



NEW SOUTH WALES
BAR ASSOCIATION

THE NEW SOUTH WALES BAR ASSOCIATION
BAR COUNCIL

MINUTES OF PROCEEDINGS

Thursday 22 October 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; Game SC; Walker; Hughes; Wood; Stitt; Callan; Hyde Page; Antipas; Sethi

APOLOGIES: Sullivan QC; Phillips SC; Cunneen SC; Toomey SC; Khandhar

IN ATTENDANCE: Executive Director; Deputy Executive Director; Manager, Professional Conduct (for professional conduct matters)

MINUTES

The minutes of the meeting of 24 September 2015 were confirmed.

The minutes of the Executive meeting held on 15 September were confirmed.

MATTERS ARISING FROM THE MINUTES OF THE MEETING OF BAR COUNCIL OF 24 SEPTEMBER 2015

Noted. The Bar Council reaffirmed its decision of 24 September that the paper “The Case for Change” should be regarded as confidential and not disseminated further until the President has been able to discuss the matter with the Attorney.

OUTSTANDING ACTIONS AS AT 14 OCTOBER 2015

Noted. The Bar Council also noted that the Report of the Strategy Day held on 25 July was in the process of finalisation and would be submitted for consideration at a future meeting. The Junior Vice-President advised that, in accordance with Bar Council’s resolution of 27

August, a Working Party had been established to examine the Bar Council's duty to report suspected offences pursuant to s465 of the *Legal Profession Uniform Law (NSW)*. The Working Party has met and a memorandum is being prepared on the issue for further consideration by the Bar Council.

PRESIDENT'S REPORT

Noted. The President advised that a complaint had been received under the revised Best Practice Guidelines and had been resolved to the parties' mutual satisfaction. The President advised that relevant papers relating to the complaint would be retained on a confidential basis.

EXECUTIVE DIRECTOR'S REPORT

Noted.

FINANCE

Financial statements for August and September 2015

Noted. The Treasurer thanked the Finance Manager, the Executive Director and other Bar Association staff for their 'fantastic assistance' throughout the year.

MEMBERSHIP

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

Terry Betts – B	Sir George Kneipp Chambers (QLD)
Vice President Joseph Catanzariti – B	Fair Work Commission (Sydney)
Tristan Cleary	3 St James' Hall Chambers
Steven Cominos	6 St James' Hall Chambers
Madeleine Ellicott	6 Selborne/Wentworth
Frances Gordon – B	Owen Dixon Chambers (Melb)
Christopher McGorey	Forbes Chambers
Luke Reeves	Edmund Barton Chambers

FOR CONSIDERATION

Memorandum to the Bar Council dated 12 October 2015 from Arthur Moses SC, Junior Vice-President; Tim Game SC; Mark Ierace SC and Director, Professional Development – Criminal Advocate Review Committee – Advocacy Training Budget

RESOLVED:

- (a) To support the endeavours of the Criminal Advocate Review Committee;
- (b) to provide seed funding in partnership with the Australian Advocacy Institute for advocacy workshops for barristers, comprising:
 - (i) two initial workshops in the 2015/16 financial year at an estimated cost to the Association of \$750 per person. It is anticipated that there will be 25-30 attendees in each workshop; and
 - (ii) five further workshops in the 2016/17 financial year, including two general, two advanced and one appellate workshop at an estimated cost to the Association of \$500 per person. It is anticipated that there will be 25-30 attendees in each workshop, however numbers and the workshops will be refined depending on feedback from the first two workshops.

The Council noted the Executive Director's advice that additional staffing for the Professional Development Department would be required. Although he would try and provide the staffing within the current budget, this new initiative may require supplemental funding.

Memorandum to the Bar Council dated 14 October 2015 from the Education Committee – Referral from the Bar Council regarding PCs and Readers

RESOLVED that the current arrangements regarding the timing of readers' applications for and receipt of practising certificates should remain unchanged.

Memorandum to the Bar Council dated 14 October 2015 from the ADR Committee – Accreditation and re-accreditation of mediators – Recommendation for appointment to the NSW Bar Association's list of Supreme Court mediators 2016-17; Memorandum from the Deputy Executive Director dated 22 October 2015 - Additional names to be recommended for appointment to the New South Wales Bar Association's list of Supreme Court mediators for 2016

Menzies QC and Walker declared an interest and took no part in the decision regarding this item.

RESOLVED to accredit the applicants set out in the memorandum from the ADR Committee dated 14 October as 'new' mediators for the period 25 October 2015 until

25 October 2017 under the NMAS (with the accreditation of two applicants subject to the provision of an assessment certificate).

ALSO RESOLVED to accredit the applicant set out in the memorandum from the ADR Committee dated 14 October as an ‘experience qualified’ mediator for the period 25 October 2015 until 25 October 2017 under the NMAS.

FURTHER RESOLVED to re-accredit the applicants set out in the memorandum from the ADR Committee dated 14 October as mediators for the period 25 October 2015 until 25 October 2017 under the NMAS (with the re-accreditation of two applicants subject to the written confirmation of CPD hours completed).

FURTHER RESOLVED to recommend the applicants set out in the memorandum from the ADR Committee dated 14 October and the Deputy Executive Director’s memorandum of 22 October to the Chief Justice for the 2016-17 Supreme Court mediator list, with the exception of one applicant.

Memorandum to the Bar Council dated 15 October 2015 from the ADR Committee – Approval of BarADR arbitrators

Bennett QC and the Treasurer declared an interest and took no part in the discussion or decision regarding this item.

RESOLVED to accredit the applicants set out in the memorandum from the ADR Committee dated 15 October as BarADR arbitrators.

Memorandum to the Bar Council dated 15 October 2015 from the Chair, Equal Opportunity Committee – Childcare: request to increase allocation of spaces

RESOLVED that the New South Wales Bar Association (Association) enter into a Deed of Variation with Guardian Corporate Early Learning Services Pty Ltd (Guardian) to increase the number of spaces reserved under the Management Agreement dated 10 November 2014 between the Association and Guardian by a further 10 full time spaces at the Martin Place Early Learning Centre for the remaining 2 year term, in light of the significant waitlist of Association families wishing to place their children at the Centre.

Escrow Payment Services for Barristers – Joint Project Proposal; memorandum to the Bar Council from the Executive Director, ‘Escrow proposal’, dated 20 October 2015.

The President left the meeting during the discussion of this item and took no further part in the Bar Council’s deliberations. The Senior Vice-President chaired the remainder of the meeting.

The Bar Council agreed that further discussions be undertaken with the National Australia Bank by the now Treasurer and Moses SC to advance the project, and noted the need for discussions with the Law Society and regulatory authorities concerning aspects of the proposal.

Memorandum to the Bar Council dated 21 October 2015 from the Treasurer and Ingmar Taylor SC – Draft policy on practice certificate fee waiver for parents and other carers

RESOLVED to adopt the following policy governing practising certificate fee waivers for parents and other carers:

Other than where special circumstances justify a different course, the Treasurer will apply the discretion that is vested in the Treasurer to waive practice certificate fees for barristers taking leave as a carer in accordance with the following guidelines:

Parental Leave

- 1) On application, a barrister who is or is intending to take leave, for whatever period of time, from practice in connection with the birth or adoption of a child or children (parental leave) shall be given a practising certificate fee waiver equal to 100% of the annual practising certificate fee.
- 2) Such application may be made prior to going on leave or during such leave, and will apply to the next practising certificate fee to be paid by the barrister following the date of application.
- 3) There is no limit to the number of practising certificate years for which an application may be made and granted for a parental leave fee waiver.
- 4) For the purposes of rules 1 to 3, a barrister is taken to be:
 - a) on 'parental' leave if she or he is taking such leave in connection with the birth or adoption of her or his child;
 - b) the barrister will be the primary care giver for the child during a period of leave of at least two months, even if some work is done during that period.

Other Carer's Leave

- 5) On application a barrister will be given a practising certificate fee waiver calculated pro rata equal to the number of months that the barrister intends to take leave to be a carer (carer's leave).

- 6) An application must be made with the next application for renewal of any practising certificate following commencement of the leave. Further:
 - a) If the leave has commenced but not completed at the date of such application, the application shall be made in respect of the period from the commencement of leave to 30 June of the relevant year and applied pro rata to the following year's practising certificate fee;
 - b) Any such application may include a claim for leave estimated to be taken in the following practising certificate year. In that case:
 - (i) if the barrister returns from leave earlier than estimated, he or she shall inform the Treasurer and refund the amount of overpayment; and
 - (ii) if the barrister returns from leave later than estimated, he or she may claim the further time in the next practising certificate renewal application.
- 7) For the purposes of rules 5 and 6 above, a barrister is taken to be on 'carer's leave' if the barrister is taking leave in order to be a primary care giver for another person for a period that is not less than 2 months, even if some work is done during that period.
- 8) There is no limit to the number of practising certificate years for which an application may be made and granted for a carer's leave fee waiver.
- 9) Notice of this policy shall be distributed in writing with each set of practising certificate renewal forms.
- 10) All applications shall be in writing and signed by the barrister, and shall accompany any practising certificate renewal application.
- 11) Each such applicant shall:
 - (a) set out such circumstances and provide such supporting documentation as the Treasurer or Executive Director may reasonably require; and
 - (b) certify his or her belief in the truth of any fact asserted or document provided Treasurer's Decision and Data.
- 12) The decision of the Treasurer in determining any fee waiver shall be in his or her absolute discretion.

- 13) The Treasurer shall cause to be recorded the number and type of applications for waivers under this policy, the number granted, the financial effect of such waivers, and shall report thereon to Bar Council.

Email to the Bar Council from Mary Walker – Mary Walker and The NSW Bar Association

Noted. The Bar Council agreed that carriage of the litigation should remain with the Bar Council Executive in consultation with the Association's legal advisers.

FOR INFORMATION

New Barristers' Committee Report to the Bar Council for 2015

Noted.

Minutes of the Law Council of Australia Directors' Meeting held on 27 June 2015

Noted.

Minutes of the meeting of the Equal Opportunity Committee held on 19 August 2015

Noted.

Minutes of the meeting of the Criminal Law Committee held on 8 September 2015

Noted.

Memorandum to the Bar Council dated 21 September 2015 from Director, Organisation & Development – Bar Practice Course 2/15 – satisfactory completion

Noted.

Letter to The Hon Gabrielle Upton MP dated 25 September 2015 from the President – Proposal to lift the prohibition on the appointment of Queen's Counsel in NSW

Noted.

File note from the Deputy Executive Director of a meeting with the Race Discrimination Commissioner held on 7 October 2015

Noted.

**Joint letter from the NSW Law Society and NSW Bar Association dated 13 October 2015
– National Security Legislation**

Noted.

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

- Email to the Bar Council dated 1 October 2015 from the Executive Director – NSW Bar Association submission to the Attorney regarding reinstatement of the title Queens Counsel
- Email to the Bar Council dated 9 October 2015 from the Deputy Executive Director – NAB Escrow Payment Service Project Proposal

The meeting closed at 6.05 pm.

Confirmed as a correct record:

Noel Hutley SC
President

Date: