

# Welcome Michael McHugh SC, and thank you Tim Game SC

Ingmar Taylor SC

This edition carries Michael McHugh SC's first President's column. In that sense it marks the end of Tim Game SC's two years as President of the NSW Bar Association.

To put yourself forward as President of the NSW Bar Association is, at the best of times, to volunteer to undertake a role full of multiple demands and potential pitfalls. A previous President estimated his practice income reduced by more than 30% while President.

Game SC had thrust upon him the additional task of guiding the Association and its members through a period when the Bar and Bench was forced to adapt and change more rapidly in one year than it had in the previous 20 years. He demonstrated great leadership in a difficult time, and no doubt hands over with some relief to McHugh SC. He is to be applauded for his efforts, ably assisted by the staff of the Association, led by the modest and deeply effective Greg Tolhurst.

McHugh SC has a number of things waiting for him. COVID-19 issues will continue to dominate, but hopefully will be less time consuming going forward. That will allow him to focus on finalising the Bar Association's next five year strategic plan. It will contain a number of targets. McHugh SC, who featured on the front cover of the Bar News special edition on diversity, will be keen to see the Bar and subsequently the Bench continue to become more representative of society. Another target will be addressing sexual harassment and bullying. On that subject, this edition carries a significant article, led by Penny Thew and co-authored by Kylie Nomchong SC and Pauline Wright, President of the Law Council of Australia, which examines whether, following the Hon Chief Justice Kiefel's statement into the conduct of the Hon Justice J D Heydon, *Winds of Change* might blow through the legal profession.

The Bar Association has appropriately always taken a leading role in commenting



on law reform. One issue that will be an active area of debate over the next two years is drug law reform. Following a recommendation by the Criminal Law Committee, the Bar Council resolved in October to publicly state its endorsement of the recommendations made in the Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants. Recommendation 11 of the Special Commission Report is to implement a *model for the decriminalisation of the use and possession for personal use of prohibited drugs*. Chapter 11 of the Report summarises the evidence that demonstrates a health response is more appropriate than a criminal response. The focus should be on criminalising the drug trafficker, but treating the drug user. Too many young lives are irrevocably altered by a criminal conviction for minor drug possession. Criminalising minor drug use does not prevent it occurring, but does prevent a health based response being effective. More significantly, it facilitates organised crime and its associated violence and intimidation. 30 countries and 18 States of the USA have to varying degrees decriminalised personal drug use. It will take courage for the NSW Parliament to address this issue rationally and based on the evidence. When it does the NSW Bar Association will be there to assist it.

Turning to this Summer Edition, you will find plenty of interesting reading.

Dominating the news as we go to print is the report written by Major General Paul Le Gay Brereton AM RFD, Judge of the Supreme Court of New South Wales, into war crimes committed by the Australian Defence Force during the war in Afghanistan. This edition carries an article about his father, Russell 'Dooley' Le Gay Brereton. Later also a Supreme Court Judge, he too conducted an investigation into war crimes immediately following the end of the World War II. A barrister before he joined the army in 1941, he was appointed a War Crimes Officer in 1944 and investigated and then prosecuted Japanese guards of Australian POWs held in the notorious 'death camps' of North Borneo during the Second World War.

This edition also carries the 2020 Maurice Byers lecture by Professor Anne Twomey titled the *Constitutional Maelstrom of the Whitlam Era* which examines the role that Maurice Byers, the Commonwealth Solicitor General, played during those years. It is a wonderful and accessible piece of legal history writing.

A current Solicitor-General, Michael Sexton SC, who was himself involved in the Whitlam Era as an adviser to the Attorney-General, Kep Enderby, is the subject of an extended interview conducted by Elizabeth Raper SC. Sexton SC, who has been NSW Solicitor-General for over 22 years, has written often and incisively on various political issues of the day. A selection of his articles has recently been gathered into a book entitled *Dissenting Opinions*. Alongside the interview we republish one of those pieces, which argues that the USA experience reveals that Judges become politicised by the existence of a Bill of Rights.

Two further pieces focus on the US Supreme Court. Ann Bonnor examines the life of a Vägmärken (waypaver), Justice Ruth Bader Ginsberg, aka 'the Notorious RBG'.

Geoffrey Watson SC tells the legal backstory to *Roe v Wade* and explains that its jurisprudential underpinning is based on a *right to marital privacy*.

Gail Furness SC, who has a capacity to draw frank revelations, does not disappoint in her interview with silk and author Richard Beasley SC, whose preferred political culinary delicacy made the front page of *The Australian*.

For those questioning whether there is life outside the Bar, we have three articles to make you think. Belinda Baker has started a new column we will call 'With my own two hands', which examines what barristers do in their spare time to make the world a better place. She interviews Peggy Dwyer to learn about Weave, a community organisation assisting the disadvantaged in Redfern, Waterloo, Woolloomooloo and surrounds.

For those who nurture artistic yearnings, Sean O'Brien has written a marvellous piece about Carlo Goldoni, attorney and advocate who gave up advocacy to take up playwriting, penning *The Servant of Two Masters* and other great comedies. And Kavita Balendra interviews Michelle Painter SC, who tells us about the joys and therapeutic benefits of knitting.

There are many other great pieces as well. Naomi Wootton and Aleksandra Ilic separately examine the life of Justice Jane Mathews. Therese Catanzariti wonders how many case names are mispronounced. The Honourable Michael Kirby AC CMG reminisces about his time at the Bar on the unveiling of a portrait at 12 Wentworth Selborne Chambers. Stephen Ryan writes about how COVID-19 changed the Bar Practice Course forever, accompanied

by striking photos of masked and robed readers. And Douglas McDonald Norman tells us about Justice William Broome, the British born lawyer who remained in India after Independence as a High Court Judge.

Can I thank my fellow Bar News committee members who have each contributed significantly to this edition, along with the redoubtable Michelle Nisbet who as always guided the edition expertly to print.

Last year our cover depicted our barrister couple on scooters on the Amalfi Coast. This year Rocco Fazzari has captured them unsurprisingly closer to home, soaring over the Three Sisters. I hope you too are able to enjoy a break over summer somewhere in this great country of ours and find something to enjoy in this Summer Edition. **BN**

Happy Holidays!

Ingmar