The Founding of the Australian Bar Association

The purpose of this article is to record the facts of the founding of the Australian Bar Association whilst they are still relatively fresh in the minds of its founders. As far as possible we have let the founders tell the story themselves even though this may have led to a certain amount of duplication. We have written to the founders, and the letters set out below are replies which we consider we have permission to use. We also quote from a history written by Meares Q.C. (of the New South Wales Bar) the first President, shortly after the establishment of the Association. We have used surnames only in referring to all barristers at times when they were at the Bar (although many of them are now on the Bench).

The history written by Meares Q.C. begins:

'During 1955/1956 the New South Wales Bar Association possessed no voting rights on the Executive of the Law Council of Australia. In that year the New South Wales Bar Council had occasion to make representations to the Federal Attorney-General on two matters which directly and appreciably affected the New South Wales Bar only to be advised that the matters had been taken up by the Law Council of Australia and had been finally dealt with.

'Following these and similar experiences, and because it was considered that the constitution of the Law Council was unsatisfactory, a view which was generally shared by its constituent bodies, the New South Wales Bar Council, on the 26th June, 1957, unanimously resolved, after a long discussion, that it favoured the formation of an Australian Bar Association and the President was requested to initiate action to that end.

'The Bar Association of Queensland agreed with the proposal, subject to the reservation that the proposed Association did not in any way subvert the condition or status of the Law Council of Australia, but the Victorian Bar Association was not in favor of the proposal.

'In a paper delivered to the Tenth Legal Convention of the Law Council on the 17th July, 1957, entitled "Miscellaneous Comments", Wallace J. (then President of the New South Wales Bar Council), the author, who had conceived the idea originally, again urged the formation of an Australian Bar Association.'*

Mr. Justice Wallace (now President of the Court of Appeal of New South Wales) wrote on 3rd May, 1967:

'In reply to your recent letter, which I was very pleased to receive, the position so far as my own activities are concerned about the Australian Bar Association is as follows:

'As a background I could say that in 1957 I was President of the New South Wales Bar Association and Vice-President of the Law Council of Australia. I had noticed during the previous two years what I deemed to be some defects in the constitution of the Law Council of Australia and I was instrumental in obtaining some much needed amendments thereto in or about the year 1957.

'Then in connection with the Law Convention held in 1957 at Melbourne I was asked to write a paper and I did so. This was entitled "Miscellaneous Comments" and appears in volume 31 of the Australian Law Journal at page 292. It was in this paper that I proposed the formation of an Australian Bar Association and my views commence at page 298.

'Prior to writing that paper I had called a special meeting of the Council of the New South Wales Bar Association at which the sole item on the agenda was to discuss my proposal. After considerable discussion a resolution of my Council was unanimously passed approving of the formation of an Australian Bar Association along the lines I suggested.

'I then wrote my paper and, fortified by the unanimous resolution of my own Bar Council, I attended the Law Convention in Melbourne and in due course read it. As will appear from the report of the commentators(1) my proposal was, with one exception condemned. This was partly because it was misconstrued as the late Dr. Louat Q.C. pointed out(2). The strongest dissent came from leading solicitors of the New South Wales Law Institute whose comments also appear in the Law Journal report.

'Your Mr. Wanstall Q.C.(3) supported my proposal on behalf of the Bar Association of Queensland. This support came as a very pleasant surprise to me.

'However the opposition from both the barristers in southern States and from the solicitors in New South Wales continued for some years but eventually wiser counsels prevailed and after the meeting in your chambers in 1962 the establishment of the Australian Bar Association was formally announced at the Law Convention held in Hobart in January, 1963.'

In his paper(4) Wallace Q.C. had said:

'It is quite impossible in my opinion to alter the constitution so as to give an acceptable representation to the Bar of New South Wales, but this aspect would be readily solved if there were two federal organisations, one for barristers and the other for solicitors . . . Each would have direct access to Commonwealth authorities and could make joint representations when desired.'

*(1957-58) 31 A.L.J. 291ff.

(1) At 301-312.
(2) At 307.
(3) At 305.
(4) At 298.

He drew attention to the unsatisfactory nature of representation of the New South Wales Bar on the Law Council and further said:

'So far as etiquette is concerned it would be inappropriate for a body so constituted to consider matters of etiquette in relation to, for example, the New South Wales Bar, and so far as law reform is concerned it would seem preferable if barristers could present their views to the Commonwealth Attorney-General separately from solicitors where representations were desired. The present tendency is undoubtedly for the Commonwealth authorities to regard the Law Council as the voice of both branches of the legal profession throughout Australia on all matters of reform, governmental committees and so on, and yet there might not be a single barrister on the executive . . . That fusion of the branches is not in the best interests either of the public or of the legal profession is, I think, now generally accepted, and I hope separation will come in South Australia, Western Australia and Tasmania.'

As Mr. Justice Wallace himself has said, the proposal was condemned. Else-Mitchell Q.C. (now Mr. Justice Else-Mitchell of the Supreme Court of New South Wales) is reported(5) as saying:

'I speak personally, not being a member of the governing body of the New South Wales Bar Association, and I find myself in agreement with Mr. Eggleston, Mr. Francis and Mr. Watling who have preceded me and who have said that it would be a dreadful thing if the proposal that Mr. Wallace has submitted in his paper should mean the abolition or the dismemberment of the Australian Law Council. It is true, if one reads Mr. Wallace's paper critically, that he does not say any such thing, but may I with respect, suggest that no other consequence could follow than the dismemberment of the Law Council if there were formed an Australian Bar Association on the basis with the powers and scope that Mr. Wallace envisages.'

Windeyer Q.C. (Now Sir Victor Windeyer K.B.E., P.C., C.B., D.S.O., a Justice of the High Court) is reported(6) as saying:

'I can see nothing of this proposal which would make it easier to do any of the things which are worth doing which Mr. Wallace has enumerated which cannot be equally well done by the organisation which is established and which if not endangered may have a great future.'

Wanstall Q.C. (now Mr. Justice Wanstall of the Supreme Court of Queensland) spoke for the Queensland Bar Association(7):

'Passing now to the last matter in Mr. Wallace's paper, the subject of an Australian Bar Association, I am able to say that the committee of our Bar Association in Queensland approves of this suggestion in principle subject to two important qualifications and those qualifications are of such a nature we feel the approval in principle cannot at present lead to any effective results. The two reservations are that if such an Association is formed it must only be done upon the condition that it does not in any way subvert the condition or status of the Law Council of Australia and we fail to see in the manner in which it has been presented by Mr. Wallace—as Mr. Eggleston was quick to point out —that there could be at the same time the Law Council in its present form.'

The late Dr. Frank Louat Q.C. of the New South Wales Bar said(8):

'What I understand Mr. Wallace to be saying is that the Law Council of Australia, admirable though it is and splendid though its achievements are, is not ideally constituted today to give some effect or expression to that differentiation of function, and that it would be desirable that an Australian Bar Association should be a constituent element of the Law Council of Australia just as perhaps the Australian Solicitors Association, under whatever name you may choose to call it, would also be an organic element of that body.

'Now, considered in that light, the proposal is not revolutionary.'

On 13th June, 1967 Bowen Q.C. (presently Attorney-General for the Commonwealth), wrote:

'Thank you for your letter of 26th April and for your kind remarks.

'To the best of my recollection the first draft of the constitution of the Australian Bar Association was prepared by me and was discussed and settled at a meeting held at my home in Wahroonga attended by representatives of the Victorian Bar Council, namely, Oliver Gillard Q.C., and, I think Jim Tait Q.C., two representatives of the Queensland Bar Association, Tom Barry Q.C., and Walter Campbell Q.C., and two representatives of the New South Wales Bar Association, Leycester Meares Q.C., and I.

'At that time I was President of the N.S.W. Bar Council and Vice-President of the Law Council. Leycester Meares was Vice-President of the N.S.W. Bar Council.

'After the draft was settled it was put to the three Bar Councils and after a passage of time was eventually accepted by them without major amendment and the Association was then established.

'I think the principal reason for the formation of the Association was that it had become apparent there were various matters affecting barristers only which were not appropriate to be dealt with by the Law Council of Australia. Examples are Rules affecting admission to practice as Barristers, Counsel's fees and Bar rules of etiquette. Also it was desired to strengthen the position of the independent Bar in Australia.'

The history written by Meares Q.C. continues as follows:

'In 1960 a sub-committee of the New South Wales Bar Council, consisting of Bowen Q.C., Holmes Q.C. and Kerr Q.C., was appointed to explore the possibility of establishing the Association and upon its recommendation a meeting was arranged to

(5) At 308.
(6) At 309.
(7) At 305.
(8) At 307.

take place on the 4th December, 1960 at Bowen's residence between representatives of the New South Wales, Victorian and Queensland Bar Associations.

'At such meeting T. M. Barry Q.C., and W. B. Campbell Q.C. represented Queensland, O. J. Gillard Q.C. and J. B. Tait Q.C. represented Victoria and N. H. Bowen Q.C. and C. L. D. Meares Q.C. represented New South Wales. A draft constitution, which had been prepared, was discussed and approved of in principle.

'Following upon this meeting a further meeting was held in Sydney during the Twelfth Legal Convention in July, 1961. There were present at such meeting Graham L. Hart Q.C. and W. B. Campbell Q.C. representing Queensland, R. A. Smithers Q.C. and O. J. Gillard Q.C. representing Victoria and N. H. Bowen Q.C. and C. L. D. Meares Q.C. representing New South Wales.

'Further details were discussed and it was decided to submit the scheme to the respective Bar Councils.

'On the 16th November, 1961 the New South Wales Bar Council unanimously resolved to support it.

'The scheme shortly thereafter received the unanimous support of the Queensland Bar Association and on the 15th June, 1962 the Victorian Bar Council advised that a poll had been conducted amongst its members and that a large majority were in favour.

'Following upon approval from the three Associations the Association was formed at a meeting held in the chambers of Graham L. Hart Q.C. in Brisbane on the 27th July, 1962. At this meeting Graham Hart Q.C. and A. K. McCracken represented Queensland, M. V. McInerney Q.C. and O. J. Gillard Q.C. represented Victoria and C. L. D. Meares Q.C. and J. R. Kerr Q.C. represented New South Wales.'

On 4th October, 1967, after referring to the first President's history set out above, Mr. Justice McInerney wrote:

'In regard to the early history of the moves for the formation of the Association, as outlined in the memorandum of Meares Q.C., already referred to, it is probable that the sentiments of the New South Wales Bar Council were not at that stage shared by the Victorian Bar Council. For one thing Victoria had, in the person first of J. B. Tait and later of D. I. Menzies a member of the executive of the Law Council at all times during the '50's. I do not myself recall any general sentiment of dissatisfaction among members of the Bar Council with the constitution of the Law Council. It is probably fair to say that it was not until 1961 that opinion in favour of the formation of the body was expressed in Victoria.'

On 8th May, 1967, after referring to the meeting in Sydney in December 1960, Sir James Tait, Kt., Q.C. wrote:

'My recollection is that the question of the relationship of the new body to the Law Council of Australia and its possible effect on the latter was discussed at length, and we all in the end accepted the view of the New South Wales Bar that the suggested new body was "not directed in any hostile fashion at the Law Council of Australia nor is it intended to rival displace or affect the Law Council", but would deal with matters affecting barristers which were inappropriate to be dealt with by the Law Council of Australia. I think it was also accepted that the Law Council of Australia would continue to represent the profession in Australia as a whole, in particular in such matters as dealing generally with Governments and law reform and also as to international matters. A draft constitution was considered, and in line with the above intention it was agreed that the words "as such" should be added to the word "barristers" in the first stated object of advancing the interest of barristers *as such*. The constitution as finally adopted accepted these words, as you know, and added among the objects "to co-operate and maintain liaison with the Law Council of Australia".

'There was another meeting held in Sydney during the Twelfth Legal Convention in July 1961, again attended by two representatives of each of the three Bars. I was not present on this occasion but do not think that the matter was carried any further except that it was decided to submit the matter to the respective Bar Associations. As far as Victoria is concerned, at a meeting of the Bar Council on 2nd November, 1961 it was decided that the matter be placed before a general meeting of the Bar at the next Annual General Meeting, i.e., February 1962, and that prior to such meeting a memorandum be circulated to members setting out the considerations for and against the proposal.

'At the Annual General Meeting of the Victorian Bar held on the 23rd February, 1962 further discussion on the formation of an Australian Bar Association was adjourned until the 1st March, 1962 when a resolution was carried authorising the Bar Council to make arrangement with the New South Wales Bar Association and the Queensland Bar Association for the formation of an Australian Bar Association in terms similar to the draft constitution which had been circulated, but as this resolution was carried by a small majority and when the meeting was poorly attended (22 votes to 18 against) it was decided to obtain a wider expression of opinion from the Bar by taking a ballot. The ballot was taken and on the 31st May, 1962 it was reported that the voting was 89 in favour and 19 against and the Bar Council resolved that "the New South Wales and Queensland Bar Associations be informed that the Victorian Bar Association supports the proposal for the formation of the Australian Bar Association and will be glad to join in discussions concerning the constitution and organization of the body".

'The above are the particular actions taken in Victoria in regard to the formation of the Australian Bar Association as I recollect or have them recorded and I have set them out because they indicated there was considerable hesitation in Victoria as to the formation of the new body.'

I (Mr. Justice Hart) shall now say what I know personally of the matter. My recollection is that the Queensland Bar was not very interested in the formation of an Australian Bar Association before the meeting in Sydney in July 1961. The general view, including my own, up to that time, was, that it would lead to the destruction of the Law Council. Whilst attending the Twelfth Convention of the Law Council in Sydney in July 1961, W. B. Campbell Q.C. (now Mr. Justice W. B. Campbell of the Supreme Court of Queensland, and, at the time this article was commissioned, President of the Australian Bar Association), Gillard Q.C. (now Mr. Justice Gillard of the Supreme Court of Victoria), Smithers Q.C. (now Mr. Justice Smithers of the Federal Judiciary), and myself were asked to lunch at Wentworth Chambers with Bowen Q.C., the then President of the New South Wales Bar Association, and Meares Q.C., the Vice-President. At that time Smithers Q.C. was President of the Victorian Bar Council and I was President of the Bar Association of Queensland. We were treated to a very fine lunch and two matters were raised, one a proposed Australian Bar Association and the other the wicked proposal then being mooted at the Convention to abolish juries in running down cases. Bowen Q.C. is a very persuasive gentleman and Meares Q.C. is a very persuasive gentleman and when combined together with a good lunch they were irresistible. Bowen Q.C. put the reasons for the proposed Association to us that day on the same grounds as he has given in his letter, set out above. The proposals seemed reasonable and the guests undertook to try to get them adopted by their respective Bar Associations.

I raised one question. We have in Queensland a rule by which only Queensland residents can be admitted to the Bar. This rule does not commend itself to members of other Bars and the Queensland Bar itself has always been somewhat divided on its desirableness. I said of it that I thought sooner or later it would have to go, especially when Queensland's population and economic strength increased, but that it was for the Queensland Bar itself to say if it should go, and if it should go, when it should go. I would only agree to try to bring in the Queensland Bar on the condition that the proposed Australian Bar Association was never to be used in any way to abolish the rule. It was agreed that if Queensland entered it should be subject to such a term and that no attempt of any kind would ever be made to use the proposed Australian Bar Association to abolish the rule. The Queensland Bar were told of this and thereafter voted unanimously in favour of an Australian Bar Association. If it had not been for the concession made with respect to the rule, I do not think Queensland would have come in. We have heard that the unanimous vote of the Queensland Bar influenced Victoria's decision to enter.

At the meeting in my chambers on 27th July, 1962 on my motion the proposed constitution was amended so as to allow two Vice-Presidents instead of one and with one or two other amendments it was adopted. I then proposed Meares Q.C. as the first President. My reasons were that the Association had really been brought into being by the New South Wales Bar. It had produced the original idea and then the objects which we felt we could accept. It was the oldest and largest of the Australian Bars. It was also the most enthusiastic and had the means to make the Association successful (the N.S.W. Bar, for instance, presented the A.B.A. with this Gazette). The understanding on the Vice-Presidents was that they were to come from the two States which did not have the President. There was a further understanding that the Presidency was to

After the meeting of 27th July 1962: (left to right) Hart Q.C., Meares Q.C., McCracken, McInerney Q.C., Gillard Q.C., Kerr Q.C.

rotate. It was to be Victoria's turn next, and then Queensland's. The two Vice-Presidents elected were McInerney Q.C., then President of the Victorian Bar Council, and myself, then President of the Bar Association of Queensland. Queensland deliberately sent a junior, McCracken, to the inaugural meeting so as to have continuity of representation. He is now the only original member of the Executive. For the sake of interstate peace I have refrained from expressing my views on juries in running down cases. But I will say that they have not altered one jot since July 1961.

The President of the Law Council, Bruce Piggott C.B.E., was in Brisbane at the time of the formation of the A.B.A., attending a meeting of the Executive of the Law Council. After the formation of the Association the new President and the two Vice-Presidents attended on the President of the Law Council to inform him of what had been done. At that time I was also one of the Vice-Presidents of the Law Council. Like Agag, we came delicately, somewhat fearing the fate of that unfortunate monarch (And Agag came unto him delicately . . . And Samuel hewed Agag in pieces, before the Lord in Gilgal: 1 Samuel c. 15, 32, 33.). But we explained that the objects of the new body were in no way intended to interfere with the functions of the Law Council. We were received with kindness. (These recollections have been checked for accuracy by my brother W. B. Campbell and by McCracken.)'

The first general meeting of the Australian Bar Association was held in Hobart on 24th January, 1963 during the Thirteenth Legal Convention of the Law Council of Australia. We believe that the Australian Bar Association has now become a most useful body and of great advantage to the Australian Bar in many ways. We also believe that it has assisted the establishment and continuance of the Bars of both South Australia and Western Australia.

Mr. Justice G. Hart*
John Helman**

*Of the Supreme Court of Queensland.
**Of the Queensland Bar.

The Criminal Injuries Compensation Act, 1967 (N.S.W.)

In contemporary society we all too frequently have brought to our notice headlines announcing the commission of some violent crime. The report of such crimes usually contains graphic details of the offender's actions. Where the offender is apprehended, the circumstances of his trial will normally be described, together with the ultimate verdict. But at this point in the criminal process, the interest of the various mass media, and with them of the community at large, usually ends. The eventual fate of the unfortunate victim attracts little if any publicity, even though the injuries he has sustained may be serious, resulting in possible permanent physical disability and considerable financial loss.

It does seem that with our modern emphasis upon the treatment and rehabilitation of offenders, we have lost sight of the victim and of the obligations owed to him by both society and the offender. Indeed, to many members of the public it must appear that the interests of the offender are placed before those of his victim. For no matter what the nature of the victim's injury and loss, he is unlikely to receive compensation for them. While in primitive legal systems great importance was attached to redressing harm caused by criminal acts, in our supposedly sophisticated legal system scant attention is devoted to this aim. The courts seldom exercise their limited powers to order offenders to pay compensation to their victims. Nor are the civil remedies of victims against their attackers likely to result in the recovery of compensation, most such offenders being men of straw. In the case of offenders who remain undetected, victims have no opportunity to obtain redress through either the civil or criminal law.

But now, after being habitually ignored for centuries, it would appear that the role of the victim as the Cinderella of the criminal law is to be ended. For both in Australia and overseas, governments are at last recognising the need to provide schemes to compensate victims of violent crime. New Zealand instituted such a scheme in January 1964, the United Kingdom in June, of the same year, and more recently various American States, including California, have followed New Zealand's lead(1). Now New South Wales has become the first Australian State to introduce a crime compensation scheme.

In this article it is proposed to examine the broad outlines of the New South Wales scheme, together with certain problems associated with its implementation.

The Scheme's Statutory Basis

The statutory basis for the New South Wales scheme is to be found in the provision of the *Crimes Act,* 1900, and the *Criminal Injuries Compensation Act* 1967. Sections 437 and 554 of the former Act have, since 1900, granted power to the courts to order that a sum be paid out of the property of a convicted offender as compensation to any "aggrieved person" sustaining loss or injury by reason of the commission of a felony, misdemeanour, or other offence. In the case of courts of superior jurisdiction this sum must not exceed $2,000, and in the case of courts of summary jurisdiction $300.

(1) The nature of these overseas schemes is discussed in an article by the present author, *"Compensating Australian Victims of Violent Crime"*, (1967) 41 A.L.J. 3-11.