

## **President's Report 2019**

### **Bar Council**

The following members elected on 24 October 2018 comprised the Bar Council during 2018/2019:

President:	Stephen Davies SC
Vice President:	Martin Cuerden SC
Members:	Brahma Dharmananda SC Elsbeth Hensler Joel Yeldon Terry Palmer Sarah Russell Timothy Hammond Asanka Gunasekera Rachel Joseph Fiona Stanton Jenny Thornton
Secretary	Fiona Stanton
Treasurer	Brahma Dharmananda SC

Bar Council met on 10 occasions for scheduled monthly meetings between November 2018 and October 2019.

### **General Meetings**

Special General meetings of the Association were held on 29 April 2019 and 20 August 2019. The Association's Annual General Meeting will be held on 30 October 2019.

### **Strategic review of the activities of the WABA and Strategic Plan**

This year, following some reflection on my part about the work engaged in and objectives realised in years past, Bar Council commenced a strategic review of the operations of the Association.

The purpose of the exercise was, and because it is still ongoing, remains the giving of close attention to the constitutional objects and obligations of the Association; the role the Association serves or might be reasonably expected to serve, within our community generally and within the broader legal profession in particular; and the resources and capacity, tangible and otherwise, available to the Association in order to determine, in that context, how our objects are to be best advanced and our obligations best discharged.

The ultimate purpose of this exercise is to formulate a Strategic Plan.

As part of the progress on this to date, Bar Council has agreed on a framework within which these matters can be evaluated and the review brought to an effective conclusion. The further prosecution and finalisation of the review and implementation of the Strategic Plan will be key matters for the 2020 Bar Council.

### **Committees**

During and pending the outcome of the review the Committee structure and membership that existed at the commencement of the year was maintained and was as follows:

Access to Justice	Elspeth Hensler, Justin Edwards and Fraser Robertson
Bar Readers' Course	Marcus Solomon SC, Co-ordinator
Autumn CPD Seminars	Marcus Solomon SC, Co-ordinator
Spring CPD Seminars	Marcus Solomon SC, Co-ordinator
Disciplinary Committee	John Ley and Paul Yovich SC
Diversity at the Bar	Rebecca Lee, Paul Yovich SC, Wendy Gillan (until March 2018), Asanka Gunasekera and Rachel Joseph (from March 2018).
Essential Trial Advocacy Course	Sarah Russell, Course Director
Group Life Insurance	Sarah Russell
Wellness Committee	Terry Palmer (until December 2017), Clinton Russell and David Blades
Pro Bono	Elspeth Hensler, and Fraser Robertson
Professional Indemnity Insurance	Geoffrey Hancy
Professional Standards Scheme	Stephen Davies SC, Sarah Russell and Fiona Stanton
Referral Service	Martin Cuerden SC

### **Bar Readers' Course**

This year's Bar Readers' Course was conducted over 9 weeks from April to June, with 28 new members completing one or more of the modules of the BRC this year.

A function to mark the closing of the BRC, award certificates and present prizes to the best performed readers was held on 13 August.

Rebecca O'Brien was awarded the Chief Justice's prize for the best performed reader in the Ethics & Practice, Evidence, and Jurisdiction & Procedure modules.

Rachel Cosentino was awarded the prize for the best performed reader in the Essential Trial Advocacy Course.

Many members of the Bench and senior members of the Bar willingly contribute their time and effort as Presenters and or Course Coordinators. Support of this type is essential to the ongoing success of the BRC and both the Association and participants are extremely fortunate to be the beneficiary of this generosity.

Even more gratitude is due to Marcus Solomon SC, who has very graciously continued to serve as Coordinator of the Association's CPD programme. That role encompasses the BRC, and the Autumn and Spring CPD Seminars. The time and energy expended by Marcus on the Association's CPD programme represents a most significant contribution to both the discharge of obligations of the Association and the community of the Bar.

We are all in debt to Marcus for his contribution.

### **Essential Trial Advocacy Course**

The Essential Trial Advocacy Course was held between 1-5 July 2019 at the Supreme Court of Western Australia. The Association records its gratitude to the Chief Justice of the Supreme Court for making the Court's facilities available for our use. The facilities were excellent, and the ability to use real courtrooms is a significant factor in the success of ETAC.

There were 33 participants in total, comprising 14 from WA, 18 from SA and 1 from Tasmania.

There were 19 coaches, comprising 9 from WA (Matthew Howard SC, Stephen Davies SC, Marcus Solomon SC, Garry Cobby SC, Paul Yovich SC, Mara Barone SC, Terry Palmer, Bettina Mangan, and Sarah Russell (Course Director), 6 from SA, 1 each from NSW, the NT and Tasmania and Christina Koch the Voice & Performance Coach.

A pool of 40 volunteers (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.

The Honourable Justice Craig Colvin, the Honourable Justice Darren Jackson, the Honourable Justice Lindy Jenkins, the Honourable Justice Kenneth Martin, the Honourable Justice Gail Archer, His Honour Judge Patrick O'Neal and the Honourable Antony Siopis attended on the final day to act as judges at the mock trials.

The Course culminated with the final Dinner on the Friday night. The Honorable Justice Archer made the after dinner address.

While the success of the ETAC is due to the collective efforts of all involved in the course, I wish to acknowledge and record the Association's gratitude for of the very significant contribution made by Sarah Russell, who this year assumed the role of Course Director.

The Association has an enviable reputation for the smooth and successful operation of biennial ETAC's hosted in Western Australia. That reputation was upheld in an exemplary manner under Sarah's stewardship.

### **2019 Autumn CPD**

This year's Autumn CPD was held in March with presentations on the following topics:

- *Freedom of religion and the administration of justice – a curious clash between the Supreme Court of New South Wales and the clergy*
- *A practical guide to electronic trials in a real courtroom*
- *New Practice Direction on Witness Statements – everything you need to know*

- *Jurisdictional error after SZVFW, TTY167, Hossain and Shrestha*
- *Thorne v Kennedy [2017] HCA 49 - the latest from the High Court on undue influence, duress and unconscionability*
- *Work – Life Balance*

I wish to record the gratitude of the Association to all the speakers for their excellent presentations and also, again, to Marcus Solomon SC for putting together a first rate programme.

## **2019 Spring CPD**

This year's Spring CPD Seminar Series will held during October/November with presentations on the following topics:

- *Court - managed expert evidence directions and regimes: the new world order*
- *The changing world of financial reporting*
- *Risk management for barristers*
- *Comic book contracting and legal visual design*
- *Ethical issues around expert evidence*
- *Religious Discrimination Bill*
- *All things not being equal: communication and the Courts*
- *Drafting Appeal Grounds – Criminal and Civil*

## **Indigenous Clerkships**

The Association's Indigenous Clerkship programme was again offered to indigenous students who are studying law at a Western Australian university. It is somewhat disappointing to have to report that no applications were received from indigenous students for the 2019 programme. Consideration will be given as to whether any implications may be drawn from this as part of the Strategic Review.

## **Pro Bono**

Over the past 12 months, the Association received 22 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 49 requests which were assessed as meeting the criteria for pro bono assistance. Of the 49 requests circulated to members, assistance was provided in 39 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.

Elsbeth Hensler and Fraser Robertson continue to provide outstanding assistance in assessing and coordinating pro bono requests received by the Association.

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

The Association continues to receive regular requests from practitioners for assistance through the Referral Service.

The Referral Service was established to formalise 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).

Requests from practitioners are referred to the Vice President, Martin Cuerden SC for assessment and referral.

During the past year, the Association received formal requests from 4 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.

### **Professional Standards Scheme**

The Association's Scheme under the *Professional Standards Act 1997* (WA) is in its fifth year of operation and was due to expire on 30 June 2019. The Association sought and received approval from the Attorney General of Western Australia for an extension of the Association's Scheme until 30 June 2020.

Since 2016, Ms Kelly Hick has been engaged as an external consultant to assist with preparation of the Association's Annual Report which is submitted to the Professional Standards Councils. Ms Hick was also engaged to assist with preparation of the Association's Application for a new Scheme. Preparation of the Annual Report, and the new Application requires an enormous amount of time and effort by Ms Hick, Debbie Cole, and Sarah Russell and Fiona Stanton – both of whom are members of the Professional Responsibility Committee. Their collective efforts are invaluable and greatly appreciated.

### **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 farewell the Honourable Justice Stephen Thackray, Family Court of Western Australia, 13 December 2018 (Stephen Davies SC)

Special sitting to farewell the Honourable Justice Michael Barker, Federal Court of Australia, 30 January 2019 (Stephen Davies SC)

Special sitting to welcome the Honourable Justice Gail Sutherland, Chief Judge, Family Court of Western Australia, 8 February 2019 (John Hedges SC)

Special sitting to welcome the Honourable Justice Ciara Tyson, Family Court of Western Australia, 15 February 2019 (Kim Wilson SC)

## **Functions**

This year's Bar and Bench Dinner was held at Royal Freshwater Bay Yacht Club on 25 October.

There was a record turnout in all categories of membership, ordinary, judicial and honorary.

The toast by Mara Barone SC and the response by His Honour Judge Prior were funny, clever and well delivered. Both were richly deserving of the loud applause and subsequent compliments.

## **Election of the Honourable John Quigley JP MLA to membership of WABA**

I was very pleased to be able to announce Bar Council's election of the Honourable John Quigley, JP MLA, Attorney General of Western Australia, as an ex officio member of the Association.

There are two components to that pleasure: The first arises from the resolution of Bar Council, having been moved by me as President and seconded by Martin Cuerden SC as Vice President, being passed unanimously, and by a full complement of the members of Bar Council, and, it may fairly be said, with acclamation.

The second derives from the acceptance of the membership by the Attorney General without hesitation and with genuine delight and humility, both of which were unmistakably evident, which reflects well on the stature and standing of the Association.

This is first time that an Attorney General of Western Australia has been elected an ex officio member pursuant to clause 10 of the Constitution. The basis for the election appears from the terms of the resolution. A copy of the resolution and its schedule is attached to this report.

As is evident, the election of the Attorney General to membership has nothing to do with party politics, nor indeed matters political at all.

Neither is it connected in any way with the substance of his legislative work nor the particular appointments he has made; any such connection is to be eschewed on the ground that it may raise matters on which, of course, views of members could reasonably differ.

Any attempt to discern the basis on which this Attorney General was elected is to be informed by the words of the resolution and its schedule.

Finally on this topic, in no way was the election of this Attorney General intended to suggest a precedent that any Attorney General who may serve in the future ought also be elected.

## **Membership**

There are currently 273 members, of whom 239 are local members. Of the local members, there are 67 women and 206 men. There are 4 women and 36 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:

Sharon Auburn  
David Bayly  
Cheyne Beetham  
Brian Bradley  
Colin Chenu  
Terry Clavey

Lauree Coci  
Hayley Cormann  
Lisa Eaton  
Aidan Kraus  
Felicity Maher (previously an Interstate Member)  
Julie Moore  
Rebecca O'Brien  
Darren Pratt  
Matthew Pudovskis  
Jonathon Slack-Smith  
Jennifer Solliss  
Ann Spencer  
Cobey Taggart  
Philip Vincent  
Jesse Winton

***Honorary Members***

The following former members were elected as Honorary Members:

The Honourable Diana Bryant AO, QC  
The Honourable Michael Barker QC  
The Honourable Stephen Thackray

***Judicial Members***

The following former member was elected as a Judicial Members:

The Honourable Justice Darren Jackson

**Members of Council**

I wish to record my thanks to all members of Council for their service.

A handwritten signature in blue ink, appearing to read 'SM Davies SC', with a wavy, stylized flourish at the end.

**SM Davies SC  
President**

**Resolution of Bar Council of 24 October 2019 for the election of  
The Honourable John Quigley JP MLA, Attorney General of Western Australia  
as an ex officio member of the Western Australian Bar Association**

*Moved: SM Davies SC, President; seconded Martin Cuerden SC, Vice President:*

*Cognisant of the understanding and regard he has displayed, and the respect he has accorded, as a Parliamentarian and as Attorney General to the rule of law and the separation of powers between the branches of our system of government, and further cognisant of the diligent and careful way in which he has sought to discharge the functions of the office of Attorney General, and further cognisant of his Parliamentary record of prosecution of necessary, effective and practical reform of the law in Western Australia as set out in summary form in the schedule to this resolution, and further cognisant of the stature of his career in the law prior to assuming the office of Attorney General as set out in summary form in the schedule to this resolution, that the Honourable John Quigley JP MLA, Attorney General for Western Australia, be elected, for such time as he may serve in that office, as an ex officio member of the Western Australian Bar Association.*

*Carried, unanimously, and by the full complement of members of Bar Council.*



## **Schedule to the Resolution of Bar Council of 24 October 2019**

This is the schedule referred to in the resolution of Bar Council that the Honourable John Quigley JP MLA be elected, for such time as he may serve in that office, an ex officio member of the Western Australian Bar Association.

### Parliamentary record

The Honourable John Quigley JP MLA was sworn in as the WA Attorney General on 16 March 2017.

On 13 December 2018 he was also sworn in as Minister for Commerce.

Mr Quigley has prosecuted necessary, effective and practical reform of the law in Western Australia including:

- Changes to the civil liability laws to remove the limitation periods which previously precluded victims of child sexual abuse from commencing Court proceedings.
- Negotiation with the Commonwealth and other Australian jurisdictions to enable WA to join the National Redress Scheme for Institutional Child Sexual Abuse.
- Adopting the Legal Profession Uniform Law creating a legal market with NSW and Victoria covering 75 per cent of the national legal profession.

Further, he has introduced into Parliament reforms that, if passed will:

- Provide for a more just and effective approach to fines enforcement and will only allow a Magistrate to issue a warrant of commitment for fine default, with the intention of making imprisonment for fine default truly a last resort.
- Implement a high risk offenders scheme to extend the *Dangerous Sexual Offenders Act* to serious violent offenders.
- Create a legislative regime for class actions.
- Provide protections to Western Australians from ticket scalping.

Further, Mr Quigley is at the date of the resolution prosecuting further significant legal reforms namely:

- Amendments to the Criminal Law (Mentally Impaired Accused) Act 1996, reducing the unacceptable longstanding overrepresentation of Aboriginal people in WA's criminal justice system.
- Implementing the recommendations of the report by Mr John Fiocco into security of payment in the construction industry

Further, as Attorney General he has facilitated the establishment in WA of a custody notification service making it mandatory for WA Police officers who arrest and detain an indigenous person at any time to call a rostered Aboriginal Legal Service of WA solicitor this being a recommendation of the State Coroner, Ms Rosalinda Fogliani, following the Coronial inquest into the death of Ms Dhu and became operational in October 2019.

Further as Attorney General he is also working to ensure certainty in funding arrangements for Community Legal Centres and the Aboriginal Legal Service.

Further, as Attorney General he has boosted the representation of women among the judiciary including through the appointment of Judge Julie Wager as President of the Children's Court of Western Australia, Justice Janine Pritchard as President of the State Administrative Tribunal and Justice Jennifer Smith Justice Jennifer Hill to the Supreme Court.

Prior to the commencement of his service as Attorney General, as a government backbencher, Mr Quigley was instrumental in the events that led to the 2006 exoneration and release from prison of the late Mr Andrew Mallard, convicted of murder in 1994, and the awarding of a substantial *ex gratia* payment to Mr Mallard. Mr Quigley worked with the legal team that secured the High Court's decision that Mr Mallard's conviction be quashed.

### Career in Law

Prior to entering Parliament Mr Quigley had career as a lawyer.

He graduated in law from the University of Western Australia. After completing an articulated clerkship with the law firm Kott Wallace and Gunning, he was admitted as barrister and solicitor of the Supreme Court of Western Australia.

Mr Quigley practised as a lawyer for 25 years mainly in criminal law. He appeared as counsel in many trials in all Western Australian Courts and in Supreme Court appeals. For many years his principal client was the Western Australian Police Union.

Mr Quigley had an active role as counsel in the 1992 Royal Commission into Commercial Activities of Government and Other Matters.

Mr Quigley also appeared at a lengthy 1999 South Australian coronial inquest. This concerned the death of a Western Australian police officer, seconded to the National Crime Authority, who died as a result of a bombing in Adelaide.