

Western Australian Bar Association

President's Report 2009

The following members elected in December 2008 comprised the Bar Council during 2009:

President	Craig Colvin SC
Vice President	Grant Donaldson SC
Secretary	Brendan Ashdown
Treasurer	Joseph McGrath
Members	Ron Birmingham QC Kanaga Dharmananda Elspeth Hensler John Hockley Paul Mendelow Peter Quinlan* Judy Seif Joshua Thomson

(* Appointed by Bar Council on 10 February 2009 pursuant to clause 42 of the Constitution to fill the vacancy arising from the appointment of her Honour Judge Felicity Davis).

Staff

The Association has the benefit of two very capable and motivated members of staff in Debbie Cole as Executive Officer and Education Coordinator and Karen Knox as Administrative Assistant. The systems and procedures of the Association have been thoroughly reviewed over the past 2 years and are now in good order. The Association is able to provide timely responses to requests for information and makes efficient arrangements for the diverse events arranged for members. Debbie and Karen also field inquiries from members.

Arrangements whereby Debbie works additional hours Monday to Thursday and does not work from the office on Fridays are working well. Debbie puts in many additional hours in service to the Association and on behalf of all members I thank both Debbie and Karen for their outstanding service.

Governance

Bar Council continued to work in accordance with the governance structure established in 2008.

The structure entrusts responsibilities for particular portfolio areas and key goals to particular members of Bar Council (and in some cases other members of the Association). This approach ensures accountability for delivering outcomes.

Members responsible for particular portfolios co-opt members to assist in implementing key objectives where necessary.

The Association has a formal budgeting process and has substantially increased its annual budget as a result of increased activities.

There remain a few areas of the work of the Association where committees have been established.

Disciplinary Committee

Ken Martin QC, Graeme Murphy SC and John Ley were elected members of the Disciplinary Committee at the December General Meeting held on 2 December 2008.

Jeremy Allanson SC and Laurie Levy SC were appointed by Bar Council on 28 July 2009 pursuant to clause 60B of the Constitution to fill the vacancies arising from the appointments of Justice Ken Martin and Justice Graeme Murphy.

There is one matter currently before the Disciplinary Committee.

Professional Standards Act Committee

A committee has been established to advance an application for approval of a Scheme under the Professional Standards Act

Committee representatives

The following members of the Association have served on the following committees or points of consultation in relation to the following matters

Australian Bar Association Conduct Rules, Craig Colvin SC
Law Council of Australia Judicial Appointments Committee, Grant Donaldson SC
Legal Practice Board Professional Conduct Advisory Committee, Craig Colvin SC, Gillian Braddock SC and Michael Berry
National Legal Profession Reform, Craig Colvin SC
Law Council of Australia Elder Law Working Group, Matt Howard SC
ALJA Research Project of Criminal Conferencing models operating in WA, John Prior.

Bar Council

Bar Council met on 10 occasions between February and November.

Portfolio Areas

Bar Readers' Course	Paul Mendelow
Bar Review	Peter MacMillan
Barristers' Benevolent Association	Ron Birmingham QC & John Hockley
Best Practice Forum	Kanaga Dharmananda
Chambers	Grant Donaldson SC
CPD Weekend	Joshua Thomson

Constitution & Rules	Grant Donaldson SC
Costs	John Vaughan
Courts	Craig Colvin SC
Finance	Joe McGrath
Functions	Joe McGrath
Legal Aid	Grant Donaldson SC
Member Benefits	Kanaga Dharmananda
Professional Indemnity Insurance	Peter Quinlan & Joshua Thomson
Pro Bono	Elsbeth Hensler
Secretary	Brendan Ashdown
Submission Requests	Peter Quinlan
Trial Advocacy Course	Gail Archer SC
Women	Elsbeth Hensler, Judy Seif & Paul Mendelow

Principal New Goals and Objectives

The following new goals and objectives were adopted for implementation during the course of 2009.

1. Publish forms for compliance with costs and disclosure obligations under Legal Profession Act.
2. Establish pro bono referral arrangements with the Law Society of WA.
3. Progress Professional Standards Act application.
4. Investigate means by which further accommodation for barristers may be provided.
5. Conduct survey on briefing practices for women, arrange forum for senior practitioners to provide tips for establishing a practice and investigate establishing a mentoring scholarship for young women barristers.
6. Conduct Best Practice Forum on Communication, Conferral and Confining Issues.
7. Lobby government to commit the funds necessary to upgrade the Supreme Court and to improve access to the courts.
8. Lobby government to provide increased funding for legal aid and improve briefing arrangements for barristers, especially in criminal appeals.
9. Establish regular meetings with Law Society and other legal organisations, and courts.
10. Establish a range of member services and benefits.
11. Identify ways in which to improve collegiality.

Costs Disclosure

In 2009, members of the Bar became subject to formal cost disclosure obligations under the Legal Profession Act. A seminar to inform members of the obligations

under the new laws was held on 5 February and was very well attended. Thanks to John Vaughan for the considerable work undertaken in preparing and presenting his paper.

For the assistance of members, forms to guide compliance with the requirements of the legislation were prepared and are now published on the Association's website. John Vaughan, Peter Quinlan, Felicity Davis (as her honour then was) and Craig Colvin SC were responsible for preparing the guides.

Pro Bono Referral

The arrangements for referral of pro bono inquiries have been reviewed during the course of 2009. There are now arrangements in place for the assessment of all inquiries and guidelines as to their consideration. Public information on the Association's website has been reviewed. Elspeth Hensler has taken on responsibility for this area and has greatly improved the timeliness with which inquiries can be considered and the arrangements for identifying members who may be willing to act in particular matters. Her efforts on behalf of all members in this regard are greatly appreciated.

Elspeth has also represented the Bar in the establishment of the Western Australian Legal Assistance Forum, a consultative body representing a diverse group of organisations involved in legal aid and provision of pro bono legal services. Elspeth has been appointed as the inaugural Chair of WALAF.

The Association has also established arrangements for referral of matters from community legal centres. Cooperative arrangements are also in place with the Law Society that allow for the Association to provide assistance in assessing the merits of claims with inquiries received by the Association that require an instructing solicitor being referred to the Law Society. These are all important improvements to coordinate the pro bono services willingly provided by many members of the Association.

In 2009, 36 formal inquiries for assistance were received with assistance being provided in 14 matters in a diverse range of cases. Some matters were complex and the service of members in taking on these deserving cases which otherwise would not be able to have the benefit of legal assistance is very valuable.

Members act in many other pro bono matters where requests are not received through the Association.

Professional Standards Act

The Association has taken the formal decision to progress an application for a limited liability scheme under the Act. It has decided that any such scheme should allow for a member to opt out if the member wished to do so. Similar schemes have been put in place by the New South Wales Bar Association and the Victorian Bar. The committee was under the leadership of Graeme Murphy SC (as his honour then was). Peter Van Hattem SC has agreed to take over as Chair of the committee and will convene a meeting in February 2010 to advance the process of making an application.

Availability of Barristers' Chambers

The availability of chambers is an important issue for the Association. It is in the interests of all members that there is a vital and substantial Bar in Perth with a diversity of members able to meet the needs of legal firms and their clients. It is difficult for the Bar to grow without provision of adequate, reasonably priced accommodation.

A report on the issue was received from Grant Donaldson SC. The Bar has formally considered the limited options available to it to establish chambers. It does not have the financial standing to be able to establish chambers itself. It has been in dialogue with the two largest sets of Chambers, Francis Burt Chambers and John Toohey Chambers concerning accommodation issues in the course of the year. The Association remains interested in supporting any initiative to establish new accommodation to the extent that it is able to do so.

Women at the Bar

Women remain under-represented at the Bar compared to the legal profession as a whole. Nevertheless, it is encouraging that women are joining the Bar. Of the 19 new applicants for membership this year, 6 were women.

A group comprising Judy Seif, Elspeth Hensler and Paul Mendelow have reviewed the steps that might be taken to support women at the Bar.

A successful function at which women judges and registrars were invited to join women members of the Bar was held on 23 July. There were 31 in attendance.

The Association has undertaken a survey of women at the Bar to identify further measures that could be undertaken to encourage more women to join the Bar and any issues that are considered to arise in respect of their advancement. The survey will be used to inform further initiatives to be taken in 2010.

There remains work to be done in encouraging changes in referral practices. It is especially important that women be seen to be briefed in high profile or leading cases. Justice Owen remarked recently that despite the Bell litigation involving many barristers there were no women who were given a speaking part in the court proceedings.

Best Practice Forum

The Association held its second Best Practice Forum on *Communication, Conferral and Confining Issues* on 28 August 2009. The forum, which was coordinated by Kanaga Dharmananda, was well received and supported by members of the judiciary, the bar and experienced solicitors. Sincere thanks Kanaga, and to Grant Donaldson SC and Theo Lampropoulos SC for presenting papers at the forum, and to Terry Palmer and Steven Wong for their assistance with preparation of the papers.

The best practice forum initiative of the Bar Association is an important one. It seeks to bring to the attention of the profession generally the practical content of the ethical obligations that must be observed by officers of the Court. The forums focus upon particular practice skills that are important in modern litigation practice.

The first Best Practice Guide on *Preparing Witness Statements for use in Civil Cases* (the subject of 2008 forum) was published on the Association's website. It is planned to expand these guides based upon the papers presented at each annual forum.

Supreme Court Upgrade

The Association has raised with the Attorney General the need for an upgrade in the facilities of the Supreme Court. In the course of the year, the difficulties associated with the current facilities were the subject of an address by the Chief Justice during the course of Law Week. It is an understatement that the provision of a new court is well overdue. It is a fundamental responsibility of government to ensure that the courts are properly resourced. The Association will continue to advocate for a new Supreme Court building.

Legal Aid and Criminal Appeals

The Association has supported the efforts of the Law Council of Australia to secure increased funding for legal aid. It remains an issue which gives rise to substantial injustice.

Grant Donaldson SC has been involved in initiatives to increase the number of senior experienced practitioners available to take briefs in criminal appeals. Craig Colvin SC has also raised the issue with Legal Aid. The result has been a change in practices within Legal Aid and an increase in those who have been identified as appropriate for Legal Aid briefs in criminal appeals.

Meetings with other Bodies

In the course of 2009, the Association hosted meetings with the Law Society and with the various bodies involved in providing legal services on a non-commercial basis. These meetings enable the Association to understand the issues facing the broader profession and to identify ways in which the Association and its members may be involved in addressing those issues. These meetings will continue.

The Association also maintains regular informal communication with the heads of the courts.

Member Benefits

Kanaga Dharmananda has commenced a process of identifying benefits that may be made available to members of the Association. These benefits are published on the website and a membership card has recently been distributed to members to facilitate access to these services.

Collegiality

An important part of the work of the Association is to provide opportunities for members of the Bar to meet as colleagues to discuss professional issues and to maintain cordial relationships that are essential to the administration of justice within an adversarial system. Many of the activities of the Association have this attribute. However, in 2009, the Association has not introduced any new initiatives designed to specifically address this goal.

CPD Weekend 2009

The Association's second CPD weekend was held at the Vines on 30 and 31 October 2009 with 70 members in attendance. There were a number of highlights of the weekend. The event commenced with a dinner and outstanding hypothetical that was both entertaining and informative led by Jason MacLaurin with panel participants Justice Carmel McLure, Judge O'Neal, Chris Zelestis QC, Beau Deluil, Linda Black and Joel Yeldon. The opening session on the Saturday on issues for the justice system presented a diverse range of challenging issues affecting different aspects of professional responsibility. Justice Owen dealt with issues associated with large and complex litigation and modern commercial practice. Chief Judge Antoinette Kennedy presented a challenging paper on the effect of recent laws requiring the imposition of mandatory custodial sentences. Prof Neil Morgan presented evidence of conditions in Western Australian prisons as a result of overcrowding and outlined the importance of the role of a formal inspector in ensuring proper facilities are provided for detention.

Other speakers for the weekend included Justice Graeme Murphy, Michael Corboy SC, Prof Christopher Steytler QC, Craig Colvin SC, Brahma Dharmananda, Justice John Chaney, John Hedges, Justice Christine Wheeler, Justice Kenneth Martin, Registrar Sandra Boyle, Gail Archer SC, John Prior, Elspeth Hensler, Richard Douglas and Ron Birmingham QC.

All speakers must be congratulated on the high quality of their presentations and the excellent papers provided for the principal sessions. The event is of the highest quality and diversity. It is of great benefit to members.

It is an important part of the collegiality of the Bar. Members are encouraged to plan to attend the event in 2010.

The outstanding work of Joshua Thomson in arranging the excellent programme for the weekend must be acknowledged. The administrative arrangements by Debbie Cole and Karen Knox enabled the event to proceed without any problems.

Submissions

Submissions on the following topics were made by the Association

Legal Profession Regulations to Solicitor General

Consolidated Practice Directions of the Supreme Court of Western Australia to the Chief Justice

Proposed Practice Direction – Taxation of Costs, Administrative Appeals Tribunal
Costs Scale, Federal Court

Proposed Practice Direction for use in civil and criminal appeals, Court of Appeal
Review of Professional Standards Act 1994 (WA), Department of Attorney General
Costs Recovery, Standing Committee of Attorneys General

Updated National Minimum Standards for Professional Indemnity Insurance, Law
Council of Australia

Ceremonial Sitting Times, Supreme Court

Tenure of Magistrates, Attorney General

National Legal Profession Reform Process, Attorney General
National Legal Profession Reform Process, Law Council of Australia
Costs Recovery, Standing Committee of Attorneys General (2)

Judicial Welcomes and Special Court Sittings

Speech to farewell to Justice Christopher Steytler, President of the Court of Appeal, Supreme Court, 30 January (Craig Colvin SC)

Farewell to Chief Justice Murray Gleeson, 30 January (Grant Donaldson SC)

Farewell to Justice Michael Kirby, High Court, 2 February (Craig Colvin SC)

High Court Ceremony for New Silks, High Court, 2 February (Craig Colvin SC)

Appointment of Justice Virginia Bell, High Court, 3 February (Simon Moncrieff SC)

Speech to farewell Justice Michael Barker, President of the State Administrative Tribunal, 5 February (Craig Colvin SC)

Speech on appointment of Judge Felicity Davis, District Court, 16 February (Grant Donaldson SC)

Speech on appointment of Justice John Chaney, Supreme Court, 17 February (Craig Colvin SC)

Speech on appointment of Justice Ken Martin, Supreme Court, 24 March (Craig Colvin SC)

Speech on appointment of Ms Andrée Horrigan, Children's Court, 27 March (Philip Urquhart)

Speech on appointment of Judge Patrick O'Neal, District Court, 20 April (Paul Mendelow)

Speech on appointment of Justice Graeme Murphy, Supreme Court, 1 May (Grant Donaldson SC)

Speech to farewell Judge Roger Macknay, District Court, 8 May (Chris Zelestis QC)

Speech on appointment of Judge Simon Stone, District Court, 18 May (Sam Vandongen)

Speech to farewell Justice Tony Templeman, Supreme Court, 5 June (Craig Colvin SC)

Speech on appointment of Judge Janine Pritchard, District Court, 18 June (Peter Quinlan)

Speech to farewell to Justice Julianne Penny, Family Court, 3 July (Gillian Braddock SC)

Speech on appointment of Justice Stephen Hall, Supreme Court, 24 July (Stephen Davies)

Speech on appointment of Justice Simon Moncrieff, Family Court, 1 September (Peter Dowding SC)

Speech on appointment of Ms Felicity Zempilas and Mr Edward De Vries, Perth Magistrates Court, 4 September (Sam Vandongen)

Speech on Ceremonial Sitting to mark the commencement of Law Week, Supreme Court, 14 September (Craig Colvin SC)

Speech on Special Sitting to mark the occasion of Justice Virginia Bell's first sitting in Perth, High Court, 12 October (Grant Donaldson SC).

Bar Readers' Course

The Bar Readers' Course is now well established as an important part of commencing practise at the Bar in this State.

Paul Mendelow was responsible for coordinating the Bar Readers' Course in 2009 and I thank him sincerely for all his work in that important capacity.

19 new members completed one or more of the modules in the Bar Readers' Course.

The Association continues to receive widespread support from members of the judiciary and senior members of the Bar. Presenters this year included members of the Federal, the Federal Magistrates Court, the Supreme (including the Court of Appeal), the Family and the District Courts, along with senior members of the Bar. The quality and seniority of the teaching faculty and their willingness to contribute their time and energy has been and will continue to be a significant factor in ensuring the ongoing success of the Bar Readers' Course. Thank you to all those members who contributed in providing teaching as part of the course.

This is the sixth year that the Bar Readers' Course has been offered and it is pleasing to note that LexisNexis has sponsored the course since its inception.

A review of the course was undertaken upon its completion and some small changes will be introduced next year as efforts are made to continually improve the course and its content.

Trial Advocacy Course

A Trial Advocacy Course, designed to cater for 'junior' barristers from small bars in Australia, was conducted by the Association in conjunction with the Australian Bar Association and the South Australian Bar Association.

The Association is extremely grateful to her Honour Chief Judge Kennedy for granting approval to use courtrooms and facilities at the District Court, during the Court's recess period, for this year's course which was held from 22-26 June.

Gail Archer SC assumed significant responsibilities as Course Director and the excellent work undertaken by Gail and other members of the Organising Committee

(Phil Greenwood SC, Chair of the ABA's Advocacy Training Council and Ian Robertson SC of the South Australian Bar) ensured the success of the course.

The support which the Association received from sponsors – Medico Legal Insurance Group, Suncorp and LexisNexis, was of enormous assistance and greatly valued.

There were 24 participants in total, comprising 17 from WA, 6 from SA and 1 from the ACT. There were 12 coaches – 5 from WA (Gail Archer SC, Gillian Braddock SC, Craig Colvin SC, Tony Derrick and Sam Vandongen).

Plans are underway for next year's course which is to be conducted by the South Australian Bar Association in Adelaide in late June.

Members

There are 199 members of the Association of whom 182 are local members. Of the local members there are 149 men and 33 women. With the appointment of Patricia Cahill, Matthew Howard, Anthony Derrick and Stephen Davies as Senior Counsel announced on 24 November there are now 26 men and 3 women practising as Senior Counsel in Western Australia who are members of the Association.

New Members

The following new Members were elected to the Association:

Katrina Banks-Smith
Natasha Breach
Greg Carter
Anthony Elliott
Anthony Eyers
Laurence Levy SC
Bettina Mangan
Neville Morcombe QC *
Natasha Stewart
Ian Weldon
Steven Wong
Stephen Wright

(* Interstate Member)

Applications for membership by Glenn Cridland, Charmaine Holyoak-Roberts, Henry Jackson, Lee Mather, Charles Robert Newlinds SC *, Alan Troy, and Anthony Willinge are pending before the General Meeting on 2 December.

Judicial Members

The following former members were elected as Judicial Members

Justice Kenneth Martin
Justice Graeme Murphy
Justice Stephen Hall
Justice Simon Moncrieff
Judge Felicity Davis
Judge Patrick O'Neal

Honorary Members

The following former members were elected as Honorary Members

The Hon Christopher Steytler QC
The Hon Anthony Templeman QC
His Honour Roger Macknay QC

Functions

- Dinner for the Hon Christopher Steytler held on 1 May at Platform Restaurant
- Cocktail Function for Women Members of the Judiciary and WABA on 23 July at E Cucina Restaurant.
- Bar and Bench Dinner held on 11 September at the Grand Palace Restaurant
- High Court Cocktail Function held on 13 October
- High Court Dinner jointly hosted by the Law Society and the Association held on 14 October at the Government House Ballroom.

WA Bar Review

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

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 Joseph McGrath 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.

The Association also provided sponsorship for

- AIJA's Indigenous Courts Conference (\$2,750)
- AustLII (\$3,000)

General Meetings

Special General meetings of the Association were held on 21 May and 30 June. The Association's Annual General Meeting was held on 22 October.

Members of Council

I wish to record my thanks to all members of Council for their service. The work of the Association is important. I am grateful to have been given the opportunity to serve members of the Bar as its President. Throughout my term I have been grateful for the willingness with which many members accept the burden of undertaking responsibilities in the interests of others and the profession generally. Service beyond personal interest is one of the important hallmarks of a profession. I am pleased to see that there are many that continue to uphold that tradition.

The standing of the Association and the range of activities that it arranges for the benefit of its members have increased substantially in recent years. Its financial resources, though still modest, have improved. With the support of its members, the Association is able to comment upon important issues for the administration of justice and to focus upon upholding professional standards through offering first class continuing legal education. The Association is well placed to continue to serve an important role in the profession in this state.

Craig Colvin SC
President