



Bar governance

As this issue is put to press, a new Bar Council has been elected. There is an unwritten convention that, although members of the council are elected on an annual basis, members of the executive of the council, or at least the president and vice-presidents, hold office for two years assuming their re-election to the council, which is invariably the case.

So long as the individuals concerned are willing to do so, that may well be a good thing in terms of continuity of leadership although if there is a 'progression' from junior vice-president to senior vice-president to president, as also seems to be a convention, this argument may be doubted. On the other hand, one's impression is that the burdens and workload of these three most senior positions within our governance structure are incredibly onerous and call for a massive contribution of time from (and income foregone by) the individuals concerned. Whilst the high degree of public service which such office-holding entails is laudable, it may be more – and even far more – than it is reasonable to expect. The long 'lead time' in relation to senior positions may operate to deter highly capable members of the Bar Association who may otherwise have a great deal to contribute and otherwise be disposed to offer themselves for service from seeking election. The current

conventions may also operate to restrict the inflow and turnover of 'fresh blood' and ideas on bar councils.

It goes without saying that none of these thoughts represents a criticism, express or implied, of any current or past senior office holders of the Bar Association; on the contrary, I hold them in the highest esteem and admire enormously their dedicated contribution and public service. That having been said, however, the growth in both the size of the association and the breadth of the tasks and corresponding time involved which members of the executive of the council appear to have to devote to the association at the very least calls for some reflection and questioning of the convention that the three most senior offices of the association are held for two year periods rather than one year, which is the term of office of the president of the Law Society of New South Wales, for example.

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This issue

I am pleased to be able to thank the shadow state attorney general and member of the Bar Association, Greg Smith SC, for his excellent and politically courageous but eminently sensible contribution to the issue of sentencing and so-called 'law and order auctions'. The *Bar News* policy has been to invite contributions from both sides of politics and previous issues have seen the publication of contributions from the current state attorney and his predecessor, as well as contributions from Commonwealth attorneys from both the Coalition and Labor sides of politics.

This issue includes many useful notes on recent cases and current developments

and I thank the respective authors – typically younger members of the Bar – for their contributions. Youth is balanced by the sage reflections of Ian Barker QC in his opinion piece, styled 'A geriatric barrister's yearning for the good old days'. (Barker was never a member of the late Paul Lynham's band 'Pace-maker and the Gerries'.)

This issue also continues our commitment to the exploration of matters of historical legal interest with what are, in one sense, companion pieces. David Ash has prepared the third of his features on members of the NSW Bar to have been appointed to the High Court, this time focussing on AB Piddington, the judge who famously never took up his seat but who is, nonetheless, a figure of significant historical interest. It is a superb and fascinating piece of work. (For Ash's earlier portraits of Barton and O'Connor, see *Bar News* Summer 2007–2008 and Summer

2008–2009 respectively). Piddington followed his resignation from the High Court by accepting an appointment as the inaugural president of the Inter-State Commission, a body few will have heard of but whose existence is mandated by section 101 Commonwealth Constitution. I have taken the opportunity to reprise research I undertook into this body while an economic history student (some time ago) which is reproduced in this issue, in edited form, under the heading 'The Missing Constitutional Cog – the Omission of the Inter-State Commission'. The third substantive article is Justice Allsop's recent paper entitled 'Judicial Disposition of Cases', which considers and questions the manner in which technical expert

evidence is received and assessed. In this context, the juxtaposition of this article with the piece concerning the Inter-State Commission is deliberate, as the latter body was intended to have been an economic High Court expert in the determination of, inter alia, issues of inter-state protectionism.

The Hon Leslie Katz SC continues to muse on literary allusions in Australian judgments, in this case tracking Sherlock Holmes's appearances in Australian law reports. Ian Temby QC draws on

his own forensic techniques to identify Australia's first civil litigants. Members can also catch up with a host of judicial appointments and also read of the honour conferred on Bret Walker SC through the award of the Law Council's Presidential Medal. Quite apart from being the most outstanding appellate lawyer in the country, dominating the High Court Bar across both civil and criminal matters, he has made unstinting and herculean contributions to the governance of the profession both at a state and national level. His award is richly deserved.

Acknowledgements

I thank Anna Katzmänn SC for her support of *Bar News* through the two years of her presidency. I also thank this year's *Bar News* committee which has shared the heavy load of producing what I hope has become a very high quality publication with a mix of the current, the interesting, the practical, the historical, the personal and the social life of the vital institution that is the New South Wales Bar.

Andrew Bell SC

Editor



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