

# Raising the Bar?

By Ian Morris and Alistair Wyvill, Barristers, William Forster Chambers

St Michael of Kirby's last sermon to the Darwin faithful was a memorable speech, full of insight not just into the law and the High Court but also into the judge himself and his thinking. His list of regrets and failings was fascinating, stuff enough for an entire conference. To take but one – how is it that one of Australia's most highly regarded jurists could regret that he had spent only seven years practising at the Bar? What difference could that have made to his stellar career?

This is of particular interest for the Northern Territory. In spite of the massive growth up here over the last ten years, the number of practitioners acting as local counsel has remained about the same. Worse, they're now a lot older than they used to be. More than 75% are around 50 years of age or older. Only three are under 40. All have more than five years experience at the Bar and none could be described as a "junior" junior.

Why is the Bar so in favour with St Michael but so out of favour with younger NT practitioners?

Perhaps it is the high average age that leads today's youth to think that the Bar is not for them, that they couldn't make it without grey hair and a dress sense from the 1950s. This hints at a vicious circle – the older the Bar gets the more distant and unassailable it seems to younger practitioners. Perhaps there is a view that life at the bar is too hard for a junior barrister, or that there is not enough money in it and junior practitioners are attracted to a

regular pay packet after years as a penniless student. Perhaps it is the fear of not being able to repay HECS fees.

But looking at the opportunities now at the bar, none of these considerations have much weight. It is because the Bar is getting older that the opportunities at the Bar in Darwin for junior practitioners are the best they've been for many years.

## Work Levels

A few weeks ago, a letter was received by our chambers seeking barristers for a particular type of court work at legal aid rates. The conditions can be challenging and no-one is ever going to get rich on a pure diet of this kind of work. But new and some more established practitioners at southern Bars would give their eye teeth to take on these cases. Was anyone available from WFC? Nope – everyone was already committed elsewhere.

This is not in our experience a one off. Greg Cavenagh SM, the local coroner, has spoken to us about his difficulty in getting suitable local counsel at a reasonable price for this (sadly) expanding area of work. His Honour has little choice but to fly up counsel from south. This is not a criticism of the local counsel. In our view, it simply reflects the reality that there are not enough barristers practising at the local bar to meet existing demand, particularly at the junior end of the scale.

In addition, there is a lot of

"junioring" work (being briefed by the solicitor to assist more senior barristers researching, preparing and presenting cases) which is there but is not being done at the moment. In Alistair's early days at WFC (Ian was a late starter); he had the great benefit of being led in various cases by Mildren and Riley JJ (as they now are), Michael Maurice QC, Tom Pauling QC and Graham Hiley QC. This kind of experience is critical for a young barrister as it was for him. Without seeing close-up how high-quality, experienced counsel conduct cases, it is difficult if not impossible to improve one's own skills. Sadly, it is rarer these days that local senior and junior counsel appear together. We believe this is principally because the existing juniors are too busy. Finally, opportunities in "devilling" (same as junior work but paid for by the barrister) – a mainstay for barristers starting out at the southern Bars and one of the best ways at the beginning to hone one's skills - are there in spades... but with no-one to take them up.

For a young practitioner prepared to work hard and deliver a service of real value for the solicitor and the client at a sensible price, there is work out there and a good living to be made.

## Support

Making a decision to go to the Bar does not mean that junior barristers find themselves standing alone against the world. One of the advantages of joining a set of chambers is that help



is at hand to guide a “newbie” through the adventures of practice. Additionally, briefs can be referred between members of chambers when the need demands and the instructors consent. A new barrister interested in a particular field of work can find the coat tails of someone already ensconced in that area, and learn and obtain work from them.

### **Cost**

Yes, there are up-front costs. You will not have much change out of \$5,000 once you’ve paid for your practising certificate, insurance, wig and gown, furniture, books, stationary, etc, etc... After that however it is all negotiable. The existing Darwin chambers are all aware of the need to secure a regular in-flow of new members to support the long-term survival of their chambers. Rent holidays are available, with discounted rates thereafter whilst the new member builds his or her practice.

In the end, a young practitioner with a good future at the Bar in the Northern Territory is very unlikely to fail for financial reasons.

### **Will you make it?**

As we see it, the most important attribute is a commitment to helping your client and your instructing solicitor “win” the case – which includes recognising and bailing out of losers on the best available terms. Yes, a good understanding of the law is important and, yes, young barristers are often briefed because they’re cheap; but at the end of the day barristers, young or old, get work because they help – and are seen to help - their solicitors and their clients achieve good results in cases.

For a young practitioner, joining the Bar is not, at least in the short to medium term, a lifestyle choice. You need to be available to respond and respond quickly to all inquiries you get. But if you respond to those opportunities by showing your solicitors and their clients this kind of commitment, they will come back.

### **What will you get from it?**

The Bar touches places other types of legal practice just don’t get to. This is what Michael Kirby was referring to. It is the coal face of the law. As counsel, the ultimate responsibility for the analysis and presentation of the case is yours. There is no place to hide, no-one else to blame. And nothing focuses effort and attention more than this. With rare exceptions, barristers become skilled advocates and lawyers. They are not born that way. When you take that responsibility for the presentation of cases on a day to day basis, and you take it seriously, those are the skills you develop.

### **What are you waiting for?**

You don’t need to be a rocket-

scientist to see the opportunities which will open up for young local barristers in five to ten years time when most of the current crop has shuffled up or perhaps just on. Few barristers complain that they went to the Bar too early or for too long. Like Kirby J, most regret that they went too late or for too short a time. If you are thinking about it seriously, now is definitely the time for action.

### **Postscript**

When Morrie and I settled on the words “... when most of the current crop has shuffled up or perhaps just on” neither of us anticipated the brutal speed at which fate can move, underlining by bitter irony the theme of our article. There was no shuffling about it. He was here one moment - full of energy, ideas, jokes, obscurities and lyrics - then gone the next. I can’t yet accept that we’ve had the last of our daily conversations, or exchange of two-finger salutes - that I won’t get caught out again at the entrance to the WFC desperately searching at ground level for the source of the insult, lobbed down by the “big smokey thing” on our balcony. His will be a long remembered, painful absence.

*I’m walkin’ down that long,  
lonesome road, babe  
Where I’m bound, I can’t  
tell  
But goodbye’s too good a  
word, gal  
So I’ll just say fare thee  
well*

(Dylan, Don’t Think Twice, It’s All Right). }