

# Jeff Shaw QC returns to the Bar

*In 1990 Jeff Shaw QC was elected to the Legislative Council. After five years in opposition, followed by five years as attorney general, Shaw QC has returned to the Bar. He recently offered some reflections in an interview with John Feron.*

**Feron:** After ten years in Parliament, five as attorney general, have you noticed any changes in the barrister's work?

**Shaw QC:** There are changes. The environment is somewhat freer, the competition is fiercer but the essential task of the advocate remains, that is to present a case competently before a court. That is the challenge that I am looking forward to in future years. I have got to come to grips with variable practices of the courts' requirements of wigs and gowns, but these are trivial matters in the broader context of things. My view is that, in substance, the same obligations and roles that I assumed in 1976 when I first came to the Bar are still in place in 2000.

**Feron:** When you first entered Parliament you then had an established and successful career at the Bar. What were some of the things that motivated you at that time to change your direction to take on the political career?

**Shaw QC:** I had been practising at the Bar since 1976 and took silk in 1986. When an opportunity came up in 1990 I thought it was time to seize it and to take the chance. It was not without regrets and not without some sense of apprehension but I took the view that many barristers had played a role in public life and given the chance placed before me, I should do likewise. I don't regret that for a minute and although the five years in opposition were hard, combining the role of a shadow minister with the role of practitioner at the Bar, the five years between 1996 and 2000 as attorney general were very satisfying. I was motivated to take a position in the Parliament by seeking to pursue some reformist ideas about the law and the legal system, to strive, however difficult the task is, to make the law more accessible to ordinary people. Hence, it was satisfying to me that I was able to persuade the Treasury in each of the five years in office to not only maintain but actually increase the amount of legal aid available from the New South Wales budget. I also took the view that it was useful to be able to persuade a government to maintain fundamental legal principles in the criminal justice system and to avoid the intervention by politicians into, for example, sentencing processes or other aspects of the legal system.

**Feron:** Did your experience as a barrister assist you perform the role of politician?

**Shaw QC:** Although most politicians would

probably disagree, I found the background of being a barrister useful in terms of being able to argue a brief, whether in the Parliament or the media. From time to time I had to argue a position that was not entirely in conformity with my own views; that is often the role of the barrister. Also while I felt generally comfortable with the positions the Government took in the five years that I was attorney general I was able to moderate or liberalise various populist pressures that impacted upon the Government and come to a resolution that I was satisfied with in terms of legal principle. For example, I was able to persuade the Government against adopting mandatory sentencing and American style grid sentencing and maintain the concept of a broad judicial discretion. So, when I was put out into the public arena to argue for the government's position, I felt that I was putting something that was consistent with traditional legal principle. I wasn't pushed into the position of advocating something dangerous.

**Feron:** In what way were the pressures on Jeff Shaw the politician different from those on Jeff Shaw the barrister?

**Shaw QC:** As a politician there is constant pressure within the Government and the media. There is expectation of being available to the media 24 hours a day, seven days a week, to deal with supposed crises as they arise. The luxury of a barrister is to accept a brief, run a case and then send the papers back to the instructing solicitor. There are obviously significant pressures at the Bar, but they are intermittent rather than constant. There are more intellectual challenges for a barrister. The constant pressure to be available to argue the Government's position is obviously a burden that those who assume the office of the Attorney General have to undertake. For me, five years of that was, although satisfying, enough.

**Feron:** Looking back do you have any disappointments?

**Shaw QC:** The role of reformer is hard. You are facing forces of conservatism. Obviously I think I could have pursued reform in more areas and further than we actually achieved, but the fact that we revised and reviewed the sentencing laws in a way which seemed to be broadly acceptable, enacted non-discriminatory property laws, developed privacy legislation and changes to the court system whereby,

particularly in the civil lists, old matters were moved rapidly through by the devolution of cases to the District Court from the Supreme Court were, I think tangible things.

*Fernon:* What lessons do you think you've learnt from your time in politics?

*Shaw QC:* I have become a little more world weary and sceptical, but nonetheless there are ideals that are worth fighting for and I have come away from public life with the idea that, despite popular prejudice to the contrary, there are many people in the Parliament, indeed most of them, who are well intentioned and who are receptive to reasoned views from the community. Indeed, I think the great preponderance of people who go into public life are motivated by the idea of doing good things and that this is probably not sufficiently appreciated. The legal profession needs to understand, I think, that the politicians on both sides of the Parliament are receptive to rational argument and although there are occasionally some primitive anti-lawyer prejudices, mostly the members of parliament have regard to the views propounded by the barristers and solicitors of New South Wales, especially when under pressure and in need of good advice.

*Fernon:* During your tenure as attorney general, one issue of controversy between the Government and the Bar Association was the appointment of acting judges. Looking back, how do you see that issue?

*Shaw QC:* That issue has been resolved. The acting judges were appointed on the recommendation on the heads of jurisdiction and the salutary result of their appointment was to clear up the huge backlog of civil lists. No longer do plaintiffs' claims need to languish for five to ten years in the Supreme Court. That was a temporary measure, adopted on the recommendation and with the support of the judiciary. It has now ceased and the only acting judges, with a few exceptions, are retired judges who want to give the community some further service and as I apprehend it, there is no significant objection to that. So, this was a finite process, designed to address a particular and significant problem. And so I think the controversy has been quelled.

*Fernon:* It was once not uncommon for barristers to have a political career. Why do you think it's so uncommon now?

*Shaw QC:* The rewards and virtues of practice at the Bar are attractive, and the remuneration and other aspects of political life are relatively unattractive. I do not think that that should preclude other barristers from having a go at politics and I know that a number of them are keen to do so, those with some ideals to pursue. There are some barristers

on both sides of politics who would aspire to the position of the Attorney General. That is a legitimate aspiration and I would encourage them to pursue that. But it is true, despite popular misconceptions, that there are relatively few people in the Parliament, State and Federal, who have actually practised law. That should not dissuade other people from taking the opportunities when they arise, because I really do think that members of the Bar can make a contribution to public life; they understand that in the debates that occur in the political process, facts are important, principles are important; that there

needs to be focus on what is relevant rather than what is extraneous or misleading. The virtues of disinterested debate and objective consideration of the issues I think flow from an experience of practising law, and can contribute to the level of our political discourse in Australia.

*Fernon:* A former politician who returned to the Bar some time ago once said that it was gratifying to return to the Bar from politics - in court there was a sense of being listened to; there was no such sense in Parliament. Was that your experience of Parliament?

*Shaw QC:* There is sometimes an artificiality about Parliamentary debate and certainly in the late hours of the night when a parliamentarian is addressing some topic, whether a broad question of public policy or something quite esoteric, there is the feeling that no one is listening. At least at the Bar, one assumes that a judge is listening and, from time to time, the opponent is listening. Although sometimes as an opponent it's tempting not to listen too carefully.

*Fernon:* Jeff Shaw's current ambitions?

*Shaw QC:* For the foreseeable future to simply apply myself to the day to day practise of law in a variety of courts and tribunals and in a variety of areas of the law and to do the best I can for my clients. That may seem a pretty basic aspiration but it really is what I want to do for the next few years.

*Fernon:* Welcome back to the Bar!

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