

THE AUSTRALIAN CAPITAL TERRITORY BAR ASSOCIATION

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Condolences from the Australian legal profession

The following statement can be attributed to Mr Duncan McConnel, President, Law Council of Australia:

- Law Council expresses its condolences following the tragic execution of Australian citizens.
- The Law Council is saddened to learn of the execution of Australian citizens Mr Andrew Chan and Mr Myuran Sukumaran in Indonesia on 29 April 2015.
- On behalf of the Australian legal profession, I extend my deepest condolences to the family and friends of Mr Chan and Mr Sukumaran. Our thoughts are with you during this difficult time.
- Both Mr Chan and Mr Sukumaran expressed remorse for their crimes and were exemplars of successful rehabilitation. They will be remembered for their positive contributions, which ultimately gained the respect of the Australian community for their courage and commitment to the rehabilitation of themselves and other prisoners.
- I also acknowledge the considerable work undertaken by the Australian Government at a diplomatic level in support of its citizens, and to the lawyers who worked tirelessly to support these two young men.
- The Law Council has a <u>long-standing policy</u> opposing capital punishment and considers that no person should be subjected to the death penalty irrespective of their nationality, the nature of the crime they are alleged to have committed or the time and place of its commission.
- Our deepest sympathies are with the family and friends of Mr Chan and Mr Sukumaran.

Karuna Gurung, Acting Director of Communications

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The Law Council of Australia exists to represent the legal profession at the national level, to speak on behalf of its constituent bodies on national issues, and to promote the administration of justice, access to justice and general improvement of the law.

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President's Message

A number of law reform issues are currently simmering in the background. Foremost amongst these are the laws that relate to family violence, to proper compensation for workers suffering work related injury and the processes surrounding sentencing.

It is always important to give proper consideration to these issues, but when law reform takes place, the expectation ought be that what is come up with constitutes an improvement to the law. The basic criteria by which this can be judged is by asking whether:

- 1. The change means that outcomes are just;
- 2. The changes mean that more people are treated fairly; and
- 3. The changes mean that a just outcome can be achieved quickly and in a less burdensome manner.

The key characteristic in each of these is the connection to fairness and jutice. Making a system cheaper, but less fair is no improvement. Making a system quicker, but unjust is a step backwards.

As each of these hot areas are examined with an eye to reform, the overriding question of fairness and justice ought remain at the forefront of any consideration.

In the area of family violence, justice dictates that anyone who requires protection ought be able to receive it, while those who do not pose a risk ought not be subject to the force of an order.

In the area of compensation for workers, the serious question ought be asked as to whether it is fair to arbitrarily draw barriers to the receipt of compensation, to exclude classes of injuries, to exclude persons who have been genuinely damaged in the name of efficiency. Trading off fairness for efficiency is a poor bargain.

In the area of sentencing, the Standing Committee on Justice and Community Safety Inquiry into Sentencing has recently been released, and released in the context of the Attorney's own enquiry into sentencing reform. The report details 55 recommendations. Many of these would be positive changes to the sentencing process. Encouragingly, the approach and the methodology of both the Committee and the Attorney has been one directed toward fairness and justice in this area.

It is the hope of the Bar that the approach exemplified in the consideration of sentencing will be likewise reflected in the other hot areas of law reform.



EDITORIAL



Violence against Women

Boko Haram, the Islamist terrorist movement based in north-east Nigeria, which was initially linked to Al-Qaeda, but now is linked to the Islamic State Movement, kidnapped 276 school girls from Chibok on 15 April 2014. Fifty girls escaped, leaving 222 young girls who were either sold as slaves and/or "married" off. In July 2014 Boko Haram kidnapped the wife of the vice-president of Nigeria and on 13 December 2014 the village of Gumsuri was attacked with over 100 women and children kidnapped. And finally, in March 2015, 400 women and children were kidnapped from the town of Damasak. Clearly, women, and particularly young women, are being targeted in these acts of violence by this terrorist group.

In Australia, in 2015, two women per week are killed by domestic violence. The ACT has had 2 women allegedly murdered through domestic violence in recent weeks. The number of omen now attacked and injured per week is unfortunately growing. The murder rate in Australia has been falling for several years. But the rate of domestic violence and homicides involving domestic violence has been rising in recent decades. The murder rate of 2 women per week represents now 50% of murders per annum in Australia. Governments at federal, state and territory levels are reacting to this alarming state of affairs. Rosie Batty has unsurprisingly called for decisive action to end this increasing rate of domestic violence. The plan to combat this appalling state of affairs must not only involve increased criminal prosecutions and investigations, but must also be aimed at seeking out causes for this violence and having rational,

state and territory plans aimed at prevention implemented. This will necessarily involve plans for combatting this violence on many levels, including, obviously, education and rehabilitation.

Imprisonment Rates in the ACT and Australia

As at 17 June 2014, Australian jail populations rose sharply, with the number of full-time prisoners jumping up to 9%. The ACT recorded the largest increase of 32%. Why is this so? The number of inmates in Australian jails hit a record of 30,775 in 2013, i.e. up 5% from 2012. The rate of imprisonment is also up, at 170 prisoners for every 100,000 adults compared with 157 per every 100,000 adults in 2003. The Northern Territory has the highest imprisonment rate, with 821 adults in prison for every 100,000 adults. The ACT has the lowest imprisonment rate in Australia. However, our imprisonment rate has been dramatically rising with the A.M.C. now overfull and the government looking at "expanding" the A.M.C. for a so-called "permanent" solution, whilst re-utilising Quamby as a standby solution. Australia-wide, 20% of the male inmate population was jailed for acts intended to cause injury and 15% for sexual assault and 15% for unlawful entry with intent. Women were commonly jailed for drug offences, i.e. 18%, with 17% jailed for acts intended to cause injury and 10% for unlawful entry with intent. 81 Percent of prisoners were born in Australia, 3% born in New Zealand, followed by 2% born in Vietnam and 2% born in the UK. Sadly 27% of the prisoner population is indigenous Australians and 58% of all prisoners are re-offenders!

The questions then must be asked as to whether this increased rate of imprisonment is deterring crime and whether enough money, time and programming have been put into realistic rehabilitation programs. What, e.g., is the rehabilitation program at the A.M.C. and for whom? And if there is one, what effect, if any, has it had upon recidivism? Is our increasing imprisonment rate making Australia a safer place to live? 47 Percent of homicides are committed with a knife, whilst 24% are committed with a firearm. A further worrying statistic is that form 1990 until the middle of 2011, 40% of people, who were fatally shot by police, were suffering from mental illness. I raise these statistics for quiet reflection as to 'where are we going' and 'are we on the right track'?

FJ Purnell SC



The Office of the ACT Bar Association has relocated to

Level 1, AMP Building, 1 Hobart Place, Canberra City ACT 2601

Mental Health, Wellbeing and the Law

Lawyers have one of the highest rates of depression among Australian professionals.¹ Admittedly, this rate is almost matched by that of engineers and accountants.² Most of us know more than one person who has faced a mental health problem, often depression or anxiety.

When law students commence their studies, their mental health is about the same as that of the general population. However, by the time they finish, the rate of depression among law students is well above average.³

A 2009 study of depression and psychological distress among Australian law students, solicitors and barristers found that high or very high distress was reported by 35.2% of law students, 31% of solicitors and 16.7% of barristers (compared to 13.3% for the general population).⁴

Law students and lawyers set high standards for themselves and immerse themselves in the demanding fascination of the law. People often joke that law students and lawyers have Type 'A' personalities: ambitious, organised, impatient workaholics. This may make for a good lawyer, but it is also a weakness.

From the early days at law school, students justifiably feel anxious about their prospects of obtaining satisfying employment upon graduation. According to an article in the Australian Financial Review, the number of students completing law courses in Australia has doubled in the past decade.⁵ Australia is producing more than 12,000 graduates of law courses a year, yet there are only about 60,000 practising solicitors in the country.⁶

[L]aw graduates [are] pouring out of Australian universities at such a rate that a degree once promising security and relative riches now comes laden with fear and uncertainty. Students are emerging from the brutal slog of law school into what industry elders see as the worst job market in decades.⁷

Once employment has been secured, the workplace imposes Law firms are feeling the pinch of competition, and passing it on to their employees, particularly junior practitioners, who bear heavy workloads. In addition, practitioners have to meet billing targets and high (often unrealistic) client expectations.

In part, the stress that both law students and practitioners feel is an inevitable concomitant of the practice of law. Often, the law provides no clear answer. What was

Beaton Research and Consulting and Beyondblue, Mental Health in the Workplace (2011) http://www.beatonglobal.com/pdfs/Anxiety_and_depression_in_the_workplace.pdf>.

 ² Beaton Research and Consulting and Beyondblue, Mental Health in the Workplace (2011) <http:// www.beatonglobal.com/pdfs/Anxiety_and_depression_in_the_workplace.pdf>.

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 Norm Kelk, Sharon Medlow and Ian Hickie, 'Distress and Depression Among Australian Law Students:

³ Norm Kelk, Sharon Medlow and Ian Hickie, 'Distress and Depression Among Australian Law Students: Incidence, Attitudes and the Role of Universities' (2010) 32 *Sydney Law Review* 113.

⁴ Norm Kelk et al, Courting the Blues: Attitudes Towards Depression in Australian Law Students and Lawyers (2009) Brain & Mind Research Institute Monograph <<u>http://www.cald.asn.au/docs/Law%20Report%20</u> Website%20version%204%20May%2009.pdf>(page 12).

⁵ Edmund Tadros, 'Law Degree the New Arts Degree, Students Warned', *Australian Financial Review* (online), 14 February 2014 http://www.afr.com/news/policy/education/law-degree-the-new-arts-degree-studentswarned-2014/0214-jgegs.

⁶ Edmund Tadros, 'Law Degree the New Arts Degree, Students Warned', Australian Financial Review (online), 14 February 2014 http://www.afr.com/news/policy/education/law-degree-the-new-arts-degree-studentswarned-20140214-jgegs-"; Urbis, 2011 Law Society National Profile: Final Report (Urbis, July 2012).

⁷ Neil McMahon, 'Law of the Jungle: Lawyers Now An Endangered Species', Australian Financial Review (online), 11 October 2014 http://www.smh.com.au/national/newscustom/law-of-the-jungle-lawyers-now-anendangered-species-20141011-114u91.html

the answer one day may change the next, with legislative changes or a court decision. Where the law does provide an answer, it may be one that the young lawyer (or their partner or client) does not want to hear.

In the past two decades, many leaders in the profession – judges and senior counsel – have "come out" and spoken about their battle with depression. The profession has reacted to such revelations with support and admiration for those who have spoken out. The professional achievements of some sufferers show that depression is no impediment to success, provided that it is acknowledged and treated.

Earlier this year, at a national forum on the mental health and wellbeing of law students and lawyers, Justice Shane Marshall, of the Federal Court of Australia, spoke openly about how the law has contributed to his own battle with depression, which he dates back to law school days. He counselled:

> [D]epression is a critical issue for law students and young practitioners. It can no longer be treated as a side issue. Active planning to assist students to combat it is a necessity – not an option.

He reassured those who are struggling with mental health issues that they are not alone:

The most significant matter for law students, academics and practitioners to know about mental health (and Judges too for that matter) is that you are not alone and almost certainly there will be someone that has experienced exactly what you have experienced. Knowing that you are not alone and that there are people who have risen to high levels in the legal profession or academy, who have struggled with issues that you too have struggled with, should be a source of great encouragement.

This is sound advice. The legal profession has a strong culture of collegiality and mentoring. It is important that senior professionals within the workplace create a happy and supportive working environment, remain aware of the risk of depression and make it easy for junior (and senior) practitioners to seek help. All practitioners should keep a lookout for their colleagues, and be prepared to offer both professional and personal support. Professional bodies can also offer support or put their members in touch with support agencies, and will respect the privacy of those seeking support.

Importantly, as Justice Burns noted in his speech to new lawyers at the Supreme Court's most recent admission ceremony, "whilst a career in the law can be immensely fulfilling, it will never replace the meaningful personal relationships in your life". Be sure to take time to foster your relationships with family and friends, as they will be your support network long after you meet your billable targets or hang up your robes.

Chief Justice Helen Murrell



Health care for ACT Practising Barristers

Notice:

The last Bar Bulletin contained an article by Mr Bill Rowlings, CEO of Civil Liberties Australia. The article was clearly represented as the view of Civil Liberties Australia. It carried no endorsement from the Association. The attention of the Bar Council has been directed to comments made concerning the Eastman case. Given the currency of the Eastman case, the Council has determined that the article ought be withdrawn from the publication.

WELCOME NEW PRACTISING MEMBERS TO THE BAR

Mr Karl Pattenden has joined practice at the private Bar as a Reader and is located at Blackburn Chambers. Mr Pattenden was previously the Principal of Pattenden Law where he dealt with various commercial, alternative dispute resolution, bankruptcy, building and construction, employment and industrial matters.

Mr Pattenden may be contacted at his Chambers on (02) 6247 5040 or e| pattenden@blackburnchambers.com.au

Mr Gregory Stagg has joined practice at the private Bar as a Reader and is located at Burley Griffin Chambers. Mr Stagg previously practised at the Legal Aid Office (ACT) where he represented various Family Law and Child Welfare matters.

Mr Stagg may be contacted at his Chambers on (02) 6230 6912 or e| gstagg@bgchambers.com.au

MILESTONES - 25 YEARS ON THE BENCH THE HON JUSTICE BURNS AND MAGISTRATE DINGWALL

Congratulations to The Hon Justice Burns and Magistrate Dingwall on reaching 25 years on the Bench. There has been a tsunami of changes as to personnel, practices, evidence rules and other matters of importance during that period. The Bulletin wishes them both continued sanity and health for the next 25 years.



National Law Week Monday 11 — Saturday 16 May 2015 *"Magna Carta: Commemorating 800 years"*

ACT Bar Association Law Week Closing Drinks



Law Week proudly sponsored by



What's Law Week?

Law Week's goal is to promote public understanding of the law and its role in society. Law Week events are developed to include people from diverse backgrounds, organisations and perspectives.

Locally, Law Week is sponsored by Lawcover, and seeks to raise donations for a Canberra charity. From 2013 to 2015, Law Week is supporting the ACT Law Society Foundation, which is an enduring fund that assists local charities and other worthy causes.

You are cordially invited to the Law Week Closing Drinks!

Organised by the ACT Bar Association, the Law Week Closing Drinks is an opportunity to network and unwind at the end of a busy Law Week.

Details

- » When: Friday 15 May 2015, at 5.30pm.
- » Where: Upper floor, Treehouse Bar, Sydney Building, 32 Northbourne Avenue, Canberra City.
- » Cost: Tickets are \$35 per person.
- » Drinks and canapés will be provided.
- » Register online at www.actlawsociety.asn.au/events/category/law-week or contact nicole.karman@actlawsociety.asn.au.

For more information about the ACT Bar Association, please visit their website at www.actbar.com.au.



For more information about Law Week, please contact the ACT Law Society on (02) 6274 0300 or email nicole.karman@actlawsociety.asn.au

SUPREME COURT OF THE AUSTRALIAN CAPITAL TERRITORY

Notice to practitioners

Associate Judge

Practitioners are advised that the *Courts Legislation Amendment Act 2015* (ACT) came into effect on 21 April 2015.

Amongst other things, the *Courts Legislation Amendment Act 2015 (ACT)* has the effect of re-titling the office of the Master of the ACT Supreme Court to Associate Judge of the ACT Supreme Court. This change will have effect commencing 21 April 2015.

To avoid any confusion, the Associate Judge can be referred to or addressed in the same way as a resident Judge of the Supreme Court (that is, Associate Justice Mossop or Judge if in chambers).

A new email address has been created reflecting the change in title from Master to Associate Judge. The new email address is: <u>Associate.MossopAsJ@act.gov.au</u>. This email address is now operating.

Grant Kennealy Deputy Registrar ACT Supreme Court 28 April 2015

Recent directions in Legal Aid - update

A media statement by all State and Territory Attorneys-General was released on March 6. It was a warning to the Commonwealth that Legal Aid funding had reached crisis points. All the Attorneys declared that the recent cuts to Legal Aid funding, both the CLC's and Legal Aid Commissions, but also to the ATSILS, are short-sighted and ill-conceived. This was very welcome. But it was even more promising to see that the Commonwealth Attorney-General reinstated funding that was cut. It was a big relief to the sector!

While the Commission (and the Environmental Defender's office) did not benefit from this announcement by the Attorney, we have not been immune from the cuts in funding; indeed we lost funding from the Commonwealth when they cancelled a contract worth \$400,000.00. On top of this, due to lower interest rates, the Commission received \$415,000.00 less than it would have otherwise received from the Statutory Interest Account managed by the ACT Law Society. The combined reduction in funding this year totalled over \$800,000.00. This has been the most significant cut to the Commission in its 36 year history.

The impact on the provision of services has been mitigated by a range of saving measures within the Commission itself and a tight application of funding guidelines for grants of legal assistance (this includes to extensions of grants). These measures were unfortunate, but necessary in the present circumstances as we seek to stretch the legal aid dollar. At the same time, there remains pressure on the Commission to improve the number of grants of assistance that are made; the number of grants have been declining over the past decade.

This is pushing the Commission towards finding alternative ways of delivering legal services and making as much use of our staff as is sensibly possible. It has meant for example, that when legal assistance is granted in indictable matters, we are looking much more closely at the nature of the offence and what legal issue may need to be determined. From time to time, this has meant that we are briefing Counsel later than we otherwise would have in the past, which quite rightly is placing a higher burden on Commission staff to ensure that matters are properly prepared before they go to Counsel.

All-in-all the measures we are taking have ameliorated the impact of some of the funding cuts. Grants of legal assistance have not declined this year at the same rate, which shows a promising trend. We will continue to look at innovative ways to deliver services, and you are likely to see an increase of duty services both in the criminal, family courts and at ACAT. The other area in which we are looking is to meet the legal needs of our clients through early intervention, and so we are emphasising early dispute resolution, advice and minor assistance work - in short work that we hope will put our clients in a better position to reach a solution at an earlier point without the need for engaging in litigation. A more limited pool of funds available for litigation necessarily means we must find other ways of providing assistance.

Furthermore, recent findings of the Law Foundation of NSW and the Productivity Commission point to a profound shortfall in services in the civil area, and indicated that legal aid commissions across Australia need to pay more attention to particular disadvantaged sections of our community. In the ACT we are focusing more resources on family/domestic violence, the African communities and the Muslim community. Our work here is largely likely to be in the provision of legal information, advice and minor assistance; and also community legal education – delivered through outreach programs located in throughout the Territory.

> Dr John Boersig CEO, Legal Aid Office ACT

From the DPP

I have recently promulgated a revised Prosecution Policy for the Territory.

Pursuant to Section 12 of the Director of Public Prosecutions Act 1990, the Director may give directions or furnish guidelines in relation to prosecutions. The prosecution policy has not been amended or renewed since it was originally promulgated by the first Director, Ken Crispin QC in December 1991.

Of course there have been many changes in law and practice since that time, and the task of renewing the policy had become a pressing one. The wording of the updated policy follows closely the policies of the various states, territories and the Commonwealth. Importantly, the test in relation to the decision to prosecute remains the same and mirrors that contained in all other Australian prosecution policies. That test has well and truly stood the test of time. The policy is not intended to cover every conceivable situation which may be encountered during the prosecution process, but to provide a general guide to prosecutorial discretion and inform the community of the principles which guide the Director and prosecutors in the performance of their functions.

A key feature of the new policy is that it acknowledges and encompasses both the Human Rights Act 2004 and the Victims of Crime Act 1994, both of which post date the original policy. The revisions also encompass developments in the area of prosecution disclosure; the role of prosecutors in the sentencing process; prosecution obligations towards unrepresented accused, and the prosecution of corporations.

The new policy will be officially launched in the near future by the Attorney-General. In the meantime the new policy will be posted on the website of the Office.

Jon White SC Director of Public Prosecutions

Seldon's Corner

ATTORNEY'S EFFORTS ON LEGAL AID SERVICES

The Attorney has promised that he is addressing the shortage of funding that ACT Legal Aid Services are currently experiencing by seeking more money from the Commonwealth. We applaud this and trust that despite shortages, the ACT can itself find more funds for legal services. The Attorney has also promised a further sentencing option for the courts in the form of restorative justice. We look forward to that development also.

PAPPAS IN THE MOVIES

Anyone who has seen Russell Crowe's *The Water Diviner* would have recognised Pappas starring as the Turkish army sergeant.

PLAIN WORDS

Mal Meninga's famous exit from Canberra politics, "Bugger it, I resign", has possibly been eclipsed by a former team mate, *The Brick with Eyes*, Glenn Lazarus, who on commenting on Christopher Pyne's Education "reform" program, said on 21 January 2015 "You can polish a turd for as long as you want, it's always going to be a turd".

CHARLIE HEBDO

There can be little doubt that s18(c) of the *Racial Discrimination Act* would have been breached by the cartoon that caused the massacre. Much has been written on this matter, so no further comment is necessary.

RUMOUR ABOUT WALKER SC - UNTRUE

There is no truth in the rumour that Walker SC has been interviewed about being involved in the ancient offence of PRAEMUNIRE.





MAY 2015

15 May 2015 - ACT Bar Association's Law Week Cocktail Party at Treehouse

RENEWAL OF BARRISTER'S PRACTISING CERTIFICATES

RENEWALS WILL BE SENT OUT ON 18 MAY 2015 AND ARE DUE 29 MAY 2015

Please ensure that you commence your Pll Renewals in time for your PC renewal.

APPROVED PII POLICIES - FOR 2015/2016 PRACTISING YEAR

The following Professional Indemnity Insurance Policies were approved by the Bar Council on 28 April 2015 for the purposes of s312 of the Legal Profession Act 2006 (ACT) for the insuring year 1 july 2015 to 30 june 2016.

CGU INSURANCE LIMITED "barristers civil liability professional indemnity insurance policy" (Aon) including the Extended Continuous Cover Endorsement to be offered to new clients in 2015-16;

ALLIANZ AUSTRALIA INSURANCE LIMITED policy, "Professional Indemnity Policy – Barristers" (Willis);

AAI LIMITED (AKA SUNCORP) POLICY "Professional Indemnity Insurance Policy for Barristers" submitted by AAI Limited; and

ARCH UNDERWRITING AT LLOYD'S (AUSTRALIA) PTY LTD (MARSH).

The policies can be found on the Association's website at http://actbar.com.au/pii/

JUNE 2015

CEREMONIAL SITTING

SUPREME COURT OF THE ACT - 15 JUNE 2015 - 9.30AM

A Ceremonial Sitting of the ACT Supreme Court to mark the 800th anniversary of the sealing of the Magna Carta will be held in Courtroom 1, Supreme Court of the ACT at 9.30am.