

Western Australian Bar Association

President's Report 2011

Bar Council

The following members elected on 1 December 2010 comprised the Bar Council during 2011:

President:	Grant Donaldson SC
Vice President:	Theo Lampropoulos SC
Members:	Elspeth Hensler Mark Holler Belinda Lonsdale Paul Mendelow Peter Quinlan SC Sarah Russell Marco Tedeschi Joshua Thomson Sam Vandongen SC Joel Yeldon
Secretary	Sarah Russell
Treasurer	Peter Quinlan SC

Disciplinary Committee

Gail Archer SC was elected a member of the Disciplinary Committee at the December General Meeting held on 1 December 2010, joining Laurie Levy SC and John Ley as other members of the Committee.

Bar Council

Monthly Meetings

Bar Council met on 8 occasions between February and November.

Committees

Bar Readers' Course	Mark Holler
CPD Autumn Festival	Kanaga Dharmananda SC & Sarah Russell
CPD Conference	Joshua Thomson & Grant Donaldson SC
Finance	Peter Quinlan SC
Professional Indemnity Insurance	Peter Quinlan SC
Pro Bono	Elspeth Hensler & Natasha Breach
Secretary	Sarah Russell
Trial Advocacy Course	Gail Archer SC
Women at the Bar	Sarah Russell, Belinda Lonsdale & Paul Mendelow

Bar Readers' Course

This year, 15 new members completed one or more of the modules in the Bar Readers' Course (BRC). 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 successful of the BRC and is greatly appreciated by both the Association and participants.

A function to mark the closing of the BRC, award certificates and present prizes to the best performed readers was held on 5 August. Congratulations once again to Tim Hammond who was awarded the Chief Justice's prize for the best performed reader in the Ethics, Evidence, and Jurisdiction and Procedure modules. Tim was also awarded the prize for the best performed reader in the Trial Advocacy Course.

Sincere thanks to all those involved in the BRC, particularly Mark Holler who is responsible for coordinating the course. Thanks also to LexisNexis for their continued sponsorship of the BRC.

Trial Advocacy Course

To increase the pool of coaches for the Trial Advocacy Course (TAC), a Coaches Method Clinic was held on Friday evening, 8 April and Saturday, 9 April. The Clinic was conducted by Phil Greenwood SC (Chair of the ABA Advocacy Training Council), Craig Colvin SC and Gail Archer SC, and was attended by Linda Black, Jeremy Curthoys (as his Honour was then known), John Hedges, Mark Herron, Matthew Howard SC, Chris Kendall, Laurie Levy SC and Peter Quinlan SC, with the following members acting as 'volunteer readers' – Natasha Breach, Greg Carter, Gary Dean, David MacLean, Bettina Mangan, Terry Palmer, Sarah Russell and Steven Wong.

The TAC was conducted in conjunction with the Australian Bar Association and the South Australian Bar Association, and was held between 4-8 July at the District Court. The opportunity to use courtrooms and facilities at the District Court, during the Court's recess period, was of enormous benefit and assistance to coaches and participants. The Association is extremely grateful to his Honour Chief Judge Martino for granting approval to use the Court's facilities.

A record 31 participants completed this year's course, comprising 7 from South Australia, 4 from the Australian Capital Territory, 2 from the Northern Territory, 3 from overseas (Singapore, Nauru and Solomon Islands) and 15 from Western Australian.

There were 21 coaches, comprising 11 from Western Australia (Justice Ken Martin, Judge Tony Derrick, Judge Patrick O'Neal, Gail Archer SC, Matthew Howard SC, Sam Vandongen SC, Chris Shanahan SC, Linda Black, Jeremy Curthoys, Mark Herron and Chris Kendall), 7 from South Australia, and 1 each from New South Wales, the Australian Capital Territory and Tasmania.

A pool of 45 volunteers (junior solicitors, articulated clerks and law students) played the role of volunteers and/or acted as camera operators.

A number of judges from the Supreme and District Courts attended on the final day to act as judges at the mock trials.

Organisation of courses like the TAC requires a significant amount of time and energy and the Association is very appreciative of the contribution made by Gail Archer SC as Course Director. Having served as Course Director in the 2009 and 2011 courses, Gail's decision to "step down" as Course Director was accepted with regret by Bar Council. Matthew Howard SC has very kindly agreed to take over as Course Director.

The Trial Advocacy Course is widely recognised throughout Australian Bars, and is gaining an international reputation. The success of the course is, in no small part, due to the effort and commitment which members of the bench and senior members of the Bar have been prepared to make.

Sincere thanks to all those involved in the TAC, including Suncorp/MLIG and Juniper Wines for their sponsorship.

Australian Bar Association Bar Entry Requirements

The ABA has developed standard requirements for entry to Australian Bars. Known as the "ABA 10", all Bars have been encouraged to adopt procedures that require applicants to demonstrate a satisfactory standard of competence in each of the 10 topics.

Each Bar was requested to report on how the ABA 10 topics are currently being addressed by those commencing practise as barristers. It is pleasing to report that 7 of the ABA 10 topics are presently covered in the BRC. Steps will be taken to incorporate the remaining 3 topics (ie Written Advocacy, Other Forms of Dispute Resolution, and Practice Management) into future courses.

There are also moves towards introducing a uniform examination for entry to Australian Bars. The Bar Associations in New South Wales, Victoria and Queensland have introduced, or are in the process of introducing, entry examinations. Bar Council will monitor the introduction of entry examinations.

CPD Seminars

In addition to the annual CPD Conference, this year the Association conducted *The Autumn Festival of CPD* and *Asylum Seeker/Migration Law Training Seminars*.

The Autumn Festival comprised 5 one hour seminars held during the week of 14-18 March. Many thanks to Kanaga Dharmananda SC and Sarah Russell for their work in arranging an excellent programme for the Festival.

Thanks also to Matthew Howard SC who was responsible for coordinating the Asylum Seeker/Migration Law Training Seminars held on 21, 22 and 29 July at the Federal Court.

CPD Conference

As the Association's principal CPD event, our annual conference is an important part of our CPD programme. Held at the University of Notre Dame on Saturday, 15 October, the programme included presentations by a number of current and former members of the Bench and the Association, with the keynote paper presented by Justice Mark Weinberg of the Court of Appeal in Victoria.

The presentations were excellent and very well received by all who attend this year's conference.

Sincere thanks to Joshua Thomson for his valuable assistance with the programme.

Best Practice Forum

The Association held its third Best Practice Forum on 25 November on *Presentation of Expert Evidence of a Medical Nature*.

The Forum is part of a series conducted by the Association to promote the development of better litigation practices. Previous seminars have concerned the preparation of witness statements and the practice of conferral.

The Association will compile a list of recommendations for the presentation of expert medical evidence arising from the Forum. This will be published on the Association's website, as has occurred in relation to past forums.

Future CPD Events

Earlier this year a survey was conducted to enable members to provide feedback about the type of CPD events that will be of interest to and supported by members.

A significant amount of time and effort is involved in organising our CPD events, and it is very disappointing when events are not well supported by members. Our CPD events are of a high standard and worthy of broader support by members.

The new Bar Council will review future CPD events, in early 2012.

Pro Bono

Elsbeth Hensler and Natasha Breach have, once again, shouldered the responsibility for assessing and coordinating pro bono requests received by the Association. We are very grateful to both for their enormous contribution in ensuring the prompt and efficient processing of requests.

The Association regularly receives pro bono referrals from the Courts, and also works closely with Law Access and community legal centres in coordinating and providing pro bono assistance.

In 2011, of the 66 formal inquiries received, assistance was provided in 27 matters.

We are rarely required re-circulate requests due to a lack of response, and in most matters we receive multiple offers of assistance from members. That is a tremendous result. Sincere thanks to all members who offered and/or provided assistance in these matters.

Representation of Practitioners before the LPCC and SAT

Earlier this year I wrote to certain senior members of the Bar seeking confirmation of their willingness to adopt or follow the practice of not charging, or charging a nominal or modest fee, to advise and appear for practitioners who are the subject of complaint to the LPCC and SAT.

The vast majority replied in affirmative, and a register has been established to facilitate the Referral Process.

This is an important initiative for which the Association has been commended.

WABA Membership of Committees

UWA Faculty of Law Advisory Committee (Grant Donaldson SC)

Australian Centre for International Commercial Arbitration (Grant Donaldson SC)

Functions

- Bar and Bench Dinner held on 2 September at The Quarter Restaurant
- Cocktail Function (Women Members) held on 15 November

Judicial Welcomes and Special Court Sittings

Speech on appointment of Judge Gillian Braddock SC, District Court, 12 January (Belinda Lonsdale)

Speech to farewell Justice Peter Blaxell, Supreme Court, 24 February (Grant Donaldson SC)

150th Anniversary of Supreme Court, 17 June (Grant Donaldson SC)

Speech on appointment of Judge David Parry, District Court, 24 June (Peter Quinlan SC)

Speech on appointment of Justice James Edelman, Supreme Court, 25 July (Theo Lampropoulos SC)

Speech to farewell Judge Mary Ann Yeats, District Court, 4 August (Grant Donaldson SC)

Speech on appointment of Judge Jeremy Curthoys, District Court, 8 August (Grant Donaldson SC)

Submissions

Submissions on the following topics were made by the Association.

Legal Professional Privilege and the *Corruption and Crime Commission Act 2003* to the Hon CD Steytler QC, Parliamentary Inspector.

Practice Direction relating to the conduct of Strategic Conferences with the CMC List to the Chief Justice

Proposed amendment to *Criminal Procedure Rules 2005* (WA) r21 to the Chief Justice

IMF (Australia) Ltd proposals re obligations of litigation funders to the Chief Justice

Future Funding of Law Libraries at the Supreme and District Courts to the Chair of the Legal Practice Board

Review of the Office of Solicitor General to the Acting Solicitor General
Professional Confidential Relationship Privilege to the Attorney General.

New Members

The following new Members were elected to the Association:

Rohan Hardcastle *
William Keane
Anthony Papamatheos
David Skender
Michael Collins
Paul Yovich
Frances Douglas QC *
Greg Barnes *
William Alstergren *
Catherine Garde
Todd Kovacic *
Paul Edgar
John Brooksby
Tina McAulay
Murugan Thangaraj SC

(* Interstate Member)

Judicial Members

The following former members were elected as Judicial Members

Judge Gillian Braddock SC
Justice James Edelman
Judge Jeremy Curthoys

Honorary Members

The following former members were elected as Honorary Members

The Hon Peter Blaxell
The Hon Malcolm McCusker AO QC
The Hon Len Roberts-Smith QC

Following recent amendments to the Constitution, The Hon Neville Owen will be invited, and no doubt, elected as an Honorary Member shortly.

Membership

There are currently 216 members, of whom 188 are local members. Of the local members, there are 35 women and 153 men. There are 2 women and 26 men practising as Senior Counsel in Western Australia who are members of the Association.

Women at the Bar

Bar Council recently reviewed and updated its Model Briefing Policy. The primary focus of the Policy, which was first adopted by the Association in 2005 and subsequently revised in 2008, is to address identified briefing behaviours that discriminate against women members of the Association.

Letters enclosing copies of the Policy were recently sent to the Attorney-General, some government departments and medium/large law firms seeking their support in adopting the Policy and in implementing procedures for the collection of data on their organisation's/firm's briefing of women members.

A cocktail function directed principally to our women members was held on 15 November. The function was held as a launch pad for promoting the Model Briefing Policy, and as an opportunity for leaders of the profession to become more aware of the Bar's desire to further promote its women members.

In a concerted effort to address this and related issues, in August 2010 Bar Council commissioned a research project to investigate the barriers and pathways towards creating a diverse bar and judiciary in Western Australia. The research is being undertaken by Jill Howieson, Associate Dean at UWA Law School and Thomas Fitzgerald, Lecturer, School of Law at the University of Notre Dame with support from the UWA School of Psychology.

The initial research report *"Demographic Diversity in the WA Bar: A Consistent Failure to Frame the Right Question"* is available on the Association's website.

The new Bar Council will consider whether it will proceed with phase 2 of the research project, in early 2012.

Group Life Insurance Proposal

Bar Council has unanimously supported a proposal submitted by MLIG (Peter Steele)/Suncorp for group life insurance and total permanent disability cover for members. The proposal has been offered on the same terms and conditions as that negotiated by the Council of the Bar Association of Queensland (BAQ) for their members earlier this year.

An outline of the proposal was presented by Peter Steele at this year's CPD conference.

The key features of the proposal include:

- competitive terms and conditions negotiated by the BAQ Council (premiums are significantly lower than retail premiums);
- collective bargaining power;
- cover is provided on a "no questions asked" basis.

A member of Bar Council has been appointed to make an application to the ACCC for notification on behalf of the Association. Thereafter, the proposal will be put to members in General Meeting.

Western Australian Barristers' Rules

The Western Australian Barristers' Rules were adopted at the Association's Annual General Meeting held on 5 October 2011. The Rules replace the Association's Conduct Rules.

Finances

The Association has once again been well served by Peter Quinlan SC, as Treasurer, and our sound financial position, though still modest, has enabled the Association to continue to provide and improve on services to members.

General Meetings

A special General meeting of the Association was held on 30 June. The Association's Annual General Meeting was held on 5 October.

Australian Bar Association

Grant Donaldson SC attended 2 meetings and Theo Lampropoulos SC attended 1 meeting of the Australian Bar Association.

Law Council of Australia

Joshua Thomson attended 2 Directors' meetings of the Law Council as alternate for the President. Craig Slater attended 1 Directors' meeting and Hylton Quail attended 2 Directors' meetings of the Law Council as alternates for the President.

Members of Council

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

Grant Donaldson SC
President