

## President's Report 2020

### Bar Council

The following members elected on 30 October 2019 comprised the Bar Council during 2019/2020:

President:	Stephen Davies SC
Vice President:	Martin Cuerden SC
Ordinary Members:	Brahma Dharmananda SC Elspeth Hensler Joel Yeldon Sarah Russell Eric Heenan Jenny Thornton
Members of less than 3 years' standing	Cameron Henderson Simon Majteles
Non-WA Bar Chambers Ltd Members	Terry Palmer Tim Hammond
Secretary:	Cameron Henderson
Treasurer:	Brahma Dharmananda SC

Bar Council met on 10 occasions for scheduled monthly meetings between November 2019 and October 2020 and for one special meeting in August 2020.

### General Meetings

Special General meetings of The Western Australian Bar were held on 18 December 2019, 28 April 2020 and 29 September 2020. The WA Bar's Annual General Meeting will be held on 28 October 2020.

### Reforms and initiatives

#### Overview

The following reforms and initiatives have been introduced.

#### *Change in focus and function*

- Introduction of a strategic plan focusing on doing the important things well.
- Introduction of Action Item method of generating and executing steps to be taken.
- Abolition of the ad hoc committees and review of other activities of Bar Council.
- Streamlining the process and broadening the resource for consultation requests.

#### *Changes to promote collegiality and that reflect a multi chambers Bar*

- New premises to better reflect the multi chambers nature of our Bar.
- The Common Common Room to promote collegiality in a multi chambers Bar.
- Grievances Procedure - sexual harassment, workplace bullying and discrimination.

#### *Change in outward facing activity*

- Branding the new premises with the identity of The Western Australian Bar.
- Building relationships of substance with Attorney General and Solicitor General.
- Building the strength in our existing relationships of substance with the Courts.
- Communications that are noticed with contents that matter.

#### Drivers for reform

By the end of 2018 two broad and interconnected challenges for the Bar were obvious. One was the need to revive collegiality at our Bar. The other was the need to re-focus to reflect the 'multi chambers' Bar that we had become.

#### *Collegiality*

Collegiality in our profession is not about the pleasure of having a drink or a shared experience with colleagues. It is about the continued existence of a peer group as a genuine feature of our profession. That is essential to proper functioning of our legal system. Our system depends on lawyers behaving ethically, fairly and reasonably; absent that, our system would begin to fail and would eventually fail fully.

The obligation to behave ethically, fairly and reasonably functions, largely, on an honesty model. Collegiality, or the maintenance of a peer group is key, because people behave ethically, fairly and reasonably more often when they are dealing with people they know and when they are part of a professional community that will hold them to account. Peer pressure does not work without peers.

### *Multi chambers Bar*

The multi chambers Bar that we had become called for steps to end, or to begin to diminish, the exposure our Bar had to the criticism that it was FBC focused to the disadvantage of members in sets of chambers other than FBC.

### *Focus of Bar Council*

These two interconnected challenges called for Bar Council to:

- Bring our focus closely and tightly to our objects,
- Identify the few important things Bar Council ought to be doing,
- Articulate and remind people why those things were important,
- Find ways of doing those few things well,
- Actually do those things, and
- As far as possible, do nothing else.

### Strategic Plan

In early February Bar Council completed its review of operations of The Western Australian Bar Association. The review gave close and detailed attention to:

- Our Constitutional objects
- Our intended role
- Our resources and capacity
- How our objects are best to be achieved
- How our role is best to be performed

A Strategic Plan was developed. It is a simple and functional document, not a statement of mere aspiration. It was adopted by Bar Council at its meeting held on 12 February 2020.

The Strategic Plan serves three purposes:

- It records our role, purpose and objects
- It sets out the strategic goals, and
- It sets the mechanism by which those goals are to be pursued.

It documents the framework within which all decisions as to the introduction or continuation of initiatives or the employment of resources are to be made.

Further, it provides for responsibility and accountability: there is a member of Bar Council personally responsible for the implementation of each action that is agreed by Bar Council to be taken and accountable for implementation.

### Strategic Goals

The few important things that Bar Council ought to be doing distilled down to these:

## Competence and ethical standards

- Maintain standards of competence at the Bar by training and education.
- Maintain standards of ethics at the Bar.

## Interests of society

- Maintain and protect the reputation of the Bar.
- Educate as to the meaning and significance of the rule of law.
- Notice and bring public and government attention to threats to the rule of law.
- Be prompt (and when necessary, rapid) and consistent in defence of the judiciary.

## Interests of the Bar

- Maintain and promote the Bar's position as the provider of the best advocacy and advice in WA.
- Grow the Bar (from 3.6% to 6.6% by reference to proportion of the WA legal profession) by promoting practice at the Bar as an attractive form of practice.
- Increase collegiality among members of the Bar and the Bench.

## Action items by members who are not on Bar Council

Experience over time had demonstrated that the committee system was ineffective.

The committees have, in large measure, been disbanded in favour of an action item model. Under the action item model, individual members of Bar Council accept a stewardship role and responsibility for implementation of action items.

The action item model also permits a member who is not on Bar Council to:

- Formulate an action item
- With the assistance of a member of Bar Council, prosecute the adoption by Bar Council of an action item and
- Have responsibility for the implementation of an action item.

Under this model there will be little scope for members to observe that Bar Council has not acted in an area without exposing themselves to the same charge.

## The Common Common Room

The WA Bar Common Common Room was established as a practical and effective means of reviving and nourishing collegiality.

The Common Common Room opened on 4 March to a large turnout of members from almost all sets of barristers' chambers.

Despite the interruption of COVID-19, the aim of increasing collegiality was maintained by conducting a virtual Common Common Room by Zoom during the restrictions.

Since its physical re-opening in late May The Common Common Room has operated successfully each Wednesday evenings.

It has also proved to be an excellent venue for hosting drinks to welcome new members for events to mark judicial appointments and for the holding of meetings of The WA Bar such as the AGM.

The widespread support of many members, ordinary, judicial and honorary, marks the success of this initiative to revive and nurture collegiality in our a multi chambers Bar.

#### New Premises for The WA Bar

In April Bar Council approved the taking and fitout of new premises for The WA Bar.

On Tuesday, 27 October 2020, at an event attended by members of various sets of chambers, the Chief Justice declared the new premises of The WA Bar open.

To the extent our financial capacity has enabled us to do so in a responsible way, the new premises serve to further identify The WA Bar, separate us from FBC and to better reflect the multi chambers nature of our Bar.

The organic growth in the number of sets of chambers over recent years is an extremely positive development and the multi chamber nature of our Bar has become one of its important features.

#### Grievance Procedure

In October Bar Council introduced a Procedure for grievances concerning sexual harassment, workplace bullying and discrimination.

#### Bar Readers' Course

Bar Readers' Course was cancelled for this year due to COVID-19 restrictions, the view having been formed that electronic presentation would diminish the value of the course to an extent unacceptably disadvantageous to Readers undertaking the course this year.

Time to undertake the Bar Readers Course was extended by one year for those who would otherwise be undertaking all or part of the course this year.

## Essential Trial Advocacy Course

In March, the Australian Bar Association announced that the 2020 Essential Trial Advocacy Course, which was scheduled to take place in Adelaide between 29 June to 3 July 2020, would not proceed due to COVID-19 restrictions.

Arrangements are currently underway to conduct an Essential Trial Advocacy Course in Perth involving Perth based participants and coaches during January 2020.

## 2020 Autumn CPD Seminar Series

The first three seminars in this year's Autumn CPD Seminar Series were held in March with presentations on the following topics:

- *US Presidential Impeachment: the process, the outcome, the lessons*
- *Statutory Unconscionability after ASIC v Kobelt [2019] HCA 18*
- *Who? Me?" – a guide to dealing with complaints made against you to the LPCC*  
*"Yes. You" – a guide to acting for practitioners who are the subject of complaints to the LPCC*

While it was hoped that satisfactory arrangements could be put in place for the remaining two seminars to proceed with the presenters and the participants attending remotely, there were concerns about the effectiveness of such a method of delivery.

Considerations included the very senior presenters and the material being of a very high standard. In those circumstances, it was considered to be unsatisfactory if the technology used for delivery of the seminars operated to diminish the value of the work that had gone into preparation or compromised educational value.

## 2020 Spring CPD

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

- *Virtue, Honour and Ethics: Problems with a Deontological Perspective on the Ethical Responsibilities of Lawyers*
- *Witness Summaries Not Statements: The New World Order*
- *The Arrest of Ships in Australia*
- *Unravelling Corporate Fraud: re-purposing ancient laws for modern times*
- *The Australian Bar Association*
- *Character References in criminal trials – social media outrage and the administration of justice*
- *Commercial risks, reputation and native title*

- *Why intimate partner violence is difficult to see as grounds for self-defence: Old common law legacies*
- *Damages beyond compensation: recent developments from the highest courts of Australia and the United Kingdom*

I again wish to record my gratitude and that of The WA Bar to Marcus Solomon SC who very generously continued to serve as Coordinator of The WA Bar's CPD programme.

The time and effort expended by Marcus is a remarkable contribution to work which is central to The WA Bar's role, purpose and objects.

#### Pro Bono

Included in the assessment of operations of The WA Bar, Bar Council reviewed pro bono services provided by The WA Bar – both in terms of the resources and capacity to assess and coordinate requests received, and the provision of pro bono assistance provided by members.

On the basis that the decision whether to take on a matter was ultimately a matter for the individual member concerned, which served as a sufficient check in respect of means testing concerns, Bar Council resolved to continue the existing system whereby two members share the task of assessing requests for pro bono assistance to the Bar.

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

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.

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.

#### 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 the Vice President 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.

As part of its review operations of The WA Bar, Bar Council considered the scope of assistance provided by members of The WA Bar to practitioners who are the subject of complaint to the LPCC and/or the State Administrative Tribunal.

In order to gain an understanding of the amount and type of work being undertaken by members in relation to assisting and/or representing practitioners who are the subject of complaint to the LPCC or SAT, whether on a no fee or reduced fee basis, members were requested to complete and return a short survey.

The intention of the survey was to capture all work done, whether it originated from the Referral Service, or from direct requests based on pre-existing relationships.

As consequence of the review, Bar Council resolved that consideration ought be given to:

- Require practitioners to advise whether they have insurance for defence costs;
- Asking Law Mutual about coverage of the costs in the policy, or as optional cover.

#### Professional Standards Scheme

The WA Bar's new Professional Standards Scheme under the *Professional Standards Act 1997* (WA) was approved and commenced effective from 1 July 2020.

Notwithstanding the excellent work undertaken by Ms Kelly Hick, who has been engaged as an external consultant by The WA Bar since 2016, the requirements of the Application process involve a significant amount of time and effort on the part of the Professional Standards Committee and in particular, Sarah Russell, Fiona Stanton, and Debbie Cole.

An obligation The WA Bar has accepted in order to achieve approval of the Scheme is to have a risk management plan. Included in the new Risk Management Plan is a requirement for members to inform the President of The WA Bar of any professional complaint or disciplinary finding made against the member as from 1 July 2020. This information will be confidential, will be de-identified and will be used as statistical information and for no other purpose. The membership renewal form was amended to reflect this requirement.



## 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 His Honour Judge MacLean, District Court of WA, 4 February 2020.
- Welcome Her Honour Judge Wallace, District Court of WA, 4 February 2020.
- To mark the retirement of His Honour Judge Sleight, Chief Judge of the District Court of WA, 1 May 2020.
- Welcome Her Honour Judge Barone SC, District Court of WA, 3 June 2020.
- Welcome His Honour Judge Flynn, District Court of WA, 12 August 2020.
- Welcome His Honour Judge Massey, District Court of WA, 19 August 2020.
- Welcome her Honour Judge Shepherd, District Court of WA, 2 September 2020.

## Functions

A Summer Party was held at Moana Hall on 18 December 2019. It was very well attended by members and seemed to be widely regarded as more inclusive and preferable to an event at that time of year associated with one of the religions.

This year's Bar and Bench Dinner will be held on 13 November at Beaumonde on the Point.

## Review of Membership Records

A project involving a review of our membership records - current and historical, was undertaken this year. That review revealed that there was no record of an invitation having been issued or of a nomination or election for a number of Judges of the Supreme, District and Family Courts in Western Australia.

It seems that over the years there have been inconsistencies as to the mechanics by which a newly appointed Judge became a Judicial Member and as to the time at which this occurred, with the consequence that the formal aspects of the matter for some appointments were not attended to.

Consequently, I sent letters to the Judges concerned inviting their Honour's to accept Judicial membership of The WA Bar, noting the unusual feature of the invitation being made now, in circumstances where, from the time of their appointments, their Honours have always been regarded by The WA Bar as Judicial Members.

I am pleased to report that many of the Judges have graciously accepted and will be put to the Annual General Meeting (no doubt for election by acclamation).

## Membership

There are currently 279 members, of whom 249 are local members. Of the local members, there are 63 women and 186 men. There are 4 women and 39 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:

Lindsay Allan-McConchie  
Leon Firios  
Tony Hager  
Robert Heath QC \*  
Kathryn Heslop  
Marcus Humphreys  
Daniel Johnson  
Sharon Kermath \*  
Verity Long-Droppert  
Clare McKay  
David Monaghan  
Samantha Nadilo  
Long Pham  
Alexandra Pieniazek  
Rebecca Pierluigi  
Roger Sands  
James Sippe  
Adam Stewart  
Shane Stewart  
Colin Thorpe  
Stefan Tomasich  
Nicholas Wallwork  
Anne-Marie Wholley

(\* Interstate Member)

### *Honorary Member*

The following former member is to be elected as an Honorary Member at the AGM on 28 October 2020:

Philip Urquhart

*Magistrate Member*

The following former member is to be elected as a Magistrate Member at the AGM on 28 October 2020:

Magistrate Cleary

*Judicial Members*

The following to be elected as Judicial Members at the AGM on 28 October 2020:

Supreme Court of WA – Court of Appeal  
The Honourable Justice Mazza  
The Honourable Justice Mitchell

Supreme Court of WA – General Division  
The Honourable Justice Tottle  
The Honourable Justice Fiannaca  
The Honourable Justice Hill

District Court of WA  
Her Honour Judge Sweeney SC  
His Honour Judge Goetze  
His Honour Judge Bowden  
His Honour Judge Stone  
Her Honour Judge Stewart  
Her Honour Judge Petrusa SC  
His Honour Judge Gething  
His Honour Judge Lemonis  
Her Honour Judge Wallace  
His Honour Judge MacLean  
Her Honour Judge Barone SC  
Her Honour Judge Shepherd  
His Honour Judge Massey  
His Honour Judge Martin Flynn

Family Court of WA  
The Honourable Justice Duncanson  
The Honourable Justice O'Brien  
The Honourable Justice Tyson

State Administrative Tribunal  
His Honour Judge Parry

Members of Council

In a body like Bar Council, these reforms and initiatives could not have been made without the support members of Bar Council have given me.

I particularly mention Martin Cuerden SC and Brahma Dharmananda SC. Silks serve an important function on Bar Council. As well as having the experience and judgment to make very important contributions, they also serve as a check

and counterweight against any President who becomes too convinced of his or her own righteousness or magnificence.

This has worked to greater or lesser extent over the years, but in its application to me I consider I have been very much a beneficiary, and I am very grateful to Martin and Brahma for all the help and support they have given me.

To the extent the changes succeed, Bar Council is entitled to the credit. To the extent they do not, I the carry the responsibility, and it is proper I do so, the decisions having been made under my Presidency and some of the methods used being matters of style selected by me.

It is too early for any of us to forget that the course of the last two years was interrupted by COVID. It affected the progress or final completion of some of the reforms and initiatives we have introduced. The result is that for the changes we have put in train, there remain one or two things to be fully bedded down.

There is no doubt that Martin will deftly attend to any parts that remain undone in the execution of reforms and initiatives we have already underway. He will bring his own unflappable personality to the matters of style to the extent those things matter.

The end of this month will also bring the total of my years on Bar Council to 12, and I feel entirely sure, using the polite form in which these sentiments are usually expressed, that members will feel that I have offered sufficient service, and some, no doubt, might feel more than enough.

Thank you all for the honour of permitting me to serve as President of The Western Australian Bar.

SM Davies SC  
President