



NEW SOUTH WALES  
BAR ASSOCIATION

THE NEW SOUTH WALES BAR ASSOCIATION  
BAR COUNCIL

MINUTES OF PROCEEDINGS

Thursday 14 May 2015  
in the Boardroom of the New South Wales Bar Association  
at 4.30 pm

**PRESENT:**

Needham SC; Hutley SC; Moses SC; Hogan-Doran; Doyle Gray; Bennett AC QC; Menzies QC; Sullivan QC (by phone); Phillips SC (by phone); Game SC; Cunneen SC; Traill; Walker; Khandhar; Toomey; Wood; Stitt; Callan; Hyde Page; Antipas; Sethi

**IN ATTENDANCE:**

Executive Director; Deputy Executive Director; Director, Professional Conduct (for professional conduct matters); Executive Assistant

MINUTES

The minutes of the meetings of 23 April and 8 May 2015 were confirmed, subject to a minor amendment by way of clarification regarding Mary Walker's attendance by phone at the meeting of 8 May.

PRESIDENT'S REPORT

Noted. David Bennett QC thanked the President for her role in hosting last week's Bench and Bar Dinner. The Bar Council, by acclamation, thanked the Events Co-ordinator Corinne Gilbert and other staff who assisted in ensuring a memorable and highly successful event.

FINANCE

Noted. The Treasurer advised that the Finance Investment and Audit Committee was giving ongoing consideration to the best use of the Association's accumulated reserves and that Bar Council will be kept informed of progress on the issue.

## MEMBERSHIP

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

Jason Curtis	Hunter Street Chambers
Anton Duc	Frederick Jordan Chambers
Leoni Freeman – B	Hunter Street Chambers
Gideon Gee	New Chambers
Roger Gormley – B	Normanhurst, NSW
Rodney Howle	ODPP, Campbelltown
Stephen Lawrence	Sir Owen Dixon Chambers
Katherine Madgwick	Ground Floor Wentworth
Shanna Mahony	Lachlan Macquarie Chambers
Brent Michael	6 Selborne/Wentworth
Alexandra Rose	6 St James Hall
Thomas Skinner	Ada Evans Chambers
Nicholas Swan	11 St James Hall
Christopher Winslow – B	NSW Bar Association
James Smith	Martin Place Chambers
Mark Turnbull	Pennant Hill, NSW
Sarah Warren	9 Windeyer Chambers

## FOR CONSIDERATION

### QC/SC Discussion

**Memorandum to the Bar Council from Alan Sullivan QC – Adoption of a policy in favour of QC/SC choice – Resolution to establish a working group**

**Amendments to Alan Sullivan QC’s resolution as attached to letter from the Hon Secretary dated 7 May 2015**

**Memorandum to the Bar Council from Noel Hutley SC (Senior Vice-President) and Arthur Moses SC (Junior Vice-President) – Proposed adoption of a policy in favour of QC/SC choice**

**David Bennett AC QC’s Email and attached documents**

The Bar Council discussed the various proposals in the memoranda and other papers before it.

RESOLVED that the Bar Council adopts the policy that there should be a uniform system of titles and styles for Barristers practising in the national legal market, and that, until such time, all Barristers granted practising certificates by the Bar Council under s.41(2) the *Legal*

*Profession Act 2004* or section 44 of the *Legal Profession Uniform Law* who have been appointed or who in future may be appointed as Senior Counsel in New South Wales in accordance with the protocols established from time to time by the Bar Council, should have the opportunity to choose to accept or participate in a Commission, grant or other arrangement permitting the use of the title Queen's Counsel (or King's Counsel as the case may be) and by a process that is consistent with the continuation of an independent Bar (the Policy).

ALSO RESOLVED that the Bar Council delegates the task of:

- (a) advancing the Policy;
- (b) addressing any concerns raised in the report to Bar Council dated 16 April 2014 from the Committee chaired by LJ Priestley;
- (c) formulating and advising on a model for regulatory reform to give effect to the Policy;
- (d) gathering and receiving evidence, information and enquiries in relation to the Policy from members, other legal practitioners, and any other third party;
- (e) formulating responses by the Council thereto;
- (f) reporting to the Bar Council from time to time on its work; and
- (g) presenting the Policy through the Chair to the Government of New South Wales and members of Parliament with a view to the introduction of any necessary legislation or regulation to give effect to the Policy,

to Jane Needham SC (Chair), David Bennett QC, Paul Menzies QC, Alan Sullivan QC, Jeffrey Phillips SC, Justin Hogan-Doran, Hamish Stitt and such other Councillors as the Council may appoint.

The President as Chair of the meeting did not exercise a vote on the resolution. Noel Hutley SC, Arthur Moses SC, Tim Game SC, Paresh Khandhar and Dominic Toomey asked that their dissent be noted.

## **2015 Senior Counsel Application Documentation**

**Cover Sheet for Senior Counsel Application (marked up)**

**Invitation to Apply (marked up)**

**Guide to Practical Aspects (marked up)**

**Protocol as at 14 May 2015 (marked up) – Version 1 – President, Senior Vice-President and Junior Vice-President**

**Protocol as at 14 May 2015 (marked up) – Version 2 – David Bennett AC QC and Ishita Sethi**

After some discussion, Bar Council RESOLVED to adopt Version 1 of the Protocol as at 14 May 2015 (marked up) and the marked up versions of the Cover Sheet for Senior Counsel Application, Invitation to Apply and Guide to Practical Aspects for the purposes of the 2015 Senior Counsel application process.

**Letter dated 8 May 2015 from Tom Howard SC and Letters dated 11 May 2015 to The Hon Mike Baird MP and The Hon Gabrielle Upton MP – the *Independent Commission Against Corruption Amendment (Validation) Act 2015***

Noel Hutley SC, Arthur Moses SC, Tim Game SC and Margaret Cunneen SC disclosed an interest and took no part in the discussion of this item.

The President advised that the Act had passed both Houses of NSW Parliament and received Royal Assent last week and that she had discussed concerns regarding the retrospective effect of the legislation with Tom Howard SC. The Association has consistently expressed concerns about legislation which retrospectively affects individual interests. The President noted that she had written to the Premier and Attorney General earlier this week raising these concerns and indicating that the Association wishes to be involved in the independent panel review of the implications of the High Court's decision which will be chaired by the Hon A M Gleeson AC QC. The President advised that a note to this effect would be provided to members via In Brief.

## **DISCUSSION WITH CHIEF JUSTICE**

The Chief Justice, the Hon T F Bathurst AC, attended the meeting at 6.15pm. The Chief Justice indicated that he was interested in hearing views regarding the operation of the courts and possible improvements that could be made, and has embarked on a series of consultations on this issue with Heads of Chambers.

The Chief Justice and Councillors had a wide-ranging discussion regarding a number of issues regarding the courts and the justice system generally.

The Chief Justice left the meeting at 7.15pm.

## FOR INFORMATION

### Schedule of Bar Council Meetings and Agenda Items

Noted. The President advised that the schedule had been devised to allow for the orderly disposal of the various matters currently awaiting Bar Council consideration over the next few meetings and noted that additional meetings were only scheduled in extraordinary circumstances. Mary Walker indicated that she regarded further Bar Council consideration of the definition of barrister's work contained in the proposed national Legal Profession Conduct Rules for barristers to be a matter of urgency as the Conduct Rules for barristers are to take effect from 1 July 2015 and the matter is placed on the Bar Council agenda for the meeting to be held on 16 July 2015. The Bar Council noted that the time for consultation on the Rules expired in February 2015.

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

- Email to the Bar Council dated 17 April 2015 from the Deputy Executive Director – The New South Wales Bar Association. Association Liability Policy renewal
- Email to the Bar Council dated 21 April 2015 from the Deputy Executive Director – Submission to Acting Independent National Security Legislation Monitor – Inquiry into section 35P of the *ASIO Act 1979*
- Email to the Bar Council dated 21 April 2015 from the Deputy Executive Director – NSWBA Drug conference: 29 May 2015
- Email to the Bar Council dated 24 April 2015 from the Executive Director – Memorandum to the Bar Council re Fair Work Commission
- Email to the Bar Council dated 1 May 2015 from the Deputy Executive Director – Bowraville submission

The meeting closed at 8.15pm.

*Confirmed as a correct record:*

Jane Needham SC  
President

Date: