



## **President's Report to Members**

19 November, 2015

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### **1. Legal Aid**

The tight budgetary situation continues to impact severely on the availability of funds for legal aid in Australia hurting many in the community and creating huge pressures for many of our members. Australia spends about \$28 per head on legal aid services. In England, which has recently undergone massive cuts, they spend \$60 per head. The failure to provide people with legal representation not only risks the chance of an unfair outcome for the individual, but it also has flow on effects to the family of that individual, to the community, to the cost of running the court system, to the economy and the correctional system.

The ABA has continued to advocate for permanent and long-standing improvement of legal aid funding to the legal assistance sector and will work with the Law Council and the Commonwealth Attorney General to focus awareness on the budgetary allocation for legal aid.

### **2. Diversity and inclusion**

Developments in the area of diversity and inclusion have been very exciting this year with real momentum gathering for the adoption of a National Diversity and Inclusion Charter, a National Equitable Briefing Policy, National Guidelines to address bullying and harassment and the sharing of ideas to encourage return to work by women lawyers, including women barristers.

Work on the revised National Briefing Policy has been underway for many months now and was an agreed outcome of a taskforce of State and Territory Law Council Directors, CEOs and EO Committee representatives, managing partners of large law firms and many others. A key recommendation of this task force was the revision of the Law Council National Equitable Briefing Policy to ensure harmonisation of effort.

It is expected that a revised National Equitable Briefing Policy will be adopted this year or early in 2016 and the bars, firms, government and corporate counsel will be invited to sign on to the policy. Various bars here adopted briefing policies and initiatives including, recently, Commbarr of the Victorian Bar. The New South Bar Council adopted an Equitable Briefing Policy in October available here: <http://www.nswbar.asn.au/the-bar-association/media-releases>.

### **3. Citizenship**

In response to a proposal to strip citizenship from dual nationals under a “self-executing” regime in legislation before parliament the ABA has been vocal in opposition noting the potential that it is too broad and unconstitutional: [http://www.austbar.asn.au/wp-content/uploads/2015/08/ABA\\_citizenship-10-8-15.pdf](http://www.austbar.asn.au/wp-content/uploads/2015/08/ABA_citizenship-10-8-15.pdf).

I am grateful for the assistance of Peter Quinlan SC and Pat O’Sullivan QC in making a submission on behalf of the ABA to the Parliamentary Joint Committee on Intelligence and Security. The ABA submission canvasses the questionable constitutional validity of the Bill and raises concerns with the breadth and disproportionate impact of the draft provisions and potential for legal uncertainty for government agencies acting upon the automatic loss of citizenship. Finally the submission raises concerns in relation to fair process and the inadequacy of the review model.

The legislation has been redrafted to meet some of our concerns and is now before parliament.

### **4. Profile of the ABA**

This year the ABA collated membership data of each State and Territory and has now published a Statistical Profile Of Australian Barristers. The Profile provides useful information concerning the composition of the bars and will inform our strategic thinking. For example, the total number of Australian barristers practising at the independent bars is now 6005. Of this number, 77% are male and 23% female, with 10% of all senior counsel being female. The membership of the smaller bars in ACT, Tas and NT is growing steadily. A copy of the Profile is available here <http://www.austbar.asn.au/statistics>. My thanks to Kim Kemp of the NSW Bar for her assistance in producing the Profile.

### **5. Imprisonment of Indigenous People**

Researchers at the University of New South Wales have published a recent report concerning their investigation of the mental health of prisoners in Australia identifying as Aboriginal and Torres Strait Islander. The UNSW Project found that Indigenous people were 2.4 times more likely to be in juvenile custody than non-Indigenous people and 27% of prisoners in Australia identified as ATSI with a known mental illness or cognitive disability despite making up less than 3% of the State’s overall population. The report also revealed that Aboriginal women faced complex health needs and challenges and were significantly impacted by current sentencing habits. The ABA urged support for the National Justice Coalition “Change the Record Campaign”: <http://www.changetherecord.org.au> and will continue to advocate for a raft of supplementary strategies to address the current crisis including the adoption of Close the Gap Justice Targets and reconsideration of mandatory and baseline sentencing.

### **6. Abolition of the death penalty**

On 9 October the ABA and Law Council made a joint submission to the Joint Standing Committee on Foreign Affairs Defence and Trade concerning Australia’s Advocacy for Abolition of the Death

Penalty. A copy of the submission is available here: <http://www.austbar.asn.au/wp-content/uploads/2015/11/09-10-2015-Sub-Auss-Advocacy-Abolition-Death-Penalty-Final.pdf>. On 16 November Dr Natasha Molt of the Law Council and I addressed the Joint Committee hearing in Melbourne.

The ABA strongly supports the development of a strategy for abolition of the death penalty including the establishment of a panel of eminent persons to act as ambassadors for abolition domestically and internationally and the strengthening of our domestic legal framework and practices to ensure that Australia agencies, including the AFP, do not expose a person elsewhere to the real risk of execution.

It is important that the Law Council and ABA continue to stand shoulder to shoulder in their support for the abolition of the death penalty internationally. Today media reports suggest that Indonesia has decided there should be a moratorium on further executions, which is a very pleasing announcement.

## **7. Advocates immunity**

Members may be aware that the High Court has granted special leave to consider the advocates' immunity in the case of *Attwells v Jackson Lalic*. The ABA considered seeking leave to appear as amicus in the proceeding and engaged Clayton Utz and DLA Piper to assist, instructing Dick Whittington QC, Paul Liondas and Ben Doyle in this process. I am very grateful for the contributions of each. I understand the matter will be listed by the Court later this year.

## **8. Appointments and farewells**

I am delighted to note the appointment of Brigitte Markovic to the Federal Court in August, 2015, welcomed by Jane Needham SC on behalf of the ABA and Mark Moshinsky QC in October this year on 11 November, 2015 welcomed by me on behalf of the ABA and Paul Anastassiou QC on behalf of the Victorian Bar. Mark is a former Council member of the ABA and a former Chairman of the Victorian Bar. On 20 November I will appear at a sitting of the Federal Court to farewell Justice Shane Marshall and Paul Anastassiou QC will appear on behalf of the Victorian Bar.

A number of appointments have been made to the Federal Circuit Court including Josh Wilson QC. Josh has a long-standing association as a coach with the Advocacy Training Council and we are very grateful for his contribution over so many years to the work of ATC in Australia and internationally. I also congratulate Tim Heffernan to the Adelaide Registry, Steven Middleton to Newcastle and Philip Dowdy to the Sydney Registry.

## **9. Advocacy training**

The Advocacy Training Council conducted very successful Essential Trial Advocacy and Appellate Advocacy Programs in June this year in Adelaide and Brisbane respectively.

Places are available in the Advanced Trial Advocacy Residential Program in Melbourne in late January, 2016. The course is designed for experienced advocates with the option of either a criminal or civil brief based upon real cases. The coaches include senior Australian judges as well as senior international and Australian silks and juniors as well as professional voice, movement and impact coaches accredited by the ABA ATC.

I encourage all members to consider the program as a way to brush up on advocacy skills, our fundamental tool of trade. It may be very useful for those who have been out of court for a time preparing large matters, returning from leave, or those considering making application for appointment as senior counsel, as a way to gain insight into and improve your own style.

The ABA will also sponsor a number of places in the ATC Advanced Program for indigenous barristers.

#### **10. Incorporation/AGM**

I am pleased to announce that this year, after many years of consideration, the ABA has finally incorporated and moved to a corporate structure. I am very grateful for the contribution of a number of people involved in this process including Tony Lang, Chris D'Aeth, Philip Selth and our new company secretary Jennifer Pearce. The new corporate structure will provide the appropriate corporate governance mechanisms and protection of ABA assets going forward.

#### **11. ABA Silks Dinner**

All new silks for 2015 will be invited to take their bows before the High Court of Australia at 3.30pm on 1 February, 2016. The Chief Justice will invite all new silks and their families to a Reception immediately after the ceremony.

A dinner to mark the occasion will be held at the Great Hall of the High Court on 1 February, 2016 at 7.00pm. All barristers and their partners are invited to attend.

#### **12. ABA Conference 2016/2017**

The ABA Council has resolved to hold our first national conference jointly with the Victorian Bar in Melbourne on 26-27 October, 2016. This is a wonderful initiative that will cater to members biannually. Treasurer Will Alstergren QC is designing an exciting program to appeal to all members with the assistance of Sarah Fregon, CEO of the Victorian Bar.

### **INTERNATIONAL ENGAGEMENT**

#### **13. ABA Boston and Washington Conferences**

The bi-annual ABA Conferences in Washington DC and Boston USA in July this year were a resounding success and those attending enjoyed the best of these wonderful cities and a terrific program focusing on US jurisprudence and trial practice lessons for Australia. We were able to

hear firsthand from federal and state Judges and trial attorneys, as well as some wonderful international and home grown speakers. I am very grateful to Chris D'Aeth, Bali Kaur and all who made the conferences a success.

#### **14. ABA Conference 2017**

The ABA Council has resolved to conduct the next biannual 2017 Conference in Ireland. This conference will be supplemented by our work in Asia noted below.

#### **14. Focus on Asia**

The ABA has embarked upon an ambitious program of short CPD programs in Singapore. The first of these weekend sessions was undertaken in late October. The Vice-President Patrick O'Sullivan QC and Peter Quinlan SC presented papers and I participated in a panel discussion of issues around pure economic loss and the liability of public authorities in tort at the request of the Law Society of Singapore to a group of about 50 lawyers. The program will be the first of a number of CPDs designed to showcase the expertise and talents of Australian barristers in Singapore. The ABA Council will consider how to continue with this program on a cost effective basis. This program and our ongoing advocacy training in the region, will lead up to the ABA National Conference to be held in Singapore in 2018.

In addition I will be participating in a Convergence Conference in Singapore on 21 and 22 January, 2016 at the request of the Chief Justice of Singapore, Chief Sunderesh Menon. Chief Justices Menon and French are keynote speakers at the Conference and there will be a focus on the economic integration and convergence in trade practices amongst Asian countries, the need to retool the legal and regulatory frameworks across Asia and examine how legal convergence of business laws can be expedited in an Asian context. I will be speaking on the second day on cross border enforcement of arbitral awards and judgments and the benefits of adoption of the Hague Convention On Choice Of Court Agreements.

The Conference is an important step towards our participation and greater cooperation in the Asian region and our influence in legal practice and jurisprudence in the region.

The Conference will see the launch of an Asian Business Law Institute which will work on producing statements of law on various topics of transnational impact, such as insolvency, tax and competition law and produce authoritative statements on the law in Australia, Singapore, India and China. This is an ambitious program and the ABA is very pleased to be participating at the outset. More than 500 lawyers from the region have already registered. Anyone with an interest in exploring the prospects of transnational work should definitely attend this conference:

<http://www.legalconvergenceasia.com/>.

In early November the Vice-President and I joined in welcoming delegates to the LAWASIA Conference in Sydney and the regional meeting of Chief Justices to coincide with that conference. Chief Justice Menon then addressed the Queensland Bar and Law Society on the dispute resolution landscape in Singapore.

**15. IBA and Opening of the Legal Year UK**

This year I attended the International Bar Association Conference in Vienna, following the opening of the Legal Year Ceremonies and Conferences in London. While the Conference is primarily a Conference for solicitors there is much of interest in the sessions including a significant focus on challenges to the rule of law globally and regulation of the profession.

While our participation in the IBA is currently under review, it is noted that the IBA Conference in 2017 will be held in Sydney and it is expected that Australian Judges and barristers alike will make a significant contribution to the business sessions of the Conference.

**16. PNG Travel Ban**

The ABA expressed concern that members of the Queensland Bar were being denied entry to PNG to represent the interests of their clients. Happily, representations to the PNG government and media attention to the case appear to have resulted in the lifting of the ban.

<http://www.austbar.asn.au/about-the-aba/media-releases>

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