

Interview: Mark Holden

Mark Holden is an Australian music industry legend. From Countdown to “Touchdown!” on Australian Idol, he is well recognised as a cultural reference point for multiple generations. But many might be surprised to learn that before he was on our screens with “Never Gonna Fall in Love Again” and “I Wanna Make You My Lady”, the Carnation Kid was three years into a law degree at the University of Adelaide. Mark left his studies behind to pursue his passion for music in 1975. After a career that took him to LA and back, including writing for The Temptations and Vanessa Amorosi, he finished his law degree in 2001, took the Bar Exam, and in 2008 became a barrister specialising in criminal and family law, which he now balances with his musical pursuits. **Isabella Boag-Taylor**, Associate at Bird & Bird, called Mark to chat about his many insights into the music industry, the legal challenges it faces, and his dual careers in music and the law.

ISABELLA BOAG-TAYLOR: When I was researching for this article, I found that the law is much more of a common thread for you than people might assume. You first studied law at the University of Adelaide in 1972 but left just before your final exams to launch your debut album and become a Countdown phenomenon. After returning to Australia from LA in 1996, you recommenced studying whilst simultaneously working to kickstart Vanessa Amorosi’s career. Then, after finishing as a judge on the inaugural run of Australian Idol, you decided to become a barrister. I’m interested to know – if you were already studying law, what drew you to the music industry, and was music or the law your first love?

MARK HOLDEN: Music was my first love. Unbeknownst to me at that time, my family has been musicians for generations. Both my parents were musical. Dad sang in the house, and Mum played the piano. I loved music but I didn’t realise that it could be a profession – I never thought of it that way. I got into music because my older brother played in a band with one of the Brewster brothers (who went on to form The Angels). In between my law lectures, I would go down to the refectory in the technical college and practise on the piano in the basement. Eventually, I decided to audition for Ernie Sigley on *Adelaide Tonight*. He took me under his wing, and in 1974 I went on a national talent show as an original songwriter. John Bromell offered me a publishing deal in Sydney, so I had to transfer my law degree to UNSW whilst I was making my first album. Juggling was



a struggle – I was performing in *Joseph and the Amazing Technicolor Dreamcoat* and hanging out with John Paul Young. Unsurprisingly, my taxation and corporations law courses were the straws that broke the camel’s back (that, and maybe the article for the student paper that I wrote titled *F*** Law*). I decided to leave my law degree to pursue music full time.

BOAG-TAYLOR: It sounds like you were basically forced to embark on a music career just to get out of doing your corporations law exams! I have read that you credit your legal studies in the 90s with your best

song writing – saying it helped “free up” the creative part of your brain. Are you able to speak a bit more about the relationship between your creative and legal interests, how they coexist?

HOLDEN: Well, I squeezed my creative brain for 15 years in Los Angeles. Anyone can be a songwriter, but being a hit songwriter is an entirely different proposal. And even fewer people can make a living from it. So I really squeezed my brain to make it work. When I came back to Australia in the 90s with a wife and a baby, I had no idea what I was going to do. I decided to go back and finish

my law degree. I really enjoyed it the second time around – I could see the extraordinary value of the laws we have in Australia, which are so much better than a good deal of the world. It was difficult in my forties to engage again and start from scratch but I got back into it. By that time, I hadn't used the song writing side of my brain for a while, but when I met Vanessa, the songs just popped out. Maybe part of it was the fact that I had started again, in a sense. That's the extraordinary thing about art.

BOAG-TAYLOR: You've spoken about how the legal profession is an opportunity to advocate for people and make a difference in their lives when they are facing adversity. There are also many power imbalances in the music industry (for example, the recent copyright controversy surrounding Taylor Swift's rerecording of her masters, and Megan Thee Stallion taking her label to court over the "unconscionable" terms of her contract). From your unique position, what do you see as the major legal challenges facing the music industry?

HOLDEN: When I went back to university, my intellectual property lecturer was against the concept of copyright. He took the very stern view that there shouldn't be such a thing. My response to him as a songwriter was, "There are people like me, and many of us, for whom copyright is incredibly important, even if it's a creature of statute and not a natural thing."

I once had a conversation with the late Michael Gudinski about the changes that have come through in the music industry, and the way the business used to be structured. When he and I were coming up, music came in a cardboard box that was put on the back of a truck, then on an airplane, and unpacked in a country town. The artist and the record company were on one side, and the songwriter and publisher were on the other. For a record to come out, the record company had to actually manufacture a physical thing, as well as artwork, booklets

– all that cost a lot of money. So in those days there was justification for the statutory rate scheme, where less than 10% of the income generated from the record went to the owners of the copyright in the song. I said to Michael, "How can we now accept the status quo, with the songwriter and publisher still only left with less than 10% of the income, when the whole issue around the physical cost of making a record has disappeared for the record label?"

BOAG-TAYLOR: Of course – because streaming is everything now. What is it like to be an artist and songwriter whose music has appeared on both physical records and streaming services?

HOLDEN: In 1999, I cowrote the song "Absolutely Everybody" with Vanessa Amorosi, which was a hit in 20 countries around the world. Not long after that, Spotify was invented in Sweden. I own my own publishing, which means that when "Absolutely Everybody" is streamed today, my half share of the song writing credit on that song gives me 0.00015 dollars per stream. When that song is streamed 1 million times, I earn 150 dollars. And 10% is collected by a publisher in Europe. For comparison, in 1978, my album *Encounter* sold 80,000 copies. At that time, I was being paid 5% (which is an absolutely tiny amount) but it meant I earned \$35,000 from my very first record. In 1978, I used \$30,000 of that money to pay for my grandparent's house in Adelaide. One album made me enough cash to pay for a house at 24.

I have always felt that we need more innovation in the law. For example, the concept of copyright persisting seventy years after the death of the author is absurd. My very first hit was called "Never Gonna Fall In Love Again". It was written by Eric Carmen, who based both that song and a little song called "All by Myself" on the symphonies of Sergei Rachmaninoff. That meant that although Rachmaninoff died in 1943, his grandchildren received income from the 20 million copies of "All by Myself" sold by Celine

Dion. Is that the point of copyright? I always thought it was to provide the creators with some kind of living.

BOAG-TAYLOR: The bulk sale of publishing rights by artists has been at the forefront of the discussion recently, with musicians such as Bob Dylan and David Crosby cutting deals. How difficult is it to retain your publishing rights as an artist?

HOLDEN: People like Bob Dylan own their publishing from the start, but not everyone has the wisdom to do that. For some, striking a publishing deal is the only way to earn money, and to make the contacts you need to push ahead in the industry. It took me until I wrote "Lady Soul" for The Temptations to manage to hold onto my own publishing rights – and that was six years after I started in the industry. Publishing is a nickel and dime business, it's about collecting all the tiny streams of money.

BOAG-TAYLOR: Many people would assume that there is a degree of overlap between your experience as an accomplished live performer and your role as a barrister. What skills have you gained in the music industry that have been helpful to your legal career?

HOLDEN: My role as a barrister is often about managing people and managing projects. Whilst I appear solo in the Magistrates Court, if it's big and serious then once I get the work I will find the best QC for the job. Bringing a team of people together is very central to the work of song writing, recording, and artist management. But in terms of being a performer? There's no comparison. Of course in court there is the same intensity and anxiety, but in criminal and family law people's lives are on the line. If you make a bad record, maybe you don't get picked up, or you lose some money. In law the stakes are so much higher. So the comparison is more in terms of the song writing and record making – both, like law, are about problem solving. You have to find the right people for the work, and get the best ideas in the room. Fortunately, the Victorian Bar is an amazingly open environment where you can walk

into a colleague's chambers and just ask a question.

BOAG-TAYLOR: Yes, and 'junior' lawyers are often junior not just in legal experience, but also in life experience. Does having some pretty extraordinary life experience give you a different perspective?

HOLDEN: Coming to the legal profession later in life allowed me to have the confidence to back myself without worrying what people think. One of my funniest moments in court was when the Magistrate announced, "I wish you'd stop lecturing me" and I replied, "I believe I have to." Life experience really gives you something to offer your clients. In music cases, sometimes it feels like the legal profession doesn't quite understand what it means to have your musical creation – something that is incredibly meaningful to you – adjudicated. I am lucky my musical endeavours haven't ended up in litigation.

I have also been lucky in my career to be able to pursue cases that I really care about on a pro bono or

no win no fee basis. I fought for two years for an Indigenous woman to get the care of her grandchild that had been born in prison. All I made after two years was 800 dollars, but I didn't care - we got the child back. It is one of my proudest moments.

Kyle Sandilands once asked me to be a judge on his "Trial by Kyle" show – I was apparently the only lawyer he knew that he actually liked. So you could say I passed up an opportunity to be appointed to the bench!

BOAG-TAYLOR: I'm sure there are plenty of law students staring down their final exams, hoping they can become music sensations instead. Do you have any advice for people who have dual interests in the creative industries and legal profession?

HOLDEN: That's an interesting one, because when I first started at law school, about 30% of the people I studied with ended up going into something creative. The advice I would give is: as tough as it is, and as difficult as it is – whatever it is that you want to do – if you do it well enough and long enough, the money

finds you. I am living proof of that! I'm a journeyman songwriter, not a virtuoso, and by sheer willpower and by working hard, the opportunities came to me. As a young man, I would never have imagined the career that I've had.



Isabella Boag-Taylor, Associate at Bird & Bird

A Discussion with TIO Judi Jones

In her capacity as the leader of the nation's highest volume complaint handling service, the Telecommunications Industry Ombudsman (TIO) Judi Jones joined CAMLA for a webinar to discuss out of the courtroom dispute resolution and the future of the TIO in the ever changing regulatory landscape. Chaired by Joel Von Thien from Clayton Utz, the TIO outlined its remit (namely, to deal with individual and systemic complaints related to phone and internet, assist with Land Access objections, provide fair and independent dispute resolution services, and implement benchmarks set by the Government) as well as the dispute resolution process for members and complaints.

Ms Jones, who is stepping down from the role in 2022, indicated that the future looks positive for the TIO with new Terms of Reference being introduced next year, a transformation project on the cards and a potential role in regulating digital platforms complaints.

Some further interesting facts coming out of the seminar:

- The TIO also publishes data publicly which provides information and analysis to stakeholders and supports the evolution of the regulatory frameworks. Last financial year, the TIO was pleased to see a 6.1% decrease in the number of complaints – however it still fielded 119,000 complaints from individuals and small businesses. The main culprits

for complaints were poor customer service and billing issues. There was also a sharp increase in the number of complaints regarding lack of accessibility / the provider being uncontactable.

- The new Terms of Reference include the ability to 'join' members who aren't party to the complaint.
- The TIO is undertaking a transformation project "Echo" designed to simplify the way consumers and members engage with the TIO.

A resounding thank you to Clayton Utz for hosting the event and to the TIO for sharing these insights with CAMLA and its members.