

Pull open a Cracker of an edition

Ingmar Taylor SC

It is not just train drivers and teachers who take industrial action. The criminal bar in the UK have been on strike this year over terribly low brief fees to conduct criminal trials. As Anthony Cheshire SC writes in 'Crime doesn't pay', juniors are briefed to appear for a fixed fee of £90 or £125, with no allowance for preparation, from which they fund their own travelling expenses to appear in regional courts. The average annual income of a criminal barrister in their first three years is just £12,200 (about \$22,000 AUD).

As Catherine Gleeson tells us in her review of the Secret Barrister's latest book, *Nothing but the truth*, compounding the problem is the fact that if a matter does not get on (which is more common than not) no fee is paid, despite the preparation that was done. The chronic underfunding of the legal system in the UK has led to a backlog of over 60,000 cases in the Crown Court.

The net result is a broken system that, in effect, uses the junior bar as a virtually free service on the unspoken assumption that they will do it in order to achieve a level of seniority where they can obtain a liveable income, which rather assumes they can afford to maintain themselves in the meantime.

These stories underline the importance of the NSW Bar Association's successful advocacy to improve Legal Aid rates for barristers, although they remain too low.

Decriminalisation of the use and possession of prohibited drugs for personal use has been the consistent policy position of the Bar Association for decades. In recent times it has called for the recommendations of the Report of the Ice Inquiry to be adopted. Criminalising personal use of prohibited drugs prevents appropriate health care, encourages organised crime and has a disproportionate effect on young disadvantaged people, including first nations people, who find their limited opportunities further reduced once caught up in the criminal justice system.



Despite the majority of the population supporting decriminalisation it has proven a change too politically difficult for either major political party to adopt (despite the best efforts of our current Attorney General Mark Speakman SC). In Sean O'Brien's article subtitled 'Justification for a citizens' assembly', Sean looks beyond the government's (inadequate) response to the recommendation of the commission of inquiry into the drug 'ice' to ask: is there a way to de-politicise such issues so that they can be addressed? He examines the Irish 'Citizens Assembly' approach, under which an assembly made up of randomly selected citizens and those chosen by political parties consider specific and highly contentious issues. Their recommendations have paved the way for constitutional and legislative reform in respect of subjects thought politically intractable, including same-sex marriage and abortion.

Speaking of inadequate responses, Hugh Dillon, in his article 'Reforming the Coroners Court: If not now, when?' considers the NSW government's response to the Legislative Council Select Committee report on the coronial jurisdiction in NSW. The Bar Association has called for the recommendations to be acted upon. Dillon points out that NSW is the last jurisdiction in Australia to use under-resourced magistrates and public

servants as coroners. Nearly half the deaths reported in NSW occur in regional and rural areas, yet they fall to the busy local magistrates to determine, rather than being heard by specialist magistrates.

We are privileged to be able to reproduce David Gonski AO's Bathurst Lecture 2022 on cyber-security. Speaking shortly before Optus and Medibank became front-page news as a result of cyber-hacking, Gonski presciently identified cyber-security as a number one issue that company directors must address. What should they be doing to protect their companies from cyber-attacks? Should it be illegal to meet ransomware demands? What should the government do? As you can expect from our country's pre-eminent company director, it is a carefully considered and fascinating speech.

The legal world's reaction to the death of Her Majesty, Queen Elizabeth II is explored by Daniel Yazdani in an interesting piece that delves into the history of Her Majesty's links to Australia. He sets out in full a speech Her Majesty gave in 1968, but only released in June this year, which includes 'the Bar is as much a safeguard to our liberties today as it has been in the past.'

The piece carries a picture of the robes worn by the Hon Justice Kunc during the official period of mourning following the Queen's passing, replete with mourning bands and weepers (the latter being white linen coverings for the cuffs and sleeves of the court coat that allow a judge to use his or her sleeves to wipe away tears – hence 'weepers').

David Townsend, in his article 'Government dies with the sovereign no more', examines the history of the demise of the Crown. Up until the late 18th Century the offices of all ministers, judges and military officers fell vacant upon the death of the sovereign, which left the State with no ready means to determine a controversy over succession (either legally or militarily).

One of my favourite articles is Awaid Ahmad's wonderful letter to his mentor, Kevin Connor SC, that tells the story of how, as a reader, he took on pro bono a case for Likumbo Makasa, a Zambian national of the same age, who was in detention and whose visa had been cancelled. He represented 'Li' over the next nine years, through multiple hearings, including two Full Federal Court Appeals, ending in a unanimous successful decision by the High Court. He writes frankly of his frustrations and his mistakes, of times of stress and tears shed in the AAT bathrooms, and of those who assisted him along the way, and concludes:

As the members of the High Court strode off the Bench, and with my face-mask on due to protocol, my eyes closed and tears filled them. I embraced Jason for a moment, and saw Li's figure: a tall, dark man standing at the edge of the public gallery, tears also rolling down his cheeks, waiting to embrace me.

Gail Furness SC, recently appointed Inspector of the Independent Commission Against Corruption, explains what the role entails. While much of the public criticism of the ICAC is misguided, it is useful to know that there is an avenue for legitimate concerns to be raised.

Stephen Ryan writes a lovely piece on a misfortune that every prosecutor fears: exhibits that go missing.

Speaking of your worst fears, many a junior barrister has woken with the (not always irrational fear) that their leader may not appear that day leaving them to run the case. Nicholas Bentley has written a great article that explores what to do in that situation.

The process of coming to the Bar is not without its complexity. The New Barristers Committee have put together a useful and thorough guide of things to know before coming to the Bar that I am sure will be a useful resource for years to come.

Mental health at the bar is the focal point for the Wellbeing Committee. Emily Graham writes about a pilot Mental Health First Aid First Responders course that trained three barristers and eight clerks on how to identify those who may be suffering from mental health issues.

This edition carries some fantastic interviews. Elizabeth Nicholson interviews Mark Dennis SC the founder of the charity Reasonable Cause and learns about the heartwarming and significant work the foundation does for children living in disadvantaged countries.

Sally Dowling SC, Director of Public Prosecutions NSW, is the subject of a wonderful interview by Ann Bonnor and Libby Nicholson that explores her views of the ODPP.

The Bar Association's Disability Advocate for Change, Robert Dubler SC is interviewed by Simon Philips. The inspirational interview examines Robert's personal experience of working as a quadriplegic at a senior level at the Bar and as a senior member of NCAT. Robert speaks of what needs to be done to make the Bar more accessible for those with a disability.

Sharyn Hall SC is the Bar Association's new LGBTQI Advocate for Change. She speaks frankly and warmly with Claire O'Neill about her lived experience, the challenges faced by LGBTQI barristers, and what we can do to promote a more inclusive profession.

We reproduce an edited version of the fantastic and funny Paul Byrne SC Memorial lecture given by the Hon Justice Peter Hamill, which recounts the professional life of one of the NSW Bar's greatest criminal lawyers.

Justice Davies, The Hon Mary Gaudron KC and Dr John Kennedy McLaughlin have penned a wonderful obituary for Janet Coombs AM DSG CEP DGCHS, the eighth woman admitted to the NSW Bar, who practised continuously from 1959

to 1998. Coombs was a founding member of the Women Lawyers' Association and was instrumental in acquiring a room, known as 'The Women Lawyers Room' in Frederick Jordan Chambers, to ensure that there was a room available for new women barristers. Coombs insisted that each new woman barrister should accompany her to lunch in the Bar Common Room. This led to a biannual event conducted by the Women Lawyers' Association, called 'The Janet Coombs lunch', to welcome new women barristers and to honour Coombs' work.

It being the Summer Edition, we have 'What Podcasts to Listen to this Summer' by Reg Graycar along with some great book and movie reviews. There is also a summer crossword, filled with litigation related clues, and a chess problem.

Before I finish I must mention someone who has perhaps contributed more to Bar News' success than anyone since it was founded by the Hon Ruth McColl SC. Chris Winslow commenced at the NSW Bar Association 27 years ago, and for most of that time was (among his other roles) the unseen hand that guided and assisted a series of editors. One of those past editors, Chief Justice Bell, has lured him away, which means that after 27 years Chris has gone up in the world (literally, from the basement to the Supreme Court's 6th floor). On behalf of myself and all the past editors, I sincerely thank him.

The summer holidays are upon us. Whether you are looking forward to testing yourself in the waves, like our cover-art counsel, or to just contemplating a view, like Bullfry at Patonga, I hope and trust you will enjoy a well-earned break and return refreshed for a wonderful 2023. **BN**