

At the crossroads

By Ian Harrison SC



This edition of *Bar News* comes at a significant point in the history of the New South Wales Bar Association. In February of this year enrolments of new barristers in the Bar Practice Course were the largest at any time since the course began. This, at a time when the Bar is suffering. Further, attendance at this year's Bench and Bar Dinner was larger

by far than at any other similar function, including the Centenary Bench and Bar Dinner in 2002. This also at a time when the Bar is suffering. Despite the significant practical difficulties which confront women who wish to become barristers and develop and maintain a successful practice, the proportion of women at the Bar today in New South Wales is higher than at any time in the past and growing. This at a time when the Bar is suffering. Why should these things be so?

For reasons that are not always entirely clear barristers have been given, individually and collectively, a high profile in the media. Sometimes this has been good for the Bar but in most cases publicity has been negative. Some of this has been understandable. For example, the awful and painful experience, not to say the shame and humiliation, for all of us in having to deal with a large number of notorious bankruptcies was as close to the lowest point in the public perception of barristers imaginable. Nothing good came from the experience beyond a stark reminder to all members of the Bar Association and the wider community of our continuing, unavoidable and essential taxation obligations. In the middle of 2004 I am confident that the Bar has recovered from this period of trouble and that the likelihood of a recurrence of similar problems is small. There is no doubt, however, that the legal profession and lawyers in general, and barristers in particular, necessarily lost some credibility as a voice worth listening to. The road back will be steep.

Every so often the press recycles the old story about how much barristers earn, who are the top silks and what they charge, and why is so expensive to set up practice when first coming to the Bar. I am unable to recall an article in any paper at any time in the recent past telling the story of a person whose life was changed as the result of their having been represented by a skilful advocate. This type of story seems never to attract attention of readers in quite the same way as those which paint us in a bad light or deprecate our worth. All of us from time to time, and no doubt some more than others, will have received letters of thanks and gifts of appreciation for a job well done. Even our harshest critics at the highest level of government have had in the past, and no doubt will continue

to have long into the future, the need for wise and vigorous counsel. Perhaps the jaundiced perceptions of barristers as a group subverts or clouds the view of the good work we are able to do on an individual basis.

It is, and was, in this context that legislation having the effect of severely attenuating and in some cases completely eliminating the common law rights of accident victims to sue for damages was so easily able to be enacted. I have never been able to understand how the public at large accepted these changes without so much as a whimper when the potential personal and social implications for so many people were so obvious. A not insignificant part of the so-called debate preceding these enactments gave public emphasis to the perception that the then existing system could not continue to survive under pressure from voracious lawyers and the associated legal costs. This was wrong then and remains wrong now. The Premier has made it clear that no sympathy should be afforded to barristers whose careers have been adversely affected or in some cases totally destroyed by these changes.

So why is this a significant point in the history of the New South Wales Bar Association? As practising certificate renewal forms go out many barristers will be considering whether or not the Bar Association has served them well or whether or not they can in any event afford the non-compulsory fee for membership of the association given the not inconsiderable sums required to renew their practising certificate. These are matters upon which all individual barristers will have to make a decision soon. This edition of *Bar News* is testament to the breadth and depth of issues of social significance in which women and men of the New South Wales Bar are involved. The pages of this journal bear eloquent witness to the significance of barristers in the community. Barristers are not important people. But in my experience people who need barristers think they are important. Despite populist sentiment that barristers should work for nothing, people who need barristers and who think they are important are also prepared to pay for their services. That situation has been so since almost the beginning of this colony and will, in my opinion, continue to be so. The significance of the moment is that barristers collectively, and many of us individually, are at personal and professional crossroads. It is important therefore that we maintain the confidence and optimism shown by the new readers, and the determined resolve of our women advocates who overcome enormous obstacles on a daily basis.

The Bar may be suffering but this also will pass.