

# The COVID-19 Special Digital edition

By Ingmar Taylor SC

This is a special edition twice over. First, it is intended to be a record of the changes wrought by COVID-19 on the Bench and Bar.

Second, this is our first all-digital edition. While a small number of hard copies will be printed for posterity, you are almost certainly reading this on a monitor, tablet or phone.

It has been a very enjoyable edition to put together. After putting the call out, the Bar News Committee was showered with personal reflections on working during COVID.

We have pieces from Judges, from silks, juniors and readers, from mediators, from a clerk, from criminal law practitioners, family law practitioners, and from a variety of other practice areas. They are written with honesty, insight and invariably, great humour.

Jane Needham SC, for example, writes about the changes brought about when working from home: *Challenges, such as cats on keyboards, children interrupting hearings, and sharing household space, were offset by increased family time, opportunities for slow cooking, and (in my case at least) an expanded capacity to convert fractions to percentages, thanks to Year 8 maths classes.* In her article *What have we learnt from enforced working from home?* Jane considers whether going forward it will be more acceptable for barristers to work from home, doing so from the perspective of two men who plan to do so in order to spend more time with their families.

Emily Graham takes the subject a step further, considering whether some will choose to work from 'virtual chambers'. She pitches her start-up idea: barristers as 'brief partners' locatable on an app, hovering waiting to accept a brief.

COVID-19 caused a rapid and sudden change to practice. Work literally disappeared overnight as Courts vacated hearings. As Gaby Bashir SC and Ann Bonnor record in *COVID and Crime – A View from the Private Bar*, it had a particularly adverse impact on the private criminal bar. Their piece includes snapshots of the many messages sent to her: *Almost all of my work has stopped ... My practice is now basically*



Screenshot selfie taken just before first appearance from home

*non-existent ... A significant portion of my practice is going to be wiped ... I have five trials which will all disappear.* Two more great pieces examine the impact of COVID-19 on criminal practice by the DPP, Lloyd Babb SC, and Public Defender Troy Anderson.

Following the immediate cancellation of hearings came a period of rapid adaption to a new way of running hearings, as acknowledged by the title of Justice Nye Perram's article: *Video justice: ten years of progress in eight weeks.* Associated with that was a need to learn new ways of running hearings. We carry two pieces in that regard: *How to Conduct an Effective Virtual Arbitration Hearing – 10 Tips from the Battlefield* by Jern-Fei Ng QC of Essex Court Chambers and Adam Hochroth, of Banco Chambers *Remote Hearings during the Pandemic.*

Robert Sheldon SC is one of a number who identify the drawbacks of AVL hearings: *"At the end of every occasion of my using the technology I felt something, more than usual, had been missed in the process."*

In this time of upheaval, one theme that comes through many of the pieces is the importance of collegiality. We reproduce a message to the Bar from The Honourable Margaret Beazley, Governor of NSW, who says that the 2000 sole practitioners who make up the Bar 'do collegiality' well. Our regular opinion columnist, Anthony Cheshire SC, identifies that while there was a real risk that members would react by retreating into self-isolation in all respects, there was instead a great willingness to work together to overcome the difficulties of working with technology. *"I have found more cooperation and courtesy and less unpleasantness than had often been the case before COVID-19 hit."*

Benjamin Goodyear's summary of the Court of Appeal decision in the Black Lives Matter rally case evidences another theme – the way that the Bench and Bar worked together to ensure the Courts remained open. In that case both the first instance decision and the appeal were heard and determined within 24 hours.

Justice Andrew Bell, President of the Court of Appeal, writes about how that Court continued to sit, uninterrupted by the COVID-19 virus. He characteristically resists the temptation to draw comparisons with other courts, content to note that the Court of Appeal heard all 85 cases listed for hearing between 1 March and 5 June 2020. He goes on to record that the Court of Criminal Appeal *increased* its sittings during the same period, in anticipation of the need to free up experienced judges to deal with the inevitable backlog of trials which were not able to be conducted because of the constraints associated with the assembly of juries.

We also reproduce a great interview with The Honourable Justice Julie Ward, Chief Judge in Equity, who provides a view from the bench of the impact of COVID-19. Her Honour's final tip is worth repeating: *"avoid Reply All when responding to an emailed judgment. Although there may be something to be said, in this day and age, for immediate feedback on one's performance – reply all direct to chambers is not the best way to do that!"*

A third theme is that of adaption and change. In *After COVID-19; marketing the Bar through and after the pandemic* Penny Thew notes falling levels of litigation (32% reduction in NSW Courts from 2005 to 2018) and examines whether the Bar has a capacity to increase its work by marketing itself effectively. Michael Green's article, *Innovations in a pandemic: Reflections from the Great Pause*, discusses how the Bar Association assisted members to understand and use technology to run hearings remotely, and calls for a principled consideration of how online court hearings might be used in the future.

Stephen Ryan interviewed Chief Justice Bathurst and Chief Justice Allsop for his article *No snapback for the Bar: court chiefs confirm some changes will remain post-COVID* and learnt that they expect a number of the changes to remain, including appearances by email and appeals by AVL.

As a number of the authors reflect, appearing from home was initially a novelty. Some thought to curate their backgrounds (and frankly some did not, but should have!).

My effort can be seen in the screenshot that accompanies this editorial, taken during my first AVL hearing from home. Many chose instead virtual backgrounds. I am reliably informed a silk, who will remain nameless, decided to retire to his yacht. You cannot fault his approach to social distancing. He obtained an appropriate photo of shelves of law books to use as his Zoom background. All seemed perfect, but for the fact that as he put submissions he slowly bobbed up and down.

Not everyone could appear by AVL from home. Michelle Swift records in her piece, *Settled*, that when her trial in Gosford became an AVL hearing at short notice she ended up appearing fully robed from the front verandah of her AirBnB accommodation, to the amusement of passers-by.

As a number of authors note, there are *some* advantages in appearing from home, and not just the capacity to dress newsreader-style, with suit on top and shorts below. Many have enjoyed cutting out travel time. Only in COVID-19 times could I have concluded a hearing in Newcastle at 1.58pm and appeared in a different matter in Parramatta at 2pm.

On the other hand, members of the Bar who share their home with very young people found it a challenge, as Renee Bianchi's amusing reflection records.

Many of the Bar Association's committees provided pieces. The Wellbeing Committee's Chair Kylie Nomchong SC has written a wonderful piece with Sarah McCarthy that notes the stresses and pressures caused by the crisis and the opportunity it provides to embrace a new way of practising in the future.

Robert Hollo SC and Tiffany Wong SC of the Education Committee write about the changes that the Bar Association made to its readership and CLE programs, including allowing readers to commence without first completing the course. Megan Caristo of Eleven Wentworth is one of those readers, and provides a reflection on what it has been like starting at the Bar during COVID.

The Human Rights Committee has written three pieces which examine the Government reaction to COVID-19. The Family Law Committee assisted in gathering a number of articles that examine the difficulties of running a family law proceeding remotely.

In addition, the subeditors of the various usual sections of the magazine embraced the COVID-19 theme. In Recent Developments you will find COVID-19 related case summaries, including cases on whether you

can have a matter adjourned or obtain bail, based on COVID-19 considerations.

In the history section there are three pieces that examine the last time the Bench and Bar was faced with a pandemic: 1919 and the Spanish Flu. I particularly like the photo of the court room with everyone masked (something that will soon be seen again, at least in Melbourne). There is also a story about the Chief Justice and Justices of the Supreme Court causing a major scandal by appearing in the Banco Court for the start of term *without* wearing masks.

Meanwhile, Bullfry ruminates from his self-isolation, and the Furies answer all your 'appearing from home' questions.

This edition also carries a number of non-COVID-19 pieces that are well worth reading. Of particular note is Mark Steele's summary of the report of the UK Witness Evidence Working Group, which concluded that there are striking deficiencies in a legal system that relies on affidavit evidence, rather than oral evidence in chief. It contains my second-favourite line of the edition: *"Truth may sometimes leak out from an affidavit, like water from the bottom of a rusty bucket."*

Bret Walker provides a beautiful obituary of Philip Selth, who during his years as Executive Director (1997-2016) arguably had a greater impact on the Bar Association than any member.

We introduce a new contributor, Reg Graycar of 11th Floor St James, who has agreed to provide regular podcast reviews. Her first column provides an introduction to the genre, including a summary of some of the best known podcasts about law.

Finally, can I thank a number of people. First, I would like to thank Michael Green and his committee for assisting us to go digital in such a short time-frame. It meant we could produce an edition more quickly and at lower cost. Those (like me) who prefer a hard copy, fear not. We plan to return to printing hard copies for those who want them in the future, in addition to a digital format.

Second, can I thank the outgoing Bar News Committee for all your work, not just on this edition but over the last 3 editions. It was a pleasure working with you, and I am very pleased that almost all of you chose to remain for a further year.

Finally, can I thank the very hard-working Michelle Nisbet, who manages to deal with us amateur journalists with humour and patience and is the reason that each edition actually makes it to print. **BN**