

# BALANCE

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The Official Publication of the Law Society of the Northern Territory

## President's Year in Review

### National Issues

Upon my election as President of the Law Society on 30 August 1994 I mentioned to you that having then been Vice-President for four years I had the advantage of that experience to appreciate the time and effort put in by past Presidents and in particular the two previous Presidents, to ensure the rights of members were protected and their views properly presented. I must say that having been President for a year I really only now appreciate the time and effort required.

As predicted the push for a National Legal Services Market dominated the Law Council of Australia meetings. Not surprisingly, the time set aside at the programmed Law Council meetings was insufficient to debate all the important issues of a move towards a National Profession and ultimately a National Practising Certificate.

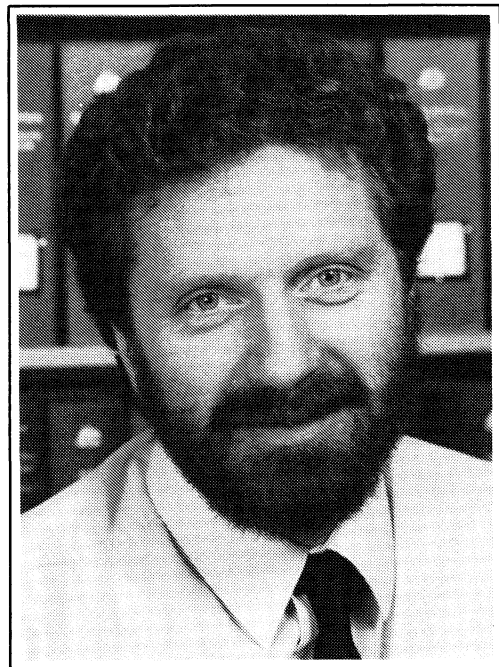
Additional meetings were necessary with the result of additional cost to constituent bodies. I pause to note that the introduction of a national practising certificate will cost constituent bodies in excess of one million dollars per annum in lost income from in particular visiting counsel practising certificates.

As I have pointed out in my monthly column, the hardest hit constituent body in this regard on a percentage of income basis will be this Society. We will lose approximately \$65,000 in income from the issue of practising certificates to interstate practitioners. The benefit of a national practising certificate to legal practitioners will be the freedom for all practitioners to practise in all Australian jurisdictions without the need for additional admissions and several practising certificates.

The considerable amount of time given to the development of a National Legal Services Market as envisaged by the legal profession itself was not in my opinion wasted.

It was, I suggest, better for the profession to put its views on how a national legal services market should operate rather than to wait and have a completely unacceptable model forced on us by legislation.

Although we have not been completely successful in having all our proposals accepted, the fact that the profession was able to present a united front was I believe a great achievement and has improved the



*Terry Gardner  
President*

image of the profession in the eyes of the Federal Government.

### Northern Territory Issues

On the local scene, the matter that raised the greatest debate was the Euthanasia Bill presented by the then Chief Minister, Marshall Perron.

The Society was asked for its views by so many groups and so many reporters on so many occasions, I lost count.

Council discussed the Bill at length and decided that as there were diverse views on the subject among members of the Society and for that matter Council itself, the Society could not nor should it have a view.

You will be aware that Peter Tiffin arranged a very successful CLE in April this year titled, "Legal Implications of the Euthanasia Bill". I believe that as a result of that CLE session, several recommendations made were incorporated in the re-write of the Bill.

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Of the many matters put to members for comment the two which resulted in the greatest response were "a minimum wage for articulated clerks" and "the continued appointment of Queen's Counsel."

The submissions for and against the fixing of a minimum wage for articulated clerks were evenly divided. However, it was apparent that any change in the current situation could result in a reduction in the number of places available for articulated clerks. Faced with this dilemma Council decided that it was best not to upset the status quo and to rely on members of the profession to ensure articulated clerks were fairly treated.

The overwhelming response from members on the question whether the system of appointing Queen's Counsel should be continued, was that it should be abolished.

A fall back situation recommended by several members was that the current system should be replaced by a recognition of excellence in the legal profession as a whole and not just of members of the independent bar. I have made members' views known to the Attorney-General and to the Chief Justice.

Following submissions from members, Council once again reviewed professional conduct rule 3 and in particular that section which currently prohibits practitioners from using the words specialist or expert (and derivations thereof) in advertising.

Several members complained that conveyancing agents were allowed to use specialist and expert in advertising and the rule as it stood discriminated against some practitioners who practised predominantly in conveyancing.

Following considerable debate it was resolved to abolish the rule against using the words specialist or expert in advertising with the provision that if a practitioner used specialist or expert in advertising he or she may be called upon to justify such a claim.

As provided in the Legal Practitioners Act, the proposed amendment

was forwarded to the Chief Justice for approval. The Chief Justice has refused to approve the amendment in its current form and referred it back to the Society with the following comment:-

*"The proposed Rule 3(2) troubles me. It means that the Chief Justice will enable a practitioner to hold himself or herself out as a specialist or expert until he or she is called to account and evidence is made available to prove the claim. I seek your advice as to the criteria by which it is proposed to assess such claims."*



*1995 Opening of the Legal Year  
Alice Springs*

I have made further representations to the Chief Justice and it is hoped the problem can be resolved shortly.

During the year I met with the former Attorney-General, Mr Fred Finch and with the Chief Minister Mr Shane Stone. I record my thanks to Mr Finch for his willingness to discuss matters of mutual interest and understand the problems currently confronting the profession.

At my meeting with the Chief Minister he indicated his continued support for the profession and said that he was eager to see the Northern Territory as the venue for more national and international legal seminars and conventions.

## Complaints

Following the receipt of several complaints it became necessary for me to raise the matter of practitioners treating other practitioners with the utmost courtesy and fairness. As I said in my column in "Balance" it seems strange to me that it should be necessary to

include such a rule in the Professional Conduct Rules.

Darwin, Alice Springs and Katherine are small centres and the legal profession in the Territory is still relatively small. It is hoped that practitioners will make every endeavour to settle their differences without the need to lodge a formal complaint with the Society.

I remind practitioners that there is a system in place at the Law Society whereby members are able to obtain ethics rulings which could resolve a lot of the problems now occurring.

Additionally, many complaints have been received from government employees and members of the public concerning lack of courtesy by practitioners. This again reflects badly on the profession as a whole.

I am able to report that the Executive Officer is able to resolve the majority of complaints with a telephone call and I wish to thank all those practitioners who have co-operated notwithstanding that on most occasions they are not at fault.

The system of resolving complaints informally saves the Society and members a not insignificant amount of time and expense. The vast majority of complaints received are in respect of costs, delay and the failure to answer correspondence and return telephone calls. There were occasions when members of Council were berated in respect of the Society's disciplinary role - the Complaint being that the Society existed to protect members of the profession not to pursue them.

The hallmark of a profession is its accountability. The Society exists, in part, to demonstrate that accountability. Accordingly I make no apology for the exercise of the disciplinary function.

## Public Purposes Trust

As a result of the special grant to set up the Legal Aid Contingency Fund and falling interest rates, no major financial commitment was made over the past year. Once again the Trust funded several smaller community projects. Law Week and the Mock Trials received the greatest financial support. These events also resulted in

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the greatest interest from the general public.

It is interesting to note that the Law Week programs and the Mock Trials comply with the majority of the objects of the Trust. Other projects funded by the trust include, continuing legal education videos, International Jessup Mock Trials and Domestic Violence Report.

## Centre for South East Asian Law

Although we have not received formal notification, I understand the Act amending the Legal Practitioners Act authorising the Attorney-General to direct the trustees of the Fidelity Fund to pay from the fund \$750,000 has become law and the direction given.

## Legal Practitioners Act

The Northern Territory Attorney-General's Department is undertaking review of the Legal Practitioners Act and has sought comments from the Society concerning problems with the current legislation. In an endeavour to obtain the views of as many of the profession as possible. Council resolved to establish a Legal Practitioners Act Review Committee.

The establishment of such a committee was advertised in "Balance" and at the same time asked for practitioners interested in being members of the committee to contact the Society. Unfortunately, to date only one practitioner has indicated an interest in being a member of the committee.

The Attorney-General's Department will shortly issue a discussion paper on the Legal Practitioners Act and I once again ask for your assistance to ensure that the Act we get is the one we want.

## Member Services

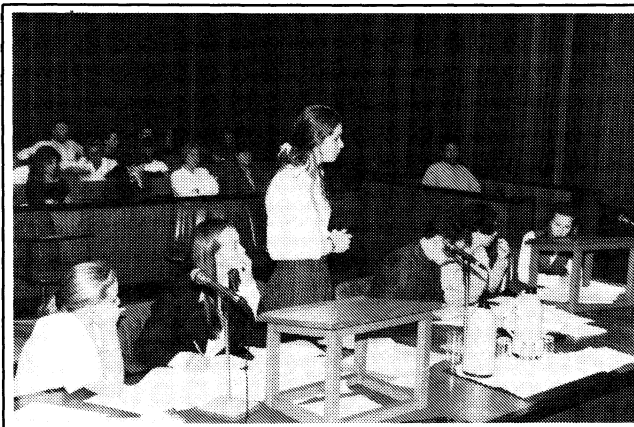
Once again the number of businesses offering discounts to members has increased with the addition of discounts on subscriptions to popular magazines and several retail business

outlets including Chandlers.

It is pleasing to note that members are now using many of the discounted services negotiated on their behalf and in particular the Qantas and BP schemes and the national fleet owners discount on motor vehicles.

Feed back from members indicates there are considerable savings to be made on most purchases at participating retail outlets. One purchase of a video cassette recorder resulted in savings exceeding the cost of membership of the Law Society.

I urge you to take advantage of the member services whenever possible as a lack of support has resulted in some organisations withdrawing from the scheme.



*The case unfolds at the Final of the Interscholar Mock Trial Competition 1995 – Alice Springs*

## Balance

Balance is at the cross roads at the moment. We need more local content which means the contribution of articles by members.

The articles need not only be on legal matters but could include material on overseas or interstate trips or visits to unusual or excellent restaurants. Photographs of people and places of interest to members would also be appreciated.

In the not too distant future, I would like to see "Balance" printed in colour. This would require more advertising to raise the revenue to pay for the increased printing cost. This can only be achieved if we make "Balance" more attractive and interesting to advertisers. I would like to thank all those who have contributed to "Balance" over the year and particularly those who have given up their time to prepare the Supreme Court notes.

## Secretariat

For those of you who have not visited the secretariat of the Law Society it consists of the Executive Officer Jim Campbell, Office manager Julie Davis and Receptionist and all-rounder Fiona Halliday. Member Services are currently being undertaken by Vicky Civils-Wood on a consultancy basis.

There have been further upgrades to the telephone, facsimile and computer systems which have once again resulted in a reduction in the response time when dealing with requests for the issue of documents and the supply of information.

I have received compliments from interstate practitioners on the efficiency of the operations of the secretariat.

The one matter of concern to me is

the poor condition of the premises out of which the Law Society operates. I have asked the Executive Officer to investigate the cost and availability of improved premises and to report back to Council.

I know fellow Councilors will join with me in thanking Jim, Julie, Fiona and Vicky for all they have done for the Society over the past year and in particular for making my role as President much easier.

I would also like to thank all Councilors for their assistance.

## Professional

### Indemnity Insurance

It is with much pleasure that I am able to announce that professional indemnity insurance premiums for 1995/96 are set to drop by some 18% for \$500,000 cover and with considerable savings on top up cover.

There are some minor points to be resolved with the broker but these should not effect the savings I have mentioned.

As the premium for \$1,000,000 cover in 1995/96 is not much more than that paid for \$500,000 cover in 1994/95 I believe it is wise for all practitioners to consider the additional cover. It is noted that 60% of NT practitioners already take out cover of \$1,000,000 or above and that most other jurisdictions are moving to have cover of \$1,000,000 as the minimum.

— Terry Gardner