

# What the Bar was, is and can be

Australia is indeed the lucky country, for most. Yet the tyranny of the majority has cast its stains here too.

One such stain is the treatment of our Indigenous peoples. Massacred, dispossessed of their land, deprived of citizenship, and treated with disdain or worse for decades, the descendants of our First Nations unsurprisingly remain largely disadvantaged.

This edition of *Bar News* focuses on the rights of First Nations people and the law.

In August 2001 the Bar Association established the Indigenous Barristers' Trust – The Mum Shirl Fund. Established and carried on in large part by the sheer force and determination of Chris Ronalds, with the support of Ruth McColl, Bret Walker, Mullenjaiwakka and Michael Slattery, amongst others, it has facilitated the pursuit of the practice of law by Indigenous persons.

This edition carries profiles of four such First Nations lawyers: Teela Reid, previously tipstaff to Justice Lucy McCallum, and barristers Tony McAvo, Leon Apostle and Damian Beaufls.

Teela speaks of the assistance provided by the Bar Association and the trust: 'It's not just the financial assistance – it's the connections made amongst law students, graduates and people in the profession such as judges, barristers and solicitors that are breaking down barriers. Young Aboriginal lawyers are now starting to believe that going to the Bar is possible...'

Michael Kirby has written a piece that examines the everyday discrimination faced by Aboriginals in the in the 60s. And Sol Bellear, who recently died shortly before the 25 year anniversary of Paul Keating's Redfern Speech, speaks of its impact in a moving interview conducted by the NSW Aboriginal Land Council.

Looking forward, Professor Megan Davis, Professor Rosalind Dixon, Associate Professor Gabrielle Appleby and Noel Pearson discuss how the First Nation's people should be recognised by our Constitution, and why there should also be a mechanism created to acknowledge the wrongs of the past. As they explain, the Uluru Statement from the Heart provides the path to an important, indeed necessary, step to true recognition and reconciliation. It is a shame that the human failings of our national cricketers gave rise to more commentary and column inches than the failure of our leading politicians to embrace the Uluru Statement.



Vance Hughston SC and Tina Jowett provide an analysis of the developing law in respect of native title compensation claims, where Courts are being asked to put a monetary figure on the loss of the connection Aboriginal peoples have with 'country' following the extinguishment of their native title rights.

A different stain caused by the tyranny of the majority is examined in a powerful speech by a leader of our Bar, Bret Walker. His speech focusses on our nation's decision to indefinitely detain refugees overseas. By reference to German case law and the writings of Immanuel Kant, he expounds on the fundamental proposition that it is impermissible to use the lives of others as a means to an end.

*Bar News* continues to examine the current State of the Bar and its increasingly diverse membership. To that end there is a new column, 'Who is a barrister?', under which title each edition will profile a barrister who is not one of the usual suspects.

The caricature of a barrister is a white, middle-aged man practising out of wood-paneled chambers adjoining the Supreme Court (yes, Bullfry, I am talking about you). They still make up a sizeable proportion of the Bar, but they are aging (about a third of the Bar are men over 60yrs of age) and the make-up of the Bar is gradually changing. Did you know that more than 10% of the Bar are women over 50 yrs? The first 'Who is a barrister?' column profiles one of them – Anne Gibbons, who came to the Bar at the age of 52 yrs.

Wellbeing at the Bar continues to be a significant issue. Our President has written a powerful column on judicial bullying and the effect it has on practitioners.

A view from the other side of the bar table is provided by our first Archon's View column. An anonymous Superior Court judge writes about the effect that certain types of counsel

have on her [or him]. Known types of counsel are identified, such as the LOD (light on detail) counsel, who 'work on the assumption that facts are like truffles, an expensive delicacy not to be consumed in substantial quantities; also that judges were truffle pigs. And, just in the case of the poor truffle pig, the judge never got the good end of the deal.'

For those who have been meaning to take up gentle exercise to help address the stresses of the Bar, there is a review of Supreme Court Justice Ruth Bader Ginsberg's exercise regime.

This edition also contains a typically entertaining piece by David Ash, packed full of amusing asides, on the development of the law on implied terms in a contract. It reveals the rich history that underlies the usual one paragraph excerpt from *BP Refinery (Westernport)*, the last Privy Council decision to be recorded in the *Commonwealth Law Reports*.

There a number of other great pieces. David Robertson has written a fascinating account of the first paperless trials being conducted by the Land and Environment Court. Michelle Painter provides an insight into the tragedy and emotions that arise when 'the whispering division' hears matters in its Family Provision List. Christopher Parkin of the NSW Bar, and Duncan McCombe, chair of the Young Bar of England and Wales in 2017, tell us what it is like to practise at the London Bar. Alexander Rose writes about how the law is slowly catching up with genderfluidity. Steven Berveling provides an insight of what it is like to be a plaintiff in a personal injury matter. Kevin Tang provides another of his entertaining excursions into the history of the Bar, this time the history of the 'Doctor's Commons' who practiced ecclesiastical law. And Poulos' obituary of that titan of the Bar, Robert Toner SC, is absolutely wonderful.

*Bar News*, as the journal of the NSW Bar, is a record what the Bar was, what it is, and what it can be. If you can contribute to that record, please do so.

In particular, if you have a strong view about an aspect of practice or the mores of the Bar then send me a piece that can be published anonymously as *Advocatus*.

Or if you merely have questions, then send me one, and let the Furies provide the answer.

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