J E F F R E Y P H I L L I P S S C

A.B.N. 40 681 107 216

15 October 2015 3.30pm via mailchimp

Dear Fellow Practitioners,

The Choice Between QCs and SCs

As is well known, I believe members of the Inner Bar should be free to choose whether to take QC or SC as their post-nominals.

In this Bar Council election there is a group of candidates who are marketing themselves as the 'non-ticket' ticket. This group states its members are not committed to voting as a bloc, although literature put out by the non-ticket ticket rather pointedly attacks what are described as: narrow single interest agendas.

> It is important to understand that many of the members of this ticket are opposed to giving barristers a choice in respect of post-nominals. In my opinion this ticket consists overwhelmingly of candidates who would be disposed to reverse the policy recently adopted by Bar Council in favour of choice.

Getting the agreement of the NSW Government to make the necessary change is at a delicate stage. A substantial business case has been presented to the Attorney-General. The Government will not enact the necessary legislative changes unless the Bar Council maintains its position in favour of choice.

I urge you to vote for candidates for Bar Council who are in favour of choice. I provide you with a list of these candidates on whom you can rely to ensure that such change happens.

Bennett QC, David
Burton SC, Greg
Cotman SC, Nigel
Cunneen SC, Margaret
Feller SC, Danny
Menzies QC, Paul
Phillips SC, Jeff
Sutherland SC, Robert
Williams SC, Michael

Bagley, Thomas
Doyle Gray, Philippe
Gerace, Maria
Hickelton, Julia
Hopper, Justine
Hyde Page, John
Hughes, Tom
Sethi, Ishita
Stitt, Hamish
TalIntyre, David
Walker, Mary
Williams, Nanette

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Email from J Hyde Page to anonymous.

15 October 2015 p.m.

Jeff Phillips SC has sent a letter, identifying the Bar Council candidates who support choice on the 'QC' issue. I personally support choice of post-nominals for the Inner Bar. I also believe there is an acute danger that after this Bar Council election the policy on choice will be reversed.

Phillips SC points out that one of the two tickets contesting this election (colloquially, the 'anti-ticket' ticket) consists mainly of barristers who oppose choice of post-nominals. He also points out a consequence of electing the 'anti-ticket' ticket, or electing a number of its members, would be a majority on Bar Council that opposes the policy in favour of choice.

Literature distributed by that ticket is silent on the issue (although it expresses disapproval of the 'bloc' elected to Bar Council in 2014). However I would regard the following as beyond dispute:

(i)In 2014 the Bar Council voted to reject choice of post-nominals. I was the sole member of Bar Council who voted in favour of choice;

(ii)11 votes is a majority of Bar Council. In late 2014 a total of 12 people were elected to Bar Council from the pro-choice bloc (or ticket, or whatever one prefers to call it);

(iii)By my count, 15 of the members of this anti-ticket ticket are opposed to choice, and some of them are vehemently opposed.

Approximately half the candidates on the anti-ticket ticket were members of the 2014 Bar Council, who I became familiar with through Bar Council. If they constitute the 2016 Bar Council I would expect a rescission motion to be put by one of them, if it seemed possible that such a motion would be carried. Apart from the 15 I have referred to, I am unsure about the other members of the anti-ticket ticket.

I can only suggest, as I did last year, that among the broader membership there is a sizeable majority in favour of choice. As with last year it may be necessary for supporters of this policy to vote for Bar Council candidates for this reason alone, in order to get the change through.

The Jeff Phillips letter lists the candidates who support choice of post-nominals

Dear Fellow Practitioner,

Bar Council Elections and Alternative Dispute Resolution

We are writing about the election of the 2016 Bar Council.

You will recall our recent correspondence about the importance of changing the "uniform" professional rules to give proper recognition to Alternative Dispute Resolution ('ADR') as a part of barristers' work. That correspondence was directed to the ADR practitioner community in NSW and hopefully, was seen by all or most people interested in ADR.

The proposed change in the Bar rules has not yet been made and there continues to be significant work to be done in order to achieve a realistic appreciation of the importance of ADR in a modern barrister's practice. The community appetite for ADR is reflected in the fact that the number of matters in the civil jurisdiction reaching a fully contested hearing is reducing markedly. As a start, we need to ensure that the unfinished business of "*ADR and the Bar Rules*" is satisfactorily finalised.

The ADR issue is a particular part or manifestation of wider issues that affect the proper operation of the NSW Bar Council as a representative body for NSW barristers. The following aligned issues also need to be progressed:

- remedying the lack of corporate governance structures and lack of transparency in decision making in the Bar Association; and
- engendering in the Bar Association a culture of constructive responsiveness to the views of the membership.

In our letter we called for people interested in standing for election to Bar Council to advance these issues to flag that interest. In addition to ourselves, David Bennett QC, Paul Menzies QC, Hugh Marshall SC, Sue Kluss and Valerie Heath responded.

We recognize that to effect change, support for change for ADR issues must come from a larger group within Bar Council.

We are standing in the current elections to Bar Council as part of what is being described as the "*Political Neutrality Ticket*" (the Bennett QC and Cunneen SC ticket), which we regard as a group with a proper commitment to the ADR goals, as well as to wider issues, including the aligned issues described above.

A separate group of barristers advertised itself last week as being opposed to the *Political Neutrality Ticket*, and in favour of "the virtues of stability and experience". However, there is a significant issue. We suggest the members of this ticket should be understood as being largely opposed to the interests of ADR, and, specifically, opposed to a change to the professional rules to recognize ADR as barristers' work.

We encourage you to vote for those who support the development of ADR at the NSW Bar.

Sincerely,

Nigel Cotman SC and Mary Walker

David Bennett AC QC

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Sydney NSW 2000

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13 October 2015

Dear Colleagues,

Bar Council: Political Neutrality

I am writing about the election of the next NSW Bar Council.

As you are possibly aware, two groups of candidates are contesting this election, each representing a different school of thought on how the Bar Council should be run. One group (of which I am a part) is calling for a Bar Council based on political neutrality. The other group includes the barristers responsible for the specific incidents, described in the recent letter of Margaret Cunneen SC as examples of how the Bar Association has lost its way.

I am unsure of what name to give this alternative ticket, although I will say at the outset that I have great respect for many of its members. Having acknowledged this, I disagree with many of the things that have been done by the Bar Association over the past year or two for which this ticket implicitly stands, both by reason of its membership and by reason of its expressed belief in *'the virtues of stability and experience'* in matters concerning the Bar Association.

When I was the president of the NSW Bar Association it was an organisation dedicated to providing services to its members. It spoke only very occasionally, and therefore with great authority, on important rule-of-law and professional issues such as reductions in the legal aid budget and attacks on common law damages for personal injuries. It opposed steps towards fusion. Apart from these matters, its main concern was to help the membership with professional life. Also, the Bar Council was punctilious about corporate governance. It would have been unthinkable for a senior office-bearer to put out a press release attacking a government of either political persuasion without a meeting of the full Bar Council. It may be conceded that, in the case of the president, it would have been permissible under our constitution to do this; but it never occurred, except in relation to issues (such as those referred to earlier in this paragraph) as to which the vast majority of our members would have been in agreement. There is a distinction between statements on this type of issue affecting the Bar and statements on general controversial political issues.

In all outward respects the organisation has since changed, and not for the better. In my view the Bar Association's engagement with the media and the Australian political process has become counterproductive. This is not a matter of the Bar Association being too right wing or too left wing; but about it expressing controversial viewpoints that have not been ratified by the full Bar Council, on subjects outside its remit as a professional association for barristers. Our public comment on whether it is appropriate for burkhas to be banned in the Federal Parliament is a paradigm example.

That is a topic on which views may legitimately differ and it has no relevance to the Bar as such. The effect of courting controversy can only be to weaken the Bar Association's effectiveness as a participant in law reform. I suggest that effectiveness in law reform has rather more value than cheap posturing in the media.

Ideological and personal favouritism have come to play an unacceptable role in how the Bar Association treats its members. The immediate and unqualified support for Gillian Triggs, contrasted with the belated and grudging support for Dyson Heydon, encapsulated much of what I believe is wrong with the organisation. There have been other examples.

In my view a large part of the explanation for this negative trend has been a cavalier attitude to corporate governance whereby the Bar Association is now substantially run without reference to Bar Council, at the personal fiat of its senior office-bearers and members of an over-powerful employed staff.

Cunneen SC has correctly pointed out that none of the Bar Association's press-releases or policy statements over the last year were ratified by meetings of Bar Council. The ordinary members of Bar Council only became aware of them after the fact.

These are all important issues, on which there is a significant division of opinion in Bar Council. In that context I was disappointed to see that in the letter the rival ticket put out last week there was no direct attempt to engage with the issues. The rival ticket was formed in response to calls for a Bar Council based on neutrality, yet it has made no attempt to articulate the substance of its views or the basis on which its members were chosen; other than to say, somewhat paradoxically, that it is opposed to the running of organized tickets in elections. The running of a 'non-ticket' ticket tends to negate the value to the membership of there being organized tickets in an election, which is that members can know what they are voting for.

For my part, something about which I think the rival ticket has been less than forthcoming is the QC/SC issue. Almost all the barristers on the rival ticket have opposed members of the Inner Bar having a choice about whether to take the post-nominals QC or SC. If elected to Bar Council they would almost certainly vote to reverse the policy in favour of choice that was recently adopted at the instigation of the political neutrality group after lengthy debate, at the stage when we are taking the issue to Government.

For all of these reasons I would commend to you the ticket whose members advocate political neutrality.

Sincerely,

David Bennett AC QC

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Margaret Cunneen SC

Margaret.cunneen.sc@gmail.com

Dear Colleagues,

Political Neutrality

Perhaps you have seen my letter expressing dissatisfaction with aspects of how the NSW Bar Association operates. If not, the letter is available at the following link:
http://www.calameo.com/read/004524552013035a91687

It is pointless to deny there is currently a division of opinion on the NSW Bar Council. I believe (as do the other supporters of political neutrality) we should have a Bar Council that avoids political controversy and media posturing, and I believe there should be corporate governance processes in place to prevent ideological and personal favouritism in the treatment of our membership. The Dyson Heydon AC QC incident from earlier this year epitomised the unfortunate direction in which the organisation is drifting.

A number of current and former members of Bar Council have formed a ticket for the purpose of contesting this election. Their manifesto was published last week, although my colleague David Bennett QC has pointed out they profess to be an 'anti-ticket' ticket. The 'anti-ticket' ticket includes some fine barristers. I make no criticism of them personally, indeed many of them are close friends, and I am a firm believer in the collegial approach. However I do not agree with their viewpoint. I am a part of the section of Bar Council that believes the specific incidents described in my earlier letter were mistakes that should not be repeated.

I encourage you to vote for the following members of Bar Council, and the following candidates for membership of Bar Council. We are in favour of a Bar Council based on political neutrality.

Bennett QC, David
Burton SC, Greg
Cotman SC, Nigel
Cunneen SC, Margaret
Feller SC, Daniel
Menzies QC, Paul
Phillips SC, Jeff
Sutherland SC, Robert
Williams SC, Michael

Bagley, Thomas
Doyle Gray, Philippe
Gerace, Maria
Hickelton, Julia
Hopper, Justine
Hyde Page, John
Hughes, Tom
Sethi, Ishita
Stitt, Hamish
Talintyre, David
Walker, Mary
Williams, Nanette

Please keep in mind your ballot will be invalid if you vote for more than 21 candidates.

Sincerely,

Margaret Cunneen

Margaret Cunneen SC

TOM HUGHES

BARRISTER

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29 September 2015

Dear Fellow Practitioners,

The Criminal Bar: Reform needed

You would have seen the recent letter from our colleague, Robert Sutherland SC, about the difficulties facing the criminal bar.

I am in favour of all the reforms proposed by Sutherland SC, specifically: (1) urgent attention to the listing problems at Parramatta District Court, (2) introduction of a system of trust accounts to be operated by the Bar Association for the benefit of barristers' clients, (3) more sensible professional rules that permit barristers to do straightforward and necessary things - like filing subpoenas, or nominating their chambers as an address for service in direct access matters - without engaging in professional misconduct, and (4) lobbying for increases in counsel fees payable by the Legal Aid Commission. There has been no increase in legal aid rates for years.

Regrettably there may be opposition on Bar Council to all these reforms, much of it from commercial and equity barristers who have little appreciation of our area of practice.

The solution, as Sutherland SC implies, is for the criminal bar to coordinate its voting so that enough like-minded candidates get elected to Bar Council for the necessary reforms to get adopted. More people from the criminal bar stand for Bar Council each year than any other area of practice. The pattern is for criminal practitioners to split their votes between the 20 – 30 candidates from our area of practice, with the consequence that hardly any of them get elected. This explains the inadequate representation of the criminal bar on Bar Council.

I would encourage you to consider voting exclusively for the candidates on the criminal bar ticket being put together by Sutherland SC.

Regards,

Tom Hughes

Tom Hughes

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GREGORY GEORGE

Monday, 12 October 2015.

Dear Colleague,

Annually, the Productivity Commission publishes a report on government services in Australia. This report includes data about the amount of litigation in state, territory and federal courts. The 2015 report highlights a worrying trend and something most civil law barristers would be aware of - civil litigation work is rapidly diminishing. The extent of the decline over the last six years is reflected in the table below:

NSW Courts Civil Lodgments 2009 to 2014

	2009	2010	2011	2012	2013	2014
Supreme Court	14,185	10,992	11,318	10,074	9,444	8,780
District Court	9,237	8,273	8,389	7,797	7,487	7,224
Local Court	187,531	182,597	175,692	146,578	146,819	138,023
Totals	**210,953**	**201,862**	**195,399**	**164,449**	**163,750**	**154,027**

Federal Court*	3,864	3,642	4,941	5,277	5,802	5,009

* Data published for the Federal Court is an Australia-wide figure and though the court has district registries, data for the court's NSW registry in not published separately.

The headline results these numbers reveal are:

- During the six year period lodgments in New South Wales' courts fell 27%:
- In the Supreme Court lodgments fell 38.1% (and in 2014, the court's lodgments were the lowest they have been in the twenty years the Productivity Commission has published reports): and
- Lodgments fell 26.4% in the Local Court and 21.8% in the District Court.

Regression analysis indicates that if the rate of decline (Federal Court excepted) of the last ten years continues, lodgments in these courts in 2020 will be:

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NSW Courts Projected Civil Lodgments in 2020	
Supreme Court	5,300
District Court	6,930
Local Court	91,494
Total	**103,724**

Federal Court	5,484

Work at the civil Bar is a function of the work there is to do in these courts and therefore almost certainly, less work in these courts equates to less work for barristers.

The NSW Bar Association should be aware of this issue and engaging members about it, so:

- It provides members with information so they are able to make informed decisions about their careers and finances and know about what is happening in their work place:
- Strategies are developed to manage the issue so the consequences of reduced work, or different work, causes least possible impact to members: and
- The Association knows what work its members are doing in 2015 (and in any given year) so it provides services members need.

None of these things are happening.

I am standing as a candidate at the upcoming Bar Council election because they should be. I would appreciate your vote so this changes.

If you would like further information about the Productivity Commission's report, please go to *http://www.pc.gov.au/research/ongoing/report-on-government-services* or contact me by either email (*gpgeorge@stjames.net.au)* or telephone (*9222 2030*).

Yours faithfully,

GREG GEORGE
T+9222 2030

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ROBERT SUTHERLAND SC
Barrister-at-Law

Seventh Floor Garfield Barwick Chambers
53 Martin Place, Sydney NSW 2000
e-mail: rsutherlandsc@gmail.com

21 September 2015

Dear Fellow Practitioner,

RE: THE FUTURE OF THE CRIMINAL BAR

I am writing to express a number of concerns about the viability of successful practice at the Criminal Bar.

It is patently clear and widely recognised that criminal practice at the Bar is becoming difficult. Cuts to legal aid, at all levels; increased efforts by many solicitors to appear without briefing a barrister; solicitors advertising themselves as "Barristers and Solicitors"; and difficulties with direct access briefs all contribute to these difficulties.

A number of members of the Criminal Bar have raised these and other concerns with me. There is a perception in some quarters that there are issues in urgent need of attention by the Bar Association and that the appropriate focus might be assisted by the Criminal Bar having a greater proportion of representation on the Bar Council.

Matters which have been raised for consideration in this regard include the following:

- **Listing Problems**. Whilst the Downing Centre itself is not without problems, Parramatta District Court has become somewhat of a "black hole" or "Bermuda Triangle". It is notorious that up to a week and, on occasion, longer can be spent in the precincts of Parramatta Court House waiting for a trial judge. The problem is completely unacceptable for privately funded clients and does nothing to assist the Legal Aid budget.

- **Direct Access Briefs**. Problems abound in this area. The absence of trust accounts is a matter in respect of which there would appear to have been discussions for some years but little apparent progress. The disadvantage of counsel not being permitted to perform basic tasks, such as filing subpoenas, arguably fails to take proper account of the realities of practice for those who accept direct access briefs.

- **Competition with Solicitors**. In addition to difficulties in relation to direct access briefs, the description and advertising by solicitors describing themselves as "Barristers" and the apparent increasing volume of court work being done by solicitors is a matter in respect of which the Bar Association might have a louder voice.

- **Legal Aid**. Problems with Legal Aid include the quantum of brief fees (which is substantially a budgetary problem), but also artificial constraints in the size of Legal Aid panels. There is a strong argument that all sufficiently qualified and experienced counsel should be entitled to be included on relevant panels, irrespective of the size of such panel.

- **Other institutional funding**. Whilst the State Crown increased its fees in recent years, there is a perception (which I believe to be accurate) that the Commonwealth DPP has gone substantially backwards in real terms in its rates during the past two decades.

The question which has been raised with me is whether there is sufficient representation on Bar Council of practitioners who have a realistic appreciation of the substantial problems facing the Criminal Bar, as well as a real preparedness to tackle those problems.

Following the appointment of Kate Trail to the District Court there are only three criminal law practitioners on the twenty-one member Bar Council. I believe that there needs to be better representation from the Criminal Bar on Bar Council and I would appreciate hearing from those of you who share this view.

Please contact me if you are supportive.

Yours sincerely,

ROBERT SUTHERLAND SC

Ross Goodridge

Denman Chambers - 7th Floor, St James Trust Building 185 Elizabeth St, Sydney NSW 2000
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Dear Colleague,

2015 Cost Regulations – The Changes and the Changes Needed

I advance the case that the regulation of barristers' fees has gone too far and ought to be wound back.

Up to 1987 *Blackstone, Commentaries on the Laws of England* (4th ed 1876 Vol 111 at 27) correctly stated that the fees of counsel were 'not as *locatio vel conductio*, but as *quiddam honorarium*; not as a salary or hire, but as a mere gratuity'.

The business of client retainer and collecting money was left to solicitors. Barristers spent their time practicing law, not business. Fees were a matter of honour. If there was a relationship of trust between the barrister and solicitor the brief was "not marked" leaving the barrister to determine a fair fee at the end of the brief or, if the brief was "marked" with a dollar amount, it was for the barrister to accept or decline the brief.

The Legal Profession Act(s) of 1987 and 2004 together with the prescribed regulations somewhat altered our right to be paid fees. These acts created the right to practice by way of direct access and/or the right to enter into a contract whereby the lay client would be liable for our fees. I readily accept that when a barrister accepts a direct access brief or contracts with a lay client, that barrister ought to be bound by and large by the same regulation as solicitors.

Most of us choose not to accept direct access briefs or contract with lay clients. For most of us, the 1987 and 2004 Acts introduced some inconveniences including costs agreements. These inconveniences were manageable. Few breaches had the consequence of disentitling counsel to the whole of their fees or rendering us liable to penalties.

The passing of the *Legal Profession Uniform Law (NSW) 2015* and the prescribed rules have cast further and, what I argue to be, unnecessary obligations upon us. The 2015 Act carries significant consequences that any or many of us may inadvertently suffer.

For those of us who conduct their practice on the basis of accepting briefs from solicitors and not contracting with any person other than the solicitor, then the relationship ought to be one of simple contract law (and honour) between two sophisticated and informed persons being free to adopt such custom and formality (or lack there of) as they may choose. The solicitor's obligation should be no higher than self-satisfaction that he or she has sufficient information to be able to inform and contract with the lay client.

I do not argue that our fees and charges should be above review. I argue only for simplicity.

Some examples will hopefully help make my point:

1. Section 180(3) permits that an unconditional costs agreement may be made between a solicitor and a barrister and such a costs agreement need only consist of a written offer and the "conduct" of acceptance. Paradoxically, if a barrister was to be generous enough to say that he or she would not charge the whole or part of the fee if the case is unsuccessful then s181, s182 and s185 would void the costs agreement and would be conduct capable of constituting unsatisfactory professional conduct and/or professional misconduct and render the barrister liable to a civil penalty of 100 penalty units.
2. If you negotiate the settlement of a litigious matter, you must disclose to the lay client, before the settlement is executed-
   a. a reasonable estimate of the amount of legal costs payable by the client if the matter is settled (including any legal costs of another party that the client is to pay); and
   b. a reasonable estimate of any contributions towards those costs likely to be received from another party.

   If you, as counsel, fail to do so, then, unless the solicitor has made these disclosures to the client before the settlement is executed, your cost agreement is rendered void (s177 and s178).

These sections also provide no guidance as to whether your estimates must be objectively reasonable or subjectively reasonable.

3. Rule 73 only permits the sending of a bill by fax or email where consent to that method of delivery has been given.
4. If you send a bill by email and neither the covering letter nor the bill is signed personally by the barrister then, per s188, no bill has been sent.
5. Section 175(2) requires that the barrister must disclose to the solicitor to enable the solicitor to disclose to the lay client:
   a. The basis on which legal costs will be calculated in the matter and an estimate of the total legal costs,
   b. When there is any significant change to anything previously disclosed information disclosing the change, including information about any significant change to the legal costs,
   c. Sufficient and reasonable amount of information about the impact of the change on the legal costs that will be payable to allow the client to make informed decisions about the future conduct of the matter.
   d. Information about the client's rights,
      i. to negotiate a costs agreement; and
      ii. to negotiate the billing method (for example, by reference to timing or task); and
      iii. to receive a bill from the law practice and to request an itemised bill after receiving a bill that is not itemised or is only partially itemised; and
      iv. to seek the assistance of the designated local regulatory authority in the event of a dispute about legal costs.

Where our services are given and accepted in good faith then we ought not be subjected to regulation that defines simple clerical errors or oversight as conduct that:

1. Disentitles us to our fees;
2. Is capable of constituting unsatisfactory professional conduct;
3. Is capable of constituting professional misconduct; and
4. Is capable of rendering us liable to a civil penalty of 100 penalty units.

Costs agreements between solicitors and counsel should be as simple as circumstances dictate. Regulatory oversight should be streamlined, simplified and breaches and clerical errors should be capable of proportionate review and correction.

I urge every person standing for election to champion this cause as part of their platform. In turn, I also urge the Bar Council to take up this cause with the legislature and the Law Society and to lend further support to all members to assist them with compliance, the defence of unfair penalty proceedings and the collection of fairly earned fees.

In respect of those colleagues who do wish to accept direct briefs and/or contract with lay clients I note that Danny Feller SC has recently suggested some amendments to the NSW Barrister Rules that may facilitate their practices. I cautiously support a review and the reconsideration of all limitations that inhibit the practice of a barrister as the law now defines that role.

I further urge that once our Rules have been reconsidered we thereafter engage in an education campaign to raise our collective standing in the community. I still cringe at the sight of hoardings and signage above butcher shops advertising that "Solicitors and Barristers" work there. We have a divided profession. We acknowledge this in our Rules and honour the division. The average member of the public does not understand or appreciate the division, our Rules or our traditions. Whilst the division exists the role of the specialist barrister should be trumpeted.

Yours sincerely

Ross Goodridge
Denman Chambers
6 October 2015

Margaret Cunneen SC

margaret.cunneen.sc@gmail.com

Dear Fellow Practitioners,

NSW Bar Association: Political Neutrality

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: 'Why won't the leftist Bar Association defend an honest judge from Labor's Sliming?'). 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 issued 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 (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 always briefed on merit ('Women Still Lose Out On Court Speaking Roles', Australasian Lawyer, 21/07/15).

In my view steps should 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 a 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. I can be contacted on: margaret.cunneen.sc@gmail.com

Yours sincerely,

Margaret Cunneen SC