

President's Report 2022

Bar Council

Following election on 27 October 2021, the following members comprised the Bar Council during 2021/2022

President:	Martin Cuerden SC
Vice President:	Brahma Dharmananda SC
Ordinary Members:	John Ley SC Julie Taylor SC Paul Mendelow Tim Hammond (Treasurer) Rebecca O'Brien Anthony Papamatheos
Members of less than 3 years' standing	Cassandra Andrews Jennifer Solliss (Secretary)
Non-WA Bar Chambers Ltd Members	Terry Palmer SC Steven Wong

Bar Council met on 12 occasions for scheduled monthly meetings between November 2021 and October 2022.

I wish to record my sincere gratitude to all members of Bar Council for their hard work over the past 12 months. It has been pleasurable and rewarding experience to work with everyone on Bar Council.

General Meetings

Special General meetings were held on 30 March 2022 and 18 July 2022

The Annual General Meeting will be held on 26 October 2022.

Committees/Co-ordinators

Disciplinary Committee

Gary Cobby SC was appointed by Bar Council 9 November 2021 to replace John Ley SC, who resigned. Alexander Mossop was elected as a member of the Disciplinary Committee at the Annual General Meeting held on 30 October 2019, joining Paul Yovich SC who was re-elected on 27 October 2021.

Cobby SC has agreed to nominate for election pursuant to clause 59B of the Constitution, and Mossop has agreed to nominate for a further 3 years as his current term expires on 30 October 2022.

Professional Standards Scheme	Martin Cuerden SC, Brahma Dharmananda SC, Anthony Papamatheos, Rebecca O'Brien
Professional Standards Scheme Liaison Member	Rebecca O'Brien
Essential Trial Advocacy Course (January 2022)	Terry Palmer SC
Pro Bono	Fraser Robertson
Professional Indemnity Insurance	Greg Pynt
Referral Service	Terry Palmer SC
Recovery of Outstanding Fees	Tim Hammond
Bar Readers' Course Review	Brahma Dharmananda SC, Paul Mendelow, Anthony Papamatheos, Cassandra Andrews
Bar Readers Course	Anthony Papamatheos
CPD (Autumn 2022)	Martin Cuerden SC, Terry Palmer SC
Legal Profession Uniform Law (costs)	Martin Cuerden SC, Matthew Curwood SC, Anthony Papamatheos
CPD (Spring 2022)	Martin Cuerden SC, Terry Palmer SC, Paul Mendelow, Anthony Papamatheos, Rebecca O'Brien

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):

John Hedges SC
Julie Taylor SC
Jonathan Davies
Bettina Mangan
Helen Prince
Brian Nugawela
David Bayly
David Thompson
Elspeth Hensler
Felicity Maher
Brenda Robbins (until 30 September 2022 when she resigned as a member)
Steven Wong
Rachel Joseph
Neil Morrissey

There was 1 report and 1 complaint received under the Grievance Procedure (as at July 2022).

A second Grievance Steward Training session was conducted on 14 November 2021. Invitations were extended to members of Bar Council and Heads of Chambers (inviting representatives of their chambers) to attend the training, at The Western Australian Bar's cost. Six Grievance Stewards who were unable to attend the first session attended, as well as some members of Bar Council and other members of The WA Bar.

Legal Profession Uniform Law

The *Legal Profession Uniform Law Application Act 2022* (WA) received the Royal Assent on 14 April 2022 and took effect from 1 July 2022. Accordingly, Western Australia joined the Uniform Law with effect from 1 July 2022.

The WA Bar liaised with the Attorney General and other stakeholders including the Legal Services Council to ensure that we were fully informed of the implications to barristers of the Uniform Law and of any additional requirements to be imposed on barristers from 1 July 2022.

Members and staff of the Legal Services Council (LSC) visited Perth on 31 May and 1 June during which they hosted their annual Uniform Law Summit for the bodies (eg the Legal Practice Board and Legal Services and Complaints Committee) that have a regulatory role under the Uniform Law. The LSC met separately with representatives of The WA Bar. The visit culminated with a dinner on 1 June at which the Attorney General of Western Australia, The Hon John Quigley was guest speaker.

As a result of the introduction of the Uniform Law there is now a prescribed set of conduct rules specifically directed to barristers rather than legal practitioners generally, namely the *Legal Profession Uniform Conduct (Barristers) Rules 2015*. The change is not significant as the *Western Australian Barristers' Rules* are modelled on a predecessor to the *Legal Profession Uniform Conduct (Barristers) Rules*. In light of these matters, a Special General meeting has been convened for 26 October 2022, immediately before the Annual General Meeting, to revoke the *Western Australian Barristers' Rules*. This will mean that barristers' conduct will now be governed by one rather than two sets of conduct rules.

A sub-committee of Bar Council reviewed the *Legal Profession Uniform Law* to identify relevant changes in respect of costs and developed pro forma documents with respect to costs agreements, costs disclosure and billing under the *Legal Profession Uniform Law*. These documents were provided to all members under cover of a detailed memo from the President of 2 and 20 June 2022.

Given the importance of this issue to members, a seminar on *Costs Aspects of the Uniform Law Scheme* was held on 25 August 2022 at which Matthew Curwood SC and Fraser Robertson presented on the major changes to costs disclosure and costs agreements, issuing of bills and law practice/client cost assessments following the introduction of the Uniform Law.

Bar Care

At its meeting held on 20 September 2022, Bar Council resolved to accept a proposal by Converge International to provide a Bar Care package for members of The WA Bar.

Details of the package and a proposed CPD seminar about the services offered by Converge International will be provided to members once those arrangements are finalised.

Bar Readers' Course

A review of the Bar Readers' Course (BRC), which commenced in late 2021, was undertaken by a committee comprising Brahma Dharmananda SC, Paul Mendelow, Anthony Papamatheos and Cassandra Andrews. The committee examined the structure, content and methodology of the BRC.

Following the review, Bar Council resolved to make some changes to the BRC, including a reduction in length of each seminar from 2 hours to 1 hour, and a more standard format for the materials, of shorter papers, with succinct statements of principle and practical steps modelled on the NSW Bar Readers' Course. Changes to materials was phased in for this year's BRC, with the intention that the new format for papers will be completed for the 2023 BRC.

This year's BRC was conducted over 7 weeks commencing in late-April until early June, with 22* new members completing one or more of the modules of the BRC (* excludes 12 members who attended 2022 BRC seminars which were missed in 2021).

A function to mark the closing of the BRC, award certificates and present prizes to the best performed readers was held on 31 August. Congratulations once again to Benjamin Tomasi who was awarded the Chief Justice's prize for the best performed reader in the Ethics & Practice, Evidence & Preparation, and Jurisdiction & Procedure modules, and to Craig Astill and Thomas Langdon who were awarded the prize for the best performed readers in the Essential Trial Advocacy Courses held in January 2022 and July 2022 respectively (the July 2022 course having been held in Adelaide).

The successful operation of the BRC could not be achieved without the time and energy contributed by Presenters and/or Course Coordinators – both The WA Bar and participants are very fortunate to be the beneficiaries of their generous support.

Essential Trial Advocacy Course

An Essential Trial Advocacy Course (ETAC) was conducted between 17-21 January 2022 at the Supreme Court of Western Australia for Perth based participants. A second ETAC, hosted by the South Australian Bar, was conducted in Adelaide between 27 June – 1 July 2022.

The WA Bar is once again very grateful to the Chief Justice who again made the Court's facilities available for the Course, ensuring the success of ETAC.

There were 24 participants in the January ETAC, and 13 WA participants attended the July ETAC.

There were 13 coaches in the January ETAC, comprising the Honourable Justice Corboy, Gillian Braddock SC, Stephen Davies SC, Martin Cuerden SC, Paul Yovich SC, Alain Musikanth SC, Kim Lendich SC, Matthew Curwood SC, Terry Palmer SC, Geoffrey Bourhill SC, Bill Keane and Rachael Young, along with Julia Moody as the Voice & Performance Coach

The Honourable Justice Katrina Banks-Smith, The Honourable Justice Craig Colvin, The Honourable Justice Darren Jackson, The Honourable Justice Rene Le Miere (as he then

was), The Honourable Justice Kenneth Martin and The Honourable Justice Jennifer Hill attended on the final day to act as judges at the mock trials.

The ETAC culminated in the final dinner on the Friday night at which The Honourable Justice Rene Le Miere (as he then was) spoke.

The Honourable Rene Le Miere KC, Gary Cobby SC, Bill Keane and Rachel Oakeley participated as coaches in the July ETAC.

A pool of 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.

I offer my sincere thanks once again to Sherrin Partners (Anthony Brown) for their sponsorship of ETAC.

Once again, the successful operation of the ETAC could not be achieved without the collective efforts of all involved.

2022 Autumn CPD Seminar Series

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

- *Accuracy, Utility and Gateways: Justifications (?) for Controlling the Use of Surrounding Circumstances in Contractual Interpretation*
- *The breadth of the diversity challenge: some different perspectives*
- *Some thoughts on the process of analysing your case*
- *The long and winding trial – reflections on 18 years on the bench*
- *The office and role of Parliamentary Inspector of the Corruption and Crime Commission*

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.

2022 Spring CPD

The first seminar in the 2022 Spring CPD series on *Costs Aspects of the Uniform Law Scheme* was held on 25 August 2022. The seminar was very well supported and received.

The remaining seminars in the 2022 Spring CPD series will be held during November 2022 with presentations on the following topics:

- *Legal Profession Uniform Law: What we need to know*
- *The role of silence in misleading or deceptive conduct: Whether the conduct of remaining silent is required to be deliberate in order to attract liability under s.18 of the Australian Consumer Law 2010 (Cth), by reason of the operation of s.4 (2) of the Competition and Consumer Act 2010 (Cth)*
- *Coercive Control: The invisible part of domestic violence, dangerous and difficult to overcome in court; having the experience of judicial officers and tribunal members is an excellent way to be educated about it*
- *"Voice to Parliament": The Australian Government has committed to a referendum in this term of Parliament. In this seminar Justin will outline the history and*

background behind the government's referendum proposal, survey some of the legal and political responses to it, and offer a short personal reflection

- *Professional Courtesy: What the data tells us about the issue, followed by an interactive panel discussion about its importance and practical issues*
- *Mediation – How to achieve an effective result when dealing with an impossible opponent*
- *Resulting Trusts and the Presumption of Advancement after Bosanac v Commissioner of Taxation [2022] HCA 34*

Again, I extend, in advance, my sincere thanks to all presenters.

Pro Bono

Over the past 12 months, The WA Bar received 4 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 20 requests which were assessed as meeting the criteria for pro bono assistance. Requests were circulated to members, and assistance was provided in all 20 matters, and in most matters multiple offers of assistance were received from members.

The task of assessing and coordinating pro bono requests has been undertaken by Fraser Robertson. Fraser's outstanding efforts, for which we are truly grateful, ensure the prompt and efficient processing of requests.

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

Nunzio Lucarelli KC
Matthew Howard SC
Steven Penglis SC
Jason MacLaurin SC
Clare Thompson SC
Cheyne Beetham
Venetia Bennett
Matthew Crowley
Leon Firios
Robert French
Varun Ghosh
Asanka Gunasekera
Bill Keane
Heather Millar
Rebecca O'Brien
Sam Pack
Blake Primrose
Clinton Russell
Jennifer Solliss

Bushra Tariq
Benjamin Tomasi
Nicholas van Hattem
Nicholas Wallwork
Peter Ward
Steven Wong

Representation of Practitioners before the LPCC and SAT

The WA Bar continues to provide assistance to practitioners through the Referral Service.

Terry Palmer SC was responsible for assessment and referral of requests.

During the past year, The WA Bar received only one formal request from a legal practitioner seeking assistance in relation to complaints to the LPCC and SAT. Assistance in this matter was provided by Alan Hershowitz.

Other requests for assistance are likely to have been received and dealt with informally by members of The WA Bar.

Professional Indemnity Insurance

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

- AAI Limited (trading as Suncorp)
- Arch Underwriting at Lloyd's (Australia) Pty Ltd (offered through Marsh Pty Ltd)
- Insurance Australia Limited trading as CGU Insurance (offered through AON)
- Berkley Insurance Australia trading as Berkley (offered through Pacific Indemnity Underwriting Solutions Pty Ltd)

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 Sitings

During the year the following special sittings were held:

- Farewell for The Honourable Justice Neil McKerracher, Federal Court of Australia, 3 December 2021
- Welcome for His Honour Judge Henry Jackson, District Court of WA and State Administrative Tribunal, 2 February 2022
- Farewell for The Honourable Justice Rene Le Miere, Supreme Court of WA, 25 February 2022
- Welcome for The Honourable Justice Michael Feutrill, Federal Court of Australia, 10 May 2022
- Welcome for His Honour Judge Nicholas Egan, District Court of WA, 2 August 2022
- Welcome for The Honourable Justice Michael Berry, Family Court of WA, 5 August 2022
- Welcome for Her Honour Judge Linda Black, District Court of WA, 10 August 2022
- Ceremonial sitting in memory of the late Sir Gerard Brennan AC CMG QC, High Court, 18 August 2022

- Welcome for the Honourable Justice Amanda Forrester, Supreme Court of WA, 24 August 2022.
- Ceremonial sitting to mark the swearing in of The Honourable Justice Jane Jagot, High Court, 17 October 2022.

Bar & Bench Dinner

The Bar and Bench Dinner was held on Friday, 5 November 2021 at Fraser's Restaurant.

145 members and guests attended. Bettina Mangan proposed the toast to the Bench. The Honourable Justice Rene Le Miere proposed the toast to the Bar.

The next Bar and Bench Dinner will be held on Friday, 18 November 2022 at DoubleTree by Hilton Perth Waterfront.

Membership

There are currently 294 members, of whom 267 are local members. Of the local members, there are 68 women and 199 men. There are 5 women and 37 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:

Venetia Ariane Bennett
 David Martin Bodeker
 Shirley Carol Casey
 Bryden Joel Dalitz
 Neha Dubey
 Philip William Lionel Hardless
 Justin Edgard Keogh
 Thomas James Langdon
 Fiona Margaret Lester
 Thomas Morgan Lettenmaier
 Benjamin Dean Luscombe
 James Francis McMillan
 Christopher Gordon Mofflin
 Jennifer Gaye Negus
 James Anthony O'Hara
 Samuel Reginald Pack
 Kevin Steven Pratt
 Blake Rossitor Primrose
 Rein Jozsef Squires
 Guy Thomas Stubbs
 Bushra Tariq
 Christopher James Terren
 Ryan van der Merwe
 Benjamin James Willesee

Honorary Members

The following were elected as Honorary Members:

His Honour Simon Stone
 The Honourable Lindy Jenkins

The Honourable Neil McKerracher KC
The Honourable Rene Le Miere KC
The Honourable Ian Viner AO KC
Christopher Zelestis KC

Judicial Members

The following were elected as Judicial Members:

Supreme Court of WA

The Honourable Justice Amanda Forrester

Federal Court of Australia

The Honourable Justice Michael Feutrill

Family Court of WA

The Honourable Justice Michael Berry

Federal Circuit Court and Family Court of Australia

Her Honour Judge Allyson Ladhams

District Court of WA

His Honour Judge Christian Miocevich

His Honour Judge Henry Jackson SC

Magistrate Member

Magistrate Sarah Oliver

Appointments as Senior Counsel

As at the date of this report, no appointments have been made in 2022 of Senior Counsel for the State of Western Australia.

Staff

On 2 May 2022, Debbie Cole (Executive Officer) returned from extended leave, and on 6 May 2022 Samantha Harper finished as Acting Executive Director. Debbie's return allowed Karen Knox (Administrative Assistant) to return to her normal duties, although on slightly increased hours.

I again wish to record my gratitude to Karen Knox for her efforts and contributions over and above what could reasonably have been expected of her during Debbie's absence. As I said in last year's President Report, it was due to Karen's efforts that The WA Bar was able to function effectively and successfully during Debbie's absence. That remained the case until Debbie's return on 2 May 2022.

However, as I now finish my second and final term as President of The WA Bar, I wish to take this opportunity to single out Debbie Cole for recognition and my expression of gratitude.

Debbie's temporary absence as Executive Officer amply illustrated, as Joni Mitchell once sang, that you don't know what you've got till it's gone.

Debbie is the heart of The WA Bar's operations. She works tirelessly, with no expectation of recognition, to ensure The WA Bar operates successfully in the discharge of its ever-increasing list of functions and responsibilities.

Debbie works closely with the President of the day to ensure that what needs to be done, gets done. She is always (and inexplicably) cheerful, and a constant source of support and encouragement. In my case, she always knew precisely what needed to be done, when I needed reminding that something needed to be done (often), when something was well-overdue and time-critical (again, often) and when I needed to be left alone (once again, often).

Both Debbie and Karen are an absolute pleasure to work with. The WA Bar is truly fortunate to have staff of their calibre, commitment and integrity. I cannot adequately express my gratitude to both of them for everything they have done over the past two years. Accordingly, I do so inadequately, but nevertheless with heartfelt sincerity.



Martin Cuerden SC
President