

Australian Bar Association News



April 2017

Dear colleagues,

2017 is looking like a busy and thoroughly eventful year for ABA members. It was wonderful to welcome and congratulate our new silks in Canberra earlier this year and to see many of you at the various opening of Law Term events around the country.

I would like to take this opportunity to recognise and give thanks to our former President Patrick O'Sullivan QC for his leadership, energy, and dedication to the ABA during 2016. Patrick's exceptional contribution has set long term foundations for the ABA to continue to grow and represent our membership well in the future.

In particular, Patrick's work to establish ABA committees on various issues of significance to the Bar, has helped the ABA to better engage with our members and reflect the wide diversity of skills and knowledge we share.

I would also like to highlight Patrick's commitment to the issue of Indigenous incarceration throughout 2016. It is a great testament to him that the Commonwealth Attorney General invited the ABA to partner with the government in the settlement of the terms of Reference for the ALRC examination into Indigenous incarceration.



It is a privilege to serve as the President of the ABA and I hope to continue Patrick O'Sullivan's great work to further promote the availability and quality of Australian barristers, and to act as respected voice of reason and advocate for the wider community.

Over the course of the year I look forward to promoting our members' interests in a national program to encourage briefing early in litigation and to reinforce the value the Independent Bars bring to our profession and community at large.

The ABA will also focus on the issues surrounding access to justice and look at ways to find practical solutions to the current funding issues. We applaud the recent efforts of the LCA and its Justice Project which will compliment our strategies.

We will also be establishing a national data base of figures from each superior court recording how many unrepresented litigants are appearing. This will be coupled with the establishment of a data base of work done by each Independent Bar on a pro bono basis. We hope this will assist the ABA in identifying possible solutions to assist the Courts in working with the growing number of unrepresented litigants.

I would like to acknowledge the ongoing support of the ABA executive and council and to also welcome Cindy Penrose as the CEO during this important stage of the ABA's development.

In July this year, the ABA will be holding its biennial international conference in London and Dublin. I encourage you to visit the conference webpage at www.abaconference2017.com.au. Early bird registration rates are available until 21 April 2017.

Within this newsletter you will find updates on ABA events and initiatives, as well as news of relevance to our members. I look forward to sharing more with you throughout the year, and hopefully see many of you in London and Dublin in July.

Will Alstergren QC
Australian Bar Association President

The 2017 ABA Executive

President - William Alstergren QC

Past Chairman (2014), The Victorian Bar

Vice-President - Christopher Hughes QC

President, Bar Association of Queensland

Vice-President – Noel Hutley SC

President, New South Wales Bar Association

Treasurer - Matthew Howard SC

President, Western Australian Bar Association

The ABA also commended and welcomed the appointment of Justice James Edelman to the High Court of Australia. Justice Edelman's career 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.

The ABA looks forward to following both Chief Justice Kiefel AC and Justice Edelman in their continued commitment to public service, upholding the rule of law and delivering justice in Australia.

To read the official ABA swearing-in speeches visit:

<http://austbar.asn.au/news-media/speeches>

Susan Kiefel AC: Chief Justice of the High Court of Australia ALRC examination into Indigenous incarceration

On the 31 January 2017, the ABA welcomed Justice Susan Kiefel AC as the Chief Justice of the High Court of Australia at the court's official swearing-in ceremony in Canberra. Chief Justice Kiefel AC has had an outstanding career as a Justice of the High Court and has long been held in the highest regard by the profession. The occasion of her Honour's swearing-in was also a significant milestone as the first female High Court Chief Justice in the court's 113-year history.

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. Chief Justice Kiefel AC is one of Australia's most outstanding judicial officers and has been described as an inspiration to the profession and Australians.

In February this year, the ABA welcomed the appointment of Judge Matthew Meyers AM of the Federal Circuit Court of Australia as Commissioner of the Australian Law Reform Commission (ALRC) inquiry into the incarceration rate of Indigenous Australians.

The ABA believes the terms of reference will allow the ALRC to consider the complex nature of the underlying causes of Indigenous imprisonment and the criminal justice policies which may be contributing to its' disproportionate growth.

The ABA was pleased to see the terms of reference include the scope to review recommendations from previous reports, an evaluation of the effectiveness of justice reinvestment programs and consultation with the Indigenous community.

The ABA commends our members who are actively involved in this examination , as well as the current Royal Commission into the Protection and Detention of Children in the Northern Territory.. The ABA looking forward to upcoming findings and recommendations.



From left: Patrick O'Sullivan QC, Former High Court Chief Justice Robert French AC, Philip Selth OAM, Commonwealth Attorney General, Senator The Hon. George Brandis, High Court Chief Justice Susan Kiefel AC, Philip Greenwood SC, The Hon Kenneth Hayne AC QC, Justice of the High Court of Australia.



Senior Counsel Assisting Tony McAvoy SC. At the Royal Commission into the Protection and Detention of Children in the Northern Territory

ABA Conference 2017—London & Dublin

The Australian Bar Association looks forward to welcoming you to London and Dublin in July 2017 for the ABA's biennial conference. The conference brings together barristers from across the globe to discuss and share innovative ideas, political influences and the challenges and opportunities facing the profession.

Highlights of the conference program include:

- Welcome address from Australia's High Commissioner to the United Kingdom, His Excellency, The Honourable Alexander Downer AC
- A keynote address from The Hon. Justice Keane AC, High Court of Australia
- 'In conversation with the The Right Hon Lady Hale, Baroness of Richmond'
- Jeremy Wright QC MP, Attorney-General for England and Wales, Advocate General for Northern Ireland to speak about the implications

of Brexit.

- The Importance of the Federal Jurisdiction with Justice Stephen Gageler, High Court of Australia and Justice Alan Robertson, Federal Court of Australia

Specialist Tax Sessions

The conference will also host a specialist tax stream which will feature prominent keynote speakers including from the judiciary, The Hon. Justice Pagone and The Hon. Justice Middleton and Ross Lyons, Global Head of Tax at Rio Tinto.

For inquiries contact conferences@austbar.asn.au or for travel inquiries contact brittany@corporatetraveller.com.au

Early bird rates end 21 April 2017. To view the conference program and to register visit:

www.abaconference2017.com.au



The ABA Council invites you to attend the 2017 Conference to be held in London and Dublin in July 2017. We hope you will be able to join us for our biennial conference.



Australian
Bar Association

LONDON 2-3 July

Accommodation: The Rosewood London – 2-3 July
An ultra-luxury High Holborn hotel that combines English heritage with contemporary sophistication in a central location. Set in the heart of the city near Covent Garden, the City and West End theatres, it is an ideal base for business and sightseeing in London.

Conferencing: the London conference will be held at the historic Inner Temple on 3 July, 2017. A specialist tax stream will also be hosted at Inner Temple.

DUBLIN 4-7 July

The Westbury

Delegates will stay and conference at The Westbury: Dublin's most luxurious five-star hotel. Designed to the highest standards, The Westbury hotel's rooms are decorated with custom-woven Irish wool carpets, soft mohair-covered George Smith chairs and sumptuous silk blackout curtains.

Social Highlights

Welcome Drinks at the exclusive Scarfes Bar, Rosewood London

Private tour of the Irish Courts and Law Library, followed by drinks at the Irish Bar's Sheds Bar

Gala Dinner at King's Inns: the ABA's Dining Inn

Speaker Highlights

The Hon. Justice Gageler AC, High Court of Australia
The Hon. Justice Keane AC, High Court of Australia
The Hon. Justice Middleton, Federal Court of Australia

Fees

Early bird delegate and accompanying person rates are being offered until 21 April, 2017. For more information, and to register, please visit www.abaconference2017.com.au

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

This quarter's member profile is:

Kate Eastman SC of the NSW Bar.

Kate Eastman SC was admitted to the Bar in 1998 and has developed a practice in human rights and employment law. She has appeared in matters in all States/Territories of Australia and often appears in the Federal Courts.

Prior to coming to the Bar, Kate was a Senior Legal Officer with the Human Rights and Equal Opportunity Commission and before that a solicitor with Allen Allen and Hemsley. She has taught human rights and international law variously at UTS, The University of Sydney and Monash University over 20 years. She has an BA, LLB (UNSW), LLM(Distinction) (UCL) and LLM (UTS).

Kate has chambers in Sydney, Six St James Hall Chambers.



Kate Eastman SC of the NSW Bar.

Where did you grow up?

I was born in Sydney but started school in London, then lived in Canberra before returning to Sydney to finish high school.

What drove you to pursue a career in the law?

When I was young I was very influenced by Anne Frank's story and books about political prisoners. I joined Amnesty

International when I was at school. I was fairly fixed on human rights and saw law as a way of protecting people's human rights.

Did you always want to be a barrister?

I did work experience with the late Paul Flannery QC which gave me a vague sense of what barristers did. This started me thinking that being a barrister was an option but it wasn't until I was involved in the Jessup Moot and represented Australia in the International Jessup Competition in Washington DC in 1990 that I started to think about the Bar seriously.

What do you love most about practising law?

Pushing the boundaries and testing the law; the intellectual challenge; working with clients to resolve complex and difficult disputes.

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

Getting a better deal for women lawyers – women barristers in particular are undervalued. It is frustrating on many occasions seeing very talented women overlooked for mediocre male barristers. I am still frustrated about the old stereotypes about what makes a good barrister (ie male traits) being perpetuated. These stereotypes disadvantage women.

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

I have been privileged to represent and work with number of institutions in the Royal Commission into Institutional Responses to Child Sexual Abuse. The Royal Commission's work has been confronting. The courage of the survivors is humbling. I have seen first-hand institutions making changes and reform their practices to create child safe institutions and redress the past wrongs. I have also been involved in some interesting human rights cases in the High Court – same sex marriage; indefinite detention; race discrimination.

What do you do to unwind?

Hang out with my daughter and husband. Getting into my garden – composting, pruning, propagating, weeding and planting. You can find me at Bunnings on a Sunday morning getting my gardening supplies.

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

Just finished Queen Victoria (Julia Baird) which is an excellent book. I'm part way through Fight Like a Girl. (Clementine Ford) and Stop Fixing Women (Catherine Fox).

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

Probably I would be teaching international law and human rights in Australia and overseas; and in the garden.

Advocacy Training Council

Report from Ian Robertson SC—Chair of the ATC

In January 2017, while many of Bar were taking a well-earned break, a collection of 32 barristers from Australia, New Zealand, Singapore, Hong Kong and one from the UK took the opportunity to improve their skills at the Advanced Trial Advocacy Intensive. As the opportunity to practice trial skills are being reduced because of the unfunded cost of litigation and legislation, the Intensive offers a unique opportunity to barristers of five years Call, or more to hone their abilities over five days in residence, but using real Courts. This year we had no Silks undertaking the Course, which is unusual. In nearly every past year of the 10 years the Course (or its predecessor has been in operation), it has attracted even the most experienced members of the Bar. Hopefully, that will resume in 2018. The Intensive was a great success on all fronts. Thanks are due to Todd Alexis SC and his team, including the staff provided from the Bar Association of Queensland.



Recently (24 March 2017), The Australian Financial Review reported on the Indigenous Scholarship that was awarded to Lincoln Crowley to attend the Intensive: <http://www.afr.com/business/legal/wait-and-see-mate-indigenous-barrister-breaks-barriers-20170118-gttqxy>.

Lincoln Crowley

Congratulations to Lincoln. He undertook the criminal stream of the course. I am sure that he would, in turn, extend his thanks to the BAQ Mullenjaiwakka Trust which looked after all of his travel costs.

The Intensive was in Sydney and will very likely return to Sydney in 2018. The dates have been scheduled, so save the dates now: 22 - 26 January 2018. As was the case this year, we anticipate that the Intensive will proceed on Australia Day with the kind support of the Chief Justices of the Supreme and Federal Courts. It is hoped that subscriptions will return to their pre-2017 levels.

The Essential Trial Advocacy Course will be conducted in

Perth this year from 9 – 14 July. The Course is principally for the Bars of Western Australia, South Australia, Tasmania and the Territories, supporting the former two in the delivery of their respective Readers' Courses. It too is a five day, residential Course. In addition, the ABA provides two scholarships to advocates from the South Pacific. The scholarships are named in honour and memory of the late Ross Ray QC, a much loved and respected member of the ATC Faculty. On present indication, it is expected that the Course will be fully subscribed.

The ATC, in conjunction with the New Zealand Bar Association, will be hosting the Appellate Advocacy Workshop at the Queensland Courts Complex from 8 – 10 September 2017. The Workshop had a recess last year, but will be resumed for up to 24 advocates of five year's Call or more. There will be a large Faculty of appellate justices from around Australia and from New Zealand. We have already had strong interest from the NZ Bar and from other overseas Bars. For those knocking on the door of Silk, this is an unbelievable opportunity. Even if you are not at that level, how often do you get to have the consumers of our work provide constructive feedback? Here's your chance.

Finally, I am delighted to report that Chief Justice Susan Kiefel AC has agreed to be the Patron of the ATC. Her Honour continues the relationship between the Court and the ATC that commenced with the Hon. Robert French AC.

ABA MEMBER BENEFITS PROGRAM

The March 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, Jaguar, 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:

<http://austbar.asn.au/for-members/member-benefits>

Access to Justice

On appointment as the ABA President for 2017, Will Alstergren QC confirmed his commitment to looking at alternative practical solutions to the challenges presented by the country's legal assistance budget ([The Australian - 10 February 2017 'Will Alstergren QC: legal aid could be topped up by big business'](#)). "Australia's legal assistance services are increasingly under-resourced leaving thousands of Australians without adequate access to quality legal advice and assistance. Of course, we need to be looking at ways to increase the funding of legal assistance, but we should also look at how we can deliver justice differently and more efficiently through better use of alternative dispute resolution," said Mr Alstergren QC.

In March 2017, Mr Alstergren QC attended the 20th Commonwealth Law Conference in Melbourne, followed by the National Legal Access and Pro Bono Conference in Adelaide to discuss this very issue on behalf of the ABA.

Mr Alstergren QC highlighted the dramatic increase in self-represented litigants coming before courts across the country and the challenges this presents for the litigants themselves, the opponent, the court and the administration of justice.

Mr Alstergren QC called upon all sides of government to consider this issue from both direct and indirect economic and social points of view. He stressed the need to innovate to uncover and attract great funding and to be more effective with the precious resources we do have to provide pro bono work.



ABA President Will Alstergren QC addressing the National Access to Justice & Pro-Bono Conference 2017

Going forward the ABA is looking at practical steps that may be taken on a national basis to assist the Bars and the Courts in the provision of pro bono work. These include establishing a national data set of how many self-represented are actually appearing in Courts, and how much pro bono work is being done by the Independent Bars.

40th Anniversary of Federal Court of Australia

On the occasion of the 40th anniversary of the Federal Court of Australia, ABA President Will Alstergren QC addressed a special ceremonial sitting of the Court to reflect upon the achievements of the Court and to acknowledge the significant contribution the Court has made to upholding the rule of law and access to justice in Australia.

Over the course of the Court's lifetime it has become a truly national, modern court of world recognition which is the most technologically sophisticated in the region.

Mr Alstergren QC acknowledged the strong relationship between the Bars and the Federal Court of Australia, stating that it is a relationship of deep respect and professional cooperation. This has included the work done in professional working committees with the Court, user groups and the wider consultation the Court engages with.

Mr Alstergren QC cited a number of achievements made in the Court's 40 year history, and the Court's ability to maintain its independence and integrity. To read the Federal Court anniversary speech given by ABA President Will Alstergren QC visit: <http://austbar.asn.au/news-media/speeches>

Vale Hartog Berkely QC

News of the passing of Hartog Carel Berkeley QC earlier this year came as a great loss to the Australian Bar Association and its members.

Hartog Carel Berkeley QC was a highly respected and dedicated member of the Bar and devoted a large part of his career to strengthening and promoting the work of the Independent Bar and its members.

Hartog served as President of the Australian Bar Association in 1980 and was renowned for his service to the Bar through his work on numerous committees at the Victorian Bar, including as Chairman of the Ethics Committee; Chairman of the Accommodation Committee, the Equality Before the Law Committee, the Bar Century Committee and as Chairman of the Victorian Bar from 1979-81.

Hartog was an accomplished barrister and leader in his field, serving as Solicitor-General for Victoria for ten years (1982-92) before returning to the Bar until his retirement in 2005. Hartog was a generous human being and mentor to many in the legal profession.

The Australian Bar Association expresses its deep sadness of his passing and extends condolences to Hartog's family and loved ones.

ABA responds to unfair criticism of the Judiciary

The reporting of inaccurate or unjust criticism of judges, courts, or our system of justice erodes public confidence and weakens the administration of justice. It is vital that the public knows and believes that the courts, their procedures, and their decisions are fair and impartial. The ABA considers it core to its role to defend and protect the independence of the judiciary.

In early February, the ABA wrote a letter to the editor of the Daily Telegraph in response to an article by Janet Fife-Yeomans (“Judge slams ‘racist sentiment’ and says law will uphold fairness” Feb 2 2017) which unfairly and incorrectly criticised the State’s most senior judicial officer, the Hon Chief Justice Tom Bathurst AC.

Despite the misconstrued and inaccurate connection made by Ms Fife-Yeomans, the Chief Justice’s opening of law term speech did not claim the rule of law in Australia is in danger because of “rampant racism” in our country.

Never throughout the address did the Chief Justice refer to a current “racist sentiment” within the Australian community. Rather, His Honour expressed how far we have come by highlighting the diversity in Australia and referenced the work done by the courts to promote inclusivity and participation in the legal system, as well as increasing accessibility and transparency.

Ms Fife-Yeoman’s report was unfair and showed a lack of understanding of the issues addressed. Regrettably, inaccurate reporting such as this by Ms Fife-Yeomans compromises the public’s confidence in the judicial system which is core to the effective administration of justice.

To read the ABA’s letter to the editor visit: www.austbar.asn.au/news-media/media-releases

New look ABA website!

If you haven’t already discovered the new-look ABA website, make sure you visit www.austbar.asn.au soon. On the website you’ll find information for members, the ABA’s Advocacy Training Council, details about ABA policies and priority areas, ABA Council and Committee members and the new and improved Find A Barrister web search tool.

You can also stay up to date with ABA media releases, statements, speeches and upcoming events on the event’s calendar.

DATES FOR THE DIARY

5 May 2017

Bench and Bar dinner, NSW
Hyatt Regency Sydney

26 May 2017

2017 Victorian Bar dinner
Glasshouse, Melbourne

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

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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