



THE LAW SOCIETY
OF NEW SOUTH WALES

GOVERNMENT LAWYER

Newsletter of The Law Society of NSW's Government Solicitors Committee
Number 44, December 2009

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Chair's Message

By Doug Humphreys
Chair, Government Solicitors Committee

This is the final edition of the Government solicitors newsletter for 2009. It has been a year of achievement.

The recent Government Solicitors CLE conference was an outstanding success. My thanks to all involved in the planning and running of the conference. My congratulations to the winner in the Excellence in Government Legal Services Award, Rod Parsons from the NSWWCC and Catriona Cotton from NSW Legal Aid in the John Hennessey Travelling Fellowship.

The release of the Federal "Access to Justice" report and more recently the NADRAC ADR report provide timely reminders of the need for government lawyers to think outside the traditional litigation box when looking to solving disputes between government and citizens. What is clear is that governments of all persuasions are looking to resolve disputes at an early stage using ADR prior to matters moving to the courts. This will require government lawyers to become more active and knowledgeable ADR users. ADR will need to be used at departmental level prior to matters being subject to legal proceedings. This trend is likely to substantially affect the way we practice government and practice law. It is the challenge of the future. This challenge will become a focal point for the Government solicitors committee in 2010. The committee will look at ways we can assist government lawyers up skill in this area.

Finally, as the year draws to an end, I thank all members of the committee for their work on your behalf. I wish you all well for the festive season and a prosperous 2010.

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2009 Government Solicitors Conference and Dinner

The 2009 Government Solicitors Annual Conference was a raging success. The Conference was attended by over 170 delegates and also drew an extensive waiting list (in 2010 the Committee will seek a larger venue to accommodate all interested parties).

Delegates expressed their satisfaction and enjoyment throughout the day with a number commenting that 2009 was 'the best yet'.

Feedback received from delegates noted Professor Trevor Waring AM, David Bennett AC QC and Michael Antrum as highlights of the day for their presentations on Mental Health for Lawyers, Statutory Interpretation and managing your external lawyers respectively.

Other sessions throughout the day included:

- An opening address by the Attorney General who discussed the importance of government lawyers in the alternative dispute resolution process.
- Paul Monaghan, Senior Ethics Solicitor, Law Society spoke on practical ethics for government lawyers.
- Richard Funston, Executive Director, Planning, Policy and Grants, Legal Aid NSW shared the panel session with Michael Antrum discussing the management of external lawyers.
- Jennifer Mason, Director General, Department of Human Services presented a session on dealing with the Minister's office.
- The Hon. Justice Garry Downes AM QC, President, Administrative Appeals Tribunal discussed decision-making in the public sector.
- Chris Wheeler, Deputy Ombudsman spoke on apologies, liability and the public sector with an emphasis on apologies that include an admission and/or an acceptance of responsibility.

The 2009 Annual Dinner was held in the Strangers Dining Room at NSW Parliament House following the Conference on 15 September 2009.

Guest speaker, The Honourable Justice Margaret Beazley AO QC, gave a memorable speech titled *A Flash of History*.

Her Honour looked at the history of Crown legal representation system in NSW. She noted the development from somewhat less than independent

and value driven beginnings in the early part of colonial NSW to the current model driven by the "Model Litigant" obligations placed on all government legal officers, be they State of Commonwealth based.

Her warning to those present was that despite the existence of various obligations and standards expected of government, dangers lie when agencies build up internal management cultures that run counter to Model Litigant obligations. Often these will only be changed as a result of a crisis.

In conclusion she noted:

"The message is, of course, don't wait for the crisis. As a dedicated group of government lawyers you are simply too good for that. In my experience, the very best Crown prosecutors are those who simply present the facts to the jury in an objective fashion. The result should not be a matter of personal triumph or despair. Civil government lawyers should be no different: win or lose, your role in the legal landscape is bigger than the individual cases you are involved in. That is the subtext of the Crown as the model litigator."

UPDATE: Guidance on Ethical Issues for Government Solicitors

A review and rewrite of the 2003 edition of the Guidance on Ethical Issues for Government Solicitors is currently underway.

The reviewer, Ms Margaret White, in consultation with the Government Solicitors Committee has begun the arduous task of reviewing in early September.

A final version is anticipated in late December 2009 with an official launch proposed for February 2010.

Congratulations!
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Congratulations!

Winner: 2009 John Hennessy Research Scholarship

The Government Solicitors Committee would also like to congratulate the winner of the 2009 John Hennessy Research Scholarship presented at the Annual Government Solicitors Dinner at Parliament House on 15 September.

The Scholarship was awarded to **Catriona Cotton**, a solicitor in the Criminal Law Division of Legal Aid NSW, to support her research into neighbourhood justice centres.

The Scholarship has been established by the Law Society's Government Solicitors Committee to help public sector solicitors undertake research in other jurisdictions and make recommendations for the improvement of the NSW legal system.

With the assistance of the Scholarship, Catriona will travel to Melbourne to evaluate and experience the Collingwood Neighbourhood Justice Project, an initiative that aims to address endemic disadvantage in the City of Yarra community.

From her visits and corresponding research into "therapeutic jurisprudence" Catriona will prepare a report containing suggestions for the improvement of criminal justice agencies in NSW, specifically Legal Aid NSW.

Winner: Excellence in Government Legal Service Award

The Government Solicitors Committee congratulates the recipients of the 2009 Excellence in Government Legal Service Award presented at the Annual Government Solicitors Dinner at Parliament House on 15 September.

Rod Parsons, Deputy Registrar, Legal at the Workers Compensation Commission was announced the winner of the Excellence Award for his project management of a new Workers Compensation Commission Arbitrator Manual.

Rod more than met the main criteria for the Excellence Award – performing "above and beyond the call of duty". Over a seven month period he balanced his normal workload with the demands of the Manual's production, leading a team of Presidential Members, Arbitrators and Commission staff, acting as editor-in-chief and writing several important sections.

Thanks to his leadership and direction, the new Manual will greatly assist Arbitrators with their decision-making.

The NSW Crown Solicitor's Office received a special Highly Commended Award for Excellence. Usually given to an individual or small team, this unique award covered all staff at the CSO in recognition of the CSO's outstanding and record achievements over the last 12 months on key performance criteria, namely client service, new instructions, revenue and profit. These results were achieved due to the dedication and commitment of its staff.

The Award acknowledged the CSO's high ethical standards, integrity, professional independence and compliance with model litigant, equitable briefing and other key policies. The Award also recognised the valuable service the CSO provides to the community and other public sector agencies through the implementation of equity and diversity policies and through the training and education of solicitors across the public sector.

The hard work and dedication displayed by Rod and the staff of the NSW Crown Solicitors Office exemplify the ideals of the legal profession.

Attorney General urges government lawyers to set an example in using ADR

“I believe that there is enormous untapped potential for the use of ADR in the NSW civil justice system. When government agencies are participants in that system, they should lead by example.”

The Attorney General, John Hatzistergos, was speaking at the opening of the Government Solicitors’ Conference. Mr Hatzistergos announced the release of a report, *ADR in Government*, as part of the consultation process for the *ADR Blueprint*.

The Attorney General said that government lawyers have a pivotal role to play in using ADR to resolve disputes.

Model Litigant Policy

Mr Hatzistergos emphasised that all NSW government agencies are required to comply with the Model Litigant Policy for Civil Litigation, which requires the State and its agencies to act with complete propriety, fairness and in accordance with the highest professional standards.

Mr Hatzistergos noted that the Model Litigant Policy requires that agencies must endeavour to avoid litigation, wherever possible.

The *ADR in Government* report recommends that the Model Litigant Policy be amended to give greater prominence to the role of ADR in resolving civil claims and litigation.

Barriers to the use of ADR

Drawing on observations made by Mr Tom Howe QC, Mr Hatzistergos suggested that – rather than asking whether a case is suitable for ADR – government lawyers should ask whether there is any reason why the case should proceed to a litigated outcome without having attempted ADR.

Mr Hatzistergos urged government lawyers to consider whether certain assumptions or habits of thought may cause them to overlook the full potential for the use of ADR. These include:

- an uncritical assumption that ADR is inappropriate in particular fields;
- a belief that, because attempts at direct negotiation with the other party have been unsuccessful, there is no role for ADR; and
- being more comfortable with litigation because lawyers know more about litigation than they do about ADR.

Encouraging government agencies to use ADR

The report recommends that an inter-agency Dispute Resolution Working Group be established, to provide a forum to share ideas on dispute management and avoidance and to promote the development of ADR by the NSW Government. Alternatively, the Legal Managers’ Forum could pursue these objectives.

ADR Blueprint

The *ADR Blueprint* is a discussion paper containing 19 proposals to increase and better integrate ADR across the NSW civil justice system.

The *ADR in Government* report is the second *ADR Blueprint* report making more detailed draft recommendations in response to feedback. The first report, *Pre-Action Protocols & Standards*, was released for public consultation on 2 September.

The *ADR Blueprint* reports are available online at:

http://infolink/lawlink/Community_Justice_Centres/ll_cjc.nsf/pages/CJC_index

The Attorney’s speech at the Government Solicitors’ Conference is also available at:

http://infolink/lawlink/Corporate/ll_corporate.nsf/pages/LL_Media_Centre_speeches

If you would like any further information please contact Natasha Mann, Director ADR on 8688 7451 or Tom Chisholm, Senior Policy Advisor, on 8688 7452.

Survey of the Continuing Legal Education Needs of Government Solicitors in New South Wales

Athena Harris Ingall

All current government solicitor members of The Law Society of New South Wales were recently surveyed online and by post about the continuing legal education (CLE) needs of government lawyers.

The Law Society of NSW and its Government Solicitors Committee would like to thank those government solicitors who took the time to complete and return the recent survey. Responses to the survey were received from 461 Society member government solicitors, and their views and ideas about current and future CLE options will help shape future professional development programs for government lawyers in this State.

The Society has decided to pursue specialist accreditation of government lawyers given that nearly 40 percent of respondents to the survey indicated they were interested in gaining specialist accreditation in Government/Administrative Law.

There were some other important findings from the survey. The Society has a better appreciation of the diverse areas of practice of government solicitors and the influences of location of work and experience on government solicitors' preferences for CLE due to the information provided by respondents.

Those who responded to the survey also provided

useful information about the future content and mode of delivery of CLE.

The most popular types of future content selected by respondents were (in descending order) updates on the law, refreshers on the law, statutory interpretation, evidence (e.g. gathering evidence, rules of evidence), practice and procedure in Courts and Tribunals and issues of public policy. However, there was widespread interest in a range of other topics.

In terms of the mode of delivery of CLE, findings suggest seminars are highly favoured by many government lawyers; lectures are also popular so long as the speaker is accomplished and interacts; conferences provide unique opportunities to network; online learning is an emerging option if it is not too basic; and pod casts are emerging as an option which is also attracting some interest.

There were many comments about the future packaging of MCLE to ensure the delivery of high quality, relevant information to government solicitors. Some respondents advocated that the Law Society of New South Wales examine forming partnering arrangements with other organisations/agencies as part of its endeavours to provide CLE targeted at the needs of government solicitors.

NEW Area of Accreditation in Government and Administrative Law

The Law Society is delighted to advise that it is to offer a new area of accreditation in Government and Administrative Law.

In order to develop this new area, the Law Society has established a working party which consists of knowledgeable and experienced practitioners currently working in the area – both within the public and private sector.

The working party is responsible for setting the curriculum and deciding on the appropriate assessment modes. The first meeting of the working party is anticipated to take place in late November 2009 with meetings taking place on a monthly basis thereafter. It is anticipated that the working party will complete its work by September 2010 with a view to offering accreditation in this new area in 2011.

How to be a successful in-house legal team

Helen Vickers

Helen Vickers is a partner with Sydney law firm, Henry Davis York. Helen was the head of legal in four New South Wales Government agencies for 12 years from 1997, including RailCorp and the RTA. She joined Henry Davis York in September 2009, where she specialises in contract, commercial and government-related law matters.

The key to being a successful in-house legal team is integration of the legal function into the operations and activities of the organisation. In-house lawyers must be seen by the business units as trusted advisors who are integral to their own success.

How does the in-house legal team become an effective partner with an organisation's business units?

Above all, in-house lawyers must be proactive. This means:

- **Understanding the business** – embracing the organisation's corporate plan, business plans and programs. Government in-house legal teams must also understand Government (shareholder) priorities.
- **Getting out to the clients** – finding out what their issues are, what projects are coming up, ensuring that the clients know the in-house lawyers are enthusiastic, interested in what they are doing, and available to provide assistance.
- **Being collaborative** – adopting a “can do” attitude in terms of devising legally defensible solutions to problems, rather than perpetuating the culture of “no”.
- **Providing pragmatic advice quickly and in plain language** – most managers want succinct advice (without case references) containing options and clear recommendations. This requires the in-house lawyer to have regard to business considerations when giving legal advice.

The “bread and butter” of the in-house legal team is the provision of quality legal services. Quality legal services have the following key features:

- A high standard of customer service, that is, responsiveness.
 - Advice needs to be provided as quickly as possible.
 - Telephones need to be answered; messages responded to quickly.
 - Emails and blackberries need to be monitored and responded to quickly.
 - Support staff need to understand that urgent matters must be brought to the attention of the in-house lawyers as a matter of priority, irrespective of the lawyers' other commitments.
 - All members of the in-house legal team must be courteous.
- Quality staff, with:
 - Appropriate legal training and legal skills.
 - Good communication skills.
 - Appropriate relevant experience and the ability to exercise good judgement.
- Cost sensitivity.
 - The in-house legal team must operate efficiently, especially if it is treated as a cost centre in the organisation.
 - Legal work and non-legal work should be performed by those best able to do it.
 - Wherever possible, technology should be used to improve efficiencies.
 - Above all, there needs to be an appropriate balance between in-house and external resources.
- Managing external legal service providers.
 - External legal services are essential for most organisations, where a core team of lawyers who know the business deliver legal services through a combination of in-house services and services provided by external law firms.
 - The advantage of this model is that it enables the in-house team to access “cutting edge”

- expertise and experience available from experts in the relevant area; this enables the in-house team to provide their organisation with enhanced levels of service, high levels of expertise, and legal and business acumen.
- The in-house legal team must be an informed purchaser of legal services. It must understand the organisation's needs, the strengths and weaknesses of external law firms, and how and when to outsource.
- The in-house legal team must be proactive in ensuring that external legal services are provided to a high standard and at reasonable cost. There must be no "over-servicing" and fees must be competitive.
- The in-house legal team should implement its own systems to capture and monitor expenditure and the status of matters and to monitor the performance of external law firms.
- Key performance indicators for the external lawyers should be implemented, including:
 - Cost estimates, and regular updating of progress and costs.

- Plain English advices with easy to read summaries.
- Timeliness of services.
- Written monthly reports.
- Regular client relationship meetings.
- Customer satisfaction.

Finally, to be a strategic contributor to the capability of the business, the in-house legal team should:

- Be outcome focussed, not process driven.
- Keep the internal clients up to date with relevant legal developments.
- Provide targeted training/education seminars to the business units.
- Arrange regular coordination meetings with the internal clients to share ideas and exchange information.
- Proactively raise risk issues or concerns when first aware of them, while recognising that commercial imperatives sometimes prevail.

2009 Government Solicitors Committee

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2009 Government Solicitors Committee wishes all readers the best for the festive season and a prosperous 2010.

Toongabbie Legal Centre's Second Annual Fundraising Dinner

Shanthi Benjamin

On Friday the 13th of November over 330 solicitors, barristers, elected political representatives, judges, law students and other volunteers, and gathered to attend the Second Annual Fundraising Dinner of the Toongabbie Legal Centre.

The President of the Toongabbie Legal Centre, Mr Chris Jurd, welcomed guests. The dinner, held in Parramatta, is the main fundraising effort by the legal centre which helps those who are socially, economically and culturally disadvantaged people in Toongabbie and the surrounding suburbs. The Honorary Coordinator, Mr Susai Benjamin, and the Principal Solicitor, Mr Michael Vassili, also spoke briefly.

Guests were entertained by a Polish dance group and an Indian dance couple but the highlight of the evening was the keynote address given by The Hon. Justice Virginia Bell of the High Court of Australia.

She related her personal experience with the Redfern Legal Centre over 30 years ago with the growing networks of the Toongabbie Legal Centre.

"The Toongabbie Legal Centre operates in a network of services that supplement Legal Aid NSW. Legal Aid is hard-pressed to see to every single case and as a result many people fall through the gaps".

She also praised the work of the Centre's many law student and non-student volunteers.

"Law is more than a job. Volunteering is not only important but appropriate. There is no use having legal rights if the only people protected are those who are attractive and popular."

In a message read to the gathering in his absence, NSW Premier Nathan Rees also praised the work of the Toongabbie Legal Centre.

"You do more than give a helping hand to those in need. You embody the best traditions of a caring society, committed to ideals of social justice and equal opportunity for all citizens."

If you wish to know more about the Toongabbie Legal Centre contact: coordinator@tlc.asn.au or the Honorary Coordinator, Mr Susai Benjamin, 041 869 1525.



Patron of TLC, Justice Margaret Beazley, with some of the Centre's Volunteer Solicitors and Law Students.