

# Australian Bar Association News



December 2016

Dear colleagues,

It was wonderful to see so many of our members in Melbourne in October for the 2016 ABA & Vic Bar National Legal Conference. It was a great reminder of the excellent work being undertaken by our members and a fantastic opportunity to get together to discuss opportunities, issues and challenges for the future. I would like to thank all the participants for their energy and enthusiasm during the conference and thank the team at the Vic Bar for their tremendous effort in putting on such a great conference.

In July next year, the ABA will be welcoming members to London and Dublin for the ABA 2017 Conference. Our international conferences are always a unique opportunity to highlight and profile the excellence of the Australian Bar to the rest of the world and to learn from the experiences and shared knowledge of our colleagues practising abroad. The conference program will be available early 2017 with registrations opening in February.

I would like to take this opportunity to thank all our members who have served on ABA committees this year, providing advice and support to the ABA's policy and advocacy work. This year the ABA has made significant progress on the issue of Indigenous incarceration resulting in the announcement of an ALRC reference to commence in February next year. While this is a significant and important development, the ABA's Indigenous Issues committee will continue to campaign for immediate and practical reforms to address the shocking rates of Indigenous incarceration in Australia. I also commend the work of the Access to Justice committee and the Diversity and Equality committee for making significant progress in raising the profile of the issue and the ABA's ongoing advocacy work in this area.

With the end of the law term just around the corner, I would like to wish all our members a very happy Christmas and hope you have a relaxing break with your family and friends over the New Year.



**Patrick O'Sullivan QC**  
Australian Bar Association President



## ABA & Victorian Bar National Legal Conference



**ABA President Patrick O'Sullivan QC and Prime Minister , the Hon Malcolm Turnbull MP**

More than 400 lawyers and barristers came together at the end of October to learn, share and debate some of the most significant issues, trends and innovations currently facing the legal profession. The conference provided a wonderful opportunity to engage and network with senior counsel, members of the judiciary and general counsel.

For the first time, a panel of Chief Justices was convened from across the country, attracting a full house as our most senior members of the judiciary shared their concerns, ideas and hopes for the future of the nation's courts and the rule of law. A recurrent theme from the judiciary was the increase in self-represented litigants appearing before the courts and the implications of this on court resources. Other issues discussed included technology in the courts, expenditure on the consequences of crime rather than the causes and how the same complaints arise today as did in 1900 in relation to civil litigation.



### Chief Justices' session

The Commonwealth Attorney-General, Senator the Hon George Brandis QC, took the opportunity to announce an Australian Law Reform Commission reference into Indigenous

incarceration, which will consider law reform measures to tackle Indigenous imprisonment rates. Within his address, the Attorney General, acknowledged and thanked the ABA and current President Patrick O'Sullivan QC, for the persistent campaigning on this issue over the past 12 months. The ABA will assist the ALRC with this important work and will continue to campaign for immediate and practical action to reduce the nation's alarming rates of Indigenous imprisonment.



**Attorney-General, Senator the Hon George Brandis QC**

The conference ended on a high note, with a special address to the legal profession by the Prime Minister, the Hon Malcolm Turnbull MP. As a former barrister, the Prime Minister shared some stories from his time at the Bar and thanked the legal profession for their commitment to the rule of law stating, "there is nothing more important or easily taken for granted than the rule of law".

The next ABA Conference will be held in London and Dublin on 2-7 July 2017. Further details within this newsletter.



**ABA Vice President Will Alstergren QC presenting Prime Minister, the Hon Malcolm Turnbull MP with a gift of appreciation from the ABA.**



## Equitable Briefing

In October this year, the ABA confirmed its commitment to promoting excellence, diversity and inclusion at the Bar by adopting the Law Council of Australia's Equitable Briefing Policy. The Policy includes the target of briefing female counsel in at least 30 per cent of all matters and paying 30 per cent of the value of all briefs by 2020.

In the same month, the ABA's Diversity and Equality Committee, chaired by Kate Eastman SC, held a roundtable forum hosted by Allens in Sydney, with barristers, law firms, corporate counsel and government representatives. The forum presented an opportunity to openly discuss some of the barriers to equitable briefing, as well as identify practical measures to assist clients, law firms and the wider profession meet the policy's objectives. Among the practical measures discussed to assist equitable briefing practices include:

- Annual promotion of new readers coming through the Bar
- Directives from organisational leadership teams to identify and brief women barristers with relevant expertise and experience
- Senior Counsel referrals and recommendations for junior counsel
- Improved online directory of barristers and their experience

The ABA's Diversity and Equality Committee, intends to hold further roundtables on the issue in other States over the next 12 months.

## Appointments: Justice Susan Kiefel to Chief Justice of the High Court of Australia

The Australian Bar Association warmly welcomed the announcement of the appointment of Justice Susan Kiefel as Chief Justice of the High Court of Australia. Justice Kiefel has had an outstanding career to date as a Justice of the High Court and has long been held in the highest regard by the profession. It is also a significant milestone and worthy of acknowledging her Honour's appointment as the first female High Court Chief Justice in the court's 113-year history.

ABA President Patrick O'Sullivan QC said, "Justice Kiefel's career has been notably ground breaking and has clocked up a number of "firsts" over the years. Her Honour was the first female barrister in Queensland to become a Queens Counsel and was also the first female appointed to the Queensland Supreme Court. Justice Kiefel is one of Australia's most outstanding judicial officers and an inspiration to young women throughout the profession and Australia."

Justice Kiefel will be sworn in as Chief Justice on 30 January 2017.

## Justice James Edelman to the High Court of Australia

The ABA also commended the appointment of Justice James Edelman to the High Court of Australia. Justice Edelman's career to date has been one of stellar achievement in both academic and legal practice, having been awarded a Doctorate of Philosophy from the University of Oxford, appointed to the Western Australian Supreme Court in 2011 and the Federal Court of Australia in 2015.

Justice Edelman will be sworn in on 30 January 2017.

## WABA Colloquium to honour Chief Justice French

Justice Banks-Smith, Justice Gordon and Chief Justice French



In November, the Western Australian Bar Association hosted a colloquium and dinner to honour the Honourable Robert French AO, Chief Justice of the High Court of Australia, as he retires from the bench of the High Court of Australia. His Honour has made an outstanding contribution to Australian society through his much-celebrated career, both as a lawyer and as a Judge. He has served as a judge for 30 years, firstly of the Federal Court before becoming Chief Justice of the High Court of Australia. In addition, he has also served as President of the National Native Title Tribunal.

The Australian Bar Association thanks and congratulates his Honour for his exemplary service and an outstanding career.

The ABA has awarded life membership to the Honourable Robert French AO, Chief Justice of the High Court of Australia, for his outstanding service to the court and an exemplary career in the law. The presentation of life membership will be made at the 2017 Silks dinner.



The Hon Robert French AO, Chief Justice, High Court of Australia

## ABA Conference 2017 – London and Dublin

The ABA looks forward to welcoming members to London and Dublin in July 2017 for what promises to be another exemplary international conference. The conference will showcase talent from the Bar from both Australia and the UK, as well as members of the UK and Australian Judiciary. The conference presents a unique opportunity to share experiences and knowledge on issues affecting the profession across the globe.



**Dates for the conference are:**

**London 2 – 3 July 2017**

**Dublin 4-7 July 2017**

Registrations will open in February 2017, with early bird registration rates offered until 31 March 2017. Rooms have been reserved for accommodation at both the Rosewood Hotel in London, and the Westbury Hotel in Dublin. Rates, along with booking details will be available when registration opens. To register your interest in the 2017 Conference please email [conferences@austbar.asn.au](mailto:conferences@austbar.asn.au)

### Save the date – Silk Bows – High Court of Australia

All new Silks for 2017 will be invited to take their bows before the High Court of Australia at 3.30pm on 31 January 2017.

The Chief Justice and Justices of the High Court will be inviting all new Silks and their families to attend a reception immediately after the ceremony. A dinner to mark the occasion will be held at 7.00pm that evening. Website [www.cvent.com/d/gvq1jz](http://www.cvent.com/d/gvq1jz)

## 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](mailto:media@austbar.asn.au).

This quarter's member profile is:

### Dr Jacoba Brasch QC of the Queensland Bar.

Jacoba was admitted to the Bar in 2000 and has developed a practice in family law, mental health law, and customs and excise.

She has appeared in matters in most States and Territories of Australia and often appears in the Full Court of the Family Court of Australia.

Jacoba has also appeared a number of times in the High Court of Australia with those appearances concerning customs and excise, as well as Family Law matters and the Hague Convention (child abduction).

Prior to coming to the Bar, Jacoba completed a masters in Law at New York University as a Fulbright Scholar and NYU Graduate Merit Scholar. In 2010, Jacoba graduated with a PhD from the UNSW where her doctoral thesis concerned what constitutes an independent and impartial trial, using Australian courts martial as her subject matter. Jacoba is Chair or member of a number of committees, including the Bar Association of Queensland, ABA and LCA.

Jacoba took Silk in 2014 and has chambers in Brisbane, Cairns and Melbourne.



**Dr Jacoba Brasch QC**

### Where did you grow up?

*On the quiet northern suburbs of Brisbane with school holidays down the beach. Watching young people now consumed by their i-things, I am so pleased we did not have Face-Gram or Insta-Book.*

*I attended an all-girls school where biology was a compulsory subject because, as the then headmistress told us, "It is required for nursing and you meet so many doctors that way."*

*With that, I determined that I would chart my own course and be my own, independent person.*

### **What drove you to pursue a career in the law?**

*I do words, not numbers, so, it was always the humanities for me. With a pre-law career in politics, I was most fortunate to watch legal giants such as the now Justice Keane and Walter Sofronoff QC (as successive Solicitors-General) advising the Attorney-General for whom I worked. It was a privilege. From them, I came to understand that law is, fundamentally, a way of thinking.*

### **Did you always want to be a barrister?**

My only reference point when younger was Rumpole of the Bailey – I certainly did not want to be like him, as cranky as him, or, indeed, look like him.

*Once I started law, though, there was no question for me – I would be joining the Bar.*

### **What do you love most about practising law?**

*Occasionally, just once in a while, you can actually change someone's life for the better. Apart from that, most days I have fabulous Donald Rumsfeld moments where I learn things I never knew, I didn't know. The continual learning, and need for mental agility is very appealing.*

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

*Burning the candle at too many ends and not saying "no" more often. However, I have made peace with the fact that I don't pack school lunches every morning, slipping the children money for tuckshop instead.*

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

*We can't name names in Family Law, but some of the very rewarding subjects have included: getting children out of foster care; assisting Gender Dysphoric youth secure Court approval to access irreversible cross-hormone therapy; and helping the biological mother of a child be recognised as a parent of the child.*

### **What do you do to unwind?**

*An instant unwind - making a curry paste from scratch using a mortar and pestle.*

### **Favourite book, or book you're currently reading (briefs don't count)?**

*I've just finished "The Tim Carmody Affair", which was, of course, a rather tumultuous period of recent legal life in Queensland.*

*I'm also reading Daniel Goldhagen's "Hitler's Willing Executioners", but I can only manage small sections at a time.*

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

*In reality, probably an academic or journalist.*

*In my dreams, a Formula 1 driver and celebrated 'cellist, all at the same time.*

## **Advocacy Training Council Indigenous Scholarship**



The ABA congratulates Lincoln Crowley, a barrister from the Queensland Bar, as the 2017 recipient of the Advocacy Training Council's Indigenous scholarship program.

"Lincoln Crowley is an excellent example of a talented young Indigenous barrister with an exciting future ahead of him. His career in the law spans

across public and private practise as well as both criminal and civil law," said Ian Robertson SC, Chair of the ABA's Advocacy Training Council (ATC).

The ATC Indigenous scholarship is awarded to Indigenous barristers with more than 3 years' experience at the Bar, and is designed to assist them with their advocacy skills development and to create stronger career pathways within the profession.

Lincoln Crowley's career in law began in 1997 as a solicitor for the Aboriginal Legal Service in Townsville, appearing in court on a daily basis on behalf of Aboriginal and Torres Strait Islander people. In 2001, Mr Crowley took a position as a civil litigation solicitor within the NSW Crown Solicitor's office. With the dream to become a specialist advocate, Mr Crowley joined the NSW Bar in 2003 and began practise as a Barrister before moving back to Queensland.

Since that time, he has developed a specialist practice in criminal law, both as a prosecutor and as Defence counsel. He has held various positions as a crown prosecutor and continues to be privately retained throughout Australia to prosecute for the Commonwealth. Most recently Lincoln successfully prosecuted Oliver Curtis in Sydney for an insider trading conspiracy and Omar Succarieh in Brisbane for terror-related charges.

"It is a great honour to accept the 2017 ATC Indigenous scholarship and a wonderful opportunity to be able to hone and develop my advocacy skills under the tuition of some of the best advocates the country has to offer," said Lincoln Crowley.

Lincoln Crowley will participate in the ATC's 2017 Advanced Trial Advocacy Intensive to be held in Sydney in January. The Queensland Bar Association's Indigenous Barristers Trust – The Mullenjaiwakka Trust will provide additional sponsorship to cover travel expenses.



## Indigenous incarceration

This year, Australia marked the 25th anniversary of the tabling of the recommendations of the royal commission into Aboriginal deaths in custody. The anniversary was both alarming and sobering because, in that same period of time, the rate of Indigenous incarceration has doubled from 14 percent to 27 percent. Throughout the year, ABA President Patrick O'Sullivan QC, met with Commonwealth and State Attorneys General to discuss the ABA's proposals to reducing the Indigenous incarceration rate including programs that will deliver better justice outcomes for all.

In October, the ABA welcomed the Commonwealth Government's announcement at the National Legal Conference of an Australian Law Reform Commission (ALRC) reference into Indigenous incarceration.

The ABA has commended the consultation process and submitted proposed terms of reference to the Commonwealth Attorney-General, which allows the ALRC to consider the complex nature of the underlying causes of Indigenous imprisonment right through to the criminal justice policies which may be contributing to the disproportionate growth, while also providing scope to review and evaluate the effectiveness of existing justice reinvestment schemes both here in Australia and overseas.

While the ALRC examination is an excellent and much needed inquiry, the ABA remains committed to campaigning for an introduction of immediate measures to address the alarming rates of indigenous incarceration including the removal of certain mandatory sentencing laws that have the biggest impact with minimum effect on Indigenous people, as well as a review of bail laws, fine default imprisonment and investing in justice reinvestment programs.

## IN CONVERSATION WITH.....

### NSW District Court Judge Stephen Norrish QC



In November, NSW District Court Judge Stephen Norrish QC, delivered an address at a NSW government symposium on Aboriginal Health, highlighting many of the challenges faced by the Judiciary when sentencing Indigenous

offenders and provided some thought-provoking solutions for consideration.

Judge Norrish stated that while the "underlying causes of Indigenous offending are multitudinal, multi-dimensional and multigenerational, criminal law often lacks the discernment, resources and sometimes commitment, to bring about change in individuals or the social circumstances of the offender's community."

His Honour recommends setting a target of achieving "equal justice" as an objective or purpose of sentencing and references existing mandates within the Canadian courts that have been established to address the disproportionate rates of Indigenous incarceration in Canada.


Judge Norrish's paper is available to read in full at: [www.austbar.asn.au/wp-content/uploads/2016/04/Judge-Norrish.pdf](http://www.austbar.asn.au/wp-content/uploads/2016/04/Judge-Norrish.pdf)


The ABA recently interviewed Judge Norrish regarding the state of Indigenous incarceration in Australia and discussed how his proposals might provide some real and practical avenues to turn the figures around.


**Q. 25 years ago, you were involved with the Royal Commission into Aboriginal deaths in custody. How, after a Royal Commission and numerous reviews, campaigns, and enquiries, is Australia a position where Indigenous incarceration rates have doubled from 14% to 27% during that period?**

*A. The primary reason in my view is a failure by governments generally to address successfully many underlying causes of offending found in the historical and contemporary circumstances of Indigenous Australians around Australia. The impact of these matters is compounded by absence of effective alternatives to imprisonment that encourage rehabilitation and/or diminish the likelihood of reoffending. This in the context of increasing imprisonment rates generally throughout the community and increasing restrictions upon the availability*

### Connect with us:

 [www.austbar.asn.au](http://www.austbar.asn.au)

 @AustBarAssoc

 [media@austbar.asn.au](mailto:media@austbar.asn.au)

Australian Bar Association  
ABN: 14 605 949 148

of bail for those awaiting finalisation of charges brought. Part of the problem for courts, in so far as they have contributed to the current situation, is they are not well served by the current methods of producing relevant evidence or information about offenders and their circumstances and that of their communities.

**Q. There has been some interest in your suggestion that Indigenous offenders facing jail terms of 6 months or less should only be jailed if their freedom presents a threat to other people in their community. Do you think short jail terms do more harm than good? What are the alternatives that you suggest?**

A. This suggestion is not novel. The NSW Sentencing Council recommended a more sweeping approach close to 10 years ago. Short jail sentences may have a temporary personal deterrent effect, but the cost to the community of imprisonment does not bear out a commensurate benefit if the person detained becomes comfortable in custody, trained in custody to be a better criminal and/or not encouraged to change the behaviours that led to offending in the first place. The opportunities for short term prisoners to undertake and complete rehabilitation programs are restricted and usually such people are not better prepared to return to and cope in the wider community on release. I suggest that if a court decided that offender would ordinarily be sentenced to less than a particular period of imprisonment (such as 6 months) and no other sentence is otherwise appropriate, the sentence of imprisonment be served by either community based 'correction' order requiring mandatory reporting, counselling, community work, training programs etc for that period, or be required to undertake a particular period of in-house or outpatient rehabilitation with an approved facility. Of course, failure to comply or complete particular requirements may require penal consequences. There may be other practical alternatives to incarceration pursued if the resources are available. Perhaps we should create forms of 'community detention', that are not gaols, controlled by government and local communities in remote and semi remote communities.

**Q. Have you seen success stories (rehab/education/justice reinvestment programs) here in Australia or abroad? What do you think makes them successful?**

A. Justice Reinvestment has had considerable success in various States in the United States and preliminary results in Bourke, NSW, are encouraging. Its virtue is that it involves crime prevention and rehabilitation strategies. The issues that arise in relation to addressing the overrepresentation of Indigenous people in prison custody require a holistic approach. In Alberta, Canada, there is a greater interrelation between police, corrective services, probation and parole authorities, offenders and their communities in an attempt to

better coordinate prevention and rehabilitation strategies. The key in some respects is getting Indigenous communities involved to provide support for the offender and victims and assistance to the supervising authorities.

**Q What do you consider the greatest barriers to governments making real changes that will improve the nation's Indigenous incarceration rates?**

A. One significant barrier is a failure to sufficiently consult with Indigenous communities, Elders and other individuals about strategies and solutions. Another is caution in redefining the legislative context of sentencing for fear of being accused of, or practising, 'reverse discrimination' in the application of the law. The Canadian National legislature and the Canadian courts have recognised that paying 'particular attention' to the circumstances of Indigenous offenders is 'necessary to achieve real equality' for them under the law.

## DATES FOR THE DIARY

**17 January 2016**

ATC—Advanced Trial Advocacy  
Sydney  
[www.advocacytraining.com.au](http://www.advocacytraining.com.au)

**30 January 2017**

Opening of Law Term  
Court sittings resume

**31 January 2017**

ABA Silks Dinner  
Hight Court—ACT  
[www.cvent.com/d/gvq1jz](http://www.cvent.com/d/gvq1jz)

**20—24 March 2017**

20th Commonwealth Law Conference  
Sydney  
[www.commonwealthlawconference.org](http://www.commonwealthlawconference.org)

**2-8 July 2017**

ABA Conference  
London and Dublin  
[www.austbar.asn.au/events](http://www.austbar.asn.au/events)

**10-14 July 2017**

ATC—Essential Trial Advocacy  
Perth  
[www.advocacytraining.com.au](http://www.advocacytraining.com.au)

**8 -13 October 2017**

IBA Conference  
Sydney  
[www.ibanet.org/Conferences/Sydney2017.aspx](http://www.ibanet.org/Conferences/Sydney2017.aspx)