

Welcome to the Summer 2022 edition of *Bar News*

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At the beginning of November the Bar Association successfully held its first 'hybrid' election process, enabling votes to be cast either online or by paper ballot. There was a significant uptake of online voting, and over 300 members cast their vote by paper ballot, demonstrating a demand for both forms of voting. The Bar also responded in higher numbers to the call for greater involvement, both in the number of nominations and the significant increase in those voting for nominees. Thank you to everyone who submitted their nominations and stood for election to the Bar Council. You ensured a strong process through representative participation and there was greater engagement by members. I extend an enormous thank you to each and every member who voted. I hope that you continue to exercise this important right in the future.

My sincere thanks to the Bar Council of 2022 for their extraordinary work and commitment to the Bar. Congratulations to those councillors who have returned for 2023 and to new Bar councillors. I am excited to have the opportunity to work again with the same dedicated executive team, and that there is continuity for the Bar in this respect. I am particularly delighted to welcome Tony McAvoy SC to the Bar Council and am very grateful to him for standing for nomination. It is a privilege to lead the first council where the Bar has elected an Indigenous barrister, a Wirdi man and traditional custodian of lands in this nation, to contribute as a director of the Association.

Although the COVID-19 pandemic continues, and we are entering what has been called the 'fourth wave', the courts have now almost fully resumed in-person hearings. Face masks are now voluntary and the days of seeking leave to appear in person are mainly behind us. We remain mindful of our colleagues who are still at high-risk to the virus, and of supporting members through health and professional challenges wrought by the pandemic.



The re-opening of the courts has allowed for the happy celebration of swearing-in ceremonies and silks bows, including the 2020 and 2021 bows ceremonies before the High Court of Australia. The silk bows ceremonies in the High Court had unfortunately been delayed for two-and-a-half years. They were followed by a combined dinner at the National Gallery – a true celebration after years of hiatus. The swearing in of Justice Jagot was able to be held before a full bench, bar table and court room, with many also watching online, from interstate.

The passing of Her Majesty the Queen and the ascension of the new King have also marked an extraordinary time in history. There are two articles relating to the death of the sovereign in this edition. The direct impact on the NSW Bar was that our QCs automatically became KCs, there now being KCs in this State for the first time in 71 years. Prosecutions are conducted in the name of the King and an oath of allegiance is sworn to His Majesty by freshly appointed judicial officers.

The last QC/KCs were appointed and took their bows in NSW in 1992, with the first Senior Counsel in this state being appointed in 1993. There is a detailed history of the transition in the 1993 edition of *Bar News*. As Chief Justice Bell recently affirmed, 'speaking in 2022, the

designation of SC is completely appropriate and suited ...in a mature, *independent* legal profession in which the decisions of English courts have no superior status in terms of precedent than those of any other common law jurisdiction...'. His Honour also emphasised the importance of senior counsel given the changed constituency of the Bar. I entirely support these observations.

At the time that I write, we will be honouring the Honourable Elizabeth Evatt AC, only the sixth woman to practise at the NSW Bar, at the annual Sybil Morrison lecture. There is no doubt that the Bar is a much more welcoming and diverse place than it was when Sybil was the sole female member in 1924, or when Elizabeth Evatt joined in 1955 at age 21, just three years after Queen Elizabeth II commenced her long reign. That is in no small part due to the reception of many by the beloved Janet Coombs AM, the eighth woman to join the Bar, who is honoured in these pages. More recently our Advocates for Change have also been extraordinary contributors to diversity; two of them are interviewed. Legendary advocates in the mould of the late Paul Byrne SC continue to play a great part in inspiring people from all walks of life to answer a call to the Bar, and in mentoring and shaping the craft of juniors. The Memorial Lecture given this year by Justice Hamill SC and set out in these pages, pays tribute to him.

The fact that the Bar has changed could not be more apparent than in the historic photograph of those members of the Bar who gathered at the Supreme Court steps on a spring day in town in October this year, on this side of our continuing emergence from the pandemic. The atmosphere on the steps of the court was delightful. While the photograph is not a representation of the entire Bar, it is a happy snapshot of an historic point in time for our members. The image is shared in this edition of *Bar News*.

Professional conduct and policy matters

The Bar Council has been diligently working through professional conduct matters and will continue to address delays through the finalisation of the consideration of complaints.

The Association's policy work has included submissions on a range of matters. The Association advocated for an offence of coercive control with a mental element of "intention to coerce and control" rather than recklessness, in order to lessen the risk of the offence capturing those it is designed to protect. The Bar had closely followed hearings before the Joint Select Committee in NSW, which reviewed similar offences in other jurisdictions including Scotland, Ireland and England, considered 156 submissions and heard evidence from victims, survivors, community groups and legal experts. A number of the Bar's drafting suggestions were adopted in the final Bill, which has now been enacted.

Other submissions in recent months include those in relation to: the "No Body No Parole" legislation; the *Crimes Amendment (Money Laundering) Bill*; the *Dedicated Encrypted Criminal Communication Device Prohibition Orders Bill*; the *Law Enforcement (Powers and Responsibilities) Amendment (Digital Evidence Access Orders) Bill*; the Statutory Review of the *Personal Injury Commission Act*; the NSW Parliamentary Review of the CTP and Lifetime Care and Support Schemes; and continued advocacy in relation to adoption of the recommendations of the Ice Inquiry. An article on looking beyond the NSW government's response to the Ice Inquiry recommendation for decriminalisation is part of the contributions in this edition. The Bar will also be participating in the recently announced review by the Legal Services Council of the costs disclosure thresholds in the Legal Profession Uniform Law.

We have also advocated for wholesale reform in the coronial jurisdiction, which remains part of the Local Court but should be a standalone jurisdiction. Regional magistrates are overburdened and the benefits of having trained coroners conduct inquests are indisputable. Hugh Dillon writes in detail in this edition about necessary reforms. This edition also contains insights into the role of counsel assisting in inquiries and role of the Inspector of the NSW ICAC.

The NSW Bar is an active participant as a constituent body of each of the Australian Bar Association and the Law Council of Australia and a contributor on matters of importance in the Federal jurisdiction, such as the proposed National Anti-Corruption Commission (NACC). The Bar Council has endorsed the Law Council's position regarding the NACC's ability to conduct public hearings where a private hearing would be either unfair or contrary to the public interest and for development of procedural fairness guidelines with respect to public hearings.

The Association strenuously objected to the NSW government's recent refusal to permit access for the United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) to inspect NSW correctional facilities. The Australian government ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) on 21 December 2017 and in so doing agreed to be bound by the important human rights protections afforded prisoners and detainees. One of the most important elements of the OPCAT protections is agreement by governments to unannounced visits of correctional and other detention facilities by the SPT.

The Association wrote to the Premier, the Attorney General and the NSW Minister for Corrections expressing our concern

about these visits not being allowed in NSW. It is now close to five years since Australian States and Territories became bound by OPCAT, and recent reports by the NSW Inspector of Custodial Services have highlighted persistent and significant concerns regarding the treatment of detainees and the inadequacy of facilities in NSW prisons, most recently at Parklea and Goulburn Correctional Centres. Moreover, the rate of deaths of First Nations persons in custody in NSW remains unacceptably high and continues to rise. The Association has called for concerns identified by the NSW government as holding up its implementation of OPCAT to be addressed without further delay.

On a brighter note, we have issued the latest National Mediator Accreditation System accreditations and our Legal Assistance Referral Scheme has received and facilitated hundreds of applications to date this year. The Indigenous Barristers' Trust the Mum Shirl Fund, founded in 2001, is continuing its wonderful work funding books and clothing for eligible recipients in need. The Barristers' Benevolent Fund has also been called on to assist those in need of grants or loans.

On a lighter note, summer is coming and this edition has a healthy dose of Bullfry, the Furies, *Advocatus*, film and book reviews, podcast recommendations, the cryptic crossword and a spotlight on the inaugural Bar Revue.

In summary, the Association continues on with the energetic and productive drive and dedication that saw us weather the lockdowns and emerge in good stead. We have much to be grateful for at the NSW Bar, including the exceptionally hard-working staff at the Association, our extraordinary voluntary expert committees including the *Bar News* Committee, and our unique and enduring camaraderie. **BN**