

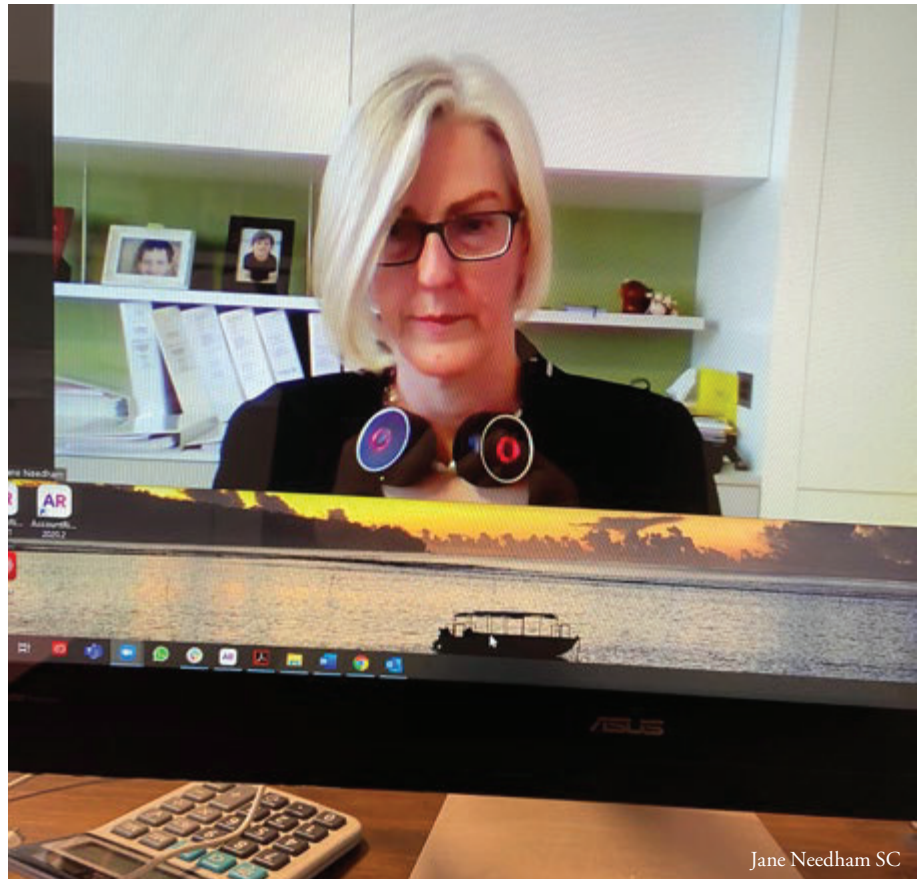
What have we learnt from enforced working from home?

By Jane Needham SC

Working in chambers during the height of the COVID-19 restrictions was both an eerie affair, and entirely familiar. When it was not feasible to work at home (generally, where I had a court hearing or conference with three children doing remote learning in the background), I would walk into chambers, sanitised and careful, and would use my disposable chopstick to press the button to the lift. In chambers, there were no clients, no staff, very few barristers, and no phone calls. Once I was into my room and had wiped down the high-touch surfaces and refilled my water bottle, it was comfortingly familiar. I had not realised how very much alone the practice of a barrister could be, if one was not in court regularly. Working on advices felt the same as it always had, until I emerged from my own room and the extent of the restrictions became clear again.

I have always enjoyed working from home. When I was President of the Bar in 2014-15 I along with many others worked hard to provide recognition for flexible practice, and to enable the structures needed for flexible practice to be incorporated into chambers' and courts' 'business as usual'. While we had some successes – the NSW Bar Association's Model Parental and Other Extended Leave Best Practice Guideline, and the Court Sitting Hours practice agreed with most courts in NSW – it is fair to say that practising remotely, or from home, or with the flexibility that most employers now provide to their workforce, remained a struggle.

It's trite to say that COVID-19 changed everything, but suddenly everyone, including barristers, needed to grapple with the same technology, access, and timeframe limitations that those of us who have been working remotely have faced for some time. Challenges such as cats on keyboards, children interrupting hearings, and sharing of 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. I acknowledge my privilege in having the financial security to manage six weeks of work disappearing in



Jane Needham SC

the course of a day, and having the emotional security of being locked down with people with whom I felt safe and secure, including a live-in au pair who made it possible for me to go to chambers twice a week. Those who are in situations more precarious than mine may not have been able to revel in the ability to teach their kids to make trifle from scratch, for example.

Now that restrictions are lifting, and life outside my chambers door is becoming more like it was before, how will we manage the transition back? Can we go back to life in chambers without losing the benefits of what we have learned during the 'Rona Lockdown? Do we need a new normal, or is the old one good enough? In other words, do we go back to practising pretty much how barristers have been practising for centuries, or do we try to structure the chambers system into something better?

One thing I have been told by a number of people, in and outside the law, is that they are looking to structure more time working at home as part of their future working life. I know that this is not the universal experience. But a number of people to whom I have spoken are actively looking to improve their personal and professional lives by structuring their practice around home chambers. I spoke to two barristers who are planning to work from home more often about their motivations, and how they saw flexible work impacting their engagement with chambers.

Slade Howell is a junior barrister who came to the Bar in 2014. He practises exclusively in crime. He and his wife Belinda have two boys aged 4 and 2, and another baby boy due in August. Prior to the restrictions, Slade was working from home, on average about a day a week, and had structured his practice

to accommodate this. He had set up a home office (in a dedicated area in their boys' playroom) before March 2020, and had most of his briefs delivered electronically and used cloud services to organise his work, including his own accounting software. Slade has his own room at Forbes Chambers which he uses regularly, particularly when he is running trials and appearing in city courts, and said he will maintain his room at Forbes into the future. He said that he appreciates the days that he can work from home because it extends his working day by eliminating his commute, and enables him to spend more time with his family. During the restrictions, Slade worked 100 percent of the time from home and did not go into chambers.

I asked Slade how he was going to structure his practice in the future. He said that he was working towards developing a practice which will enable him to work from home regularly, particularly while his boys are young, but said that this was not necessarily a response to the COVID-19 restrictions, and upcoming paternity leave had already factored into his plans. Slade's time working from home full-time during the restrictions showed him that it was less of a compromise than he had previously thought. He was not noticeably less productive. He had no difficulty having client and solicitor conferences, including with clients in custody. He also appeared in various courts remotely including the Court of Criminal Appeal (while his wife Belinda took the kids into the backyard), and drafted and settled advices and submissions.

Going forward, Slade does not think that conducting trials and other substantive criminal hearings remotely is preferable long-term, and maintaining his room in chambers will be an important part of how he manages his practice. He also said he finds the daily support of his chambers clerk essential.

Overall, Slade told me, 'I am working towards having a practice which is in harmony as much as possible with my children and with my wife's needs, and I am looking forward to having a working life which is sustainable and healthy in the long-term'.

I also spoke to another junior barrister who practises in commercial and regulatory work, and who asked to be cited anonymously. He has been at the Bar for just under ten years. He has two pre-teen children and prior to COVID-19 mainly worked in chambers, only working from home on weekends when necessary. When restrictions came in, he converted part of the main bedroom into a study area, and invested in technology such as a large screen to make his home workspace reflect his chambers setup. He had always worked with digital briefs, but often requested paper briefs in particular matters; he had no problems with these



Slade Howell

*... while face-to-face
hearings may be the gold
standard, significant
improvements have been
made to the courts' and the
profession's ability to meet
the need for flexibility.*

being couriered out during the restriction period. He worked at home except when he needed to go in for technology reasons such as needing quiet for videoconferencing. He did not experience a drop-off in work; instead, he felt he was busier than normal, although that was unrelated to COVID.

Post-isolation, he is looking to remain working in chambers but would combine that with working at home more often. He envisaged he may now prefer to work from home when court appearances or face-to-face conferences did not require him to come in to chambers. He cited the convenience of working at home when he has a significant commute each way (around 45 minutes). He felt that working at home worked as well as had working in chambers, and his family had thrived from having additional family time. He does not want to return to a model where his time with his family is significantly lessened. He pointed to a fortuitously timed move last year, from a smaller inner-city flat to a larger house in the suburbs, which made the proximity and closeness pleasant rather than the opposite.

Each of the two barristers noted the camaraderie and professional benefits of working in chambers, and they specifically wish to continue using their chambers rooms as part of their regular working life. Slade in particular mentioned that, as a relatively junior barrister, he needed to be aware of the needs of silks, and if silks wished to confer in person and use paper briefs, he had to respond to that. The collaborative nature of practice at the Bar meant that physical proximity was sometimes important, and Slade pointed out that chambers provides a valuable learning opportunity for junior barristers, as well as for their solicitors, law students working in chambers, and staff (who are often law students looking at the bar as a future career). The commercial junior noted the 'esprit de corps' of chambers which was a significant aspect of his response to working in chambers.

My own experience is that I would like to continue working from home. Interestingly, my clerk tells me that in my own chambers, only those who were already set up to work from home prior to the restrictions are looking to increase it, and those who did not work from home beforehand are looking to return as soon as they can. As noted above, as a single mother who, pre-COVID, travelled a lot for work, I have an au pair to assist me with the children when they are staying with me, and unfortunately this has meant that for the last year I have not had a dedicated study. Accordingly, a laptop on the dining table which can be moved to the desk in my bedroom has been the best that I could do, and my large screen and quiet workspace in chambers has felt

like a luxury. Despite the space limitations, I am looking forward to calling on the benefits of videoconferencing, and the courts' new-found ability to run hearings remotely, so that flexible practice for those who want or need it can be accommodated and supported.

As an example of how technology can be deployed effectively and quickly, the recent Black Lives Matter hearing in June was heard after hours and was broadcast on YouTube at first instance. The appeal was heard on a weekend with barristers for the protest organisers appearing by video from Dubbo, their solicitor on the South Coast, and employed solicitors in the court room with the NSWPF Commissioner's counsel and solicitors attending in the court room as well. The way in which that litigation was heard and publicised (including a series of excellent live-tweets by journalists, notably Michaela Whitbourn of Fairfax) demonstrates that while face-to-face hearings may be the gold standard, significant improvements have been made to the courts' and the profession's ability to meet the need for flexibility. Stephen Lawrence, counsel for the protest organisers, said that 'the various AVL related arrangements brought in to deal with

COVID-19 were [the factors that] better facilitated access to justice in this case.'

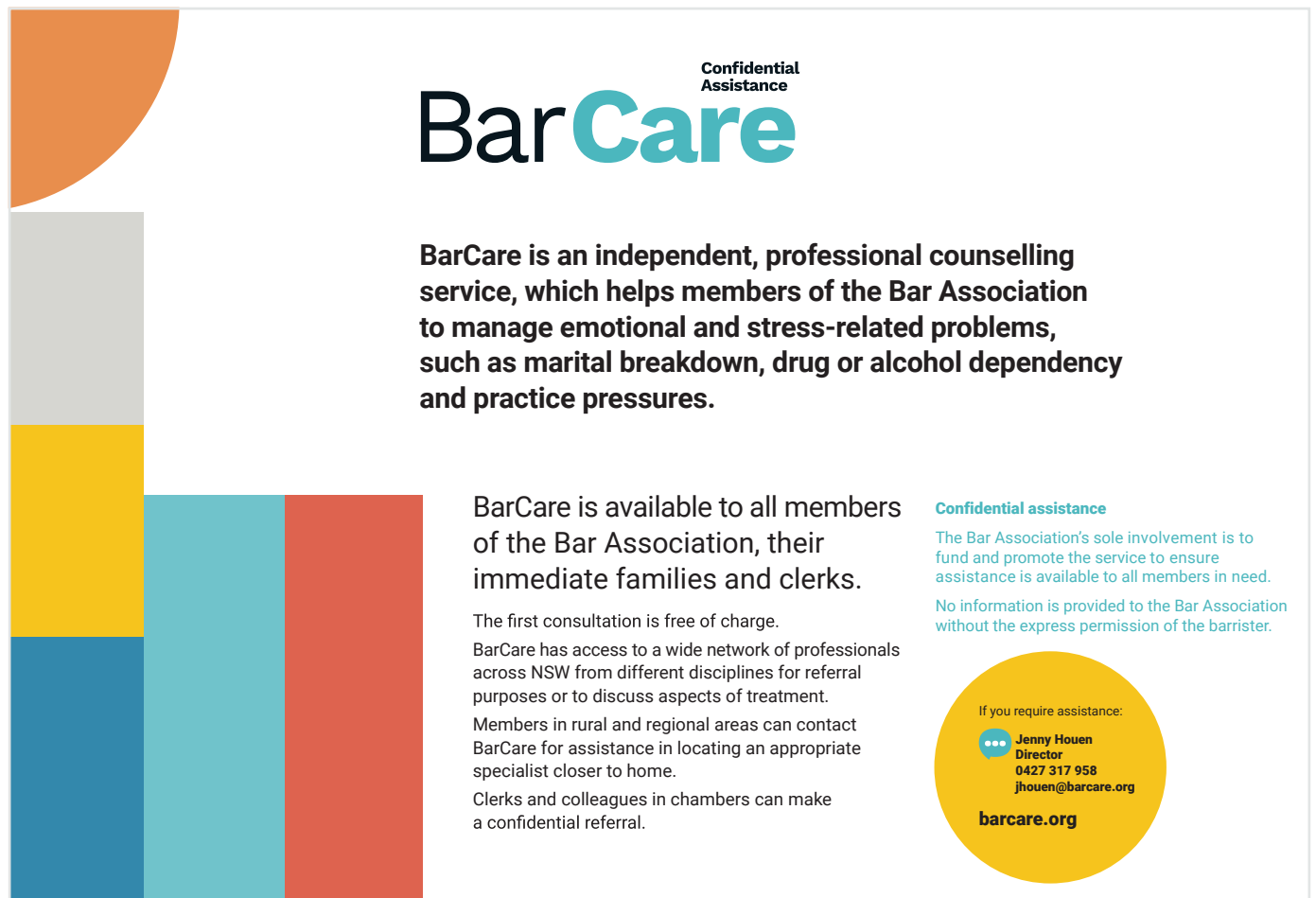
My own working practices have changed after the easing of restrictions. For example, my assistant was working from her home on a laptop during restrictions, and we were able to communicate well on Slack – something we have continued doing now that we are in adjacent rooms! The pickup of new technology was fairly seamless, but I know she is happy to be working in a collaborative environment once more. She is now able to work from home on days when she is not required to be in chambers, and I am happy to provide her with the flexibility to do that.

I do not think that my previous extensive travel for work will continue in the same way – why fly a barrister to an interstate capital for a conference when that could take place remotely? – but I am sure that the NSW Bar will continue to be briefed in interstate and international roles when travel restrictions ease. Additionally, it seems to me that the courts' new remote hearing technology can assist barristers who wish to practise in regional areas, without the need to purchase expensive Sydney chambers. This can only improve regional access to justice and assist in ensuring that the expertise of the Bar is

available to meet the needs of people living outside the major metropolitan areas.

One question is how chambers themselves will change; my discussions, with the two barristers quoted above, and with many others, makes me think that most floors will be able to continue but with adaptations such as better internet and videoconferencing setups in boardroom provided for their members, for a start. I wonder how many junior barristers, comfortable with remote technology, will feel the need to purchase rooms sized to accommodate multi-person conferences when such conferences may not be the first choice going forward. I would encourage new barristers however to value a place in traditional chambers, for the company and leadership that that structure provides.

I look forward to seeing how practice at the Bar will evolve, and whether the lessons of the COVID-19 restrictions will take into account the many and varied experiences of members of the Bar, particularly facilitating remote working where that is a choice which can be made to support parenting roles and other and family commitments. **BN**




Confidential Assistance
BarCare

BarCare is an independent, professional counselling service, which helps members of the Bar Association to manage emotional and stress-related problems, such as marital breakdown, drug or alcohol dependency and practice pressures.

BarCare is available to all members of the Bar Association, their immediate families and clerks.

The first consultation is free of charge.
BarCare has access to a wide network of professionals across NSW from different disciplines for referral purposes or to discuss aspects of treatment.
Members in rural and regional areas can contact BarCare for assistance in locating an appropriate specialist closer to home.
Clerks and colleagues in chambers can make a confidential referral.

Confidential assistance
The Bar Association's sole involvement is to fund and promote the service to ensure assistance is available to all members in need.
No information is provided to the Bar Association without the express permission of the barrister.

If you require assistance:
 **Jenny Houen**
 Director
 0427 317 958
 jhouen@barcare.org
barcare.org