



NEW SOUTH WALES
BAR ASSOCIATION

THE NEW SOUTH WALES BAR ASSOCIATION
BAR COUNCIL

MINUTES OF PROCEEDINGS

Thursday 19 November 2015
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; Lonergan SC; McHugh SC; Walker; Welsh; Mitchelmore; Shead; Higgins; Callan; Hunt; Gleeson; Antipas; Roy; Hutchinson

APOLOGIES: Cunneen SC

IN ATTENDANCE: Executive Director

MINUTES

The minutes of the meeting of 22 October and 12 November 2015 were confirmed.

The minutes of the Executive meeting of 17 November 2015 were noted.

OUTSTANDING ACTIONS AS AT 13 NOVEMBER 2015

Noted.

MEMBERSHIP

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

Jaye Alderson	State Chambers
Joshua Creamer – B	Griffiths Chambers (QLD)
Dinash Daniel – B	Meldrum and Hyland Chambers (VIC)
Katharine Jeffreys	ODPP Chambers – Parramatta
Nerissa Key	ODPP Chambers – Campbelltown
Marina Kiriakos	Ada Evans Chambers

Daniel McInerney – B
Uche Okereke
John Whelan – B

Aickin Chambers (VIC)
Sir Owen Dixon Chambers
Rozelle, NSW

FOR CONSIDERATION

Memorandum to the Bar Council dated 30 October 2015 from the ADR Committee – Recommendation of Appointment of Local Court Arbitrators

The Council RESOLVED that barristers who have been the subject of an adverse finding by the Administrative Decisions Tribunal, NCAT or the Supreme Court, or who have been reprimanded or cautioned in the past seven years, or who have had conditions attached to their practising certificates in the past seven years (other than the standard conditions applying to Readers, Crown Prosecutors, Public Defenders, Parliamentary Counsel and Academics) should not be recommended by the Bar Council for appointment to the Local Court Arbitration List (or similar lists, be they maintained by the Bar association or a court). The Council FURTHER RESOLVED that this policy apply in all instances where the Bar Council approves or recommends barristers for appointment to an ADR panel or list.

The Council asked that two barristers against whom disciplinary action has been taken in recent years be advised of the Council's policy and asked if they wished to make representations as to why nonetheless, their name should be put forward for appointment to the Local Court Arbitration List.

FURTHER RESOLVED to submit the names recommended in the memorandum to Bar Council to the Chief Magistrate.

The Bar Council asked that the ADR Committee prepare a report setting out the selection criteria applied for the various ADR lists, with recommendations to tighten the process so that the Council could be reasonably assured that all those put forward for approval and accreditation were both qualified and competent.

Memorandum to the Bar Council dated 11 November 2015 from Stephen Odgers, Chair, Criminal Law Committee – *Bar News* series on criminal issues

The Bar Council AGREED, subject to their being of a standard acceptable to the Editor, to the publication of four articles in *Bar News* relevant to criminal justice policy; that the articles be based on interviews focusing on fundamental legal principles and rehabilitation of offenders; and that the articles be written by a journalist working with a suitable senior junior. The Criminal Law Committee was asked to work with the *Bar News* Editor in the selection of persons to be interviewed and in finding suitable counsel to participate in the interviews and writing of the articles.

Letter to the Executive Director dated 11 November 2015 from L King SC – District Court Civil Business Liaison Committee and the question of concurrent expert evidence in District Court proceedings and letter dated 18 August 2015 from the President to The Hon Justice D M Price AM

The Council asked Khandhar and Welsh to prepare a letter the President might send the Chief Judge of the District Court expressing concern about the cost implications of the proposed standard orders in relation to expert evidence.

Memorandum to the Bar Council dated 13 November 2015 from the Executive Director – Delegation of Authority to the Bar Council Executive.

The Bar Council, noting that the delegation limits had not been reviewed for some years, RESOLVED to approve the delegation subject to the amount in para 1(b)(ii) being increased from \$150,00 to \$225,000; and in para 1 (b) (iii) the amount of \$20,000 being increased to \$25,000.

Benevolent Fund

The Bar Council, as trustees of the Barristers Benevolent Fund, RESOLVED that the Executive have the authority to approve gifts and loans up to \$15,000 (the delegation limit having been \$10,000 for many years).

Memorandum to the Bar Council dated 13 November 2015 from the President – Bar Council meetings

The President spoke to his memorandum. He emphasised two matters in particular. The first was the need for absolute confidentiality about Council business and discussions, including discussions/ emails between Councillors outside of the meeting room. The President also emphasised that Councillors should not approach staff of the Association with any queries relating to Bar Council matters or matters of Bar Association administration. No member of the Council, and the President included himself, should purport to instruct a member of staff (other than a committee secretary regarding committee matters). Any queries or concerns should be raised with the Executive Director or Deputy Executive Director, or for PCC matters, the Director, Professional Conduct.

Appointments- Australian Bar Association and Law Council of Australia

The Council noted that Hutley SC is the Bar Association's appointed Director of the Australian Bar Association.

The Council noted that the Senior Vice President would be the Bar Association's Director on the Law Council; the Executive Director would continue as the Alternate Director.

Memorandum to the Bar Council dated 13 November 2015 from the Executive Director – President – reimbursement of Bar Association related expenses

The Bar Council approved reimbursement of various expenses that would be incurred by the President and Directors in carrying out the business of the Bar Association. The Council noted that this was an annual delegation, but that the current President (as happened with his predecessors) had indicated that he did not wish to claim all of the approved entitlements.

Bar Council Delegations as at 19 November 2015

The Executive Director advised that all the Council's delegations would be reviewed, and consolidated where possible, over the Christmas/New Year 'break'.

Reconciliation Action Plan 2016-18

The Bar Council RESOLVED to approve the proposed Reconciliation Action Plan 2016-18. The Council asked that its thanks be conveyed to Ronalds SC and Sorrel Palmer of the Association's staff for all the work they put in to the preparation of the Plan.

Draft LCA paper on Advantages and Disadvantages of Contingency Fees; Final Report of LCA Working Group on Percentage Based Contingency Fee Agreements

The Bar Council discussed at length the advantages and disadvantages of legislation being introduced to permit the charging of contingency fees. It noted that the draft Law Council paper did not cover the circumstances where the brief was terminated; the possibility of a barrister being subject to an order for costs; and the conflict of interest in the event of there being pressure to settle. There was no overwhelming public interest in such fees being introduced. The Council did not favour the introduction of contingency fees.

Selection committee for new Executive Director

The President noted that the Executive Director's contract expired on 21 October 2016; he was not seeking a further appointment.

The Bar Council RESOLVED that the selection committee for the new Executive Director comprise: President, Senior Vice President, Treasurer, Lonergan SC and Higgins.

Life Membership

The Bar Council unanimously RESOLVED that the immediate-past President, Jane Needham SC, be appointed a Life Member for her 'exceptional service to the Bar Association and to the profession of the law'.

39 Martin Place / Early Learning Centre (ELC)

McHugh SC advised that the Government was resuming the building at 39 Martin Place to build a Metro station. The building, which houses several floors of chambers and the Early Learning Centre, would be demolished in 2016.

The Bar Council asked that it be kept informed as to the chambers' and the ELC's efforts to find alternative accommodation.

Professional Conduct Committees and the Uniform Law

The Executive Director advised that a seminar on the Uniform Law and its impact on the work of the Professional Conduct Committees would be held early in 2016. All members of PCCs and the Bar Council would be invited to the seminar.

OTHER BUSINESS

Criminal law advocacy training

Game SC briefly spoke about the working party that has been considering ways in which criminal law barristers might be assisted to gain greater advocacy skills, and how such training might lead to some form of accreditation with the Legal Aid Commission. He spoke also of the poor rate of fees paid by Legal Aid and the DPP when briefing the private Bar. Game SC will prepare a paper for the Council on the training scheme being considered, and would work with the Executive Director on any financial and staffing resource implications.

FOR INFORMATION

Minutes of the meeting of the Practice Development Committee held on 7 October 2015

The President advised that he, Cheeseman SC, Chris Wood and Michele Kearns (Clerk) had given a panel presentation on the direct briefing of barristers to in house counsel attending the ACC/ACLA Annual National Conference on the Gold Coast on 13 November. He thought the exercise had been very worthwhile.

The meeting closed at 5.50 pm.

Confirmed as a correct record.

Noel Hutley SC
President

Date: