



NEW SOUTH WALES
BAR ASSOCIATION

THE NEW SOUTH WALES BAR ASSOCIATION
BAR COUNCIL

MINUTES OF PROCEEDINGS

Thursday 27 August 2015
in the Boardroom of the New South Wales Bar Association
at 4.30 pm

PRESENT: Needham SC; Hutley SC; Moses SC; Hogan-Doran; Bennett
AC QC; Menzies QC; Sullivan QC; Phillips SC; Game SC;
Cunneen SC; Walker; Khandhar; Toomey; Wood; Stitt;
Hyde Page; Antipas; Sethi

APOLOGIES: Doyle Gray; Hughes; Callan

IN ATTENDANCE: Deputy Executive Director; Executive Assistant

MINUTES

The minutes of the meeting of 13 August 2015 were confirmed.

MATTERS ARISING FROM THE MINUTES OF THE MEETING OF BAR
COUNCIL OF 13 AUGUST 2015

Noted.

OUTSTANDING ACTIONS AS AT 19 AUGUST 2015

Noted.

PRESIDENT'S REPORT

Noted. The President also noted Bar Council's recent decision to forward the Report of the Equitable Briefing Working Party to the Law Council of Australia and advised that the Report would be released to members via *In Brief*, with the likelihood of a more general release of the Report and media statement next week.

The Bar Council extended its thanks to Kate Eastman SC and Megan Black, the Association's Senior Policy Lawyer, for their work on the Report.

FINANCE

Noted.

MEMBERSHIP

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

Tarik Abdulkhak	7 Wentworth Selborne
Edward Anderson	New Chambers
Fiona Bustos-McNeil	Blackstone Chambers
Arjun Chhabra	Maurice Byers Chambers
Michael Cosgrove	New Chambers
Louis Do	15 Wardell Chambers
Glenn Fredericks	Frederick Jordan Chambers
Emily Giles	10 St James Hall
Julie Granger	7 Wentworth Selborne
Ismail Kirgiz	Frederick Jordan Chambers
Christoph Liedermann	Chalfont Chambers
Daniel Matta – B	Henry Winneke Chambers (Melb)
Christopher McMeniman	10 Selborne/Wentworth Chambers
Gabrielle O'Shannessy	Lismore Chambers
James Pearson	10 St James Hall
Dinesh Ratnam	Blackstone Chambers
Phillip Sharp	New Chambers
Mark Sheldon	7 Wentworth Selborne
Caleb Spicer	Ormeau (Qld)
Andrew Stevens	2 Wentworth Chambers
Michael Valentin	11 Garfield Barwick Chambers
Danielle Woods	Ground Floor Wentworth

FOR CONSIDERATION

Memorandum to the Bar Council dated 11 August 2015 from the Junior Vice-President – Potential implications of Bar Council’s duty to report suspected offences pursuant to s465 of the *Legal Profession Uniform Law (NSW) (2014 No. 16a)*

RESOLVED that where allegations against a barrister raise factual matters that concern potentially the commission of a criminal offence, that:

- (a) the barrister should be informed that the Bar Council has a mandatory duty to report suspected offences and provide information in its custody or control to relevant authorities pursuant to s.465 of the 2014 Act, but note that the evidence gathered during this process from the barrister cannot be admitted as evidence against the barrister except for the purposes set out in s.466(4) of the 2014 Act;
- (b) draw to the barrister’s attention s 466(3) that a person is not excused from complying with the requirement to provide documents or information on the ground that it may tend to incriminate the barrister; and
- (c) advise that the barrister should seek their own legal advice as to whether there is any basis at law upon which any investigation by the NSW Bar Council, including a requirement for the barrister to provide information or documents, be stayed pending any criminal investigation or criminal hearing. In that respect, the barrister’s attention should be drawn to *Zhao* and *Lee v NSW Crime Commission* (2013) 251 CLR 196 (“Lee”).

FURTHER RESOLVED that a Working Party be established to consider the need for any proposed amendments which should be sought to the terms of s 465 and s 466 of the 2014 Act. Possible amendments which could be considered include:

- (a) setting out a range of offences which could be the subject of the duty of Bar Council to report. At this point, the range of offences is unlimited; and
- (b) a prohibition on evidence gathered during an investigation through compulsory notices to the barrister being provided by the Bar Council to the NSW Police Force or any other relevant authority in relation to criminal offences concerning a barrister except for an offence under the 2014 Act.

The Working Party should provide a report to Bar Council with any proposed amendments within three months.

The President is to liaise with the Junior Vice-President and Tim Game SC on the composition of the Working Party.

**Memorandum to the Bar Council dated 20 August 2015 from the President and Chair,
QC Working Party – Queens Counsel Policy – Implementation**

RESOLVED:

- (a) To approve the contents of the paper “The Case for Change”; and
- (b) To approve consultation with the Chief Justice on the content of the Paper.

The President is to report back to the Bar Council after consultation with the Chief Justice, at which point the Bar Council is to determine the extent of any further consultation with members.

FOR INFORMATION

Minutes of the meeting of the Equal Opportunity Committee on 16 June 2015

Noted.

Letter to the Chairman, Public Purpose Fund from Legal Assistance Manager dated 10 August 2015 – Bar Association’s Legal Assistance Referral Scheme Report on activities 1 July 2015 – 30 June 2015

Noted.

Minutes of the meeting of the Common Law Committee on 11 August 2015

Noted.

Minutes of the Meetings of the QC/SC Working Group held on 29 July and 12 August 2015

Noted.

Letter to The Hon Dominic Perrottet MP, Minister for Finance, Services and Property dated 12 August 2015 – *State Insurance and Care Governance Bill 2015* – Compensation Schemes and Parliamentary Oversight

Noted. The President noted that amendments to the Bill suggested by the Association regarding Parliamentary oversight of the workers compensation scheme were agreed to by the Government in the Legislative Council. The President thanked the Common Law Committee for their efforts in this regard.

Memorandum to the Bar Council dated 17 August 2015 from Policy Lawyer – Retention statistics 1994 - 2015

Noted. The President noted that currently barristers who fail to renew their practising certificate are asked the reason for leaving the Bar by Association staff, and advised that the Women Barristers Forum has been requested to prepare a set of specific questions which could be asked in this regard.

The Bar Council thanked Kim Kemp, the Association's Policy Lawyer for her efforts in compiling the annual retention statistics.

Letter to The Honourable Justice D M Price AM, Chief Judge, District Court of NSW dated 18 August 2015 – Concurrent evidence in District Court civil proceedings

Noted. Paresh Khandhar and Dominic Toomey indicated their willingness to accompany the President to the proposed meeting with the Chief Judge in relation to this issue.

Memorandum to the Bar Council dated 19 August 2015 from Policy Lawyer – Aggregated claims data for period ended 30 June 2015

Noted.

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

- Email to the Bar Council dated 7 August 2015 from the Deputy Executive Director – Career Intentions Survey Report
- Email to the Bar Council dated 7 August 2015 from the Deputy Executive Director – NSW Bar Association media release – Prime Minister's criticism of the Federal Court re Carmichael Coalmine decision
- Email to the Bar Council dated 7 August 2015 from the Deputy Executive Director – Protocol on guns in courts
- Email to the Bar Council dated 11 August 2015 from the Deputy Executive Director – Political Alert – Securing the future of the ICAC (NSW)
- Email to the Bar Council dated 17 August 2015 from the President – ASX corporate governance policies

The meeting closed at 6.45pm.

Confirmed as a correct record:

Jane Needham SC

President

Date: