

President's Report 2021

Bar Council

Following election on 28 October 2020, the following members comprised the Bar Council during 2020/2021:

President:	Martin Cuerden SC
Vice President:	Brahma Dharmananda SC
Ordinary Members:	John Ley SC Julie Taylor SC Terry Palmer SC Tim Hammond (Treasurer) Elspeth Hensler Sarah Russell (retired following her appointment to the District Court of WA on 1 December 2020) Fiona Stanton (appointed on 8 December 2020 pursuant to clause 41 of the Constitution)
Members of less than 3 years' standing	Verity Long-Droppert Rebecca O'Brien (Secretary)
Non-WA Bar Chambers Ltd Members	Joseph Garas SC Jenny Thornton

Bar Council met on 11 occasions for scheduled monthly meetings between November 2020 and October 2021 and for one special meeting on 1 February 2021 to consider the effect on members of the *Stay At Home and Closure (Perth, Peel and the South West Regions) Directions* which came into effect from 6pm on 31 January 2021 until 6pm on 5 February 2021 as a result of the COVID-19 pandemic.

I wish to record my gratitude to all members of Bar Council for their hard work over the past 12 months.

General Meetings

Special General meetings were held on 18 March 2021 and 1 September 2021.

The Annual General Meeting will be held on 27 October 2021.

Committees/Co-ordinators

Disciplinary Committee	John Ley SC and Alexander Mossop were elected as members of the Disciplinary Committee at the Annual General Meeting held on 30 October 2019, joining Paul Yovich SC who was elected on 24 October 2018. Yovich SC's 3 year term expires this year, and he has agreed to nominate for a further 3 year term.
Essential Trial Advocacy Course (January 2021)	Matthew Howard SC and Martin Cuerden SC (Joint Co-ordinators)
Essential Trial Advocacy Course (July 2021 and January 2022)	Terry Palmer SC
Pro Bono	Elspeth Hensler (until July 2021) and Fraser Robertson
Professional Indemnity Insurance	Greg Pynt
Professional Standards Scheme	Martin Cuerden SC, Brahma Dharmananda SC, Sarah Russell (until 1 December 2020), Fiona Stanton, Rebecca O'Brien
Referral Service	Terry Palmer SC
Recovery of Outstanding Fees	Tim Hammond

Grievance Procedure

The following members are Grievance Stewards under The Western Australian Bar's Procedure to Deal with Grievances Concerning Discrimination, Sexual Harassment and Workplace Bullying (Grievance Procedure):

Michael Berry SC
John Hedges SC
Julie Taylor SC
Jonathan Davies
Bettina Mangan
Helen Prince
Brian Nugawela
David Bayly
David Thompson
Elspeth Hensler
Felicity Maher
Brenda Robbins
Steven Wong
Rachel Joseph
Neil Morrissey

No reports or complaints were received under the Grievance Procedure this year.

WA Bar's office premises

For the past 12 months, The WA Bar has been located in its new premises at Level 16, Francis Burt Chambers. I would particularly like to acknowledge the efforts of my predecessor, Stephen Davies SC, who was responsible for the initiative and all aspects of the renovations and fitout. The WA Bar's premises provide it with a physical presence it has not previously had.

Bar Readers' Course

This year's Bar Readers' Course (BRC) was conducted over 8 weeks during late-April, May and June, with 45 new members completing one or more of the modules of the BRC.

The number of participants was higher than usual due to the cancellation of the 2020 BRC due to COVID-19.

A function to mark the closing of the BRC, award certificates and present prizes to the best performed readers was held on 25 August. Congratulations once again to Darren Pratt who was awarded the Chief Justice's prize for the best performed reader in the Ethics & Practice, Evidence, and Jurisdiction & Procedure modules, and to Stefan Tomasich who was awarded the prize for the best performed reader in the Essential Trial Advocacy Course.

Once again, many members of the Bench and senior members of the Bar willingly contributed their time and energy as Presenters and/or Course Coordinators. Their support ensures the ongoing success of the BRC and is greatly appreciated by both The WA Bar and participants.

Essential Trial Advocacy Course

The Essential Trial Advocacy Course (ETAC) was held between 18-22 January 2021 at the Supreme Court of Western Australia for Perth based participants. The WA Bar is very grateful to the Chief Justice of the Supreme Court who, once again, made that Court's facilities available for the Course. The facilities are excellent, and are a significant factor in ensuring the success of ETAC.

There were 17 participants from WA.

There were 11 coaches, comprising the Honourable Justice Banks-Smith, Matthew Howard SC, Martin Cuerden SC, Paul Yovich SC, Kim Lendich SC, Geoff Bourhill SC, Terry Palmer SC, Anthony Crocker, Bill Keane, Racheal Young and Julia Moody as the Voice & Performance Coach.

A pool of 23 volunteers (articled clerks and law students) played the role of volunteers and/or acted as camera operators. Their contribution is important and an essential element of a successful course.

The Honourable Justices Colvin, Mazza, Martin, Corboy and Archer attended on the final day to act as judges at the mock trials.

The Course culminated in the final dinner on the Friday night which was addressed after dinner by the Honourable Justice Colvin.

The success of the course is due to the collective efforts of all involved in ETAC.

Sincere thanks to Sherrin Partners (Anthony Brown) for their sponsorship.

A second ETAC was scheduled to take place in Perth between 5-9 July 2021 for Perth and Interstate participants and coaches, however the ETAC was postponed due to COVID lock-down/restrictions.

Arrangements are currently underway to conduct an ETAC in Perth involving Perth based participants and coaches between 17-21 January 2022.

2021 Autumn CPD Seminar Series

This year's Autumn CPD Seminar Series was held in March with presentations on the following topics:

- *Recent developments in trust law*
- *Latest developments in relief against forfeiture*
- *Making your retainer letters/costs agreements and accounts less susceptible to attack*
- *Entry into a contract as loss and damage under the Australian Consumer Law since Harvard Nominees Pty Ltd v Tiller [2020] FCAFC 229*
- *Who, What, Why, Where, When, and How?: Sexual Harassment & Bullying at the Bar*

On behalf of The WA Bar, I extend my sincere thanks to all the presenters, recognising the significant time and effort that is involved in presenting.

2021 Spring CPD

Bar Council originally intended a different format for this year's Spring CPD Seminar Series, with an emphasis upon fostering collegiality at the Bar. Options included a two-day conference at Rottnest Island. However, for various reasons, principally the continuing uncertainty caused by the COVID-19 pandemic, it was resolved to continue with the current model at this stage, with a view to again considering alternative formats in 2022.

This year's Spring CPD Seminar Series has been/will be held during October/November with presentations on the following topics:

- *Helmbright: a post Love/Thoms decision*
- *The importance of wellbeing in these difficult times (and beyond)*
- *Cross-examination – reflections and insights from a judge's perspective*
- *Criminal Injuries Compensation claims and appeals*
- *How is the materiality of non-disclosed price-sensitive market information determined?*
- *More than unfair dismissal: the diverse jurisdiction of the Western Australian Industrial Relations Commission*
- *Workplace health and safety laws: a new industrial manslaughter provision, an energised prosecutor and the first imprisonment of a director*
- *Part of the Problem or Part of the Solution?: Unpacking Bystander, Victim, and Perpetrator Factors in Bullying and Sexual Harassment*
- *Family Violence: Reflections and Suggestions from working with clients in traumatic matters*

Again, I extend my sincere thanks to all the presenters.

Pro Bono

Over the past 12 months, The WA Bar received 10 requests from members of the public which were referred to Law Access and/or other organisations for assessment/further assistance.

In addition, The WA Bar received 11 requests which were assessed as meeting the criteria for pro bono assistance. Of the 11 requests, 10 were circulated to members, and assistance was provided in 9 matters, and in most matters multiple offers of assistance were received from members.

The task of assessing and coordinating pro bono requests has been shared and undertaken by Elspeth Hensler and Fraser Robertson since June 2017, and prior to that for many years by Elspeth Hensler. Their outstanding efforts, for which we are truly grateful, ensure the prompt and efficient processing of requests.

After many years in the role, Elspeth has recently stood down from it. I would like to extend the thanks of The WA Bar for her years of service in this role, assisting to provide access to justice for many less fortunate members of our community.

While most requests for pro bono assistance received by The WA Bar from individual members of the public are redirected to Law Access for assessment, The WA Bar continues to accept referrals/requests from the Courts, community legal centres, from members of the public seeking family law assistance (in which case, requests are referred to FLAPA), and from members of the public who have approached the WA Bar at the request of their pro bono solicitor.

The following members of The WA Bar provided assistance (this does not include members who offered assistance, or provided pro bono assistance other than through The WA Bar):

- Jessica Henderson
- Rachel Cosentino
- Cassandra Andrews
- Toni Parkinson
- Greg McIntyre SC
- Cheyne Beetham
- Nicholas Wallwork
- Matthew Curwood SC
- Fraser Robertson

Representation of Practitioners before the LPCC and SAT

The WA Bar continues to receive regular requests from practitioners for assistance through the Referral Service.

The requests are referred to Terry Palmer SC for assessment and referral.

During the past year, The WA Bar received formal requests from 10 legal practitioners seeking assistance in relation to complaints to the LPCC and SAT.

Very many more requests for assistance were received and dealt with informally by members of The WA Bar.

The following members of The WA Bar provided assistance (again, this does not include members who offered assistance, or provided pro bono assistance other than through The WA Bar):

- Geoff Abbott
- Stephen Wright SC
- Joel Yeldon
- Mark Pendlebury
- Clare Thompson SC
- Stuart Shepherd

Professional Indemnity Insurance

Bar Council resolved this year to approve policies of professional indemnity insurance offered by the following:

- AAI Limited (Suncorp Insurance)
- Arch Underwriting (through Marsh Pty Ltd)
- Berkley Insurance Australia (through Pacific Indemnity Underwriting Solutions Pty Ltd)
- AON (through CGU Insurance)

Group Life Insurance Scheme

The Group Life Insurance Scheme continues to be available to members and provides cover of \$300,000 for death or diagnosis of a terminal illness, or upon assessment of total and permanent disability.

Judicial Welcomes and Special Court Sittings

During the year special sittings were held to:

- Welcome Her Honour Judge Russell, District Court of WA, 17 December 2020.
- Farewell Chief Commissioner Pamela Scott, WA Industrial Relations Commission, 21 January 2021
- Welcome Her Honour Judge Barbagallo SC, District Court of WA, 17 March 2021.
- Welcome Her Honour Judge Whitby, District Court of WA, 16 June 2021.
- Welcome Her Honour Judge Tovey, District Court of WA, 23 June 2021.
- Welcome the Honourable Justice Strk, Supreme Court of WA, 30 July 2021.
- Welcome Chief Commissioner Stephen Kenner and Senior Commissioner Rachel Cosentino, WA Industrial Relations Commission, 9 August 2021
- Welcome the Honourable Justice Solomon, Supreme Court of WA, 18 August 2021.
- Welcome His Honour Judge Mioceвич, District Court of WA, 31 August 2021.
- Welcome Her Honour Judge Ladhams, Federal Circuit and Family Court of Australia, 8 October 2021.

Bar & Bench Dinner

The Bar and Bench Dinner was held on Friday, 13 November 2020 at Beaumonde On The Point.

127 members and guests attended. Marina Georgiou proposed the toast to the Bench. The Honourable Justice Gail Archer proposed the toast to the Bar.

The next Bar and Bench Dinner is to be held on Friday, 5 November 2021 at Fraser's Restaurant.

Membership

There are currently 282 members, of whom 254 are local members. Of the local members, there are 65 women and 189 men. There are 6 women and 42 men practising as Senior Counsel in Western Australia who are members of The WA Bar.

New Members

The following new Members were elected to The WA Bar:

Cassandra Andrews
Craig Astill
Conor Breheny
James Clyne
Anthony Crocker (previously an Interstate Member)
Tina Forde
Nathan Landis
Daniel McInerney QC *
Alice McShera
Konrad Mony de Kerloy
Toni Parkinson
Thomas Pontre
Joel Sheldrick
Rebekah Sleeth
Brooke Sojan
Simon Taylor
Benjamin Tomasi
Joel Trigg
Rodney Worth

(* Interstate Member)

Honorary Members

The following were elected as Honorary Members:

Matthew Zilko SC
The Honourable David Newnes
The Honourable Peter Martino
His Honour Peter Nisbet QC
His Honour Philip Eaton
His Honour Kevin Sleight
His Honour Philip McCann
His Honour Stephen Scott
Her Honour Felicity Davis
His Honour Patrick O'Neal
His Honour Ron Birmingham QC
Her Honour Gillian Braddock SC
Paul Nichols

Judicial Members

The following were elected as Judicial Members:

Supreme Court of WA

The Honourable Justice Tottle
The Honourable Justice Strk
The Honourable Justice Solomon

Family Court of WA

The Honourable Justice O'Brien
The Honourable Justice Tyson

District Court of WA

His Honour Judge Massey
Her Honour Judge Russell
Her Honour Judge Shepherd
Her Honour Judge Stewart
Her Honour Judge Barbagallo SC
Her Honour Judge Tovey
Her Honour Judge Whitby

Appointments as Senior Counsel

The following members were appointed as Senior Counsel for the State of Western Australia on 25 November 2020:

- Graham Droppert SC
- Penelope Giles SC
- Matthew Curwood SC
- Kim Lendich SC

The following members were appointed as Senior Counsel for the State of Western Australia on 22 October 2021:

- Geoffrey Bourhill SC
- Steven Jones SC
- Darren Renton SC
- Clare Thompson SC
- Terry Palmer SC

Staff

The WA Bar has two permanent employees: Debbie Cole (Executive Officer) and Karen Knox (Administrative Assistant). Both Debbie and Karen are integral to the efficient and effective operation of The WA Bar.

Debbie's and Karen's workload has steadily increased over the years, as The WA Bar has taken on more and more responsibilities. Early this year, I formed the view that The WA Bar should consider employing another person to provide administrative assistance for both Debbie and Karen. This, and possible solutions, were matters that I discussed with Debbie and Karen earlier this year. The possibility of employing additional staff was ultimately reflected in the 40% increase in The WA Bar's budget for Salary Costs which Bar Council approved for the 2021-2022 financial year.

Unfortunately, for personal reasons, Debbie Cole has been required to take leave since 23 March 2021. Debbie's absence has been keenly felt. With effect from 3 May 2021, Bar Council engaged Samantha Harper on a 6 month contract as Acting Executive Officer. More recently, Bar Council resolved to extend Debbie Cole's leave for a further 6 months from 28 October 2021, and to re-engage Samantha Harper for a further 6 month contract from 5 November 2021 on terms which are yet to be finalised.

The role of Executive Officer of The WA Bar is a bespoke and difficult one, and Samantha has shown herself to be enthusiastic and more than capable of learning the role and taking on the challenges. On behalf of Bar Council, I wish to express my thanks and appreciation to Samantha Harper for her very considerable assistance this year.

However, I would particularly like to acknowledge the inestimable value to The WA Bar of Karen Knox. The fact is that without Karen, the WA Bar would simply not have been able to operate following Debbie's absence. Time and time again, Karen went well beyond what could reasonably have been expected of her, both in terms of the hours she has worked and the tasks she has taken on, in order to ensure that The WA Bar continues to function effectively and successfully. The tasks which Karen has taken on, as demanding as they are, have been made even more demanding by the ongoing effects of the COVID-19 pandemic.

Karen has done this unassumingly, without expectation of recognition or reward, because she genuinely cares about the success of The WA Bar and its members.

Accordingly, I wish to express my sincere personal gratitude, and the gratitude of Bar Council, to Karen for everything she has done for The WA Bar, particularly over the past 12 months.

Martin Cuerden SC
President