



This issue

The third and final issue of *Bar News* for 2011 contains the usual Christmas smorgasbord of offerings suitable for reading on a plane, at the beach or between overs at the cricket.

Bob Ellicott QC gives a unique insight into the life and career, brilliance and energy of his cousin, Sir Garfield Barwick. Richard Beasley's 'Duty of care on the battlefield' tells the story or, perhaps more accurately, captures the ordeal of two brave soldiers subjected to, on the face of things, surprising criminal charges. As he wryly observes 'Being shot at in armed combat, by someone you have been told is a Taliban insurgent, who you have been ordered to 'target', and who is firing an AK47 at you from close range, at least arguably seems an odd place, time and circumstance for a duty of care to arise.' The military theme is continued in Part 1 of Tony Cuneen's historically significant account of the contribution of over 300 members of the New South Wales Bar who saw active service in the Second World War. David Knoll's short opinion piece 'A blot on

Bolt' is also not to be missed.

There are an unusually large number of notes on recent developments but all are noteworthy. Two, in particular, focus on recent decisions of the Victorian Court of Appeal and the High Court in relation to arbitration. On one view at least, the decisions are a long way removed from the enthusiastic embrace of arbitration disclosed by the New South Wales Court of Appeal, and in the judicial and extra-judicial writings of its President, Justice Allsop, and former Chief Justice Spigelman. It will be interesting to see what legislative response these decisions receive, if any, given that there may now be seen to be a real tension between, on the one hand, recent concerted political efforts to promote Australia and Sydney, in particular, as a centre for regional alternative dispute resolution (in competition with centres such as that flourishing in Singapore), and the degree of willingness of Australian courts to review and interfere with arbitral decisions, on the other hand. The latter phenomenon is unlikely to be welcomed by commercial parties seeking speedy and certain commercial dispute resolution.

Simon Fieldhouse

The cover of this issue of *Bar News* features a recent painting by Simon Fieldhouse whose work is well-known to members of the legal profession. This picture is from a recent exhibition of his paintings entitled '*Phillip Street Impressions*' and a number of other pictures from the exhibition are contained in this issue. Exploring a new style and working in oil rather his customary pen, ink and watercolour,

Simon captures the movements of barristers to and from, and around the precincts of, the Supreme Court as well as the workings of the court itself.

A series of his paintings commemorating the swearing out of Spigelman CJ and the swearing in of Bathurst CJ now proudly hang on the walls of the Sixth Floor Wentworth/Selborne. A whimsical picture of the late Roddy Meagher, admiring Victoria in her Square, is, I understand, to be donated to St John's College. And a multi-panel study of a judge bearing a remarkable resemblance to Whealy JA in various stages of judicial disrobing was quickly and astutely purchased by the subject himself!

On the subject of art, Ralph Heimans' elegant and engaging portrait of Sir Kenneth Jacobs is also featured in this issue, complemented by Sir Anthony Mason's own portrait of, and tribute to, Sir Kenneth, now in his 94th year, which was delivered on the occasion of the portrait's unveiling. Sir Kenneth, is to hang, as it were, in the newly refurbished President's Court.

Simon Kerr SC

The death of a close colleague and friend from the bar is always distressing. When that colleague is as young as Simon Kerr SC was (39 years), the sadness is overwhelming. As Justin Gleeson SC noted in his eulogy, reproduced in this issue of *Bar News*, Simon was the sixth youngest person ever to come to the New South Wales Bar and there can have been few barristers as passionate and committed to the bar, its traditions and institutions as was Simon. I sat in the same pew at

his memorial service as I had shared with him at this year's Opening of Term Church Service at St James. With enormous strength and courage, and within a few weeks of his death he attended Bathurst CJ's 15 bobber in the Bar Common Room. It is impossible to believe that he has left us, and his presence and contribution to the bar's institutional and social life will be greatly and sorely missed. My own and the bar's sincere condolences are extended to young James (son and grandson of barristers) and Simon's family.

Signing off

I have decided that this will be my final issue as editor of *Bar News*. I have held this position for seven years and have served on the *Bar News* committee for more than fifteen years. I have always held the view that *Bar News* can and does play a significant role in the life of the bar, as well as serving as an important journal of record. That is one of the reasons why pieces of

historical interest and significance have been given such prominence.

To have served for a considerable time as editor of *Bar News* has been a great honour and privilege and a role that I have at all times greatly enjoyed. I am proud of the very high quality the publication has attained. This has only been possible with the substantial input of all of those who have served on the *Bar News* committee over the years as well as those who have contributed articles, notes, opinion pieces, reviews, cartoons and drawings over the years. Serial contributors such as Ash, Beasley, Webster, Gleeson, Moses, Stoljar, Chapple, Graham, O'Donnell and Tony Cuneen, as well as Sir Anthony Mason and Justices Heydon, Kirby, Spigelman, Allsop and Rares on the judicial side have ensured that the quality of the contributions has always been first rate. Perhaps the greatest source of personal pleasure, however, has come from the opportunity to encourage

(but never to edit - well 'hardly ever') Aitken and Poulos QC in their brilliant collaboration that is 'Bullfry'. 'Bullfry at the end of Dinner' which appears in this issue is up there with the best, and any resemblance of any of Bullfry's 'boon companions' to senior members of the inner bar is, I am almost certain, entirely coincidental.

For almost the entire duration of my involvement with *Bar News*, Chris Winslow of the Bar Association has been responsible for the production of the publication. My debt to, and respect for, him is immense. The Bar Association and its members should be very grateful to have as one of the senior staff a person of such intelligence, civility and skill.

It remains to wish all members 'Happy reading and happy holidays' and to wish my successor as editor the best of luck in the role.

Andrew Bell SC
Editor

Legal Transcription Specialists

- ☒ Upload your digital files to our secure website
- ☒ We begin typing your files within minutes of upload
- ☒ Accuracy, Reliability & Confidentiality Guaranteed

Established 1997

For more information
call us today on

0417 388 880

or visit our website

www.lawscribeexpress.com

