



THE LAW SOCIETY
OF NEW SOUTH WALES

GOVERNMENT LAWYER

Newsletter of The Law Society of NSW's Government Solicitors Committee NO.48 / DECEMBER 2011

In this edition

- 2 A Day In the Life of ...
- 3 Thought Leadership 2011
Advancement of Women
in the Profession
- 3 2011 Government Solicitors
Conference and Dinner
- 4 Human Rights Update
- 4 NSW Government Legal
Services Blueprint
- 5 2011 Winners of the John
Hennessy Research
Scholarship and the
Excellence Award in
Government Legal Service
- 6 Writing Reasons for Decisions



Chair's Message

By Doug Humphreys

Chair, Government Solicitors Committee

Dear Colleagues,

2011 has been a year of considerable achievement for the Government Solicitors Committee.

The annual Government Solicitors Conference and Dinner on 31 August was an outstanding success. I congratulate the winner of the John Hennessy Research Scholarship, Rebecca Hicks, and the winner of the Excellence Award in Government Legal Service, the NSW Legal Group of the Office of the Fair Work Ombudsman. In an effort to increase the availability of targeted CLE, the Committee has introduced twilight sessions in 2011. The aim is to run 3-4 sessions each year.

The Committee has also made some significant contributions in the policy area, informing the Law Society of its views. This has been particularly important in relation to proposals for national regulation of the legal profession.

This newsletter marks the end of my stewardship as Chair of the Committee, having retired as a Councillor of the Law Society. I would like to thank the members of the Committee for their hard work and good ideas over the last 12 months. I would also like to thank the Executive Officer of the Committee, Ms Heather Moore, who has made all things happen.

I wish the Committee well for 2012 and beyond in advancing the interests of government solicitors within the Law Society.



THOUGHT LEADERSHIP 2011

Advancement of women in the profession

READ MORE ON PAGE 3

2012 Government Solicitors Conference and Dinner

The Government Solicitors Committee will be holding its 2012 CLE Conference and Dinner in late August.

To register your interest in receiving a copy of the program and registration form in 2012, please email your contact details (including agency/department) to events2012@lawsociety.com.au.

THE LAW SOCIETY OF NEW SOUTH WALES
170 Phillip Street, Sydney NSW 2000
DX 362 Sydney
T +61 2 9926 0333
F +61 2 9231 5809
E lawsociety@lawsociety.com.au
www.lawsociety.com.au

A day in the life...

of Adam Johnston

Investigations and Project Officer
for the NSW Ombudsman

A day in my working life can be very different, depending on which day of the week you are asking me about. One of my roles is as a member of the Ombudsman's Inquiries Team. In any hour on the telephone, or in meeting someone who has walked into the office seeking advice, you can move from discussions about local government, police, prisons, fair trading and housing issues, to name but a few.

The first thing to check with any complainant is jurisdiction. Of course, there are times when it's necessary to help the complainant identify which agency they should be complaining to, and sometimes, whether their concerns are within State or Commonwealth jurisdiction. For example, sometimes people will ring with a complaint about say the Child Support Agency which is a Commonwealth body, while at other times tenants will ring about difficulties with their landlord and I will refer them to the various tenancy services and the Consumer, Trader and Tenancy Tribunal. There will also be a few calls about faulty products and product labelling, so when the orange marmalade contains sugar, food colouring and rind, but no orange, then that's a matter for Fair Trading.

And when it is within our jurisdiction, we need to know what they think is wrong and if they have addressed their concerns to the head of the relevant agency, or followed an internal complaints procedure. The NSW Government Directory is a web site

referred to during many of the calls, as it lists all the heads of agency. The NSW Police website is essential when referring complainants to the appropriate Local Area Command to raise a concern about a police officer. People can be reluctant to make complaints directly to agencies, and this advice as to the process has to be given tactfully. Sometimes however people will not be reassured the agency will properly handle their complaint. Usually this is about police and on these occasions they can write to the Ombudsman and their matter will be assessed, but forwarded to police (with our oversight of course).

Many callers want the Ombudsman to apply "a fix" to their problems with a government agency. A number of the written complaints received that I and many of my colleagues respond to also seek to have us "tell" an agency to do something, or to intervene in court action. After gently making it clear that this is not the Ombudsman's role and seeking enforceable orders is a matter for the courts, that point comes in the day where the roster says that thoughts of how the legislation applies can be replaced with thoughts of luncheon.

Even if you have just finished telling someone, for the fifth time, that if they wish to appeal a Development Application approved by Council, their opportunity for redress is the Land and Environment Court, some will come looking for the advice they wanted to hear. After that sort of conversation, there is one welcome inquiry from a colleague: would you like a cup of coffee? Add a biscuit from the unofficial "Inquiries ad hoc table of assorted nibbles" and you're ready to take the next call.

But please do not think the role is unenjoyable, it is often fulfilling as you can make differences for individuals and even the systems that impact on our lives. But like anyone that deals with public contact, a big part of the role is the ability to quickly grab hold of one's tongue and appropriately redirect it to just the right words for the situation.

When not advising complainants, I am a Project Officer for the Office's Corporate Division. A major component of this role is the review of

office policies and procedures, ensuring that a number are checked for currency against relevant Premier's Memoranda, Treasury Directives or other departmental guidelines, generally available online. Equally, as a number of matters come up on internal review schedules, my role is also to review the policy in light of any structural changes in the Ombudsman's office itself. After researching any new requirements, it's then time to put an amended document to Division Managers for consultation, or if changes are significant, rework an entire policy. Incorporating management feedback into the document in discussion with the Ombudsman's Director Corporate, the draft will then go to the Ombudsman for consideration.

It is said that variety is the spice of life, and this can be the same in your working life as well.

My work days represent a kind of variety that many probably look for but may not find themselves. There are times of phones ringing off the hook and frontline complaint handling keeping me very much aware of the public's needs, expectations and misconceptions. Then there is time to take that experience and apply it in a wider legal and policy setting. From here you see many aspects of public sector governance, from accounting standards, ATSI employment strategy to workplace safety. The variety of topics I can find myself reviewing or researching demands flexibility and has given me an appreciation of what it takes to run an agency from both the front desk and behind the scenes. With a profession increasingly specialised, including within a discrete sector like government, it's a timely reminder of how beneficial a job share, secondment or new role within your agency can be. It is said that variety is the spice of life, and this can be the same in your working life as well. ■

Thought Leadership 2011 Advancement of Women in the Profession

Despite the obvious success of women in all sectors of legal practice there is wide recognition that barriers or impediments to the advancement of women in the profession continue to exist.

In late 2010, the Law Society Council decided that identifying those barriers should become the focus of the Law Society's major thought leadership initiative for 2011. This project was championed by the 2011 President, Stuart Westgarth.

The number of women solicitors practising in NSW has grown by 452% since 1988, and women now make up 46% of the profession. However, despite this rapid equalisation in the male to female ratio, change has been slower to reach the ranks of partners in private law firms. There is a much higher

proportion of women in government practice where they make up 63% of practising certificate holders. Feedback from government lawyers who participated in the project suggested that women are also more likely to be in leadership positions in government legal teams than in private law firms.

The report and recommendations arising from this project were officially released at a breakfast on Thursday 1 December 2011. The report is available to be viewed online at www.lawsociety.com.au/advancementofwomen ■

2011 Government Solicitors Committee

Chair:

Mr Doug Humphreys	Veterans' Review Board	doug.humphreys@vrb.gov.au
-------------------	------------------------	---------------------------

Co-Chair:

Ms Margaret Bateman	Crown Solicitor's Office	margaret_bateman@agd.nsw.gov.au
---------------------	--------------------------	---------------------------------

Committee Members:

Mr Harold Bear	Roads and Traffic Authority of NSW	harold_bear@rta.nsw.gov.au
Mr Susai Benjamin	Office of State Revenue	susai@bigpond.com
Mr Roderick Best	Community Services Department	rod.best@community.nsw.gov.au
Ms Lyndsay Brooker	Legal Aid Commission of NSW	lyndsay.brooker@dadhc.nsw.gov.au
Mr Eric Coonan	Australian Energy Market Commission	eric.coonan@aemc.gov.au
Ms Elizabeth Espinosa	Sutherland Shire Council	eespinosa@ssc.nsw.gov.au
Ms Michelle Gardiner	Department of Attorney General and Justice	michelle.gardiner@agd.nsw.gov.au
Mr Adam Johnston	NSW Ombudsman	adamdj1@optusnet.com.au
Mr Paul Martin	WorkCover Authority of NSW	paul.martin@workcover.nsw.gov.au
Ms Krisstine Nash	Australian Taxation Office	krisstine.nash@ato.gov.au
MAJ John Patterson	Australian Defence Force	john.patterson@defence.gov.au
Mr Greg Ross	Eakin McCaffery Cox	Ross@eakin.com.au
Mr Bradley Row	Crown Solicitor's Office, NSW	brad_row@agd.nsw.gov.au
Mr David Thomson	DPP (Cth)	david.thomson@cdpp.gov.au
LCDR Michelle Wakefield	Australian Defence Force	michelle.wakefield@defence.gov.au
Ms Deb Willcox	NSW Health	deborah.willcox@sesiahs.health.nsw.gov.au

Law Society contact details:

Policy and Practice Department, 9926 0285

2011 Government Solicitors Conference and Dinner

On 31 August 2011, the Government Solicitors Committee hosted the annual Government Solicitors Conference and Dinner at the Hilton Hotel Sydney.

Over 200 solicitors registered for the Conference which featured speakers and topics including:

- **Opening Address**
Law Society President
Stuart Westgarth
- **Keynote Address**
NSW Attorney General
The Hon Greg Smith SC MP
- **The Rule of Law in Australian Legal History: Milestones and Failures**
The Hon Keith Mason AC QC
- **Mental Health and Wellbeing for Lawyers**
Registered social worker
Robyn Bradey
- **Human Rights Update: Issues for Government Lawyers**
Barrister Kate Eastman

There were also two panel sessions on Community Participation and Consultation (including Prof Hilary Astor of the NSW Law Reform Commission) and eDiscovery, Technology and the Justice System (including Linda Murphy, CEO of the NSW Supreme Court).

There were over 100 attendees at the Conference Dinner following which the Commonwealth Director of Public Prosecutions, Chris Craigie SC, delivered the after dinner speech. The NSW Attorney General also attended and presented the 2011 Excellence Award in Government Legal Service and the John Hennessy Research Scholarship administered by the Government Solicitors Committee.

The Committee was very grateful to all the speakers and panelists and looks forward to the opportunity to meet many more government solicitor colleagues at the 2012 Conference and Dinner.

Human Rights Update

From the Human Rights Committee of the Law Society of NSW

Earlier this year, the Working Group on the UN Universal Periodic Review (UPR) recommended, among other things, that Australia “strengthen its human rights framework by establishing a comprehensive legislative scheme for all human rights”. This echoes the National Human Rights Consultation Committee’s recommendation in 2009 that the Government enact a Human Rights Act.

In response to the National Human Rights Consultation Committee’s recommendation, the Government put in place the Australian Human Rights Framework (the Framework) instead of enacting a Human Rights Act for Australia. However, the Framework so far appears to have been of limited practical value in building human rights performance across the nation. Similarly the limited, although not insignificant commitments and replies given by Australia on the UPR Working Group’s conclusions and recommendations afford only a conservative basis for any confidence that Australia is achieving continuous improvement in its human rights compliance.

The Framework

The Framework was released by the Australian Government in 2010. However, the Hon Catherine Branson QC, President of the Australian Human Rights Commission, when addressing a seminar earlier this year at the offices of DLA Piper on the UPR noted that many senior government officials in the federal arena remained unaware of the existence of the Framework. This suggests practical limitations on the extent to which senior decision makers might draw on the Framework and limitations on its scope for bringing a higher level of human rights awareness to the content, interpretation and application of federal legislation. It also highlights an inherent limitation of any framework over the alternative of having a Human Rights Act.

However, the Framework does bring some interesting human rights developments for government lawyers. For example, in June 2011, the Australian Government accepted in part the UPR Working Group’s recommendation that it establish a comprehensive human rights legislative scheme. In doing so, the Government pointed out that measures introduced under the Framework will require a statement of compatibility with Australia’s human rights obligations to be provided for all new federal legislation.

The Framework also highlights a number of key guiding principles including engagement and respect. Consistent with the principle of engagement, Australia is developing a Human Rights Action Plan. To this end, a Baseline Study commenced with the release in June this year of a consultation draft. The draft encapsulated a number of key human rights areas which are being considered by the Human Rights Committee, including:

- the Framework itself
- counter-terrorism issues
- human trafficking, and
- the human rights experiences of a number of specific groups including Aboriginal and Torres Strait Islander peoples, refugees and asylum seekers, prisoners, carers and people experiencing or at risk of experiencing homelessness.

The Human Rights Committee provided comments to the Law Council of Australia which were incorporated into its submission to the Baseline Study.

The UPR itself has shown that on a global measure, Australia is performing to a significant level on a number of fronts in terms of overall human rights compliance. However, the campaign continues by many human rights lobby groups for a Human Rights Act in Australia. The Law Society’s Human Rights Committee continues to have concerns that there is no clear commitment by either side of politics to

progressing this vital area of legislative reform and has expressed its concerns in the lead up to the most recent elections both in NSW and federally.

Queries and comments

Any requests for further information on human rights topics can be sent to vicky.kuek@lawsociety.com.au ■

NSW Government Legal Services Blueprint

The NSW Attorney General used the occasion of his keynote address at the Government Solicitors Conference on 31 August to announce the new *Legal Services Blueprint*.

The Legal Services Blueprint outlines reforms to the delivery of legal services across the NSW Government in the following six areas:

1. Procurement
2. Fee arrangements
3. In-house legal services
4. Measurement and monitoring
5. Information sharing
6. Whole of government coordination

The reforms are designed to ensure that legal services expenditure in NSW is transparent, efficient and aligned with Government priorities.

You can access the Legal Services Blueprint on the Legal Services Coordination page of the Department of Attorney General and Justice website at www.lawlink.nsw.gov.au/lms. Legal Services Coordination is the business centre of the Department responsible for leading the development and promoting the implementation of legal services policy across the NSW public sector.

2011 Winners of the John Hennessy Research Scholarship and the Excellence Award in Government Legal Service

The Government Solicitors Committee was pleased to award both the John Hennessy Research Scholarship and the Excellence Award in Government Legal Service in 2011, and was very grateful to the NSW Attorney General who made the presentations at the Conference Dinner on 31 August. The Committee congratulates the winners for 2011.

2011 John Hennessy Research Scholarship

The winner of the John Hennessy Research Scholarship in 2011 was Rebecca Hicks from the Office of Environment and Heritage in the Department of Premier and Cabinet.

Rebecca will be using the \$5000 funding to travel to the United States where she will meet with officers of the US Environmental Protection Agency. The objective of her trip will be to examine the EPA's highly developed system for valuing the monetary benefit of environmental crime and environmental harm. Identifying better pricing mechanisms will inform sentencing so that the cost of getting caught is more likely to exceed the benefit gained from committing the offence. This has the potential to increase deterrence and provide better environmental outcomes for the community. Rebecca says that "creating

such incentives and disincentives is a radical shift in how our economy currently evaluates 'cost' but a cornerstone of a truly sustainable future".

The John Hennessy Research Scholarship was established by the Government Solicitors Committee to support public sector solicitors to undertake a research project on legal systems in another jurisdiction and to make recommendations for the improvement of the legal system in NSW. The successful applicant is required to submit a final project report which makes recommendations to improve the operations of the 'sponsor' Government legal department and/or the legal system in NSW.

2011 Excellence Award in Government Legal Service

This year, the Excellence Award in Government Legal Service was awarded to the NSW Legal Group of the Office of the Fair Work Ombudsman:

- Janine Webster
Chief Counsel (National)
- David Rushton
Special Counsel (National)
- Alistair Salmon
Director – Legal Practice (National)
- Janine Dennis
Principal Lawyer – NSW / ACT
- Vicki Hodgson
Principal Lawyer – Discrimination
- Helen Karatasas – Senior Lawyer

- Larissa Andelman – Senior Lawyer
- Alanna Van Der Veen
Senior Lawyer
- Anna Kovalsky – Lawyer
- Annabel Anderson – Lawyer
- Julia Beehag – Lawyer
- Lucy Madden – Lawyer

The NSW team is part of a broader national legal group which has recently received the Federal Attorney-General's approval to run all of its litigation matters in-house. This team has therefore contributed to the reduction of the agency's external legal expenditure by 30%. So far the agency has filed 49 matters in-house, 23 of which have been finalised and have been successful. In addition to the savings in costs, Chief Counsel Janine Webster says that having an in house practice "means that lawyers are able to maintain and build upon their litigation skills and keep them current, which has proven to be very important in the retention of valuable skilled staff".

Since 1992 the Law Society of New South Wales' Government Solicitors Committee has been administering the Excellence Award in Government Legal Service which recognises the outstanding achievements of public sector solicitors. The award is given to a solicitor or legal team who has performed 'above and beyond the call of duty'. ■

Update on Specialist Accreditation

In 2012 Specialist Accreditation is offered across 5 areas of law.

Practitioners can seek accreditation in the following areas of law: Business and Personal Taxation Law, Government and Administrative Law, Immigration Law, Local Government and Planning Law and Personal Injury.

All relevant information for the 2012 program (including the application form) is now available for download from the Law Society website.

Visit www.lawsociety.com.au/specialists and go to the 2012 Program page.



www.lawsociety.com.au/specialists

Writing Reasons for Decisions

On 18 July, the Government Solicitors Committee held a free seminar for government lawyers on *Writing Reasons for Decisions*.

The seminar featured a panel of three expert speakers:

- Doug Humphreys, Principal Member of the Veteran's Review Board and Chair of the Government Solicitors Committee
- Anne Britton, Senior Member of the Administrative Appeals Tribunal, and
- Joanne Muller, Chairperson of various health disciplinary tribunals in NSW.

These expert panelists provided hints and tips on writing reasons to over 100 attendees, who were then invited to mingle with their government solicitor colleagues over refreshments.

Each attendee at the seminar also received a copy of the Administrative Review Council's best practice guide *Decision Making: Reasons* (available online at www.ag.gov.au/arc). This guide provides useful information for primary decision makers, including on the content which should be included in a statement of reasons. In particular, a statement of reasons should include:

- The decision – A statement of reasons should refer to the legislation that authorised the decision.
- The findings on material facts – A statement of reasons must contain the findings on all material facts (that is, the findings on each fact that can effect the outcome of a decision).

- The evidence on which the findings were based – A statement of reasons should identify the evidence that was considered relevant, credible and significant in relation to each material finding of fact.

These expert panelists provided hints and tips on writing reasons to over 100 attendees.

- The reasons for the decision – A statement of reasons must state the actual reasons relied upon by the decision maker at the time of making the decision.
- Appeal rights – A statement of reasons should also include appeal rights (including any right to seek internal review or review by an administrative tribunal and time limits).

Two other CLE seminars were hosted by the Government Solicitors Committee in 2011. On 12 May, the Parliamentary Counsel, Mr Don Colagiuri SC, spoke on *Preparing Legislation and Instructing Parliamentary Counsel* and on 15 November solicitors from the Crown Solicitors Office presented tips on *Getting What You Want: Issuing Subpoenas to Government Agencies*. All three sessions were very well-attended and the Government Solicitors Committee plans to offer similar CLE opportunities in 2012. ■

FREE MCLE SEMINAR The Lawyer's Guide to Sanity, Profitability and Wellbeing

23 February 2012, 9:00am
Venue: Law Society of NSW,
170 Phillip Street, Sydney

This free seminar comprises two 3-hour modules which will run from 9:00am to 4:00pm. These workshops will help participants to recognise and understand the pressures of practice that can lead to poor mental health, poor decisions and poor outcomes.

You will come away with a toolkit of strategies, including case studies, information and resources.

For more information or to register, visit the CLE Calendar at www.lawsociety.com.au

The Government Solicitors Committee wishes all government lawyers a safe and happy festive season and looks forward to another busy year in 2012.