



Australian
Bar Association

Member News

July 2017

Dear colleagues,

The ABA has a long and proud history of representing the interests of Australian barristers both within Australia and further abroad, and it gives me great pleasure to be able to continue this very important role as many of our members gather in London and Dublin this month for the ABA's biennial international conference.

The ABA's international conferences are an excellent opportunity to hear about new developments within our field from across the globe and to compare, learn and innovate from the profession's best and brightest. This year's conference in London and Dublin will do just that – showcase the best, the most innovative, and discuss new and great legal challenges facing the Bar.

If you're attending the event, I hope you make the most of the numerous opportunities on offer to discuss, learn and network, and for those that are unable to join us this time, I look forward to sharing updates from the conference in the near future.

In the coming months, the ABA will be investing into the promotion of our members and the valuable skills and expertise they can provide through early and direct briefing. The case for early and direct briefing of the Bar is not new, nor is it complex. However, in the current environment where resources are thinner, budgets tighter and the pressure to achieve positive results is stronger than ever before, strategic, early and direct involvement of a barrister is providing clients with a serious competitive advantage.

The ABA is committed to promoting its members and I look forward to sharing news of developments in this space over the course of the rest of the year.



Will Alstergren QC
Australian Bar Association President



Access to Justice

In May this year the ABA welcomed the Federal Government's announcement to commit an additional \$55.7 million over the next three years to the community legal assistance sector in the upcoming 2017-18 Budget. This is a significant financial commitment to addressing the shortfalls of the legal assistance budget and shows a firm commitment from the Federal Government to provide crucial and equal access to legal services for all Australians.



ABA President, Will Alstergren QC speaking to media in Brisbane about Federal Government funding for legal assistance

The ABA has been a vocal campaigner for increased funding and support to the legal assistance sector. The ABA stated that the Government's re-consideration of this issue, and significant injection of funds was particularly positive news. In welcoming the announcement, the ABA called upon all sections of Government to work together to ensure that equal access to affordable and quality legal assistance remains a priority.

ABA President, Will Alstergren QC said, "The legal profession, particularly the Independent Bars and the community legal centres, have provided an extraordinary amount of pro bono work, which has become unsustainable for many. The Government's announcement will be warmly welcomed by the profession and is an excellent first step to ensuring everyday Australians have proper access to justice."

"The increased funding to the Indigenous legal services sector is a particularly substantial commitment and one that the ABA welcomes enthusiastically. The number of

Indigenous people coming before the justice system in Australia is a national disgrace and one that can only be addressed through a multi-faceted approach, that includes increased and intensive legal assistance funding."

The ABA also welcomes the Victorian Government's response to the Access to Justice review and looks forward to working with them to identify more efficient models for pro bono work.

"The ABA considers that equal access to justice through the legal assistance sector is a basic and crucial issue for all Australians. It is time to look at all possible avenues to help solve this national problem that is so badly effecting our profession, the community and the Courts."



Will Alstergren QC, George Brandis QC, Jacoba Brasch QC, Fiona McLeod SC

Tristan Jepson Memorial Foundation Best Practice Guidelines

May 2017 marked the 3-year anniversary of the Tristan Jepson Memorial Foundation (TJMF) Psychological Wellbeing: Best Practice Guidelines for the Legal Profession.

The evidence based guidelines focus on the prevention of harm and causes of workplace stress and aim to prevent injury, create a psychologically safe and healthy workplace, provide a framework for change and sustain ongoing improvement.

In May, ABA President Will Alstergren QC threw his support behind the work of TJMF by officially opening the Victorian TJMF lecture presented by Her Honour County Court Judge Felicity Hampel. Judge Hampel spoke of the many factors that can impact one's personal and professional wellbeing whilst working in the law. Judge Hampel's lecture, 'Towards Wellbeing: How to be a Human Being and a Lawyer' will soon be available on the TJMF website at www.tjmf.org.au

Early briefing in litigation and the competitive advantages it can deliver – ABA President Will Alstergren QC

A common regret from clients involved in litigation before the courts, is the countless hours and dollars invested into the preparation required for court, only to be forced to spend more time and money repairing a case before trial. And, it is not just clients that end up dissatisfied. The judiciary often raise concerns about cases that need to be postponed because of the lack of proper preparation, inadmissibility of evidence or incoherent pleadings. However, more often than not, these scenarios can very easily be avoided by briefing barristers early and directly in litigation.

The advantages of early and direct briefing are many, and are not limited to traditional court room advocacy. Direct briefing provides access to specialist expertise in every area of the law and for a range of services, from legal advice, reviewing contracts, dispute resolution and, crucially, strategic advice and planning to improve the prospects of a successful outcome.

In May this year, Justice Rares of the Federal Court, articulated why early and direct briefing of a barrister can improve the entire court process, emphasising the impact it can have on reducing the costs of accessing justice (<https://jade.io/article/528051>).

Justice Rares remarked:

“One of the significant concerns in our society is the cost of access to justice. It is not surprising that individuals and small businesses would find it difficult to obtain access to justice where four lawyers at a solicitor’s firm were each charging different, but substantial, amounts for doing what must involve repetitive work of looking at one another’s drafts, documents or other communications, all of which, ultimately, would be, and were intended to be (and properly should have been), drafted and settled by counsel. There is no obvious reason why, having regard to solicitors’ fiduciary duties to their clients to ensure that their cases are prepared as efficiently, but economically and reasonably, as possible, this kind of charging practice is appropriate.”

Many of the Independent Bars across the country have engaged in programs regarding the direct briefing of barristers, and we have seen our colleagues in the UK in recent years formalise the models of public access and direct professional briefing simply because the market has demanded it. A more efficient, strategic and competitive edge for those accessing the expertise at the Bar is the end result.

More recently, early and direct briefing has been attracting attention as a result of the significant cost savings it can provide. The availability and flexibility of the talented and experienced junior counsel at the Bar is providing a very cost-effective way for in-house counsel to access specialist advice.

Corporate Counsel who actively, regularly and successfully engage with early and direct briefing have indicated they favour this cost-effective specialist practice. The ABA is committed to showcasing the highly skilled expertise of our members and the benefits of early and direct briefing and will continue to promote the following avenues to assist clients to identify and engage our members:

- **Find-a-barrister** – The ABA website hosts a searchable database of barristers from all over the country. Search by area of expertise, experience and location. www.austbar.asn.au
- **Barristers Clerks** – Barristers clerks can recommend a barrister for particular work and can answer any questions about relevant practice areas.
- **Barristers chambers** - Contact a Barristers Chambers either online or over the phone.

ABA MEMBER BENEFITS PROGRAM

The July 2017 edition of MBA Connect, the newsletter of the Australian Bar Association's member benefits program, is out now.

It features great deals from Audi, BMW, JB Hi-Fi, The Good Guys and more.

Every month member offers are updated, so remember to check out the members section on the ABA website at: www.austbar.asn.au/for-members/member-benefits

ABA Member profile

Each quarter, the ABA member newsletter will profile a member. If you would like to nominate a member to be featured, please email media@austbar.asn.au.

Fiona Vernon of the Western Australian Bar.

Fiona joined the bar in April 2010 and has over 30 years experience, acting in a wide range of general, commercial and professional indemnity insurance litigation, largely in the Federal and Supreme Courts. She has also acted for both vocational boards and practitioners in disciplinary proceedings in the State Administrative Tribunal and has represented medical practitioners and organisations in coronial inquests.



Where did you grow up?

I was born in Antigua. My parents went back to Scotland before emigrating to Tasmania when I was five. After a year, we moved to Perth. I suspect better weather for golf played an important part in that decision. We stayed put after that, apart from a year in Glasgow when I was 14.

What drove you to pursue a career in the law?

It was a process of elimination. I decided that I didn't want to be a doctor while dissecting a bull's eye at school. I was good at maths and science but didn't think I had real talent. I thought I might be good at law, although I can't now remember why. I didn't know any lawyers.

Did you always want to be a barrister?

No, the desire to specialise as a barrister came later in my career. I practiced as a solicitor for 25 years, and contemplated joining the bar for a long time before taking the leap. The profession is not formally divided in WA, and I did a lot of the work of a barrister whilst in

what the bar affectionately calls "the amalgam".

What do you love most about practising law?

It is interesting and challenging. In addition to the law itself, I love having the opportunity to delve into other areas of professional knowledge. I have spent a long time acting in professional indemnity insurance litigation and disciplinary proceedings, and have been required to gain a working knowledge of aspects of a number of disciplines from obstetrics to electrical engineering.

What have been some of the bigger challenges you've faced in your career or as a barrister?

Having a family while continuing to work. When I had my children, there was a mindset that a lawyer could not be seriously committed to practice and the care of clients' interests, while working hours that differed from the accepted norm. Flexible work arrangements were, and are, essential for parents who want to be actively involved in their children's lives. It is not hyperbole to say that an employer who offered me the flexibility I needed saved my career. My perception is that, while attitudes have changed over the years, there is still a great deal of room for improvement.

What are some of the cases you've worked on in recent years?

I had the opportunity to work on *Marsh v Baxter* from trial to special leave application. That case concerned the competing rights of a GM growing farmer and his organic farmer neighbour and there was a lot of international interest. I also acted for the now defunct government regulator of the potato market in WA in its dispute with a high profile potato grower. So, cornering the market in agricultural produce litigation!

What do you do to unwind?

Cryptic crosswords and word puzzles. I love reading and old movies. I do some, but not enough, exercise to burn adrenalin.

Favourite book, or book you're currently reading?

Wolf Hall by Hilary Mantel is a favourite.

If you weren't a barrister, what would you be?

In common with my 17-year-old self, I still have trouble identifying anything else I would be rather be doing. Possibly, a cryptic crossword setter.



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Advocacy Training Council



For over 10 years the ABA has been delivering world class advocacy training to barristers through the ATC, providing the ABA with a channel to maintain and enhance the Bar's professional standards, in particular, advocacy standards.

The Australian Bar Association and New Zealand Bar Association have issued a general invitation to 24 barristers, with a recommended 7+ years' experience at the private Bar, to join with a senior Faculty of Federal and State Court justices, NZ High Court, Court of Appeal and Supreme Court Justices and senior members of the Australian Bar and New Zealand Bar for the highly regarded three day Appellate Advocacy Workshop.

The Workshop, will be held 8 – 10 September 2017 at the Supreme Court of Queensland, and follows the same successful and popular teaching philosophy as the Advanced Trial Advocacy Course. It is based on a realistic brief that barristers prepare and then perform in real court settings before appellate justices. Participants are required to fully prepare the matter and file submissions in advance. Performances are recorded in court and then reviewed privately with the faculty. The justices and Senior Counsel provide suggestions for improvement in a supportive, professional environment.

The Appellate Advocacy Workshop provides an unique opportunity to get genuine feedback and ideas on being a better appellate advocate from the ultimate consumers of our advocacy. The Workshop is ideal for barristers who appear, or wish to appear, regularly in appellate courts in Australia and NZ. The cross section of views from experienced judges and Senior Counsel is invaluable.

This is a three day, non-residential workshop. Australian barristers will be entitled to claim 10 CPD points, New Zealand barristers can claim 15+ hours.

To find out more or to register your interest visit: www.austbar.asn.au/advocacy-training/courses/appellate-advocacy-september-2017

The Essential Trial Advocacy Course will proceed over five days in Perth from 10 – 14 July 2017. It is a residential Course for the Readers at the SA and WA Bars, and for persons of less than two years' Call at other Bars. Places at the Course are capped at 32 and present indications are that the Course will fully subscribed. Expressions of interest can be made to Kelsey Rissman through the Bar Association of Queensland



The Australian Bar Association
Training Council
Appellate Advocacy
8 - 10 September 2017, Brisbane

The Australian Bar Association and New Zealand Bar Association would like to invite 24 barristers, with a recommended 7+ years' experience at the private Bar, to join 30 Federal Court and Supreme Court judges and senior members of the Australian Bar and New Zealand Bar on a three day Excellence in Appellate Advocacy workshop.



Ross Ray QC Scholarship

The ABA congratulates the two South Pacific winners of the 2017 Ross Ray QC Scholarship, Alexandrya Herman and Efren Jogia. The Ross Ray QC Scholarship was first offered in 2016 and is awarded in recognition of Ross Ray, an inaugural member of the ATC who tragically died last year.

The Scholarships are awarded in consultation with the South Pacific Lawyers Association to two of their members and consists of registration to the ATC's Essential Trial Advocacy Course. The ABA congratulates Ms Herman and Mr Jogia and expects they will be they will be greatly benefited by the experience and the ABA will be enriched by their involvement.

Australian Academy of Law's 2017 Annual Essay Prize

The Australian Academy of Law's 2017 Annual Essay Prize is now accepting entries. The winning essay writer will be awarded with a prize of \$10,000. Entry is open to anyone, wherever resident, who is studying or has studied legal subjects at a tertiary level, or who is working or has worked in a law based occupation.

The essay topic for the 2017 Prize is as follows:

How well do Australian legal institutions respond to climate change? How could that response be improved?

The deadline for the submission of an essay is 31 August 2017. More details can be found on the Academy's website at: www.academyoflaw.org.au

Federal Crime and Related Proceedings Practice Note (CRIME-1)

The Chief Justice of the Federal Court has issued the new national Federal Crime and Related Proceedings Practice Note (CRIME-1) which took effect from Monday, 15 May 2017. The new practice note is now available on the Federal Court website.

Following the commencement of the Federal Court (Criminal Proceedings) Rules 2016 (Cth) on 10 November 2016, the Court developed the new practice note for the Federal Crime and Related Proceedings National Practice Area (NPA).

The Federal Crime and Related Proceedings NPA is one of the nine NPAs forming the National Court Framework (NCF). Similarly to the other new national practice notes that were issued by the Court on 25 October 2016, this practice note has been finalised following appropriate external consultation.

Further information about the Court's criminal and related jurisdiction, access to the new practice note

CRIME-1 and legislation is available on this NPA's homepage. As part of the introduction of the Federal Court (Criminal Proceedings) Rules 2016 new approved forms are available. At this stage, these new forms are not yet supported by eLodgment. If you wish to file any forms under these Rules, please email query@fedcourt.gov.au.

If you have any questions about this practice note or the process please contact your local registry or email practice.notes@fedcourt.gov.au.

High Court update

Since October 2013, the High Court has published, on the Court's website, audio-visual recordings of Full Court hearings in Canberra. The visual from the recordings has been of the whole Bench, looking from above and behind counsel.

The High Court has decided that, commencing with the August 2017 sittings of the Court, the recordings will be enhanced to include a "picture in picture" front view of counsel addressing the Court. The view will appear in the bottom centre of the frame, below the Bench.

DATES FOR THE DIARY

2-8 July 2017
ABA Conference
London and Dublin
www.abaconference2017.com.au

10-14 July 2017
ATC—Essential Trial Advocacy
Perth
austbar.asn.au/advocacy-training

11—13 August 2017
The Future of Australian Legal Education
Sydney
www.academyoflaw.org.au/Conference

8-10 September 2017
ATC—Appellate Advocacy
Brisbane
austbar.asn.au/advocacy-training

8 -13 October 2017
International Bar Association Conference
Sydney
www.ibanet.org/Conferences/Sydney2017.aspx

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