

# Western Australian Bar Association

## President's Report 2012

### Bar Council

The following members elected on 1 December 2011 comprised the Bar Council during 2012:

President:	Theo Lampropoulos SC
Vice President:	Peter Quinlan SC
Members:	Grant Donaldson SC
	Ros Fogliani
	Elsbeth Hensler
	Matthew Howard SC
	Belinda Lonsdale
	Paul Mendelow
	Sarah Russell
	Judy Seif
	Marco Tedeschi
	Sam Vandongen SC
Secretary	Ros Fogliani
Treasurer	Sam Vandongen SC

### Disciplinary Committee

John Ley was elected a member of the Disciplinary Committee at the December General Meeting held on 1 December 2011, joining Gail Archer SC and Laurie Levy SC as other members of the Committee.

### Bar Council

#### Monthly Meetings

Bar Council met on 8 occasions between February and November.

#### Committees

Bar Readers' Course	Paul Mendelow & Judy Seif
Best Practice Forum	Sam Vandongen SC & Marco Tedeschi
CPD Autumn Festival	Matthew Howard SC & Marco Tedeschi
CPD Conference	Matthew Howard SC
Finance	Sam Vandongen SC
Members' Welfare	Peter Quinlan SC, Sarah Russell & Ros Fogliani
Professional Indemnity Insurance	Peter Quinlan SC
Pro Bono	Elsbeth Hensler & Natasha Breach
Secretary	Ros Fogliani
Social	Belinda Lonsdale & Judy Seif
Essential Trial Advocacy Course	Matthew Howard SC
Women at the Bar	Belinda Lonsdale, Sarah Russell & Paul Mendelow

## **Bar Readers' Course**

This year, 9 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 14 August. Congratulations once again to William Keane who was awarded the Chief Justice's prize for the best performed reader in the Ethics, Evidence, and Jurisdiction and Procedure modules. Kim Lendich was awarded the prize for the best performed reader in the Essential Trial Advocacy Course.

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

## **Essential Trial Advocacy Course**

The Essential Trial Advocacy Course (ETAC) is conducted under auspices of the Australian Bar Association, with organisation of the course alternating between the WABA and the South Australian Bar Association (SABA).

This year, the ETAC was hosted by the SABA between 25-29 June. There were 7 new members from WA who attended this year's ETAC. Gail Archer SC, Matthew Howard SC and his Honour Judge Patrick O'Neal joined current and former members of the South Australian judiciary and senior members of the SABA and other Australian Bars on the coaching faculty. Thanks to Gail, Matthew and his Honour - their contribution as coaches was invaluable to this year's participants, and their efforts are greatly appreciated by the Association.

## **CPD Seminars**

In addition to the annual CPD Conference, this year the Association conducted *The Autumn Festival of CPD* and *The new Commercial Arbitration Act (WA) Seminar*.

The Autumn Festival comprised 3 one hour seminars held during the week of 12-16 March. Many thanks to Matthew Howard SC for his work in arranging an excellent programme for the Festival.

Thanks also to Simon Davis who was responsible for coordinating the new Commercial Arbitration Act (WA) Seminar held on 24 May.

## **CPD Conference**

The Association's fifth annual CPD conference was held at the University of Notre Dame on Saturday, 1 September. The programme included an impressive line-up of speakers and topics, including the keynote address by the Hon Wayne Martin AC, Chief Justice of Western Australia. Other speakers at the Conference included the Hon Justice Michael Corboy, the Hon Justice Janine Pritchard, the Hon Alistair Hope, State Coroner, Joseph McGrath SC, Director of Public Prosecutions, Ms Adele Bergin, Doctor of Clinical & Geropsychology Candidate, University of

Queensland, Dr Darryl Menaglio, Clinical Psychologist, and Dr Ross Calnan, Clinical Psychologist.

Many thanks to all who participated as speakers, and to Peter Quinlan SC for acting as host, and Matthew Howard SC for his work in compiling the programme.

### **Best Practice Forum**

The Association's next Best Practice Forum is expected to be held during the first half of 2013.

### **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 2012, of the 77 formal inquiries received, assistance was provided in 29 matters.

We are rarely required to 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. Many thanks to all members who offered and/or provided assistance in these matters.

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

Since the establishment of the referral service in July 2011, the Association has received requests from 8 legal practitioners seeking assistance in relation to complaints to the LPCC and SAT.

### **WABA Membership of Committees**

Australian Bar Association – Women at the Bar (Elsbeth Hensler)  
Legal Profession Reform Committee (Hylton Quail)  
ATO Legal Practitioners Forum (John Hockley)  
LCA Judicial Issues Working Group (Kanaga Dharmananda SC)

### **Functions**

- Drinks to congratulate Craig Colvin SC on his election as President of the Australian Bar Association held on 9 February at The George
- Bar and Bench Dinner held on 15 June at Matilda Bay Restaurant

### **Judicial Welcomes and Special Court Sitings**

Speech on appointment of Judge Robert Cock QC, District Court, 12 April 2012 (Marco Tedeschi)

Speech to farewell Justice Michael Murray, Supreme Court, 7 December 2011 (Theo Lampropoulos SC)

Representing WABA at the swearing in of Justice Gageler, High Court, Canberra, 9 October 2012 (Theo Lampropoulos SC)

Ceremonial sitting for the late Justice Carolyn Martin, Family Court, 26 October 2012 (Frank Castiglione QC)

### **Submissions**

Submissions on the following topics were made by the Association.

- Proposed Amendment to Practice Directions – Case Management of Criminal Cases
- Law Society Senior Counsel Ad Hoc Committee Discussion Paper/Report
- Amendment of Legal Profession Regulations (re Barrister’s Indorsement)
- Legal Costs Committee - Review of Litigious Costs Determinations
- Amendment to the District Court Rules (to exclude the operation of RSC O 9A)
- LSWA Discussion Paper concerning the appointment of SC’s
- Legal Aid enquiry into allocation of legal aid assignments

### **New Members**

The following new Members were elected to the Association:

Eric Heenan  
Anthony Paul Young \*  
Dane Robert Chandler  
Justin Lee Edwards  
Kim Rosemary Lendich  
Maria Grazia Saraceni  
Annabelle Louise Lane \*  
David Victor Blades  
Lang Goodsell  
Steven Penglis  
Simon Patrick O’Sullivan QC\*  
Leigh Alan Warnick

(\* Interstate Member)

### **Judicial Members**

There were no former members elected as Judicial Members during the past year.

### **Honorary Members**

The Hon Michael Murray QC was elected as an Honorary Member.

### **Membership**

There are currently 221 members, of whom 192 are local members. Of the local members, there are 38 women and 154 men. There are 2 women and 27 men practising as Senior Counsel in Western Australia who are members of the Association.

## **Appointment of Senior Counsel**

During the year, the LSWA released a discussion paper concerning the appointment of senior counsel which attracted a good deal of interest. A committee was formed to prepare a response, after discussion at a general meeting. The committee prepared a high quality response. That response was submitted to the LSWA on 28 February 2012. The LAWA has yet to release its final report.

Many thanks to the members of that committee for their hard work.

## **Women at the Bar**

Attracting more women to the Bar remains a challenge. Members have been encouraged to make contact with female practitioners who may be contemplating joining the Bar in order to explain what the Bar has to offer, and to discuss concerns that those practitioners may have about joining the Bar.

WLWA have started a mentoring programme for junior female barristers involving retired Judges and current members. It is hoped that will assist female practitioners who are contemplating joining the Bar.

Elsbeth Hensler has been appointed the WABA representative on the ABA committee looking at the whole issue of women at the Bar, and how that situation can be improved. It is also hoped that that will provide some constructive suggestions.

Peter Quinlan SC and Sarah Russell continued to liaise with UWA representatives to identify ways in which the initial research into overall diversity (“Demographic Diversity in the WA Bar”) can be further progressed.

## **Perth Law Careers Fair**

The Association accepted an invitation from The Blackstone Society to participate in the 2012 Perth Law Careers Fair, which was held on 30 March at the Perth Convention and Exhibition Centre.

Participation in the careers fair was prompted by the report on “Demographic Diversity in the WA Bar” which identified that students reported a “lack of knowledge as to how to become a barrister” as one of the main impediments to a career at the Bar.

The careers fair provided an opportunity to educate law students and graduates about pathways to becoming an independent barrister, and to reinforce Bar Council’s support and encouragement of practitioners contemplating a move to the Bar.

## **Group Life Insurance Scheme**

The initial structure of the scheme was revised after teleconferences with the ACCC. At a Special General Meeting held on 28 May 2012, there was unanimous support for the motion that the Association accept a proposal from Suncorp for a non-compulsory Group Life Insurance Scheme for members.

The scheme, which commenced on 1 July 2012, provides a unique opportunity for members to obtain insurance at significantly reduced premiums, on a “no questions asked” basis.

At present, the participation rate stands at 63% of eligible members.

Sarah Russell and Debbie Cole, in particular, put an enormous effort into getting the scheme up and running.

### **Western Australian Barristers’ Rules**

Following adoption of the Western Australian Barristers’ Rules (Rules) in October 2011 issues arose concerning compliance with Rule 17 in relation to pro bono work, and direct assignments of Legal Aid in criminal and some family law matters.

Discussions were held with the ABA with a view to amending the model Conduct Rules, but they took the view that it was a local issue for WA, and that it should be handled locally.

After consulting with Legal Aid Western Australia, the Family Law Practitioners Association, and the Criminal Lawyers Association, Bar Council concluded that it was in the interests of justice and the community that barristers continue to be able to provide such services and carry out tasks which are properly to be regarded as incidental to the core work of providing legal advice and appearing as an advocate.

At a Special General Meeting held on 28 May 2012, a motion to amend the Rules was unanimously carried. The new Rule 18A provides that:

- (1) *A barrister will not have breached Rule 17 by doing any of the matters referred to in Rule 17(b), 17(d), 17(e) or 17(f) if:*
  - (a) *the barrister is instructed directly by a person who is not a solicitor to act:*
    - (i) *pro bono;*
    - (ii) *pursuant to a direct grant of Legal Aid in a criminal or quasi-criminal matter;*
    - (iii) *pursuant to a direct grant of Legal Aid to act for children when appointed in the Family Court of Western Australia as the Independent Children’s lawyer or in the Children’s Court as the child representative;*  
*or*
    - (iv) *pursuant to a direct grant of Legal Aid when acting for a parent or person in loco parentis in Protection and Care applications made by the Department for Child Protection; and*
  - (b) *the doing of the matters referred to in Rule 17(b), 17(d), 17(e) or 17(f) are properly incidental to the kinds of work referred to in Rule 15(a)-(f); and*
  - (c) *the matter in relation to which the barrister is acting does not reasonably require the services of an instructing solicitor.*
- (2) *A barrister acting in a matter described in sub-rule (1) is relieved of the obligation in Rule 24B.*

The amendment also includes a definition of “pro bono”.

Subsequently, other Bars took an interest in how we had handled those issues, because they came up against the same problem.

## **Barristers' Indorsement – Undertaking/Announcement to the Supreme Court**

After the Supreme Court announced it wished to cease to be involved in the practice of barristers giving an undertaking to the Supreme Court to practice exclusively as a barrister, an alternative needed to be found. The *Legal Profession Regulations 2009* were amended to provide, in regulation 5(1), for a “barrister’s indorsement” - a condition imposed by the Legal Practice Board on a local practising certificate requiring the practitioner to work solely as an independent barrister. Item 7 in regulation 5(2) was also amended to entitle a local legal practitioner who holds a local practising certificate with a barrister’s indorsement, to take or use the name “barrister”.

As a consequence of these amendments, the practice of barristers’ giving undertakings to the Court in relation to their mode of practice has ceased. New members now merely announce their intention to practise exclusively as a barrister to the Full Court.

## **Application to the Professional Standards Council**

Work on a draft application to the Professional Standards Council for approval of a scheme under the *Professional Standards Act 1997* (WA) has been in progress throughout the year. A considerable amount of work is involved in preparation of the application, which is being undertaken by Sarah Russell, Ros Fogliani and Debbie Cole, with input on specific sections from Peter Quinlan SC, John Ley and GiGi Visscher.

## **Sponsorship**

LexisNexis continue their involvement as sponsor of the Bar Readers’ Course. We are grateful for their ongoing support.

The Association provided sponsorship for the following:

- Australian Women Lawyers Conference (\$2,000)
- National Indigenous Legal Conference (held in WA) (\$2,000)
- AustLII (\$3,000)

## **Finances**

Thanks to Sam Vandongen SC for his work as Treasurer. 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 28 May. The Association’s Annual General Meeting was held on 31 October.

## **Australian Bar Association**

Theo Lampropoulos SC and Peter Quinlan SC each attended 2 separate meetings of the Australian Bar Association.

## **Law Council of Australia**

Peter Quinlan SC attended a Directors' Retreat, a Directors' Induction Programme and 2 Directors' meeting of the Law Council. Chris Kendall and David Price each attended separate Directors' meeting as an alternate Directors' for the Vice President.

## **Members of Council**

I record my thanks to all members of Council for all their hard work and support during the year.

## **Executive Officer**

It is only when you have served on Bar Council that you realize the enormous amount of quality work that Debbie Cole and Karen Knox undertake. They both carry out their tasks quietly and efficiently. Their work is vital to the proper functioning of the WABA. I thank them both for their enormous effort once again this year.

## **Theo Lampropoulos SC President**