



In the last six months probably the most important matter for the bar has been the ongoing reform proposals for the legal profession proposed by the taskforce established by the Council of Australian Governments (COAG). This is now culminated in a draft Bill, which as presently drawn has the potential to significantly undermine the independence of the profession.

The Bill is too complex to deal with in the space of this column but its fundamental proposals are that the general regulation of the profession will fall under the control of a board, the majority of which will comprise government appointees. That board will have general control over admission, the issue of practising certificates and their cancellation and variation and the making of rules governing the conduct of the profession. Although some of its functions can be delegated (in some cases delegation is mandatory) overall control of these issues remains with the board.

Parallel to the board, the Act envisages the appointment of a person described as a national ombudsman who will be responsible for disciplinary matters. Once again the person in this role has

power to delegate, which in some cases is mandatory. However, he or she is entitled to deal personally with matters which are regarded as setting a precedent or which are considered otherwise to be of importance. Further, the ombudsman is presently subject to the direction of the Council of Attorneys General.

Both these issues have the potential to significantly undermine the independence of the profession. A number of chief justices (including the chief justice of New South Wales) have spoken out against them and they are opposed by both the Law Council and the Australian Bar Association. The Bill is presently subject to a consultation period and the government has generally speaking indicated flexibility in its approach. Both Philip Selth and I are involved in the negotiations and we will do our utmost to ensure the independence of the profession is maintained.

In the last six months probably the most important matter for the bar has been the ongoing reform proposals for the legal profession proposed by the taskforce established by the Council of Australian Governments

The next matter I would like to mention is the new silk protocol. It does not have the provisions that Jeremy Kirk recommended at the Bench & Bar Dinner, rather it adopts in substantial measure the recommendations made by Roger Gyles QC in his report. In particular, the Selection Committee will now include a non-practising barrister. This year it will be Keith Mason AO QC, well-known to all of you and who, in

the council's view, was an outstanding candidate for this role. I am grateful to Keith for taking on this onerous task.

The protocol will not, of course, satisfy all of you. One thing it does do is impose a fairly significant burden on applicants in completing the application form and for that matter on the committee in considering it. However, this was thought to be desirable to ensure that the committee makes its decisions on particular candidates with regard to the views of persons who have actually seen them in action and can provide an informed analysis of their ability to take silk. The council will again review the protocol at the conclusion of this year's round of applicants to see what, if any, further improvements can or should be made.

The Bench & Bar Dinner was an outstanding success this year. That was due in no small measure to the outstanding speeches of Justice Virginia Bell, Angela Bowne SC and Jeremy

Kirk. I already feel sorry for next year's potential speakers who will have to try to come up to the same standard. Thanks also to those members of the Bar Association staff, particularly Katie Hall, who worked so hard to make it a memorable evening.

Earlier on this year I attended a number of all-day CPD seminars, both in Sydney and in regional areas. It gave



The Hon Justice Virginia Bell and Jeremy Kirk at the Bench and Bar Dinner 2010

me a good opportunity to hear of the problems confronting many members of the profession in relation to areas such as payment for legal aid work, the competitive advantage solicitors have by being able to describe themselves as barristers and solicitors, and a number of other matters peculiar to the regional areas which I visited. The Bar Council, as best it can, is seeking to deal with

those issues, some of which such as the barrister/solicitor problem are enshrined in statute and will continue to do so.

As I indicated in my column for the previous edition, I want to hear of any particular problems which you have or suggestions in the way the Bar Council can better assist its members. As I then indicated, I have an open door policy and would be happy to talk to any of

you about any matters you wish to raise.

It remains for me to thank the editorial committee of *Bar News* for bringing out such an entertaining and informative publication of which my column, I am afraid, is a somewhat drab footnote.

Tom Bathurst QC

President

BARRISTERS SICKNESS & ACCIDENT FUND

BSAF is the only insurance fund whose directors are barristers and which is operated exclusively for barristers.

Sickness & accident insurance is a key practice management strategy. BSAF's policy provides up to 100% cover. No waiting period. Prompt monthly payment of claims.

BSAF welcomes renewals and new member applications. For further information and a Product Disclosure Statement please visit www.bsaf.com.au, call 9416 0681 or email office@bsaf.com.au



BARRISTERS SICKNESS & ACCIDENT FUND

Protection for barristers since 1962

You should read the Product Disclosure Statement and consider whether the product is appropriate before making your decision.

BSAF insurance cover is issued by Barristers Sickness & Accident Fund Pty Ltd ACN 000 681 317.