

Criminal law a major policy focus for the Bar Association

By Bernie Coles QC



It is a great honour to assume the office of president following the appointment of my predecessor, the Hon Tom Bathurst, as chief justice of the Supreme Court of New South Wales. Over the years Tom has been a devoted servant of the law, holding a variety of positions at the Bar Association and beyond, culminating in his roles as president of the Australian Bar Association, and then of course this association. Tom has played a crucial role in the development of National Model Legal profession legislation and rules, as was acknowledged by the attorney general in his speech on behalf of the bar at the new chief justice's swearing in:

As president of the Australian Bar you proved a strong leader at a time when the move to a unified national legal profession was in doubt. Should this ultimately come to pass, the contribution of your Honour – who helped draft rules which have been adopted by all state bar associations – should be acknowledged.

His skill as an advocate and jurist is widely acknowledged, and his appointment has been universally

welcomed. Tom's contribution has received specific recognition from the Bar Council, which on 26 May resolved that he be appointed a Life Member for 'exceptional service to the Bar Association and to the profession of the law'.

This Winter edition of *Bar News* focusses upon the crucial area of the criminal law. The association's records indicate that 692 barristers practice in criminal law – over a third of the bar. Further, the criminal law has traditionally been, and continues to be, a major policy focus for the Bar Association, not least in terms of the threat to the Rule of Law which is posed from time to time by law and order legislation. The government's recent Crimes Amendment (Murder of Police Officers) Act, which introduced mandatory life sentences for persons convicted of murdering police officers, is a case in point.

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The Bar Association has established a constructive dialogue with the Hon Greg Smith SC MP, the new attorney general, who as a senior counsel and former deputy senior crown prosecutor understands the issues facing the bar and the need for the bar to advocate issues of legal principle which may not accord with the government's own policies. The Bar Association's Criminal Law Committee prepared a comprehensive submission opposing the Murder of Police Officers legislation on the grounds that, among other things, 'mandatory

sentencing breaches basic principles of justice, in particular the concept that similar cases should be treated similarly but that relevant differences should lead to different results.'

The Bar Association's submission was provided to all parties in the parliament and individual briefings of members of parliament were conducted.

Despite the Bar Association's concerns, the legislation passed the parliament. It is of the utmost importance that there are clear lines of communication with the attorney general so that there is mutual understanding, even if we cannot agree on every occasion. I have already had the opportunity to meet the attorney since my appointment as president, and am pleased to report that that kind of mature, co-operative approach is very much in evidence. The association will continue to pursue the interests of

the bar with the new government, not least in the areas of legal aid and tort law reform.

The announcement of the appointment of Tom Bathurst as chief justice coincided with the Bench and Bar Dinner, which was held on Friday, 13 May. Once again, it was a great success, with excellent speeches from the Hon Patrick Keane, John Griffiths SC and Angela Pearman. A good time was had by all.

The Bar Council has again this year reviewed the senior counsel

protocol. It is crucial that the protocol remain under ongoing scrutiny in order to ensure that the senior counsel selection process continues to be relevant, and again this year the views of members were sought as to how the silk appointment process could be improved. As a result of the review process, the protocol has been amended to make it clear that there is no reason why a barrister who practises as a 'pure mediator', that is, who sits as a mediator or in related ADR proceedings, cannot be considered for appointment as senior counsel.

The Bar Council has also approved changes to the *Guide to Practical*

Aspects for Silk Applicants which broaden the range of professional experience which applicants can include in their applications.

Members were also invited to make submissions to the review of the Bar Association's educational programmes conducted by the Hon Kevin Lindgren QC. The review has now been completed and its recommendations are currently being considered by Bar Council. Although no final decisions have been made, Bar Council will be considering the establishment of a specific Education Committee, and closely considering changes to the form and content of the bar exams, among other things.

Both the Bar Council and I welcome the views of members on matters which are important or are of particular concern to them.

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