



## **President's Report**

January, 2016

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This is my final report to members.

I congratulate our incoming President Pat O'Sullivan QC and wish him all the best for the year ahead.

It has been an extraordinary honour to serve as the President of the ABA, to speak out, always respectfully but where necessary, to influence lawmakers as they work to shape laws for the common good. I acknowledge the open door extended to me this year and the friendship of the Attorney-General and Shadow Attorney-General.

It is an honour to defend the Courts as we must from ill-judged criticism – this is something of a bright line for ABA and always has been.

It is an honour to strive to make a contribution to promoting the rule of law and the skills and expertise of members our Bars, here and overseas, to contribute to policy responses on issues of justice for all, especially our most vulnerable. And to promote diversity, equality, respect and inclusion consistent with principles of justice and the pursuit of excellence that are the bedrock of our profession.

### **1. Indigenous Incarceration Symposium**

I attended a symposium in Sydney organised by the Law Council in November last year. The ABA funded John Lawrence QC from NT to also attend. The Symposium noted that Indigenous imprisonment rates are catastrophically high and continue to increase, year by year. There is broad consensus that the causes are complex and inter-related, with widespread disadvantage, low school completion, high rates of alcohol and drug abuse, family violence, homelessness, unemployment and poor health. Intertwined in this is a mix of policy responses including tough bail laws and parole conditions, punitive sentencing and inadequate treatment and diversion. The Symposium discussed current measures including NT Sentenced to a Job and community corrections innovations; Just Reinvest NSW; the behaviour contract in Western Australia; and planned justice reinvestment trials in South Australia and other short term legislative and policy measures that could make an immediate impact. The ABA continues to support the Change the Record initiatives.

A communiqué was issued at the conclusion of the Symposium:

[http://www.lawcouncil.asn.au/lawcouncil/images/1556\\_-\\_Indigenous\\_Imprisonment\\_Symposium\\_communique.pdf](http://www.lawcouncil.asn.au/lawcouncil/images/1556_-_Indigenous_Imprisonment_Symposium_communique.pdf)

## **2. Diversity**

Work is continuing on a national equitable briefing policy with the aim of adopting a revised policy after broad consultation early this year. A draft, prepared by Kate Eastman SC and me, has been tabled at our Council meeting on 1 February and will go to the Law Council executive on 12 February with the aim of adopting the policy at the LCA director's meeting on 19 March. Once settled, the Bars will be invited to join in promoting the new policy nationally, internally and to private firms, government and in house counsel.

I believe that if we can secure the support of at least 30 ASX 100 companies for the new policy, we will change the landscape for briefing of women barristers in Australia.

## **3. Federal Courts**

Recent press reflects the concerns of the Chief Justice of the Family Court over the merger of corporate services to each of the Federal Courts. See for example, *The Australian* 4 December, 2015.

The merger comes at a time when there is a critical shortage in Family Court judicial resources. The time from initiation of new matters to first directions has blown out, in some cases close to 2 years. The Court in Brisbane, for example, has been without a replacement judge for nearly twelve months and the principal registrar (who hears interim matters) is due to retire this year. The appointment of a single new judge in Queensland is said to be imminent however the lists continue to blow out.

In Brisbane, for example, I am told there are currently 368 pending matters, approximately 20 new matters are filed per month and existing judges estimate they can finalise 40 matters per year including trials. A judge will be relocated from Townsville and Cairns to assist. Adelaide has an even higher rate of matters requiring determination by trial and in other States parties are issuing away from CBDs in an effort to obtain earlier hearings, placing further burden on parties and circuit resources.

The Federal Circuit Court is facing similar pressures and lack of resources. This is a matter that will require ongoing dialogue with government.

## **4. Legal Aid**

As noted in earlier reports, 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. Many community legal centres will face a fiscal 'cliff' in 2017 with the withdrawal of federal funding under the new National partnership agreement, forcing State and Territory governments to fund those centres or they will face closure.

The Productivity Report on Access to Justice notes that an immediate injection of \$200m is required into civil legal aid. This will continue to be an important issue for the ABA ahead of the federal budget and particularly in an election year. 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.

## **5. Silks Dinner**

New silks for 2015 took their bows before the High Court of Australia on 1 February, 2016. A dinner to mark the occasion was held at the Great Hall of the High Court on 1 February, 2016 at 7.00pm. Justice Nettle and Tony McAvoy SC spoke and Madeline Brennan QC introduced Justice Nettle. A copy of my remarks appears here <http://www.austbar.asn.au/wp-content/uploads/2016/02/ABA-Silks-Dinner-2016-Presidents-Opening-remarks.pdf> and other speeches may be posted.

I am very grateful for the work of those organising the dinner Georgina Stow and Katie Retford of the NSW Bar Association.

## **6. Media**

On 10 December I issued a press release (<http://www.austbar.asn.au/wp-content/uploads/2015/12/20151210.pdf>) in defence of the Queensland Court of Appeal in response to reported criticism from the Acting federal Minister for Justice. The ABA continues to respond where Courts are under attack to explain that judges' role is to apply the law impartially and independently, not to reflect the views of particular interest groups or political interests.

Since launching the ABA twitter account @austbarassoc last year the ABA has posted nearly 1000 tweets and attracted more than 2250 followers.

## **7. International**

### *Opening of the Legal Year in Hong Kong*

The President of the ABA is invited to attend the Opening of the Legal Year's Ceremonies in Singapore, Hong Kong and Kuala Lumpur each year in January. The OLY and associated events create a unique opportunity to meet over a day or two with bar leaders in the region and develop strong relationships. Last year, I was sent to each of the OLYs by the Law Council of Australia with the ABA sharing the cost, which made the trip feasible. In 2016 the OLY in Singapore clashed with the OLY in Hong Kong. It was decided, therefore, that I would attend the Opening of the Legal Year in Hong Kong (funded by the Law Council of Australia) and the Vice President would attend Malaysia and Singapore on behalf of the ABA.

Hong Kong is home to one of the world's largest legal and financial centres. The local bar is not particularly large providing long-term opportunities for Australian barristers to operate in Hong Kong. UK barristers do appear in Hong Kong and the legal systems, based on the common law, and operates much as the Australian system. I attended on the final day a hearing of the Court of Appeal in the new Court of Appeal building with a panel of 5 judges. One of these judges was

Justice Gummow, Acting Non-Resident Court of Appeal Judge. The matter was an intellectual property matter and both teams were led by UK senior counsel. Obviously those seeking to be admitted to Hong Kong would do well to have a decent grasp of Mandarin.

I attended a President's Roundtable jointly hosted by the Law Society of Hong Kong and the Hong Kong Bar Association. The President of the Hong Kong Law Society is Mr Stephen Hung and his Vice Presidents Thomas So and Melissa Pang also attended. The Chairman of the Hong Kong Bar Ms Winnie Tam SC was a co-host for the session. The session was entitled 'Breaking new ground together'. The Law Society discussed the Chinese foreign policy initiative known as 'one road one belt' promoted by the President of China and intended to lead to massive investment in its trading partners. It was noted that all commercial projects to receive funding will need lawyers and that there was a need for mobility of lawyers accordingly. He discussed a proposal to launch a website portal containing access for lawyers to a client database currently held by the Hong Kong Trade Council and listing lawyers who undertook transnational work. There was a general discussion around independence of the legal profession and judiciary, the culture of complaint and submission to Government, different cultures of litigation including administrative law challenges, and the role of lawyers promoting human rights and challenges with IT based legal services.

I also attended the Hong Kong Bar at the request of Ms Tam and met with senior counsel to discuss pupillage and direct briefing.

#### *Singapore Convergence Conference*

I attended the *Doing Business in Asia Convergence of Laws Conference* in Singapore on 21 and 22 January, 2016 at the invitation of the Chief Justice of Singapore, Chief Sunderesh Menon. Chief Justices Menon and French were keynote speakers at the Conference which focused on the economic integration and convergence in trade practices amongst Asian countries, the need to retool the legal and regulatory frameworks across Asia and ways in which legal convergence of business laws can be expedited in an Asian context.

I presented a paper 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 saw the launch of an Asian Business Law Institute, which will work on producing statements of law on various topics of transnational impact, such as contracts, insolvency and competition law and produce authoritative statements on the law in Australia, Singapore, India and China. This in an ambitious program and the ABA is very pleased to be participating at the outset.

The Vice President Pat O'Sullivan QC also attended the conference and we attended a number of side meetings to develop a continued CPD program with the Singapore Law Society and Singapore Academy of Law.

#### *Ireland 2017*

I met with the President of the Irish Bar David Barniville in Melbourne for preliminary discussions around the biannual ABA conference to be held in Dublin 2017.

## 8. Advocacy training Council

The ATC conducted an advanced trial advocacy program in Melbourne in late January. I am grateful to Kelsey Rissman of the Queensland Bar Association for her ongoing assistance with this course and ATC administration over the past year and to our excellent teaching team.

More will be said about Philip Greenwood SC later this year, but I acknowledge Philip has made an exceptional contribution in the teaching of advocacy in Australia over many, many years domestically and internationally. Philip is stepping down as Chair of the ABA advocacy training council together with many of our long standing ATC committee we thank them all for their long service.

## 9. Acknowledgements

I initiated this year the delivery of president's reports to members and the use of social media. I very much hope these initiatives continue. Past reports are available:

<http://www.austbar.asn.au/about-the-aba/presidents-message>

As outgoing President I wish to express my deep appreciation for the support I have received in my term of office. In particular Philip Selth, CEO of the ABA and the staff of the NSW Bar Association including Basil Catsaras, Jennifer Pearce, Georgie Stow, Katie Retford, Bali Kaur and former staff member Chris D'Aeth who have all provided an extraordinary level of service. I am aware this service places an additional burden upon the New South Wales Bar and, in Philip's case, on his wife Fran and I express my deep appreciation for the support given to me.

I wish to also thank members of the executive and the friendship and strong support that I have been shown by Vice-President Patrick O'Sullivan QC and Treasurer Will Alstergren QC. I would also like to thank my personal assistant Terryn Himbury. Terryn has carried a large burden of the administrative load for the ABA this year and her assistance is greatly appreciated.

A couple of years ago the ABA resolved to appoint an executive officer to manage the day to day administration and develop policy, manage media requests and build a strategic plan for the ABA.

In order for the ABA to flourish the member bars will need to absorb a share of management of special projects and we must move to engage an executive officer whether this be on a part time or full time basis. The ABA having its own dedicated officer is vital if the ABA to expand and fulfil its new role under the *Uniform Profession Act*, meet all of the other demands upon its time for input into matters of policy and properly represent members of each of the independent bars of Australia.

I very much hope that our new corporate structure and policy of communicating activities to our members through regular reports and use of social media is something that continues. For the ABA to be relevant to its members there must be a deep understanding about the nature of its activities and its unwavering support for the rule of law. The ABA speaks with a voice of authority when required to do so, in particular in defence of the Courts. This is one of our vital roles as is contributing to discussions about the nature of our profession and our practice.

It is very much my hope that our contribution to the discussion about diversity and support for women barristers and our contribution to indigenous Australians through our projects on indigenous incarceration and constitutional recognition can continue in the future.

It is an exciting time to be a barrister in Australia and I wish the new team well for 2016 and beyond.

Fiona McLeod S.C.

President

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