

A profession with integrity

By Attorney General Bob Debus



In late September this year, William Shatner won an Emmy Award for playing a quirky, overbearing senior barrister in the long running legal drama 'The Practice'.

No critical awards came to Shatner (nor indeed to any of the rest of the Star Trek cast) during his years in a yellow jumpsuit on the bridge of the starship

Enterprise. However, once draped in a pinstriped charcoal suit and citing imaginary precedents in front of a jury, he was showered with prestigious awards.

This may prove little apart from the obvious point that while lawyers will always get a bad rap in popular culture, it is a very bad lawyer indeed who is less popular than a man in a tight yellow jumpsuit.

It is trite to say that barristers are frequently the target of media attack.

The individual barrister is attacked on the steps of the courthouse as he or she departs with his or her client: the shady businessman or the accused felon, whose qualities he or she is deemed to have acquired, perhaps by osmosis.

The profession as a whole bore the odium when some barristers were revealed to have manipulated the bankruptcy laws in order to evade their taxation obligations. And in a bizarre extension of this phenomenon, the Bar Association was roundly abused for failing to detect and punish tax evasion by its members, when the responsible regulator – the Australian Taxation Office - had been positively supine for decades on the issue.

It takes no particular courage on my part to state, in the Bar's own journal, that barristers are often unfairly criticised. But my experience has been that the very great majority of members of the Bar have a demonstrated commitment to ethical standards and professionalism. And fundamentally, the public understands this. The recent reports by Walker SC and Jackson QC into, respectively, concerns about the health complaints system and the unravelling James Hardie scandal represented not only major forensic achievements but substantial contributions to the public interest.

As attorney general I have now had the privilege of working with three presidents of the Bar Association, each a leader in the profession and each tireless in advocacy both for the interests of the profession and for the interests of the justice system. The Bar Association has not hesitated to criticise the government in robust terms when it disagrees with legislation, and its contributions are singular – I might say notorious – for their comprehensive and vigorous nature.

The three presidents to whom I refer have also been notable for their resolute determination to pursue professional misconduct with all the rigour the law may allow, and we have spent many

hours in intricate negotiation as to how to make the complaint handling process as fair and as stringent as possible.

The current process of finalising national legal profession model laws has presented many opportunities in this regard. The process has identified many areas of inconsistency in areas of legal profession regulation which affect legal practice and the rights of consumers, including the complaint and discipline process.

Despite what I have said about the unimpeachable integrity of the leaders of the Bar, there is clearly a remnant of rogue barristers who avoid their tax, neglect their clients or engage in unsavoury professional misconduct. Most competent and honest practitioners will never be the subject of a complaint. However, for those practitioners who are, and for those consumers who feel compelled to bring a complaint, the importance of the existence of an effective and responsive complaints and disciplinary scheme cannot be overstated.

When a difficult public policy issue arises it is well accepted that an inquiry undertaken by a senior member of the Bar will be conducted impartially, independently and thoroughly.

A perception can readily arise among consumers of legal services that the complaint system is tilted in favour of the practitioner. If consumers of legal services are to continue to have faith in the complaints handling system, then there must be adequate mechanisms by which they can achieve redress for damage resulting from misconduct.

The massive and encyclopaedic Bill rewriting the regulation of the legal profession - including the complaint handling system – is at the time of writing at its penultimate draft, with an expected introduction date in mid-November. Of some particular interest will be the provisions relating to the cancellation of practising certificates of legal practitioners who commit indictable offences or tax offences, or are established to have manipulated the bankruptcy laws. These have been the subject of exhaustive review, informed by a number of recent cases.

According to the legal services commissioner, 80 per cent of the complaints lodged each year against legal professionals concern in whole or in part the question of fees and costs.

For this reason it is important that, independent of the legislative review process, the government has established the Legal Fees Review Panel, on which the Bar is represented by its president.

The Legal Fees Review Panel is presently examining the nature of complaints about legal costs, and will explore options for alternative approaches to billing with a view to bringing greater transparency to legal costs. Detailed statistical analysis has been

undertaken of the complaints lodged over the past 10 years with the legal services commissioner and a discussion paper is being finalised for distribution to the profession and to the public for comment and submissions.

The relationship between the state government and sections of the legal profession is prone to stress and strain from time to time, and this is bound to continue. There will be differences in ideology and policy, and actions of the state government undoubtedly impact upon the working lives of many barristers. The changes to civil liability legislation have of course been a major source of contention.

The chief justice, while commenting recently upon some adverse aspects of the legislation, has nevertheless noted the importance of restoring an appropriate balance between personal responsibility and expectations of proper care and compensation.

He also acknowledged the destructive consequences of a culture of excessive litigation.

The government believes that its legislation entrenched important issues of principle, principles also being set out in many appellate court cases as the chief justice pointed out.

The process of law reform and legislative review is continuous and the government of course carefully considers any evidence put forward by practitioners of the anomalous consequences of the legislation. The Bar Association has been active in pointing out many areas of potential reform.

One area of common ground is that the insurance industry is clearly now operating in a more favourable climate as a result of these reforms; and the public are entitled to expect that premiums should reflect this.

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To conclude a somewhat kaleidoscopic survey of issues consuming the attention of the Bar and of my administration, I want to re-emphasise that my daily experience is that the vast majority of the Bar are committed to the service of the justice system and indeed of the public. The substantial and largely unheralded contribution made by the Bar through pro bono representation is a case in point. Relatively recently, I had the opportunity of launching in Dubbo the Cooperative Legal Service Delivery Model (CLSD) developed by the Legal Aid Commission. This is a project through which government and the legal profession work together to deliver legal services to the socially and economically disadvantaged. Through CLSD, regional coalitions of key legal services providers are identifying gaps in legal services, and finding ways to deliver legal services to disadvantaged people. The goodwill involved in this project is truly remarkable and does the legal profession great credit.

It is my privilege as attorney general to work with the Bar Association and indeed the Bar more widely. I look forward to many more robust and stimulating exchanges with your executive. Except on the floor of the parliament itself, I shall never have to resort to Mr Shatner's plea to 'Beam me up Scotty, there's no intelligent life down here'.



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