

## **Western Australian Bar Association**

### **President's Report 2017**

I would like to thank members for their confidence in extending to me the privilege of serving as President of the Association over the last year.

As I did last year, I have attached to this Report a more comprehensive "operations" report for the Association.

The following deserve, I think, special mention.

As foreshadowed in the last Report, the Association this year offered for the first time three indigenous clerkships. I have set out some details in the attached Report.

The Association is engaging more directly with corporate counsel with a view to increasing the chances of their briefing members directly or earlier in disputes. It is early days in that process, but the Association has received very positive responses to its advances.

The strategic planning project which was foreshadowed in my Report of last year was not much advanced this year (*mea culpa*). It will be undertaken over the course of the next year. The aims are to better understand members' expectations and requirements, so that the Association is fully engaged with members and delivers the required and hoped for services (including as to the provision of CPD).

The Association's website is outdated and of limited functionality. Bar Council has engaged web designers who are working at the moment on a redesign. It is expected that will be completed in the first half of 2018.

The Association is subject to the *Association Incorporation Act 2015* (WA). Draft amendments to the Constitution are being prepared to make it compliant with that *Act*. Those amendments will be put before a special general meeting either later this year or the very beginning of next year. I am most grateful to Leigh Warnick who has done the heavy lifting in the drafting so far.

I would like to thank members of Bar Council, the Committees and the many individual members who have worked for the benefit of all members over the last year.

Having said all of that, the Association's work for members simply could not occur without the dedication of its Executive Officer, Debbie Cole and its Administration Assistant, Karen Knox. They literally keep the Association's world spinning and I cannot express my gratitude adequately to them.

**Matthew Howard SC**

## OPERATIONS REPORT

### Bar Council

The following members elected on 25 October 2016 comprised the Bar Council during 2016/2017:

President:	Matthew Howard SC
Vice President:	Stephen Davies SC
Members:	Martin Cuerden SC Asanka Gunasekera Geoffrey Hancy Elspeth Hensler Rebecca Lee Craig McIntosh Rachel Oakeley Fraser Robertson Clinton Russell Sarah Russell
Secretary	Asanka Gunasekera
Treasurer	Martin Cuerden SC

Bar Council met on 9 occasions for scheduled monthly meetings between November 2016 and September 2017.

### General Meetings

Special General meetings of the Association were held on 23 February 2017, 3 July 2017 and 6 September 2017. The Association's Annual General Meeting will be held on 25 October 2017.

### Committees

Access to Justice	Elspeth Hensler, Natasha Breach (until her resignation as a member of the Association in June 2017), Justin Edwards and Fraser Robertson
Bar Readers' Course	Marcus Solomon SC, Co-ordinator
CPD Autumn Festival	Marcus Solomon SC, Elspeth Hensler Sarah Russell, Jessica Henderson, Bill Keane and Alex Mossop
CPD Annual Conference	Marcus Solomon SC, Elspeth Hensler, Sarah Russell, Jessica Henderson, Bill Keane and Alex Mossop
Disciplinary Committee	Paul Yovich SC was elected a member of the Disciplinary Committee at the Annual General Meeting held on 28 October 2015, joining Gail Archer SC and John Ley.
Diversity at the Bar	Rebecca Lee, Paul Yovich SC, Wendy Gillan and Asanka Gunasekera

Essential Trial Advocacy Course	Matthew Howard SC, Co-ordinator
Group Life Insurance	Sarah Russell
Wellness Committee	Terry Palmer, Clinton Russell and David Blades
Pro Bono	Elsbeth Hensler, Natasha Breach (until her resignation as a member of the Association in June 2017) and Fraser Robertson (from June 2017)
Professional Indemnity Insurance	Geoffrey Hancy
Professional Standards Scheme	Matthew Howard SC, Stephen Davies SC Sarah Russell and Asanka Gunasekera
Referral Service	Stephen Davies SC

### **Bar Readers' Course**

This year's BRC was conducted over 7 weeks during May and June, with 21 new members completing one or more of the modules of the BRC this year.

The Association again conducted an Unconscious Bias Training Workshop as a component of the Ethics and Practice module of the BRC. The Workshop was also open to members and was very well received by those who attended. The training was provided by [Symmetra](#), a specialist international diversity and inclusion consultancy, who were engaged by the Law Council of Australia in December 2016, as the preferred service provider of unconscious bias training for the Australian legal profession.

A function to mark the closing of the BRC, award certificates and present prizes to the best performed readers was held on 17 August. Congratulations once again to Jennifer Thornton who was awarded the Chief Justice's prize for the best performed reader in the Ethics & Practice, Evidence, and Jurisdiction & Procedure modules, and to Tamasin Jonker who was awarded the prize for the best performed reader in the Essential Trial Advocacy Course.

Once again, many members of the Bench and senior members of the Bar willingly contributed their time and energy as Presenters and/or Course Coordinators. Their support ensures the ongoing success of the BRC and is greatly appreciated by both the Association and participants.

Sincere thanks to LexisNexis for their continued sponsorship of the BRC, and to all involved in the BRC.

### **Essential Trial Advocacy Course**

The Essential Trial Advocacy Course (ETAC) was held from 10-14 July 2017 at the District Court of Western Australia. The Association is very grateful to the Chief Judge of the District Court who, once again, made that Court's facilities available for the Course. The facilities are excellent, and are a significant factor in ensuring the success of ETAC.

There were 29 participants in total, comprising 15 from WA, 8 from SA, 2 from the NT, 3 from Tasmania and 1 from the South Pacific.

There were 16 coaches, comprising 7 from WA (Stephen Davies SC, Matthew Howard SC, Darren Jackson SC, Kim Lendich, Terry Palmer, Sarah Russell, and Marcus Solomon SC), 7 from SA, 1 from the NT and Julia Moody (from WAAPA) as the Voice & Performance Coach.

A pool of 23 volunteers (junior solicitors, articled clerks and law students) played the role of volunteers and/or acted as camera operators. Their contribution is important and an essential element of a successful course.

Justice Antony Siopis, Justice Lindy Jenkins, Justice Kenneth Martin, Justice Paul Tottle, Justice Gail Archer and the Hon Shauna Deane QC attended on the final day to act as judges at the mock trials.

The Course culminated in the final Dinner on the Friday night which was addressed after dinner by Justice Jenkins.

The success of the course is due to the collective efforts of all involved in ETAC.

Sincere thanks to Sherrin Partners (Anthony Brown), Ludlows and Juniper Wines for their sponsorship.

### **The French Colloquium and Dinner**

Last year, the French Colloquium was held in place of our annual CPD conference.

The Colloquium and Dinner held on 24 November 2017 were tremendous events and a fitting tribute to the enormous contribution The Hon Robert French AC has made to the administration of justice in this country.

I am delighted to share the following excerpt from a letter of appreciation received from the Honourable Robert French AC.

*“May I express my deep gratitude for the splendid Colloquium that the Western Australian Bar Association put on in my honour last week. The papers and presenters were of a uniformly high quality and I am delighted that they are to be published by Federation Press. Valerie and I greatly enjoyed the dinner. The generosity and warmth of the Bar Association is deeply appreciated.”*

As noted, Federation Press is in the process of publishing the papers and commentaries delivered on the day. Henry Jackson has the carriage of that from the Association’s viewpoint and I am enormously grateful to him for the amount of time he has spent on that project. It is expected that the book will be published in the first part of 2018.

### **CPD - Autumn Festival - March 2017**

Held over 6 days in March, this year’s Autumn Festival included presentations on:

- *Seminar 1 - OMG and the Law* by Professor Celia Hammond (Vice Chancellor, the University of Notre Dame Australia), Craig Colvin SC, Joshua Thomson SC and Marcus Solomon SC

- *Seminar 2 - Judicial review of adjudication determinations under the Construction Contracts Act* by Kanaga Dharmananda SC, Sarah Russell and Tom Porter
- *Seminar 3 - S18C - to have or have not* by The Hon Malcolm McCusker AC CVO QC and The Hon Peter Dowding SC
- *Seminar 4 - Cyber Crime in the Age of Technology* by Her Honour Judge Linda Petrusa SC, Carmel Barbagallo SC and Phil Russo
- *Seminar 5 - Lawyers behaving badly* by John Prior and Philippa Rezos
- *Seminar 6 - Maritime and Territorial Disputes in the South China Sea - International law and norms at work or a new world order ?* by Professor Stephen Smith (UWA) and Michael Opie

Seminars 1, 3 and 6 were opened to members of the legal profession, academics and law students. Aside from the opportunity to not only hear from an impressive line-up of speakers, the opening of these seminars to the profession provided an ideal opportunity for members of the profession and the Association to meet during drinks at the conclusion of each seminar.

### **CPD Seminar – *The Royal Commission and the Catholic Church***

The presentation by Francis Sullivan, CEO of the Truth, Healing and Justice Council at the CPD seminar on 10 October was excellent and compelling. There was unanimous praise from those who attended about the quality and candour of Francis' presentation, and his responses to questions from attendees.

### **CPD Conference - 19 October 2017**

Those of us who attended some or all the sessions were treated to an imaginative array of topics delivered by impressive presenters. The inclusion of two societal sessions – Children, Poverty and the Law, and The Aboriginal History of Rottneest Island created much interest, discussion and positive feedback from attendees. We were very fortunate to be joined by, and very grateful for the support of, the Honourable Simone McGurk MLA, Minister for Child Protection, and, the Attorney General, the Honourable John Quigley MLA.

The quality of the speakers and content of the presentations in the other sessions were equally impressive. We are very grateful to all speakers, and to Justices Pritchard and Jenkins for chairing the first and last sessions at the conference. Their continued support of our CPD events is greatly valued and appreciated.

Consistently with the approach taken to some of the seminars in March 2017, the Royal Commission Seminar and the Poverty and Rottneest Seminars were opened up generally to the profession, corporate counsel and certain community groups.

On behalf of the Association, I would like to thank Marcus Solomon SC and his committee for their work in putting together an excellent program for both the Autumn and annual CPD Conference in October.

### **Diversity and Inclusion at the Bar**

#### ***National Model Gender Equitable Briefing Policy***

In 2016, the Association endorsed the National Model Gender Equitable Briefing Policy which had been formulated by the Law Council of Australia. The Policy has also been endorsed by the Australian Bar Association.

The Association launched the Policy to corporate counsel in Western Australia at a function held in the Judges' Conference Room at the Federal Court of Australia on 25 May 2017. Justice Pritchard spoke at the Launch.

The Hon. Wayne Martin AC, the Minister for Women's Interests, the Hon. Simone McGurk MLA, Justices Siopis and Pritchard attended the function, along with a number of corporate counsel and members of the Association.

The Policy is, at its core, about equality within the legal profession. It seeks to make people, both within and outside of the Bar, think about how barristers are briefed. It seeks to broaden the approach taken to briefing so as to maximise choices for legal practitioners and their clients and to open up access to suitably qualified barristers.

### ***Indigenous Clerkships***

The first of the Indigenous Clerkships offered by the Association were undertaken during July. Rebecca Dann and Emma Garlett each completed 2-week clerkships, spending the first week allocated to cells lead by Patricia Cahill SC and Penelope Giles respectively, and the second week as "shadow" Associates to Beech JA and Banks-Smith J respectively. Justyne Eades completed a 3-week clerkship, spending one week each with cells lead by Michael Feutrill and Patricia Cahill SC, and a week as "shadow" Associate to Tottle J.

Thank you to all who participated in the first of the clerkships, particularly Patricia, Penelope and Michael for taking on the role of cell leaders, and Rebecca Lee who, as Chair of the Diversity Sub-Committee, was responsible for coordinating the clerkships. We are also extremely grateful to the Chief Justice and Judges of the Supreme Court for their support of and willingness to participate in the Indigenous Clerkships.

The Indigenous Clerkships, which will be offered annually, are an important feature of a number of initiatives which have been or are being developed by Bar Council (through its sub-committees) to create greater inclusiveness and diversity at the Bar.

### ***Statement on same sex marriage***

Bar Council made a media release at the end of September 2017 (as noted in WP) in support of changes to the *Marriage Act 1961* (Cth) to allow for same sex marriage.

### ***Pro Bono***

Over the past 12 months, the Association received 20 requests from members of the public which were referred to Law Access and/or other organisations for assessment/further assistance.

In addition, the Association received 52 requests which were assessed as meeting the criteria for pro bono assistance. Of the 52 requests circulated to members, assistance was provided in 36 matters, and in most matters multiple offers of assistance were received from members.

While most requests for pro bono assistance received by the Association from individual members of the public are redirected to Law Access for assessment, the Association continues to accept referrals/requests from the Courts, community legal centres, from members of the public seeking family law assistance (in which

case, requests are referred to FLAPA), and from members of the public who have approached the Association at the request of their pro bono solicitor.

Elspeth Hensler, Natasha Breach (up to June 2017) and Fraser Robertson (from June 2017) continue to provide outstanding assistance in assessing and coordinating pro bono requests received by the Association.

Regretfully (for the Association), Natasha Breach resigned as a member of the Association to take up an in-house Counsel role at INPEX Australia Pty Ltd. Over the past 6 years Natasha has, along with Elspeth Hensler, assumed responsibility for assessing and coordinating pro bono requests received by the Association. Their efforts, for which we are truly grateful, have ensured the prompt and efficient processing of requests.

In 2014, Natasha and Elspeth were worthy recipients of the inaugural Distinguished Service Award for their contributions to pro bono work at the Bar. Natasha has also represented the Association at meetings convened by the Law Society and others to consider access to justice issues and pro bono services.

Bar Council recognized the enormous contribution which Natasha made in this role over a number of years.

### **Representation of Practitioners before the LPCC and SAT**

Established formally by the Association in 2011, the Referral Service formalised the provision of advice to practitioners who are the subject of complaint to the Legal Profession Complaints Committee (LPCC) and the State Administrative Tribunal (SAT).

The Referral Service policy was reviewed in 2013 to clarify the circumstances in which assistance would be provided, and also the process in obtaining assistance.

In recent times there has been considerable call on the resources of the Referral Service. As a consequence, Bar Council resolved, at its meeting held on 16 August 2017, to amend the terms of the policy and the scope of the assistance provided without charge under the Referral Service.

Requests from practitioners were referred to the Vice President, Stephen Davies SC for assessment and referral.

During the past year, the Association received formal requests from 12 legal practitioners seeking assistance in relation to complaints to the LPCC and SAT. Very many more requests for assistance were received and dealt with informally by members of the Association.

The Association has met with the recently confirmed Law Complaints Officer to discuss the representation of practitioners and matters of concern which have arisen out of members' representation of practitioners in LPCC matters. Those discussions are ongoing, and very much welcomed by the Association.

### **Professional Standards Scheme**

The Association's Scheme under the *Professional Standards Act 1997* (WA) (Act) is now in its third year of operation. As required under the Professional Standards Legislation, the Association submitted is required to submit an annual report to the Professional Standards Councils (PSC) in relation to operation of the Association's

Scheme. An external consultant was engaged to assist with preparation of the annual report – the requirements of which are onerous and involve a significant amount of time and effort.

### **Group Life Insurance Scheme**

The Group Life Insurance Scheme, taken over by MetLife in 2015, provides cover of \$300,000 for death or diagnosis of a terminal illness, or upon assessment of total and permanent disability.

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

Special sitting to welcome the Honourable Justice Joseph McGrath, Supreme Court, 28 November 2016 (Matthew Howard SC)

Special sitting to welcome the Honourable Justice James Edelman, High Court of Australia, 30 January 2017 (Matthew Howard SC)

Special sitting to welcome the Honourable Justice Gail Archer, Supreme Court, 19 June 2017 (Matthew Howard SC)

Special sitting to welcome her Honour Judge Belinda Lonsdale District Court, 9 October 2017 (Matthew Howard SC)

### **Functions**

This year's Bar and Bench Dinner will be held on Friday, 10 November 2017 at Zaferrano Restaurant. Dane Chandler will propose the toast to the Bench and the Hon Justice Banks-Smith will respond.

### **Membership**

There are currently 252 members, of whom 220 are local members. Of the local members, there are 51 women and 169 men. There are 2 women and 32 men practising as Senior Counsel in Western Australia who are members of the Association.

### ***New Members***

The following new Members were elected to the Association:

Timothy Nicholas OWEN  
Tamasin Louise JONKER  
Paul Anthony WALKER  
David Baxter COX  
Julie Katherine TAYLOR  
Clara Victoria WREN  
John Gaetano Mario FIOCCO  
Mark Frank GERUS  
Adam Anthony NOLAN  
Francesco Paolo MERENDA  
Jennifer Anne THORNTON  
David William THOMPSON  
Fiona Ann STANTON  
Richard WEINSTEIN SC \*  
Marina GEORGIU

Amanda Louise FORRESTER SC  
Mark Geoffrey PENDLEBURY  
Karen Ann SHEPHERD  
Cameron John HENDERSON  
Rachael YOUNG  
Kate Aase Tingleff PEDERSEN  
Anthony James CROCKER \*  
Simon David MAJTELES

(\* Interstate Member)

***Honorary Members***

The following former members were elected as Honorary Members:

The Honourable Carmel McLure AC QC  
The Honourable Robert French AC

***Judicial Members***

The following former members were elected as Judicial Members:

The Honourable Justice Joseph McGrath  
The Honourable Justice Gail Archer

**Matthew Howard SC**  
President