

Dear Fellow Practitioners,

It is likely you have noticed the increasingly partisan manner in which the NSW Bar Association has been involving itself in politics and the daily media cycle.

I am writing because I would like to assess whether our membership supports this trend.

For myself, I do not believe it is in the interests of the profession for our peak body to maintain an overtly ideological and partial stance. Also, it is impossible for the Bar Association to do this while remaining representative of all its members.

The purpose of the NSW Bar Association is to look after the welfare of barristers and advance their interests. The organisation has a role as a sensible and constructive participant in law reform. It has never been, and should not be, a soap box for senior members of Bar Council.

In this last year the NSW Bar Association has made a number of highly partisan forays into the public arena. For an organisation that relies on being taken seriously by incumbent governments, I would describe them as imprudent:

1. In October 2014 the Bar Association issued a press release that accused the then Prime Minister of inciting racial hatred and opined that he might be prosecuted for racial vilification under s.20C of the Anti-Discrimination Act 1977. It described him as 'ill-informed' and 'patronising' and went on to suggest (in a way unlikely to improve our reputation for dispassionate legal analysis) that it is not for government to regulate the clothing that can be worn in secure areas. I include a link to that press release: <http://www.calameo.com/read/004487514901176b94753>
2. In August this year the Bar Association attacked the then Prime Minister for commenting on the Federal Court's decision in the Carmichael mine case, saying he had a 'lack of understanding' of the role of the courts in our political system. Yet a month later the Bar Association then conspicuously failed to criticize the Leader of the Opposition for leading a highly political attack on Dyson Heydon AC QC; a man who is, by any measure, one of our most distinguished members. This rather pointed omission was only rectified after some highly embarrassing media comments (for example, the editorial in The Australian on 26/08/16: 'NSW Bar's Defence of Dyson Heydon Not Good Enough'). When something was finally done to express support for our colleague, the gesture had become meaningless.
3. At the time of release of the Bar Association's new Equitable Briefing Policy a representative of the Bar Association told the media and was quoted as saying many barristers have an attitude to the advancement of women that is 'ignorant' and 'offensive' (Australian Financial Review, 4 September 2015).

The Bar Association also trumpeted the claim, which frankly I regard as misleading, that female barristers earn 30% less than male counterparts of equivalent seniority.

4. Over the past year the Bar Association has spoken out vociferously on behalf of persons such as Professor Gillian Triggs and the lawyers who represented Man Haron Monis, but refused outright to say anything in support of other members of the association who, apparently, were not judged worthy of similar support.

5. The Bar Association put out its own policy statement during the 2015 State Election. It is a mystery to me what business the NSW Bar Association has putting out policy statements during an election campaign.

There is a related point as well. The increasing tendency of members of our Bar Council to mimic the behaviour of elected politicians (viz., putting out media releases, issuing policy statements) seems to have been matched by a new fondness for playing identity politics, and in a way that will tend to undermine the regard in which we are held as a profession.

For example, I agree it is important for the NSW Bar Association to help female barristers (just as it should help all barristers). However I do not believe the situation is improved by unfair portrayals of the NSW Bar as a milieu that is both sexist and apparently, also, 'ignorant' and 'offensive' in its sexism. It was deeply unwise for the Bar Association to tell the media that perceptions of the NSW Bar as an 'old boys club' are accurate, and barristers are not briefed on merit ('Women Still Lose Out On Court Speaking Roles', *Australasian Lawyer*, 21/07/15).

In my view steps need to be taken to restore the public credibility of the NSW Bar Association, as well as our profession, because both are disintegrating rapidly. Without being too prescriptive, I suggest a media protocol should be introduced, and amendments made to the constitution of the Bar Association. The purpose of this would be to ensure that neither the Presidency of the Bar Association (nor any other position in the organisation) can be used as a platform for the unilateral expression of ideological and personal views, as distinct from policies that have been adopted by the entire Bar Council in properly convened meetings of Bar Council.

I have been a member of the NSW Bar Council for the past year, after an absence of several years (since 2006-2008). My perception is there has been a very noticeable change in how the organisation conducts itself. There were no formal resolutions passed by Bar Council in favour of condemning the Prime Minister for racial vilification, or releasing a policy statement during the State Election, or any of the other public gestures I mention above. For some time now the pattern has been for the organisation to take and publicly express political positions without any regard to its ostensible organ of governance. As a general rule, the ordinary members of Bar Council do not learn about media

statements or other communications by the Bar Association until these communications have actually occurred.

I would be grateful to hear from any colleague who is sympathetic to these views, or might be prepared to help effecting some sort of change.

Yours sincerely,

Margaret Cunneen SC