

## **Western Australian Bar Association**

### **President's Report 2008**

The following members elected in December 2007 comprised the Bar Council during 2008:

President	Craig Colvin SC
Vice President	Grant Donaldson SC
Secretary	Michael Berry
Treasurer	Peter Quinlan
Members	Michael Berry Ron Birmingham QC Felicity Davis Kanaga Dharmananda John Hockley Joe McGrath Dominic Mulligan Peter Quinlan Judy Seif Joshua Thomson

#### **Staff**

The Association has benefited from outstanding service from Debbie Cole as Executive Officer and Education Co-ordinator during the year. The burden of Debbie's responsibilities has been great. The range of tasks she has been asked to undertake has been vast. The Association set an ambitious agenda for implementation during the course of the year. Debbie has worked many additional hours and with characteristic attention to detail to deal with the many issues that have arisen during the course of the year. On behalf of all members I thank her for her tireless and excellent service which has enabled the Association to increase and improve the services it provides to members in many respects.

During the course of the year Karen Knox commenced working for the Association as a part-time Administrative Assistant (also working for Francis Burt Chambers). Karen has provided much needed support to Debbie in many of the additional administrative tasks that have arisen with the additional projects undertaken by the Association. We are very pleased that she has been able to join us and provide much needed flexibility in additional support.

#### **Governance**

On 13 February 2008, Bar Council approved a formal governance structure for the Association. It outlined responsibilities and accountabilities and also provided the Executive Officer with clear guidance as to who to deal with on any particular issue.

The governance structure established a process for reviewing the strategic objectives and goals of the Association. Key objectives were adopted and a timeline established for their implementation. The committee structure for the Association was replaced by a structure whereby responsibilities were allocated to individual Council members on a portfolio basis. Members were delegated authority to co-opt members to assist in implementing key objectives where necessary.

The following policy was adopted for public announcements on behalf of the Association.

“Public announcements on behalf of the WABA shall only be made by the President (or the Vice-President in the absence of the President) and persons expressly authorised by Bar Council or the President to do so.

Public announcements should be confined to matters relating to:

- the competence, standards and rules of practice amongst barristers;
- the upholding of free and open access to the courts and the rule of law;
- law reform and public debate affecting the practice, procedures, constitution and resources of the courts or practice as a barrister;
- the process for appointment of senior counsel, judges and law officers in Western Australia.

No comment should be made on behalf of the WABA on a party-political basis. Comments made on behalf of the WABA should be expressed using moderate and temperate language and should seek to contribute in a genuine way to debate on an issue”.

### **Principal New Goals and Objectives**

The following new goals and objectives were adopted for implementation during the course of 2008.

- 1 Obtain accreditation as a provider of CPD
- 2 Hold inaugural Bar Weekend Conference for Bench and Bar
- 3 Investigate making application for Professional Standards Act exemption
- 4 Prepare a report on long term strategies to encourage and support those with 5 years experience or less to join the bar and areas of practice that the bar is not supporting
- 5 Arrange reporting by the senior bar on practices that relate to briefing women barristers
- 6 Commence CPD forums for the profession generally to promote improvements in standards and competency in all areas of litigation practice

- 7 Lobby government to commit the funds necessary to upgrade the Supreme Court and to improve access to the courts
- 8 Support initiatives in NSW concerning depression and mental health of barristers

### **Accreditation as CPD Provider**

The policy adopted by the Legal Practice Board placed a considerable burden upon the Association in relation to securing accreditation as a CPD Provider.

Responsibility for establishing all the new structures and providing the necessary information to obtain accreditation fell largely upon Debbie Cole with oversight from Grant Donaldson SC. The task was concluded successfully with accreditation being secured. The formal application of the new CPD structure is expected to commence in 2009.

### **Inaugural CPD Weekend**

Joshua Thomson undertook the significant responsibilities as convenor of the Association's inaugural CPD Weekend. Debbie Cole was responsible for all the administrative arrangements. The event was a great success with a diverse programme. Sincere thanks to Joshua and Debbie for all their work in organising the event.

Held at the Vines Resort on 7 and 8 November it was attended by 75 members. Those participating as speakers included the Chief Justice, the Attorney General, the Solicitor General, Buss JA, Mazza DCJ, McCann DCJ and the Chief Magistrate. Many members of the Bar were involved in presenting sessions. The Association is grateful to Chris Zelestis QC, Ken Martin, QC, Tom Percy QC, Gillian Braddock SC, Michael Corboy SC, Grant Donaldson SC, Theo Lampropoulos SC, Jeremy Allanson SC, Gail Archer SC, Felicity Davis, Penelope Giles, John Prior, Peter Quinlan Joshua Thomson and Philip Urquhart for their valuable contributions to the Weekend.

Many favourable comments were received from attendees. It was a rare opportunity for members of the Bar to be able to meet together and consider a programme that focussed upon their practice interests. Plans are underway for the event to be repeated in 2009.

### **Professional Standards Exemption**

An initial report to Bar Council was prepared by Dominic Mulligan. Members were invited to comment upon whether the Association should proceed with steps to establish a scheme to apply to members of the Association. Members were generally supportive, with few adverse responses.

A committee chaired by Graeme Murphy SC has been established to investigate the requirements to establish a scheme.

### **Long term strategies to encourage and support young barristers**

This is a difficult, but important issue for the future of the Bar. The need to develop new strategies to accommodate future growth has been heightened by the closure of Wickham Chambers (at least for the immediate future) in the course of the year.

Rental pressures in the CBD create considerable difficulties for expansion. This initiative has not been advanced during the course of the year but will be a priority in 2009.

### **Practices for briefing women barristers**

Bar Council resolved to revise and relaunch the model briefing policy along similar lines to that adopted in Victoria. The policy will be relaunched in 2009 at an event where support from firms for the policy will be encouraged.

A survey has been prepared for completion by senior counsel practising at the Bar to obtain information on referral practices. Whilst there is ample data showing that women are under-represented in briefs to appear in superior courts and complex matters, there is little information concerning the practices adopted by key sources of referral.

Arrangements have been made for an information evening to be held in early 2009 at which senior members of the Bar will meet with women barristers and women interested in joining the Bar to share experiences in establishing successful practices at the Bar. The evening will consider particular aspects of practice in Western Australia that cause women to be under-represented at the Bar.

Of the Association's 182 local members, 29 are women. Of 28 members who are senior counsel, 2 are women.

### **Best Practice Forums**

The Association held its first Best Practice Forum on Preparing Witness Statements. The event was co-ordinated by Kanaga Dharmananda. A draft Best Practice Guideline was prepared by Craig Colvin SC and presented at a forum attended by experienced litigation barristers and solicitors and members of the Bench.

In the course of the Forum the Chief Justice provided great encouragement for the initiative.

The Guideline will shortly be finalised and published on the Association's website. The aim of the Forum is to improve the availability of practical information and standards of practice through a series of Guidelines.

Annual forums to consider different practice skills are planned for the future.

### **Lobby government**

The Association has reinforced the pressing need for a new Supreme Court Building at meetings with the former and current Attorney General. No commitment has been forthcoming.

The Association is exploring ways in which to improve access to the courts through improved legal aid funding and support for pro bono services. Funding for legal aid in the United Kingdom is about 4.5 times that provided in Australia. The provision

of legally aided representation in criminal matters is close to collapse. Seeking improvement in these access to justice areas will be a priority issue in 2009.

### **Depression and Mental Health Initiatives**

The Association supported the research initiatives being funded by the NSW Bar Association in this area.

### **Bar Readers' Course**

The Association continued to provide the Bar Readers' Course for new members. 17 members completed parts of the course in 2008. The course content was revised and improved by Felicity Davis who coordinated the course in 2008 with support from committee members Ken Martin QC, John Hockley and Joshua Thomson. The commitment to coordinate the course is enormous and greatly appreciated. The Association especially thanks Felicity Davis for her considerable and excellent work in this area.

The quality of teaching was very well received by participants. It is provided on a voluntary basis by many members of the Bench and senior members of the Bar. It is an important part of the Bar's commitment to the highest standards of practice.

In July, the Association conducted a week long advocacy course in conjunction with the South Australian Bar Association and with support from the Australian Bar Association. On the faculty for the course from Western Australia were McCann DCJ, Ken Martin QC, Craig Colvin SC, Patrick O'Neal and Felicity Davis. There were 12 attendees from Western Australia.

The Association will host a similar course in 2009 with administration responsibilities to be undertaken by Debbie Cole.

### **New Members**

The following new members joined the Association:

Gillian ANDERSON	Michael ORLOV *
Gary COBBY	Terence PALMER
John D'ANGELO	Hylton QUAIL
Martin GOLDBLATT	Garry RUTHERFORD
Noelle HOSSEN	Julian SHER
Michael JONES	David STONE
Christopher KENDALL	Sam VANDONGEN
Katja LEVY	GiGi VISSCHER
David MacLEAN	Joel YELDON
Graeme McEWEN	

\* Interstate Member

### **Functions**

A very successful Annual Bar Dinner, organised by Joe McGrath, was held at Platform Restaurant with French CJ and French DCJ as special guests. Matt

Howard was entertaining in proposing the toast to the Bench. Siopis J delivered a most memorable speech of impeccable comic timing and expressed the sentiment of all present in recognising the eminent suitability of French CJ for the highest Australian judicial office to which he had then been recently appointed.

The association also joined with the Law Society of WA in hosting a reception at the Town Hall to mark the announcement of the appointment of French J, as his honour then was, as Chief Justice of the High Court of Australia. The event was attended by many hundreds of members of the profession, judiciary and retired members of the profession.

### **Judicial Welcomes and Special Court Sittings**

High Court Ceremony for New Silks (Craig Colvin SC)

Ceremonial Sitting to mark the commencement of Law Week, 5 May 2008 (Craig Colvin SC)

Ceremonial Sitting to mark the opening of the new District Court Building, 6 June 2008 (Craig Colvin SC)

Judge Stephen Scott appointment to the District Court, 4 July 2008 (Stephen Davies)

Ms Tanya Watt SM, Mr Paul Roth SM and Mr Greg Smith SM appointment to the Magistrates Court, 8 August 2008 (Linda Black)

Farewell to Chief Justice Murray Gleeson, High Court, 29 August 2008 (Grant Donaldson SC)

Chief Justice Robert French appointment to the High Court, 1 September 2008 (Craig Colvin SC)

Memorial Sitting for Judge Paul Healy, District Court, 12 September 2008 (Chris Zelestis QC)

### **Submissions**

The following submissions were made by the Association:

Legal Costs Committee review of Litigious Costs Scales

Criminal Law and Evidence Amendment Act 2008

Litigation Funding – Standing Committee of Attorneys General

Order 24A to Chief Justice

Proposal Concerning Court Start Times

CPD Policy and Regulations

National Police Certificates recording of Pending Charges

Legal Practice Act Regulations

Supreme Court Practice Directions

Review of Supreme Court Judge's Book on Self Represented Litigants

### **WA Bar Review**

The Bar Review continues to be published twice per annum with Peter McMillan as editor. Thank you to all members who have contributed to the publication.

### **Constitution**

A special general meeting of the Association was held to ratify the constitution of the Association in order to meet legislative requirements.

### **Law Council**

Ken Martin QC attended 2 director's meetings of the Law Council as alternate for the President. Craig Colvin SC attended 3 meetings. Ken Martin QC is congratulated on his recent appointment as Treasurer of Law Council. The Law Council will hold a strategic planning meeting on 6 December 2008 to be attended by Craig Colvin SC on behalf of the Association.

### **Australian Bar Association**

Craig Colvin SC attended 3 meetings of the Australian Bar Association and Grant Donaldson SC attended 1 meeting as alternate for the President.

### **Finances**

The Association is in a strong financial position which provides it with a basis to improve services to members and ensure that it is able to provide important policy commentary. Thank you to Peter Quinlan for oversight of the Association finances.

### **Sponsorship**

LexisNexis continue their involvement as sponsor of Association events and activities, especially the Bar Readers' course events. We are grateful for their ongoing support.

### **Members of Council**

I record my thanks to all members of Council for their service. I especially thank Michael Berry for his work as Secretary.

**Craig Colvin SC**  
**President**