

Public Sector

Litigation and Dispute Management

Forum 2010

Effective Strategies and Techniques, Working Models and
Tools to Enhance the Performance of Legal Professionals

FEATURED SPEAKERS



The Honourable Sir Laurence Street AC KCMG QC
Former Chief Justice; Lieutenant Governor of New South Wales



The Honourable Robert McClelland MP Attorney-General of Australia
Attorney-General's Department



The Honourable Duncan Kerr SC MP Federal Member for Denison
Parliament of Australia



Tom Howe QC Chief Counsel Litigation
Australian Government Solicitor



Ric Casagrande Manager, Legal
Australian Federal Police



Mary-Anne MacCallum Project Manager, Civil Law Policy
Department of Justice, Victoria



Virginia Martindale Managing Counsel, South Australian Government
Financing Authority, Legal Unit
Crown Solicitor's Office, Attorney-General's Department,
Government of South Australia



Associate Professor Moira Paterson Associate Dean (Undergraduate
Studies) Faculty of Law
Monash University



Janette Dines Assistant Secretary, Office of Legal Services Coordination
Attorney-General's Department



Adam Anastasi Acting Chief Legal Officer and Executive Manager, Legal
Services Divisions
Civil Aviation Safety Authority



Elizabeth Espinosa Corporate Lawyer
Sutherland Shire Council



Andrew Morecroft Corporate Counsel
SA Water



Susan Bennett Commercial Litigation and Dispute Resolution Partner
Sparke Helmore Lawyers



Paul Gooderick Director
Law In Order



Edward Sheehy CEO
Nuix



Elizabeth Harris Managing Director
Allocatur Consulting

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Day One 14 September 2010

8.30 - 8.55 **Registration and Morning Coffee**

8.55 - 9.00 **Official Welcome and Opening Remarks from the Chair**

9.00 - 9.30 **OPENING KEYNOTE PRESENTATION**

Legal Services Reform in Australia

The Honourable Robert McClelland MP
Attorney-General of Australia
Attorney-General's Department

9.30 - 10.05 **CASE STUDY**

Civil Law Reform in Victoria

Mary-Anne MacCallum, Manager of Civil Law Reform Project, Department of Justice Victoria, will discuss key themes arising from the implementation of the Victorian civil procedure reforms, which are based on the Victorian Law Reform Commission, Civil Justice Review Report 2008. Explore:

- Background to civil procedure reforms and consultation process
- Overview of proposed civil justice reforms
- Potential influence on national practice

Mary-Anne MacCallum Project Manager, Civil Law Policy
Department of Justice, Victoria

10.05 - 10.15 **Questions and Discussion**

10.15 - 10.30 **Morning Tea**

10.30 - 11.05 **CASE STUDY**

Acting for the Crown in Litigation

Virginia Martindale has 20 years of experience in major litigation as a Crown solicitor, including medical negligence claims and class actions while acting on behalf of the South Australian captive insurer. Currently "outposted" to SAFA as its Managing Counsel, she acts for it in relation to major litigation, particularly obstetric, neonatal and other high cost claims. Virginia will talk through critical litigation issues such as what the Crown can and has been sued about, what the model litigant means in practical terms, and dealing with the unrepresented litigant. Explore:

- The public purse — where does principle override cost?
- Recent amendments to SA Public Sector Act affecting litigation against Government agencies
- Court rules on dispute resolutions, such as notice before action, settlement conferences and mediations

Virginia Martindale Managing Counsel, South Australian Government Financing Authority, Legal Unit

Crown Solicitor's Office, Attorney-General's Department, Government of South Australia

11.05 - 11.15 **Questions and Discussion**

11.15 - 12.20 **EXPERT PRESENTATION**

Utilising ADRs within Government Agencies

Tom Howe QC is a respected litigator and expert in alternative dispute resolutions who has excellent knowledge

of the limitations and guidelines faced by legal professionals working for and on behalf of government agencies. In his presentation, Tom will discuss strategies that can remove barriers to alternative dispute resolutions and suggest options for identifying the right form of ADR.

He will also present examples for applying ADRs in a variety of different areas where they may not have been applied readily, such as in penalty proceedings, criminal proceedings and coercive information-gathering processes of courts and authorities.

Tom Howe QC Chief Counsel Litigation
Australian Government Solicitor

12.20 - 12.30 **Questions and Discussion**

12.30 - 1.30 **Networking Lunch**

1.30 - 2.30 **PANEL DISCUSSION**

The Model Litigant – what is best practice?

A panel of legal experts and practitioners will debate issues around the model litigant principles and guidelines, providing a brilliant opportunity for you to discuss and receive feedback on potential problems, challenges and ethical dilemmas. Chaired by Sir Laurence Street, this panel of legal professionals is likely to provide much food for thought and practical advice with their wit and experience.

Chair:

Sir Laurence Street
Former Chief Justice; Lieutenant Governor of New South Wales

Panel Members:

Janette Dines Assistant Secretary, Office of Legal Services Coordination

Attorney-General's Department

Tom Howe QC Chief Counsel Litigation

Australian Government Solicitor

Duncan Kerr SC MP Member for Denison
Parliament of Australia

Virginia Martindale Managing Counsel
Crown Solicitor's Office, South Australia

Mary-Anne MacCallum Project Manager, Civil Law Policy
Department of Justice, Victoria

Phillip Salem Chairman and Government Services Partner
Sparke Helmore Lawyers

2.15 - 2.50 **CASE STUDY**

Freedom of Information Law Reform

The Freedom of Information Amendment (Reform) Act 2010 will make a number of important changes to the Commonwealth Freedom of Information Act which are designed to further facilitate public access to information and to provide for a new review and oversight regime to be provided by a new Office of the Australian Information Commissioner. This presentation will provide an overview of key changes relevant to public sector litigation including:

- Changes to scope and operation of access provisions;
- The new category of public interest conditional exemption provisions
- The new review structure

Associate Professor Moira Paterson Associate
Dean (Undergraduate Studies) Faculty of Law
Monash University

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2.50 - 3.00 **Questions and Discussion**

3.00 - 3.15 **Afternoon Tea**

3.15 - 4.00 **EXPERT PRESENTATION**

How to Reduce the Cost of Litigation

As an accredited cost law specialist, taxing officer for the fees of trustees in bankruptcy, former editor of Butterworths Legal Costs Victoria, Elizabeth Harris, Director of Allocatur Consulting, has over 25 years experience in litigation, costs management and pricing of legal services. She will explore strategies for cost control in litigation including alternative pricing options and:

- Scoping work and assessing risks
- Potential areas of cost blowout and how to avoid them
- Use of decision trees in dispute resolution

Elizabeth Harris Managing Director
Allocatur Consulting

4.00 - 4.35 **CASE STUDY**

Natural Justice and Dispute Avoidance – Giving the Right Advice in Difficult Circumstances

While basic fairness or procedural fairness is a fundamental right when considering administrative or disciplinary decisions that will adversely affect individuals, often legal practitioners must also consider the context within which these decisions are made. During a long career with the Australian Defence Force and now with the Australian Federal Police, Ric Casagrande has been advising senior decision makers and commanders about the requirement to provide people with natural justice in many of unique situations. Natural justice issues and the role of lawyers will be discussed in the presentation drawing on some practical examples of how natural justice is a key concept that needs to be understood and applied in any effective organisation. He will discuss:

- Dispute avoidance
- Challenges in the course of natural justice
- Providing the right advice in difficult circumstances

Ric Casagrande Manager, Legal
Australian Federal Police

4.35 - 4.45 **Questions and Discussion**

4.45 - 5.15 **EXPERT PRESENTATION**

Litigation Strategy and eDiscovery

Paul Gooderick, Director of Law In Order Electronic, will discuss the current litigation strategy landscape in relation to eDiscovery and assess key trends arising locally and internationally. He will provide an overview of new technologies and work practices facilitating cost effective legal review and case preparation.

- Local and international eDiscovery directions
- Trends in litigation strategy and technology usage
- Ways to deliver effective litigation case management

Paul Gooderick Director
Law In Order Electronic

5.15 **Concluding Remarks from the Chair**

5.15 - 6.15 **Networking Reception**

8.30 - 8.55 **Registration and Morning Coffee**

8.55 - 9.00 **Opening Remarks from the Chair**

9.00 - 9.35 **OPENING KEYNOTE PRESENTATION**

Philosophy of Consensus in Dispute Management

Sir Laurence Street QC is the former Chief Justice of the Supreme Court of New South Wales. He is the current vice president and former world president of the International Law Association as well as the Convenor and Chairman of the inaugural planning committee of the Australian Commercial Disputes Centre. He has associations with a number of leading Australian and international mediation organisations. Sir Laurence is extensively published in the area of ADR and mediation and has participated in over 2,500 successful mediations. He has designed innovative techniques and combined various mechanisms for resolving complex or novel issues and will discuss techniques for increasing the odds of reaching consensus. Discuss:

- The philosophy of consensus
- Advanced negotiation techniques in dispute management
- Achieving a successful outcome

The Honourable Sir Laurence Street AC KCMG QC
Former Chief Justice; Lieutenant Governor of New South Wales

9.35 - 9.45 **Questions and Discussion**

9.45 - 10.20 **KEYNOTE PRESENTATION**

Litigation Against the State: The Executive and the Courts

As a barrister, academic, member of parliament and federal government minister, Duncan Kerr SC has a long and distinguished history of involvement on both sides of litigation for and against the State. Duncan Kerr MP will examine and discuss recent developments in the law applying to review of executive decisions. He will discuss the implications of recent High Court and other decisions which require rethinking of previous conceptions of the nature of executive and judicial power, and the availability of judicial review at federal and state levels. Explore:

- Recent developments
- Implications of High Court decisions
- The nature of executive and judicial power

The Honourable Duncan Kerr SC MP
Member for Denison
Parliament of Australia

10.20 - 10.30 **Questions and Discussion**

10.30 - 10.45 **Morning Tea**

10.45 - 11.20 **EXPERT PRESENTATION**

Practical Litigation Strategies and Solutions

Susan Bennett, Commercial Litigation and Dispute Resolution Practice Group Leader, Sparke Helmore Lawyers, will discuss practical litigation strategies and solutions. Explore:

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Dispute Avoidance, Dispute Management and Dispute Resolution

- Practical litigation strategies and solutions
- Examples of cases
- Litigation strategies

Susan Bennett Commercial Litigation and Dispute Resolution Practice Group Leader
Sparke Helmore Lawyers

11.20 - 11.30 Questions and Discussion

11.30 - 12.05 CASE STUDY

Dispute Management

As an in-house lawyer with over 30 years experience in corporate, banking and finance, commercial, infrastructure and public law, Andrew has in his current role as Corporate Counsel at SA Water provided advice and managed many disputes within a large government public corporation. In this session Andrew will:

- Examine the role of a public corporation such as SA Water within government and complexity of disputes that arise in such an organisation
- Explore claims that arise from the failure of public infrastructure (i.e. water mains)
- Discuss the relationship between dispute avoidance and dispute management within SA Water

Andrew Morecroft Corporate Counsel
South Australian Water Corporation

12.05 - 12.15 Questions and Discussion

12.15 - 1.00 ROUND TABLE DISCUSSION

Ethics and the Law – Public Sector versus Private Practice

How ethically aware are you? Are ethical obligations for public sector lawyers different to private practice lawyers? What ethical dilemmas have you come across that your peers can give you advice on? These facilitated group discussions will provide you with the opportunity to debate and talk through current developments in ethics and the law with the focus on Public Sector legal practice.

Facilitator: To be Confirmed

1.00 - 2.00 Networking Lunch

2.00 - 2.45 EXPERT PANEL DISCUSSION

Electronic Discovery – Managing Evidence and Information in Litigation

Inadequate management of information and evidence can create serious barriers to fully understanding the weaknesses and strengths of a case, advising clients, and creating a desirable outcome in litigation.

A panel of experts will discuss modern approaches to electronic discovery, including the collection, processing, analysing and reviewing of electronically stored information in litigation cases.

Use this opportunity to get advice from the experts on how to better manage electronic evidence and large volumes of information. Discuss how to:

- Achieve genuine early case assessment
- Best manage large volumes of information
- Identify key facts more quickly

Facilitator: Rod McKemmish Forensics Director,
KPMG Forensic

Panel: Eddie Sheehy CEO

Nuix; and forensic data and litigation support experts

2.45 - 3.20 CASE STUDY

Dispute Management Frameworks – Making the Right Choice

Working for a high-profile government agency poses its own challenges and being able to manage a dispute properly can be fundamental to keeping the public profile of an agency positive. Adam Anastasi has extensive experience as a solicitor and has been actively involved in the creation of dispute management frameworks that deal with these everyday challenges in his current role with the Civil Aviation Safety Authority. Adam will talk through a few of the challenges that he has faced in the course of his professional work and explain how he resolved them, leading to an overall improvement in the management of disputes within his agency. He will discuss:

- Previous challenges
- Key options available to the principal
- Dispute management frameworks

Adam Anastasi Acting Chief Legal Officer and Executive Manager, Legal Services Divisions
Civil Aviation Safety Authority

3.20 - 3.30 Questions and Discussion

3.30 - 3.45 Afternoon Tea

3.45 - 4.20 CASE STUDY

Dispute Management in Local Government

Elizabeth Espinosa has had many years experience in Public Sector legal work due to her role as a corporate lawyer for Sutherland Shire Council, one of metropolitan Sydney's largest local government councils. In this session, Ms Espinosa will discuss the issue of dispute management in regards to contractual agreements. She will also discuss the difficulties local government lawyers face when legislation does not meet the working requirements of a government organisation. Explore:

- Potential areas of dispute
- Dispute management systems
- Resolutions

Elizabeth Espinosa Corporate Lawyer
Sutherland Shire Council

4.20 - 4.30 Questions and Discussion

4.30 - 4.45 Closing Remarks from the Chair and Close of Forum

WHO WILL ATTEND

- Lawyers
- Solicitors
- In-house-counsels
- Barristers
- Legal officers
- Special counsels
- Practice managers
- Directors of legal/legislative services
- Other legal professionals

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9.00 - 12.00 WORKSHOP A

Dispute Resolution Management

This workshop will provide an overview of the integration of alternative dispute resolution in courts and tribunals in Australia and comparisons world wide. Participants are encouraged to bring case examples for discussion and the selection of appropriate dispute resolution mechanisms for the resolution of particular disputes. This workshop will provide practical strategies and solutions to help Public Sector lawyers and other legal professionals manage legal disputes more efficiently and effectively. This workshop will focus on the prevention, management and dispute resolution processes for the resolution of litigated and un-litigated disputes. This session will include discussion about key emerging issues, including the ramification of mandatory referral to ADR; the extent of confidentiality and privilege attributed to ADR processes; accreditation of ADR practitioners; immunity of ADR practitioners; ensuring consistency of the quality of the provision of ADR services provided; the extent that courts and tribunals engage in the provision of ADR services; the provision of ADR services in the broader context of the public interest; and the need for uniformity of approach. It will also cover the development of a multi-door court system and:

- The review of the integration of ADR in courts and tribunals
- Mediating matters in different jurisdictions including an analysis of different trends and the development of practices notes governing the process.
- The use of expert determination and case appraisal and the effectiveness of the processes
- Myths and bad practices including current trends and problems and the duties and responsibilities of legal practitioners
- Review of cases such as Sharjade Pty Ltd v RAAF (Landings) Ex-Servicemen Charitable Fund Pty Ltd; FMG Pilbara Pty Ltd v Cox; Newcastle City Council v Wieland and others
- An examination of the effectiveness of dispute resolution clauses
- Civil justice reforms in Australia

Expert Facilitator: Mary Walker Barrister

Mary Walker has a B.A.Hons LLB. She was previously a solicitor with Henry Davis York in the General Litigation Department and later in its commercial department. She was admitted to the Bar in 1988. She was Chair of the Bar Association's Arbitration and ADR Committee 1996-1999, a member of an Australian Law Reform Commission Working Group reviewing the Federal Justice System 1998-1999 and a member of the Law Council ADR Committee from 1995-2003, and she has been Chair of the committee since 2004. Mary is currently a member of the Supreme Court of NSW ADR Committee. She was sponsored by Harvard University in 1995 to teach mediation with Professor Frank Sander author of *Dispute Resolution: Negotiation, Mediation and Other Processes*. She was previously a member of the National Mediation Accreditation Committee and is currently a member of the International Mediation Institute Standards Commission. Mary has an extensive practice in ADR and mediation and has advised and implemented many ADR systems in different jurisdictions. She was a lecturer in the Commercial Mediation post-graduate Law Degree, the University of Sydney 2009, and guest lecturer in ADR at the University of Sydney Civil Justice Centre within the Law Faculty in 2010.

12.00 - 1.00 NETWORKING LUNCH

1.00 - 5.00 WORKSHOP B

How to Manage Your External Spending

This workshop will train Public Sector legal professionals to become more skilled in the management of relationships with panel firms and external counsel to help ensure the agency is in control of the scoping of work to be performed, the composition of the legal team performing the work (including counsel) and legal expenditure incurred. The workshop will look at how efficiencies can effectively be driven through managing the relationships with the panel firms at a strategic level and agreeing cost-estimates/budgets at the commencement of proceedings. It will also provide a forum for open exchange of information to help provide solutions to principal litigation challenges. It will cover:

- How to project manage litigation
- Fee issues including completing cost-estimates with panel firms and briefing of counsel
- Negotiating and agreeing efficient processes in the handling of litigation
- How to enable the linking of systems for the payment of costs, running of cases, gathering of information and management of documents
- Direct briefing of counsel

Expert Facilitator: Joanne Rees CEO

Allygroup

Joanne Rees is a strategic legal management advisor and has worked in Canberra and Sydney as both a barrister and solicitor specialising in commercial litigation in a legal career spanning 30 years. Joanne has vast experience advising key government accounts including the ATO, NSW Treasury, NSW Department of Transport and Infrastructure, and others. Joanne has been appointed by the Federal Government as the Convenor of the Corporations and Markets Advisory Committee which provides independent advice to the Australian Government on issues that arise in corporations and financial markets law and practice.

ABOUT THE EVENT

In recent times legal professionals working in the Public Sector have seen huge challenges with the introduction of new government guidelines for managing and resolving disputes, where the avoidance of costly court proceedings is a dominant concern. The Public Sector Litigation and Dispute Management Forum provides practical strategies and solutions to help Public Sector lawyers and other legal professionals manage legal disputes more efficiently and effectively. It will highlight through case studies how agencies are improving in this area and stimulate debate with expert presentations. This unique interactive learning experience has the primary goal of helping Public Sector legal professionals become more effective in the avoidance, management and resolution of legal disputes.

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