

PERMISSION UNDER RULE 99(n) OF THE *WESTERN AUSTRALIAN BARRISTERS' RULES*

TO: All Members of The Western Australian Bar

FROM: Martin Cuerden SC, President

DATE: 2 February 2022

RE: **Exception to cab-rank principle for COVID-19 unvaccinated clients or instructing solicitors**

WHEREAS:

- A. Rule 99 of the *Western Australian Barristers' Rules (the Rules)* prescribes circumstances in which a barrister may refuse or return a brief to appear before a court (which is defined in the *Rules* to include a tribunal).
- B. Sub-rule 99(n) of the *Rules* provides that a barrister may refuse or return a brief in such other circumstances as may be permitted by the President of The Western Australian Bar Association or a delegate of the President who is a Senior Counsel.

GRANT OF PERMISSION UNDER SUB-RULE 99(n) OF THE *RULES*:

Pursuant to sub-rule 99(n) of the *Rules*, a barrister may refuse or return a brief to appear before a court (as defined in the *Rules*) in the following circumstances, namely IF:

1. the barrister reasonably believes that the brief will require him or her to be in close physical proximity to the client (including an officer, employee or agent of a client which is not a natural person and includes for this purpose any one or more of the clients where the barrister has more than one client and any other representative or agent of the client) (**the Client**) or the instructing

solicitor including a representative of the instructing solicitor (**the Instructor**) in the case; and

2. EITHER of the following apply:

(a) the Instructor (or, where there is no Instructor, the Client) is unable or unwilling to provide to the barrister proof to the barrister's reasonable satisfaction that the Client (including each person comprising the Client as defined in par 1 with whom the barrister reasonably believes the brief will require him or her to be in close physical proximity):

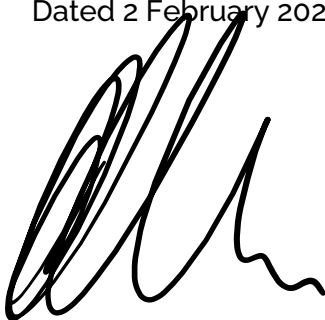
(i) has met the COVID-19 vaccination requirements including the booster vaccination requirements as would apply to the Client (including each person comprising the Client as defined in par 1 with whom the barrister reasonably believes the brief will require him or her to be in close physical proximity) if the Client was a court and tribunal worker within the meaning of the *Court and Tribunal Worker (Restrictions on Access) Directions* dated 31 January 2022 made under the *Public Health Act 2016 (WA)* (**the Directions**) and the *Booster Vaccination (Restrictions on Access) Directions (No 2)* dated 7 January 2022 made under the *Public Health Act 2016 (WA)* (**the Booster Vaccination Directions**) or such other directions as might amend, replace or supplement the Directions or the Booster Vaccination Directions as the case may be from time to time; or

(ii) is an exempt person within the meaning of the Directions or the Booster Vaccination Directions or such other directions as might amend, replace or supplement the Directions or the Booster Vaccination Directions as the case may be from time to time; or

(b) the Instructor is unable or unwilling to provide to the barrister proof to the barrister's reasonable satisfaction that the Instructor (including each person comprising the Instructor as defined in par 1 with whom the barrister reasonably believes the brief will require him or her to be in close physical proximity):

- (i) has met the COVID-19 vaccination requirements including the booster vaccination requirements as apply to the Instructor (including each person comprising the Instructor as defined in par 1 with whom the barrister reasonably believes the brief will require him or her to be in close physical proximity) under the Directions and the Booster Vaccination Directions or such other directions as might amend, replace or supplement the Directions or the Booster Vaccination Directions as the case may be from time to time; or
- (ii) is an exempt person within the meaning of the Directions or the Booster Vaccination Directions or such other directions as might amend, replace or supplement the Directions or the Booster Vaccination Directions as the case may be from time to time.

Dated 2 February 2022

A handwritten signature in black ink, appearing to be 'M. Cuerden', written in a cursive style.

Martin Cuerden SC
President