

Royal commission welcome, but due process must be followed

By Phil Boulten SC



It is a great honour to take on the role of president of the association. I am looking forward to the challenges ahead. I know that I will have the support of the Executive and a very gifted group of bar councillors as we all deal with a number of important issues for the bar this year.

I wish to acknowledge the work that our outgoing president, Bernard Coles QC, undertook on behalf of us all during his term. Amongst other things, Bernie took over the running of the association at a time of flux, with the process of development of a National Legal Profession model still a matter of continuing consideration. He also played a steady hand during some sensitive Federal Court litigation last year involving the silk selection process. I wish him well in his future career.

Over the next 12 months the New South Wales Bar will be contributing to the continuing development of what will, hopefully, be a truly national legal profession. We now have National Bar Rules and we will shortly have legislation in NSW that reflects the ground work that our former president and now chief

justice, Tom Bathurst, undertook on our behalf. In line with the National Rules and the model legislation, the bar will remain truly independent.

The independence of the bar and the inter-related cab rank rule is what makes practising as a barrister so worthwhile. Fearless and well considered advocacy are the essential hallmarks of the bar and need to be maintained. I strongly favour our existing model of sole practice in a collegiate environment.

This year the bar will give further thought to the shape of the silk selection process. The reforms that were introduced a few years ago in the wake of the Gyles Report mean that the selection protocol now emphasises the nature of applicants' practices. Objective analysis of applications using the relevant criteria is at the heart of every decision. But there is always scope for refinement and improvement and the Bar Council will be considering the issue again over the next few months.

Any substantial proposal for change will, of course, be the subject of consultation with the bench and bar. I wish to highlight at this point, though, that I regard the undoubtedly objective contributions that the silk selection committee receives from the judges of this state to be an essential feature of the system. To maintain judges' confidence in the process it will be necessary to ensure that their views are received in strict confidence.

It is timely then to express my personal pleasure at the appointment of 12 female silks this year. It was a year where the standard of applications was particularly high. It was also clear

at the outset that there was going to be a higher number of successful women than normal. But the committee was delighted when eventually so many excellent female candidates appeared on the final list.

2013 will be a year where law and order issues will be prominent in the association's consideration. The Law Reform Commission's recommended changes to the Bail Act have yet to be considered by parliament. The bar was entirely supportive of the commission's proposed liberalisation of bail laws. Ian Temby QC acted as our public advocate on this topic this year and he will be to the forefront of the public discussion when the government flags its considered response.

The bar has joined with the Law Society in its criticisms of the government's proposed amendment to the police caution – which effectively legislates for the undermining of an important aspect of an accused person's right to silence. This proposal has been met with fairly widespread criticism amongst barristers – including many who do not practise at the criminal bar. I will be attempting to convince our legislators that this measure is unnecessary when it goes to parliament after Christmas.

The Legislative Council's Select Committee of Inquiry into the partial defence of provocation has proven to be a little more controversial amongst barristers with many recognising that the current nature and scope of the defence can sometimes lead to surprising results. Yet, the bar has decided to advocate in favour of maintaining the defence, even if it is to be modified to better reflect modern attitudes to

violent responses sourced in sexual jealousy.

The royal commission into paedophilia will be a major feature of the national legal landscape next year. The Commonwealth and state and territory governments are currently coming to terms with the formal and procedural scope of the inquiry.

This is an important opportunity for people of good will throughout the country to focus on the way that organisations that care for children and young people can put structures in place that both guard against harm and that lead to the early and proper detection of perpetrators.

There needs to be vigilance, too, to ensure that whenever serious allegations of child sexual assault are made against somebody that the process of handling the response is undertaken calmly and responsibly. The criminal justice system must be maintained as the venue for the determination of guilt or innocence and for the setting of appropriate penalties following findings of guilt.

Finally, I would like to congratulate the association's latest life members.

At its meeting on 11 October 2012 the Bar Council bestowed life membership upon the Hon Kevin Lindgren AM QC and the Hon Justice Anthony Meagher. Justice Lindgren was central to the

development and implementation of the bar's education program over many years, and conducted the recent comprehensive review of the association's educational programmes. Justice Meagher provided essential and very effective advice and assistance with the association's negotiations with professional indemnity Insurers for many years. We greatly appreciate their efforts on our behalf.



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