar vigilant to ensure that sectional interest groups and individuals do not have their way in relation to juries.

The desirability of involving the community in the determination of cases involving injury to the person is no less than in cases involving injury to the reputation. At the present time plaintiffs seem not to want juries because it is said that juries are not as generous as judges. Defendants on the other hand want them. This is a complete reversal of the situation which prevailed 25 years ago when plaintiffs regarded juries as generous and Judges as less so. The truth may well be that juries represent a community response to the problem of damages. The community pays the damages. Should it not have a role in the process of the awarding of damages.

There is also pressure from some sectors of the executive to eliminate juries in special categories of criminal cases. Corporate crime is the prime example. The argument is that things are too complex for juries to understand, hence the number of acquittals. A review of the cases rather suggests a different explanation. A substantial number of these prosecutions have been dismissed at the preliminary hearing stage. This points to inadequacies of a fundamental kind in the Crown cases. To eliminate juries in this field would be to create a precedent for their elimination in other areas of crime which will be said to be just as important as corporate crime, the hope being that the judiciary may make up for inadequacies in the Crown case in a way in which the citizens of our community are not prepared to do. Such an approach is a slight upon the judiciary, as well as upon the good sense of the average Australian who sits on a jury.

Times are changing. The response of the Bar should be to accept that some change is necessary and to direct that change in a way which, whilst having regard to cost and time, recognises that peoples rights are the most important factor in the administration of justice. By ensuring such a recognition the Bar will fulfill its duty to be "servants of all". ❑

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