

Western Australian Bar Association

President's Report 2015

Bar Council

The following members elected on 4 December 2014 comprised the Bar Council during 2015:

President:	Peter Quinlan SC
Vice President:	Matthew Howard SC
Members:	Katrina Banks-Smith SC
	Stephen Davies SC
	Geoff Hancy
	Elsbeth Hensler
	Kim Lendich
	Belinda Lonsdale
	Paul Mendelow
	Hylton Quail
	Darren Renton
	Clinton Russell
Secretary	Kim Lendich
Treasurer	Hylton Quail

Disciplinary Committee

John Ley was elected a member of the Disciplinary Committee at the December General Meeting held on 4 December 2014, joining Gail Archer SC and, prior to his appointment to the District Court, Laurie Levy SC, as other members of the Committee

Bar Council

Key issues emerging from Bar Council's annual planning meeting included -

- group discussion meeting (of members practising in criminal law) held to identify issues arising in relation to the introduction of Criminal Law Panels by Legal Aid WA;
- a proposal for the Association to conduct a training course for members who wish to seek registration as adjudicators under the *Construction Contracts Act 2004* ;
- formal response to be prepared on behalf of the Association on the 20th anniversary of the Gender Bias Taskforce;
- initiatives to support and encourage prospective women barristers;

Monthly Meetings

Bar Council met on 10 occasions between December 2015 and October 2016.

Committees

Bar Readers' Course	Review Group: Matthew Howard SC, Darren Renton, Clinton Russell and Edward Greaves Coordinators: Paul Mendelow, Kim Lendich and Darren Renton
CPD Autumn Festival	Elsbeth Hensler, Geoff Hancy and Clinton Russell
CPD Annual Conference	Stephen Davies SC, Elspeth Hensler, Hylton Quail and Clinton Russell.
Essential Trial Advocacy Course	Matthew Howard SC – Course Director
Members' Welfare - Group Life Insurance	Peter Quinlan SC & Sarah Russell
Professional Standards Scheme	Peter Quinlan SC, Matthew Howard SC, Kim Lendich & Sarah Russell
Professional Indemnity Insurance	Peter Quinlan SC
Pro Bono	Elsbeth Hensler & Natasha Breach
Secretary	Kim Lendich
Treasurer	Hylton Quail
Women at the Bar	Matthew Howard SC, Belinda Lonsdale and Hylton Quail

Bar Readers' Course

A review of the Bar Readers' Course (BRC) was undertaken earlier this year for the purpose of:

- identifying areas of overlap and duplication;
- incorporating new seminars to enable the Association to fulfil its obligations to provide Practice Management and Risk Management training; and
- satisfying new CPD requirements announced by the Legal Practice Board.

The review was coordinated by Matthew Howard SC, with significant contributions on the review by Clinton Russell, Edward Greaves, Darren Renton, Kim Lendich and Paul Mendelow.

A comprehensive review of the BRC is proposed to be undertaken next year.

Due to a higher than expected number of participants, it was necessary to change the venue for this year's BRC from the Level 12 Conference Room at Francis Burt Chambers to the UWA/Energy and Minerals Institute Conference Facility at the WA Trustee Building.

Conducted over 7 weeks during May and June, 16 new members completed 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 29 July. Congratulations once again to Peter Lochore who was awarded the Chief Justice's prize for the best performed reader in the Ethics & Practice, Evidence, and Jurisdiction & Procedure modules, and to Rachel Oakeley 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 13-17 July 2015 at the District Court of Western Australia. The Association is very fortunate that successive Chief Judges have granted approval to use courtrooms and facilities at the District Court, during the Court's recess period. The facilities are excellent, and are a significant factor in ensuring the success of ETAC.

There were 23 participants in total, comprising 14 from WA, 6 from SA, 2 from Tasmania and 1 from Queensland.

There were 15 coaches, comprising 7 from WA (Martin Cuerden SC, Matthew Howard SC, Darren Jackson, Peter Quinlan SC, Sarah Russell, Marcus Solomon SC and Sam Vandongen SC), 4 from SA, 1 from TAS, 1 from New Zealand, 1 from Malaysia and 1 from NSW (Voice & Performance Coach).

A pool of 24 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.

Thank you to Jonathan Leek for assisting with the updating of this year's ETAC materials, and to Justin Edwards for standing in as a "volunteer reader" and "back-up volunteer witness".

Justice John Gilmour, Justice Neil McKerracher, Justice Lindy Jenkins, Justice Kenneth Martin, the Hon Shauna Deane QC and Katrina Banks-Smith SC attended on the final day to act as judges at the mock trials.

Special thanks to Matthew Howard SC for his exceptional work as Course Director.

CPD

Autumn Festival

I am very pleased to report that this year's Autumn Festival was very well received and supported by members. Sincere thanks to all speakers who are to be congratulated on the high quality of their presentations. Many thanks to Elspeth Hensler, Geoff Hancy and Clinton Russell for their work in arranging an excellent programme for the Festival. We are indebted to Justice Siopis for not only speaking at the Festival, but also for hosting the first seminar at the Federal Court. Special thanks to Geoff Hancy for arranging the hosting of all other seminars at the BGC conference room.

Held over 5 days on 11, 16, 17, 23 & 24 March, the Festival is a popular event that enables members who have not acquired the requisite 10 CPD points, to do so prior to the conclusion of the 'CPD period'.

CPD Conference

Regrettably, due to low registrations it became necessary to postpone our CPD conference which was originally scheduled to take place on 19 August 2015. The rescheduled conference is due to take place on 4 November 2015. The Honourable Justice John Basten of the NSW Court of Appeal has very kindly agreed to present on the topic of *Judicial Review of Administrative Action.*, and he is joined by an impressive list of speakers for, what is hoped will be, an interesting and informative conference.

Pro Bono

Elspeth Hensler and Natasha Breach continue to provide outstanding assistance in assessing and coordinating pro bono requests received by the Association.

Following the expansion of Law Access in late 2014, most requests for pro bono assistance received by the Association from individual members of the public have been 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.

Over the past 12 months, the Association received 39 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 23 requests which were assessed as meeting the criteria for pro bono assistance. Of the 23 requests circulated to members, assistance was provided in 20 matters, and in most matters multiple offers of assistance were received from members.

A recent recipient of pro bono assistance from a member of the Bar has expressed how inspiring it is that members of the legal profession are so willing to support pro bono investigation into the operation of important laws, and to assist challenges to their operation.

Members of Bar Council met with representatives from the Community Legal Centres Association and Law Access to discuss pro bono assistance and referral arrangements, advocacy training to CLC lawyers, and recent funding cuts to CLC's.

Representation of Practitioners before the LPCC and SAT

Since 2011, the Association has maintained a register of members available to advise and appear for practitioners who are the subject of complaint to the LPCC and SAT.

Requests from practitioners are referred to Matthew Howard SC for assessment.

During the past year, the Association received requests from 8 legal practitioners seeking assistance in relation to complaints to the LPCC and SAT.

WABA Membership of Committees

Law Access Limited Stakeholder Advisory Committee (Elsbeth Hensler)

Civil Practice Consultation (Craig Colvin SC, Katrina Banks-Smith SC, John Ley, Wendy Gillan and Brendan Ashdown)

Australian Bar Association – Advocacy Training Council (Matthew Howard SC)

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)

Old Treasury Building Library (John Hockley)

LCA Equal Opportunity Committee and NARS Roundtable (Rebecca Lee)

Functions

- Bar Council was pleased to unanimously support a proposal to “revive” a Bar & Bench Dinner for Women, and I am delighted to report that a very successful dinner was held on Friday, 12 June at Café Italia. Consistent with Bar Council’s commitment to encourage and support new and existing women members, such dinners provide an occasion where women judges, magistrates and members can get together in an informal, relaxed atmosphere. By all reports, the dinner achieved that objective.
- The Association and the Law Society jointly hosted a dinner to mark the occasion of the visit to Perth of the High Court of Australia on Thursday, 13 August 2015 at the Government House Ballroom.
- Bar and Bench Dinner is scheduled to take place on 13 November 2015 at Mosmans Restaurant

Legal Profession Uniform Law (LPUL)

LPUL came into effect in New South Wales and Victoria on 1 July 2015. Under the LPUL professional indemnity insurance policies held by practitioners outside of New South Wales and Victoria must be approved by the Legal Services Council in order to practice in NSW and/or Victoria. Following submissions made by the ABA, the Legal Services Council has approved all professional indemnity insurance policies that apply to members of professional associations in non-participating jurisdictions, thereby allowing lawyers from outside Victoria and New South Wales to practise in New South Wales and/or Victoria from 1 July 2015.

Information notices about the LPUL can be found at
<http://www.legalservicescouncil.org.au/index.html>

Barrister Only Condition on Practising Certificates and Order 52B of Supreme Court Rules 1971

The Legal Practice Board brought to our attention the fact that on occasion practitioners with a “Barrister only” condition on their practising certificate have accepted appointment as an “independent solicitor” within the meaning of Order 52B of the Supreme Court Rules, in relation to search orders under that rule.

The Board’s Professional Affairs Committee is of the view that practitioners practising solely as barristers should not be appointed independent solicitors under that rule, as a number of the issues which arise under that role would be inconsistent with the “Barrister only” condition. Bar Council supports that view and earlier this year members were notified accordingly.

Migration Institute of Australia (MIA)

Matthew Howard SC, Jason Raftos, David Blades and Debbie Cole met the MIA President and Business Development Manager to discuss encouraging dialogue and collaboration between the MIA and the Association.

The MIA Annual Conference will be held in Perth between 29-31 October 2015. Three WABA members are speaking at the conference. The conference is an opportunity for WABA to provide sponsorship and gain exposure for the association and thereby its members. Accordingly, Bar Council approved \$1,500 sponsorship, with an additional \$500 to be budgeted to produce a brochure, bookmark or card that will be inserted into the conference packs of delegates.

Judicial Welcomes and Special Court Sittings

Special sitting to welcome Justice Peter Martino, Supreme Court, 20 April 2015 (Peter Quinlan SC)

Special sitting to farewell Justice John McKechnie, Supreme Court, 22 April 2015 (Peter Quinlan SC)

Special sitting to welcome her Honour Judge Linda Petrusa SC, District Court, 6 June 2015 (Sam Vandongen SC)

Ceremonial sitting of the High Court in Canberra on 9 June 2015 to welcome the Hon Justice Michelle Gordon on her appointment to the High Court.

Special sitting to farewell Justice Eric Heenan, Supreme Court, 23 June 2015 (Peter Quinlan SC)

Special sitting to welcome Justice Paul Tottle, Supreme Court, 10 August 2015 (Stephen Davies SC)

Special sitting of the High Court in Perth, 10 August 2015 to honour the memory of the late John Toohey AC (Craig Colvin SC)

Special sitting of the High Court in Perth, 11 August 2015 to welcome Justices Nettle and Gordon (Matthew Howard SC)

Special sitting to welcome Justice Bruno Fiannaca, Supreme Court, 31 August 2015 (Peter Quinlan SC)

Submissions

Submissions on the following topics were made on behalf of the Association.

- Law Admissions Consultative Committee Discussion Paper – Limited Review of Academic Requirements for Admission (Legal Practice Board)
- Inquiry into the appropriate wording to recognize Aboriginal people in the Constitution of Western Australia (Attorney General of WA)
- Legal Aid WA Criminal Law Panels (Legal Aid Commission)

- The WABA and the ABA issued a joint [media release](#) in relation to concerns about four aspects of the *Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Bill 2015*
- Legal Practice Board re inclusion of barristers in the proposed mandatory Practice Management Course.

New Members

The following new Members were elected to the Association:

Jennifer Jane BATROUNEY QC *
 Steven Michel STANDING
 John Lachlan SOUTHALAN
 Peter David LOCHORE
 Rachel Victoria OAKELEY
 Emma LUCK
 Malcolm McCUSKER AC CVO QC
 Abigail DAVIES
 William Arthur Deryk EDWARDS *
 Ben Colin GAUNTLETT *
 Asanka GUNASEKERA
 Robert Lee CUNNINGHAM
 Elmine CARLEAN
 Andrew Thomas BROADFOOT *
 Genevieve Marie CLEARY
 Helen Alison TIPLADY *

(* Interstate Member)

Judicial Members

His Honour Judge Laurie Levy SC was elected as a Judicial Member

Membership

There are currently 238 members, of whom 200 are local members. Of the local members, there are 40 women and 160 men. There are 4 women and 32 men practising as Senior Counsel in Western Australia who are members of the Association.

Professional Standards Scheme

The Association's Scheme under the *Professional Standards Act 1997* (WA) (Act) commenced on 1 July 2014. The Scheme will remain in force for 5 years from its commencement and will operate as a Scheme of Western Australia, New South Wales, Queensland, South Australia, Victoria, the Australian Capital Territory and the Northern Territory.

As required under the Professional Standards Legislation, the Association submitted its first annual report to the Professional Standards Councils (PSC) in relation to operation of the Association's Scheme for the period 1 July 2014 to 31 December 2014. The reporting requirements are onerous

and a significant amount of time and effort is involved in preparing the report. Thanks to all involved in the preparing the report, particularly, Sarah Russell for her significant and ongoing work on the Association's Scheme.

Group Life Insurance Scheme

The Group Life Insurance Scheme, which had been underwritten by Suncorp, was taken over by MetLife from 1 July 2015. MetLife agreed to same terms of the existing Scheme, and to increase the level of cover to \$300k.

The Constitution of the Western Australian Bar Association

At the December General Meeting held on 4 December 2014, a motion to amend the Constitution to insert Clause 8B to provide that by becoming and remaining a member of the Association, a member agrees to become and remain a member of the Australian Bar Association Limited (**the ABA**), subject to the constitution of the ABA.

At a Special General Meeting held on 10 June 2015, a motion to amend the Constitution to align the annual election of the Bar Council with the Annual General Meeting was unanimously carried.

Sponsorship

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

In 2014, Bar Council also resolved to in principle agreement to Association making a longer term commitment of \$5,000 per year for the next 5 years to AustLII, subject to ultimate approval of annual budgets by Bar Councils.

Finances

Many thanks to Hylton Quail for his work as Treasurer. Though still modest, the Association's financial position remains sound.

General Meetings

Special General meetings of the Association were held on 10 June and 1 September 2015. The Association's Annual General Meeting will be held on 29 October 2015.

Australian Bar Association

Peter Quinlan SC attended ABA meetings held on 2 February, 9 May and 15 August.

Law Council of Australia

Hylton Quail attended Directors' meetings of the Law Council on 14 March and 27 June, as an alternate Director for the President.

Members of Council

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

Peter Quinlan SC
President