



NEW SOUTH WALES
BAR ASSOCIATION

THE NEW SOUTH WALES BAR ASSOCIATION
BAR COUNCIL

MINUTES OF PROCEEDINGS

Thursday 25 February 2016
in the Boardroom of the New South Wales Bar Association
at 4.30 pm

PRESENT: Hutley SC; Moses SC; Game SC; Loukas SC; Khandhar; Bell SC; Payne SC; McHugh SC; Walker; Mitchelmore; Shead; Higgins; Callan; Hunt; Gleeson; Antipas; Roy; Hutchinson

APOLOGIES: Cunneen SC; Lonergan SC; Welsh

IN ATTENDANCE: Executive Director

MINUTES

The minutes of the meeting of 11 February 2016 were confirmed.

The minutes of the Executive meeting of 9 February 2016 were noted.

Letter dated 17 February 2016, 'CPD and the Crown Prosecutors Conference', to Tedeschi QC from the President.

The President advised that in light of information provided by the Crown Prosecutors after the Executive's meeting, a 'one off' carryover of CPD points from 2015 to 2016 accrued at the Prosecutors Annual Conference had been approved under certain conditions.

Email from President to Finnane QC. 'Aboriginal barristers' and related correspondence

The Bar Council expressed its appreciation for the valuable work undertaken by the Indigenous Barristers' Working Party, particularly for its impressive mentoring program. The Council asked that Ronalds SC be approached to write a piece for *Bar News* providing an update on the work of the Indigenous Barristers Trust and Working Party.

Memorandum dated 25 February 2016 from the President to the Bar Council, 'Criminal Advocacy Review Committee'

The Bar Council endorsed the President's proposal that had a Criminal Advocacy Review Committee be established to consider ways to assist barristers who appear in criminal trials improve their advocacy skills.

The Committee's membership is to be:

Phil Boulten SC (Chair)
The Hon Terry Buddin QC
Tim Game SC
Mark Ierace SC
Peter McGrath SC
Craig Smith SC
Tim Gartelmann SC
Lisa-Claire Hutchinson
Tom Quilter
Alastair McConnachie (Secretary)

OUTSTANDING ACTIONS AS AT 17 FEBRUARY 2016.

Memorandum to the Bar Council dated 17 February 2016 from Director, Professional Conduct – Reporting suspected offences

The Council resolved that the Working Party established in 2015 to consider the need for any proposed amendments which should be sought to sections 465 and 466 of the *Legal Profession Uniform Law 2014* now comprise the Junior Vice-President, Game SC, Hutchinson and the Director, Professional Conduct.

PRESIDENT'S REPORT

The President spoke to his tabled report for the period 10 October 2015 – 25 February 2016.

EXECUTIVE DIRECTOR'S REPORT

The Executive Director spoke to his report dated 25 February 2016.

The Council shared the Executive Director's concern that the unavailability of the Common Room because of damage to the flooring and the insurer's insistence on several engineering

reports being obtained before interim repairs could be effected. The Executive Director advised that it was probable all of the floor would need to be replaced over the 2016-2017 Christmas vacation.

In response to a query about the recent Bar Exams in their new format, Payne SC, chair of the Education Committee, advised that he would be reporting to the Council on this matter once the results were available and the Committee had an opportunity to consider what further action, if any, might be appropriate.

FINANCE

Financial statements for December 2015 and January 2016

Noted.

The NSW Bar Association 2016/2017 Budget

The Treasurer spoke to the financial statements and to the proposed 2016-2017 budget. In response to a question, the Treasurer explained the note in the January accounts to ‘fallout from silks selection process’.

RESOLVED that the practising certificate and membership fees for 2015-2016 for silks and over 5s be increased by 2%; there to be no other changes to the fees charged for 2015-2016.

Walker declared an interest and took no part in the discussion and abstained from voting on the Budget.

MEMBERSHIP

The following were admitted as Class A – Local Practising Barrister – unless otherwise shown:

Peter Quinlan SC – B

Francis Burt Chambers, WA

FOR CONSIDERATION

Memorandum to the Bar Council dated 20 October 2015 from the Equal Opportunity Committee – Pilot project proposal – listing of short hearings

RESOLVED that Equal Opportunity Committee work with the Litigation Law & Practice Committee of the Law Society of NSW with a view to developing jointly a proposal for a pilot project in relation to the listing of short hearings in a specified court list to assess any potential for improved flexibility and predictability of working hours for legal practitioners, with any developed proposal then to be put before Bar Council for consideration.

Memorandum to the Bar Council dated 3 December 2015 from the Anthony McGrath SC, Chair, Equal Opportunity Committee – Membership of Pride in Diversity

The Bar Council stood this matter over to the next ‘policy’ meeting to enable further information to be obtained as to how the recommended training sessions might be used by the Association, particularly given its sole-practitioner membership

Memorandum to the Bar Council dated 3 December 2015 from Anthony McGrath SC, Chair, Equal Opportunity Committee – “Racism: It Stops With Me” campaign

RESOLVED that the Bar Association become a supporter of the Australian Human Rights Commission’s ‘Racism. It Stops With Me’ campaign

Travel Policy

The Bar Council, noting that the draft policy was substantially the current practice, RESOLVED to approve the Travel Policy.

Memorandum to the Bar Council dated 11 January 2016 from the Professional Development Department – Full time academic practicing certificate

The Bar Council RESOLVED that:

- practicing certificates with academic conditions to be phased out;
- applications by academics for a practising certificate to be considered on a case by case basis. Unless special circumstances such as extensive prior experience exist, academics to go through the same process as any practicing barrister to receive a practicing certificate; and
- academics pay the relevant regional rate for a practising certificate.

FURTHER RESOLVED that academics who currently hold an ‘practising certificate’ with ‘academic conditions’ be able to continue with that certificate, but that they pay the relevant regional rate.

Memorandum to the Bar Council dated 13 January 2016 from the Education Committee – Professional Development Department policies

The Bar Council, noting that the Education Committee had reviewed the following policies:

- Returning to the Bar;
- Examination Policy;

- Bar Practice Course;
- Tutor Policy; and
- Practising Certificate conditions for Readers;

and where necessary made changes to take into account the commencement of the *Legal Profession Uniform Law (NSW) 2014* and the new exam format, RESOLVED to approve the new policies.

Letter to the President dated 19 January 2016 from The Hon Gabrielle Upton MP – Report on a proposal for the removal of the prohibition on appointment of Queen’s Counsel in New South Wales

Noted.

Memo of 4 February 2016 from the CEO, Law Council of Australia – Australian legal practitioners’ access to contingency fee billings; Final report of the working group, ‘Percentage based contingency fee agreements’, May 2014.

The Council had a lengthy discussion on the Law Council of Australia’s proposal that at its March Directors meeting the LCA adopt a position on whether or not Australian legal practitioners should have access to contingency fee billing.

The Council noted that a CPD session on contingency fees was being held on Monday 29 February, after which the Contingency Fees Working Party, chaired by Bell SC, would bring a recommendation to Council as to the position that might be adopted by the Bar Council.

The Council considered a number of significant problems that would arise with any introduction of contingency fees which the Law Council’s memo either did not address, or did not fully canvass.

Memorandum to the Bar Council dated 8 February 2016 from Senior Projects Lawyer – Aggregated claims data for period ended 31 December 2015

Noted.

Memorandum to the Bar Council dated 22 February 2016 from Senior Projects Lawyer – Application for a practicing certificate and application for renewal of practicing certificate

The Bar Council approved the revised application forms, subject to the Executive agreeing to some suggested minor wording amendments.

**Memorandum to the Bar Council from the Senior Vice President dated 24 February 2016
– Law Council of Australia: Consultation on the draft National Model Equitable Briefing Policy.**

The Bar Council noted that the draft Law Council Policy, which was based on an initial NSW Bar Council draft policy, differs in some respect from the policy previously discussed by the Bar Council. The policy previously approved by Bar Council was provided to Law Council to initiate debate on a new National Equitable Briefing Policy.

The Council RESOLVED to endorse the LCA draft policy which is to be debated at an upcoming Law Council meeting which includes:

The Law Council of Australia and its constituent members encourage all persons or entities that select and work with barristers:

1. to make all reasonable endeavours to brief women barristers with relevant seniority, expertise, experience or interest in the relevant practice area;
2. by July 2018, to offer women barristers at least 30% of all briefs and 30% of the value of brief fees paid to counsel to women barristers; and
3. to provide a confidential report to the local Bar association and Law Society by 30 March each year with respect to measures taken to implement this Policy.

Executive Director recruitment process

The Bar Council resolved to appoint a recruitment agency to assist the committee that has been established to recruit a new Executive Director to replace Mr Selth, who retires later this year.

Note: The Executive Director was not present for this discussion.

FOR INFORMATION

Minutes of the meeting of the Common Law Committee held on 10 February 2016

Noted.

Minutes of the meeting of the Finance, Investment and Audit Committee held on 11 February 2016

Noted.

The following papers were circulated via e-mail prior to the Council meeting

- Email to the Bar Council dated 16 February 2016 from the Deputy Executive Director – Media release – civil juries

The meeting closed at 6.30pm.

Confirmed as a correct record:

Noel Hutley SC
President

Date: