

Government Lawyer

Newsletter of The Law Society of NSW's Government Solicitors Committee



The Law Society
of New South Wales

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- A Day in the Life of...
- Practising Certificate Information for Government Lawyers
- Dealing with unreasonable Conduct: From Conspiracy to Collaboration
- Depression – do you know the signs?
- Excellence in Government Legal Service Award 2009
- Enhancing the experience of Law Society Membership for Government Lawyers
- Your opportunity to contribute your views about CLE options for government lawyers –
Electronic Survey coming in May 2009

Chair's Message

by Doug Humphreys

Chair, Government Solicitors Committee

*Welcome to the first edition in 2009
of the Government Lawyer newsletter.*



Doug Humphreys was educated at UNSW graduating with a BComm/LLB in 1980. He was admitted as a solicitor in NSW in 1981. He worked for 3 years in private practice before joining what is now the Legal Aid Commission of NSW, where he specialised in the criminal law area. In 1993, he was appointed as the Director of the Criminal Law Division of the Commission. He held this position until 2003, when he was appointed to his current position as the Principal Registrar of the Commonwealth Administrative Appeals Tribunal.

Following his appointment to the AAT, he completed an LLM at Monash University, majoring in tribunal procedures. He is also an accredited specialist in criminal law.

He was elected to the Council of the Law Society in 2008. In addition to being Chair of the Society's Government Solicitors committee, he is Co-Chair of the Licensing Committee, Chair of the Children's Law Specialist Accreditation Committee and a Member of the Professional Conduct Committee.



It is with great sadness that I note the recent death of Matt Laffan, government solicitor, NSW DPP lawyer and champion of the disabled. In his 38 years, Matt climbed more mountains than Edmund Hillary. He never let his disability stand in the way of extraordinary achievements at a professional and personal level. His life is an example to all of us of the possibilities in life if you simply refuse to say I can't.

→ As the Chair of the committee that is devoted to looking after the special interests of Government lawyers, I am keen to obtain your feedback as to things the Society can do to enhance the value of your membership of the Society. A feedback form is contained within the final page of the newsletter. Please take the time to let us know your thoughts.

→ Please note the article on Practising Certificate Information for Government Lawyers. A number of frequently asked questions surrounding unrestricted and restricted practising certificates have been answered and I encourage you all to read the section carefully.

→ One area that is being considered is the creation of a new accredited specialty in "Government and Administrative Law". This would provide an avenue for specialist skill to be recognised. Would you or your colleagues be interested in such a proposal?

→ The committee will again this year be running its Government solicitors conference. I hope that we can get a mixture of speakers that will entice your attendance. I remind you all to start thinking about nominations for the Excellence Award in Government Legal Service and the John Hennessey travelling fellowship. This year's conference and dinner will be on Tuesday 15 September 2009. Please mark your calendars.

A Day in the Life of...

Michael Antrum

General Counsel
Office of the General Counsel, NSW
Police Force



In another life, as a budding young journalist who decided to study law, my editor cautioned me against adopting the LLB. "A sea of paper, withering words, and endless process" he said.

Damn it, he was right.

But there are the occasional bright spots of adrenaline-fused conflicts and arguments that make it all worthwhile, and the police legal practice is so diverse that even if mired in process, at least you get to do it in a different jurisdiction each time.

As General Counsel for the NSWPF, I head up what is, in effect, the agency's civil law capability. As a result of recent reforms, the practice has been strengthened and restructured to achieve optimum outcomes using both in-house and external legal resources. The Office of the General Counsel (OGC) has responsibility for employment law, industrial law, commercial law, insurance litigation, civil dispute resolution, public order advice, in addition to looking after subpoena management and witness liaison.

Most days start with a "sifting of the colours". Green papers, yellow papers, pink papers. Each colour denoting how far up the chain of command the advice will go. I knew that my keen attention in kindergarten would finally pay off. I read all advices prepared by my solicitors, and for the most part, add comforting words of concurrence at my signature block. Sometimes, I have an original idea, and either talk to the author, or send it back for further investigation and review. I don't like to send "dissent" up the chain, it simply places the client in the position of having to choose between two persuasive points of view. Of course, this is sometimes unavoidable, but usually a consensus is achieved.

Once the colours are out, the more difficult recommendations emerge in draft form. This is where, surprisingly, my opinion is actually sought.

Frequently these are issues where there is an interplay of legal, policy and political considerations and the wisdom of Solomon is called for. Unfortunately, nobody called "Solomon" works anywhere around here, so we make do. The NSWPF was very careful to ensure the independence of the OGC within the chain of command. From the Commissioner down, there is an understanding that the OGC provides independent advice, and that independence is fiercely protected by the Executive and by this office.

Depending on the complexity of the matters, the in-tray looks a bit better by mid morning. I wish the same could be said about myself. Living in the mountains means an early start, and I ain't as young as I used to be. Still, the addition of a hyper-shot coffee machine in my office is perhaps the most strategic decision I have made in my professional career. One shot of Ristretto Arabica and the world is looking significantly better. Some guests to my room wonder whether I am, in fact, a Barista. It's a vocation I'm working up to.

Time to check the new instructions. All instructions arrive in written form on our "Instructions Sheet" (I came up with that name by myself). Instructions come from, literally, the four corners of the State, and sometimes even further abroad. There are matters involving new Statements of Claim alleging malicious prosecution, false arrest, or false imprisonment. There may be police plaintiff matters regarding hurt on duty claims. There are the usual raft of human resource issues familiar to anybody who works in an organisation of 20,000 people. Commercial issues always arise in an agency that has a significant motor vehicle fleet, an impressive property portfolio, runs its own training college, and which maintains both an air wing, and maritime fleet. The new matters, big and small, are typically reviewed by myself, and then allocated to the relevant team. The matters will be entered into our practice management database and tracked from there. The same

database might “ping” me and remind that I have to follow up certain aspects on this date.

“Interruptions”, such as telephone calls and visits from colleagues for advice, are no longer “interruptions”. In the brave new customer service world, these are welcome opportunities to add value to the organisation. They take time, but we are all learning to attune ourselves to responding in a way that delivers the client not just advice, but what they need when they need it.

A normal day will often involve attending a Court or Tribunal to see how the agency's interests are fairing. This also gives me an opportunity to see first hand how our instructions are being interpreted by our external panel of solicitors, and counsel. On every day of the week, we will be appearing in a variety of jurisdictions - Supreme Court, Coroners Court, PIC, District Court, IRC - there's plenty to choose from. At the moment, we even have a special inquiry called by the Chief Justice of the Supreme Court into the conviction of Phuong Ngo. Several times a year we will be in the High Court of Australia. They promised diversity, and I've got that in spades.



People have too many meetings.

In my opinion, meetings are more often than not, excuses to kill time in an otherwise meaningless existence. Thankfully, my colleagues largely agree (or are they just meeting without me?). However, there are some meetings that need to be had, because the phone or email just can't hack it. These will be interspersed throughout the day. Hopefully, there will be coffee. Sometimes, just sometimes, there will be donuts. These are very special days.

There may be meetings with Commanders dealing with cross-border issues, local government concerns about police response, or the acquisition of new technology. Police legal work always requires a heightened sense of security around the discussion. Not only is there the usual legal-in-confidence, but the information may be subject to public interest immunity, witness protection requirements, or be otherwise operationally sensitive due to a pending or current covert operation. This requires a particular sensitivity to document security, and a knowledge of the background of all persons in the room.

One of the things I regularly do is review media footage, or a media release. The NSWPF, for operational reasons, often releases video footage.

I, or one of my legal officers, check that to ensure there are no sub judice or other legal obstacles to release. Often I see the 6pm news at 2.30pm. This is good, because I am never home by 6pm. Even once you get home, the media unit will regularly call me after hours for advice. This may entail a visit to my local police station so that I can access the Eaglenet. It seems that alleged criminals shun the 9-5 routine.

With the able assistance of my office I manage the day to day staffing and resource issues. Times are tough, and we have to pull our weight like everybody else. The old management ethic of never ever being satisfied with the status quo drives our enthusiasm for constant improvement, and I try to take at least a little bit of each day to ponder how we can deliver more bang for the buck. A current obsession is redeveloping our intranet site to provide more information online.

As it approaches the end of March, one must also consider one's CLE points tally. Perhaps I should attend the “Work-Life Balance” seminar? Nah, not enough time.

And finally, there is the email. The bane of modern life. How nice must it have been when you wrote a letter, with a pen, folded the paper and put it in an envelope and posted it? Perhaps in two weeks you might receive a reply. Legend would have us believe that in these times, solicitors were also exceedingly polite to each other. If it weren't for the absence of the iPod, this is a time I would have been happy to inhabit. The same people that set up ridiculous meetings also send ridiculous emails. The really crazy ones send “cc” email to people who couldn't care less about the subject matter. The military “need to know” basis is a philosophy that I think needs careful consideration in the civilian world. Email is like one of those horrible little Tamagotchi toys - you ignore it for ten minutes and it becomes impertinent and unmanageable. Take an “email holiday” for three days, and you will endure a subsequent month of pain. One slip on the email management trail, and you are unmercifully left behind. If I hear the phrase “did you get my email?” one more time from a person who sent it to me only two minutes prior to that fateful question, I swear I will not be responsible for my actions. May a virus descend upon their operating system.

Still, email is the modern day reality. So, with Blackberry ever by my side, I am the 24/7 General Counsel for the NSWPF. And I wouldn't have it any other way.

Although, once I have mastered imprinting a maple leaf design into the coffee crema, my future as a Barista is looking better.



Practising Certificate Information for Government Solicitors

Law Society Registry

The practising certificate issued by the Society reflects the conditions to which a solicitor is subject and also, the mode of practice of the solicitor (private practice, corporate or government). The certificate type and conditions are recorded on the front of the practising certificate and explained on the reverse of the certificate.

Solicitors working in government roles generally hold either an Unrestricted/Government or a Restricted/Government practising certificate:

UNRESTRICTED / Government

The holder is entitled to engage in legal practice as a solicitor in the course of employment by the New South Wales or Commonwealth government or a prescribed corporation.

RESTRICTED / Government

The holder is entitled to engage in supervised legal practice as a solicitor in the course of employment by the New South Wales or Commonwealth government or a prescribed corporation.

The difference between the two types of certificates is that a Restricted Practising Certificate is still subject to Condition 2 being the period of supervised legal practice:

*"2. Supervised Legal Practice (Statutory Condition)
The holder must engage in supervised legal practice only, until the holder has completed the period of supervised legal practice required under the Legal Profession Act 2004."*

For most practitioners, the period of supervised legal practice is 2 years.

The holders of Restricted/Government practising certificates need to ensure they have supervision in order to comply with the terms of their practising certificate and also, if they wish the work to count towards their period of supervised legal practice.

Removal of the Period of Supervised Legal Practice from a Practising Certificate

The removal of this condition is not satisfied by the elapse of time alone; this condition can only be removed by making a successful application to the Licensing Committee addressing the 'Supervised Legal Practice Guidelines'. The Guidelines are available at www.lawsociety.com.au/page.asp?partID=562. As a general guide,

submissions are usually about 6 pages in length. A supervising solicitor needs to certify that they have read the submission and have provided supervision of the work described during the period. A solicitor who holds an unrestricted practising certificate is eligible to provide supervision.

The Licensing Committee then considers the submission at its' monthly meeting. The lodgment date and meeting dates are included in the 'Supervised Legal Practice Guidelines'. The Society advises the outcome of the Meeting by letter.

→ The Society recommends that practitioners have this condition removed as soon as they are eligible. This will minimise any delay in obtaining an unrestricted certificate in the future and also, avoid difficulties in obtaining certification from supervising solicitors at a later date.

Working as the Solicitor on the Record

If a person is required to be the Solicitor on the Record for their employer, the solicitor is required to have Condition 2 (the period of supervised legal practice) AND also Condition 3 (the requirement to complete a Practice Management Course) removed from their practising certificate:

*"3. Practice Management Course
This condition requires the holder to complete a Practice Management Course before being eligible to be a principal of a law practice or a solicitor on the record for a corporation or government."*

The Society recommends that solicitors should only seek to remove this condition at the time they wish to commence as a Solicitor on the Record in order that the course is current and relevant to their needs.

The accredited providers of the Practice Management Course are the College of Law (www.collaw.edu.au) and FMRC Legal (www.fmrclaw.com). Courses are available that are tailored to government solicitors.

The accredited provider will notify the Society when a practitioner has successfully completed the Course.

An undertaking to complete a Practice Management Course will be accepted by the Society to enable a solicitor to commence practising as a solicitor on the record prior to completing the course. The undertaking is

available at www.lawsociety.com.au/page.asp?partID=562.

Practising Certificate Enquiries

A sheet detailing the 'Practising Certificate Types and Conditions' is available at www.lawsociety.com.au/page.asp?partID=562 together with other practising certificate and Registry forms.

Any enquiries should be directed to the Law Society Registry on 9926 0156 or e-mail registry@lawsocnsw.asn.au

Please Note: Local Government Solicitors holding corporate practising certificates will be discussed in an article in the next edition of the Government Lawyer.

IMPORTANT REMINDER CHANGE OF DETAILS

Solicitors must notify the Society of any change of details (eg employer, contact details) WITHIN 7 DAYS OF THE CHANGE in accordance with clause 21 Legal Profession Regulation 2005.

Solicitors can check their details at www.lawsociety.com.au Find a Lawyer. Any changes need to be notified in writing to The Law Society Registry by post, email registry@lawsocnsw.asn.au or fax 9926 0257.

Dealing with unreasonable Conduct: From Conspiracy to Collaboration

Adam Johnston
Complaints Officer, NSW Ombudsman



1. Introduction

Have you ever dealt with the person who sought a sum in compensation larger than your organisation's budget? Have you watched someone bang their fist on the table and yell that you are responsible for the fact that their whole family have been ripped off by government departments, the banks and numerous others? Have you ever been accused of being part of "the conspiracy"? However much we aim to identify our client's needs or meet their expectations there will be times when someone makes unreasonable demands, or has an unrealistic view of what we should do for them. Extreme examples of this behaviour can see an individual start with an initial complaint, which may be partially justified. If the genuine element is either missed or not dealt with, they may well make a further complaint, or a series of further complaints, adding to their original grievance further elements about the handling of their initial complaint.

Unless this process is interrupted at an early stage, some individuals become more alienated and less

open to the possibility of compromise and final settlement. Research has shown how bad this can be for an organisation, when a small percentage of clients consume a disproportionate and inequitable amount of its resources. I do not intend to discuss the research, but rather provide practical tips for dealing with the unreasonable complainant conduct.

It is useful to think of complainants and their unreasonable conduct as falling within four broad systemic categories. This can involve unreasonable persistence, making unreasonable arguments or demands, a lack of cooperation when attempts are made at resolution and, personal conduct towards your staff or other clients which is rude, abusive or threatening. If any of these behaviours are demonstrated, setting clear limits on the conduct you will tolerate and setting conditions on further discussions with the complainant are essential.

2. Preparation

Where appropriate consider the statutory protection available for apologies as a real opportunity not only to resolve a matter but to

“do the right thing”. In reading the case file look for file notes or letters which show the points a complainant and your agency might be prepared to agree on, as well as times when your organisation “got it wrong”. Admitting these early on as part of a full apology will not automatically bring a civil suit, given legislative amendments (see ss.67-69 *Civil Liability Act 2002*). However, it may well avoid a future appearance in court.

To make your apology sincere and simple, establish in your own mind what the original complaint was actually about. (Practical guidance on apologies can be found on the NSW Ombudsman’s web site, where Apologies: a practical guide is available at <http://www.ombo.nsw.gov.au/show.asp?id=452>) Look at the file in terms of times where the dispute was either misinterpreted or escalated. The apology should acknowledge these shortcomings.

You should also take a few other preliminary steps. These include re-reading (because hopefully you are already familiar with them) your organisation’s statement of values or complainant handling procedures. You may come across a vital discretionary power or process in reviewing these which had completely slipped your mind. Also, talk to your boss/client about your strategy for the meeting; there may be advice and experience they can offer. They may also be prepared to grant you additional discretionary powers or options to resolve a matter.

However, any such authority should be exercised only with a clear understanding of the circumstances under which it will be used. Judge a successful resolution by the fact that you were able to apply standard procedures without unduly troubling your superior, or calling on additional authority. Nonetheless, remember that one thing that will make an angry complainant even angrier is dealing with somebody who cannot commit to a settlement because they do not have the authority to do so. This makes it all the more important to know your agency’s procedures, and within that, what you can and cannot offer a complainant as part of the dispute resolution process. Be prepared to give brief but clear answers, to any anticipated demands which cannot be fulfilled, noting these as bullet points in your preparation.

3. The meeting

If you are having a face-to-face meeting with a complainant you anticipate may act unreasonably, ask a colleague to join you. It helps to have someone else present to take notes, help assure your own personal safety (if necessary), and provide a third party account after the meeting should yourself and the complainant ultimately disagree as to the substance of the meeting afterwards.

Some complaints are too complex to be resolved in

one phone call or meeting. Therefore, if you are dealing with someone for the first time, recognise that their desire to vent their anger at you is notionally not personal; you are merely a representative of the organisation or client whose actions or decisions have been the cause of their anger. Therefore, unless the person is violent or seriously abusive towards you directly, let them be angry. However, make sure you set some ground rules as to what conduct you are prepared to tolerate, as well as that which will terminate discussions and cause the complainant to be invited to leave the premises. Complainants who threaten harm or violence to themselves or others should never be tolerated and you must be prepared to call your office security staff or police should a threatening complainant refuse to leave of their own accord.

➔ **Your response to a complainant’s emotions should focus on three things.** Firstly, acknowledge the complainant’s anger; this is not the same as agreeing with their point of view, but rather you are accepting their view as a possible interpretation of events. For example, I routinely assure all persons who ring me that I will make a written record of their concerns, even where I determine a matter is clearly premature or outside of my authority or jurisdiction. I will also provide them with an enquiry reference number. While many people will never need the reference number, demonstrating that you take all complaints seriously builds trust and credibility.

However, this does not mean that you should be prepared to deal with the same person who contacts you repeatedly about the same issue. In counteracting persistence you need to remind the complainant that their complaint was dealt with comprehensively to your organisation’s satisfaction and that nothing further will be done. It can also be useful to advise that future correspondence will not be answered unless substantial new issues are raised, or arrange an internal protocol where only one designated officer deals with a particular complainant.

➔ Secondly, in situations where your organisation does not have the authority to deal with a complaint people like to be referred promptly to the correct organisation, so it is handy to develop a list of referral telephone numbers and mail addresses for the agencies that do similar or related work to yours. Remember, from the complainant’s perspective government is big, impersonal and demanding. Even if you think a complaint is ludicrous, never let that slip in your manner or tone. This will only antagonise the complainant. Always show respect, no matter how disrespectful a complainant may be towards you. However, you may always terminate a conversation with a complainant who is making unreasonable

demands or arguments. Time and resources otherwise available for patient, amenable clients with real problems will be lost unless you are able to tell a small minority of people that they must reconsider their position or come back with information that is both substantially new and relevant before you will further consider their complaint.

➔ Thirdly, a complainant may present you with a lot of information about things that happened in the past which cannot be changed. In such circumstances, you need to be discerning and ask the complainant to relate the information directly to why they have contacted you. In this, be polite but firm in stating that you cannot address what happened some time ago, but that you are seeking the person's help in identifying what you can reasonably do for them today. Setting these conditions means that you have defined clear circumstances where you will, if necessary, terminate a conversation to curtail unreasonable arguments or demands. You will also be better able to remain composed and in control of a situation.

Such a strategy does not invalidate the complainant's pain over past perceived wrongs, but encourages them to believe that resolution will be gained by focusing on the present and not looking to the past. Once they are prepared to accept that there are limits on what you will consider as relevant information, people are generally much easier to deal with and much more prepared to listen to you. If the complainant fails to take the agreed steps, then you must be firm in reminding them that these must be completed as agreed before you will take any further action, thereby demonstrating that a lack of cooperation will not be tolerated.

However, where complainants are clearly in a mood for compromise, asking them to help design elements of a settlement will build rapport, respect and understanding; all of which are useful if there is any possibility of future dealings. Equally, encouraging a complainant to invest their energy into a settlement means there can hardly have been a conspiracy plot directed at a complainant, if they collaborated in the design of the settlement to the dispute.

Further information on dealing with unreasonable complainant conduct, including information on training opportunities for public sector staff can be found at <http://www.ombo.nsw.gov.au>. *The Ombudsman's Unreasonable complainant conduct interim practice manual* is also available online. Strategies for counteracting unreasonable complainant conduct have been tabulated on pages 10 – 13 of the manual. The manual can be found at <http://www.ombo.nsw.gov.au/publication/PDF/guidelines/Unreasonable%20complainant%20conduct%20interim%20practice%20manual.pdf>

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Launch of Lawyers Beyond Borders

20 May
The Hon Michael Kirby
Keynote Speaker

Lawyers Beyond Borders (LBB) is an exciting initiative developed by Australian Volunteers International (AVI), Australia's most trusted name in the management of people-centered development projects and programs in a wide range of countries both in our region and around the world. We know Australian lawyers are passionate about their work and are committed to meaningful pro-bono work here at home.

LBB will offer Australia's legal, justice and paralegal fraternity access to a new, highly-integrated, operational framework providing a wide range of options to share expertise across the region. This program will be of interest to law firms, community legal organisations, law faculties, government agencies, peak bodies and courts, as well as individuals, policy-makers and community organisations involved in all areas of legal practice.

LBB will enable Australian lawyers, legal professionals, firms and other bodies to volunteer to assist in developing countries. This assistance will be able to be provided in a variety of ways including:

- Staff placements (3 – 12 months) – staff placed on assignments in developing country governments or organisations
- Shorter term inputs – task-based overseas assignments undertaken in groups or individually
- E-volunteering – building capacity of identified overseas counterparts by working together remotely on specific tasks
- Twinning – a firm or organisation in Australia twinning with an overseas organisation or government and providing a range of support
- Fund raising
- E-mentoring

Australia's legal sector has a genuine interest in supporting the development of under-resourced countries through an AVI-auspiced international volunteer program, and LBB will help meet that demand. We can harness the passion to make a difference and match this with "real-world" opportunities to change lives, all the while creating a valuable network "beyond borders"

that will play a key role in building the strength and capacity of the legal sector in developing countries in our region.

LBB will reflect the values and development philosophy which underpin AVI's core business: to build capacity of local partner organisations in developing countries as part of a longer-term development strategy. All aspects of the program will be people-centered, field-driven and strategic, reflecting the development needs of partner organisations.

It sounds ambitious, but we know Australia's legal fraternity is ready to lend their expertise, their hands and their hearts. Join us in changing nations and changing lives. The time for action is now and AVI and LBB are ready.

You are invited to
attend the launch
of Lawyers Beyond Borders
on Wednesday
20 May, 6pm-8pm.

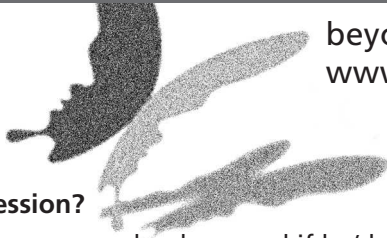
The launch will be held at the University of Sydney – Faculty of Law, Law School building F10, Eastern Avenue, The University of Sydney (near Fisher Library).

The Hon Michael Kirby will be the keynote speaker, Dr Andrew Refshauge will chair the evening and the Hon Robert McClelland will launch Lawyers Beyond Borders.

RSVP: lawyers@australianvolunteers.com
(please note places are limited)

For more information, to RSVP, or to view the invitation, please visit:
www.lawyersbeyondborders.com.

Depression – do you know the signs?



beyondblue, the national depression initiative
www.beyondblue.org.au

What is depression?

In general, a person may be depressed if he/she has had a persistently low mood over a period of two or more weeks and a loss of interest in their usual activities. Depression can also have a negative effect on a person's concentration, memory, sleep routine, motivation and activity levels, appetite, social behaviour, thinking patterns and feelings.

Changes in behaviour

In the workplace, the following changes in behaviour may be a sign of depression:

- finding it difficult to concentrate on tasks
- turning up to work late
- feeling tired and fatigued
- unusually tearful or emotional
- getting angry easily or frustrated with tasks or people
- avoiding being around work colleagues, for example, sitting by themselves at lunchtime
- finding it difficult to meet reasonable deadlines
- finding it hard to accept constructive and well-delivered feedback
- difficulty managing multiple tasks or demands
- being vulnerable to stress and anxiety
- drinking alcohol to cope with other symptoms of depression and/or anxiety
- loss of confidence and negative thought patterns
- high amounts of sick leave/absenteeism.

Please note these are only signs that an employee may have depression, it does not mean that an employee is depressed. For a diagnosis of depression, the person must be assessed by a medical practitioner or other health professional.

Do you have to tell your employer that you have depression?

Depression is a recognised disability and attracts certain rights as such under the Australia-wide *Disability Discrimination Act 1992*.

If your depression does not affect how you do your job and you are not asked directly about it by your employer, then you are not legally required to tell them about it. However, if an employer does not know you have depression,

they may not be able to provide you with assistance that you may need and it will be virtually impossible later on to prove they have discriminated against you because of it.

Telling may involve risk

The decision to tell or not is an individual one. Unfortunately there is no one single and simple answer to whether a person should tell their employer about their depression in all cases. Each situation will depend on its own facts. Below are some common reasons why people choose to tell and why some choose not to.

Why tell?

- To identify any reasonable adjustments that may be required to assist you in doing your job (such as time off to see your psychologist). Disability discrimination law obliges employers to consider reasonable adjustments for staff with disability.
- To avoid misunderstanding or labelling, and educate others in the workplace about depression.
- To protect your right to bring a formal disability discrimination complaint (if that is necessary) at a later time.
- To gain access to support/mentoring resources and information available for people with depression.

Why not tell?

- Depression may not affect how a person does their job at all; in that case it may not be relevant for your employer to know.
- You don't need any reasonable adjustments at present or in the foreseeable future.
- You have a right to privacy.
- Fear of negative attitudes and stereotypes that lead to discrimination such as harassment, dismissal, being denied job opportunities or promotions.

How do you tell your employer?

If you decide to tell your employer that you have depression, you may find it useful to think through the following issues before you take action:

- What are your reasons for telling?

- What reactions are you expecting?
- What will you do if the reactions you receive are different from your expectations?
- Who will you tell? It may be helpful initially to talk to a colleague you trust who can provide support later if you have negative reactions from others in your workplace. In addition, you may decide to ask this person to be present when you talk to your manager about your depression (this may be particularly useful if you are unwell at the time of the discussion). Alternatively, you may find it useful to have a confidential discussion with an HR officer.
- What will you say? What level of detail about your condition are you comfortable talking about?
- Remember to keep a diary of any significant events at work and copies of emails and letters sent and received. For example, when you talked to your employer about your depression and what, if any, repercussions occurred.

Organisational factors that may influence your decision to tell

- Does your workplace have a Mental Health Policy? Does this indicate that the organisation is open to helping employees who experience depression?
- Do you know of anyone else in your workplace who has spoken about their depression? If so, what happened?
- What is the level of awareness about depression in your workplace?
- What level of stigma regarding mental illness exists in your workplace?
- To what extent does your organisation support staff who are experiencing difficulties? How supportive are your colleagues?

Tips for employees

- There is no legal obligation for a potential or current employee to tell their prospective or current employer about their depression. But, it will be essential to discuss your depression with your employer if, at a later time, you decide to make a formal disability discrimination complaint about the way you have been treated.
- It may be desirable to tell your employer about your depression if it impacts on how you do your job or the health and safety aspects of your work environment, for example, if you feel that your decision-making capacity or ability to operate machinery is compromised.
- It may also be desirable to discuss your illness with your employer if it's impacting on your

work performance, especially if you are being subjected to disciplinary procedures or warnings for poor work performance. In this case you might need some workplace adjustments.

Practical ways to help someone with depression

It's not always easy to help someone who may be experiencing depression. It can be hard to know what to say or do. Here are some tips.

Talk to the person about how they're feeling.

Listen to what they're saying – sometimes, when a person wants to talk, they're not always seeking advice, but just need to talk about their concerns. Make it clear they have your full attention and you are listening properly. You may like to save any suggestions for a later discussion.

Maintain eye contact and sit in a relaxed position – positive body language will help you both feel more comfortable.

Use open-ended questions such as 'So tell me about...?', which require more than a 'yes' or 'no' answer. This is often a good way to start a conversation.

If your conversation becomes difficult or the person you're talking to gets angry, stay calm, be firm, fair and consistent, admit if you are wrong and don't lose control.

Often, just spending time with the person lets them know you care and can help you understand what they're going through.

Encourage the person to seek professional help from their family doctor or a mental health worker.

Take care of yourself. Supporting someone with depression can be demanding, so make sure you take some time out to look after yourself.

People with depression often don't see the point of doing anything and may feel that no one can really help them. Helping someone who isn't ready to recognise they need assistance may be very difficult.

DO – You can help someone by:

- Spending time talking about their experiences
- Indicating that you've noticed a change in their behaviour
- Letting them know you're there to listen without being judgmental
- Suggesting they see a doctor or mental health professional
- Assisting them to make an appointment and/or going with them to see a doctor or mental health professional



For more information about depression, effective treatments and how to help someone visit www.beyondblue.org.au or call the beyondblue info line on 1300 22 4636 (local call). For urgent assistance call Lifeline on 13 11 14 (local call).

- Asking how their appointment went
- Talking openly about depression and assisting them to find information
- Encouraging them to exercise, eat well and become involved in social activities
- Keeping in touch and encouraging close friends and family to do the same.

DON'T – It's unhelpful to:

- Pressure them to 'snap out of it', 'get their act together' or 'cheer up'
- Stay away or avoid them
- Tell them they just need to stay busy or get out more
- Pressure them to party more or wipe out how they're feeling with drugs or alcohol
- Assume the problem will just go away.

Excellence in Government Legal Service Award 2009

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'.

Lawyers employed in New South Wales by Commonwealth, New South Wales or Local Governments are eligible for nomination for the 2009 Excellence in Government Legal Service Award if their legal work:

- makes a contribution to the community that is worthy of notice
- enhances the standing of the government legal service
- contributes to good government

The Award is presented at the Annual Government Solicitors' Dinner which will be held this year on Tuesday, 15 September 2009.

Nominations are now open for the 2009 Excellence Award. You can nominate your own work or that of a colleague or staff member.

Please contact Sarah Sherborne-Higgins at the Law Society of New South Wales on telephone 02-9926 0354 or email ssh@lawsocnsw.asn.au for an Excellence Award package containing a nomination form, as well as the rules and conditions for the 2009 selection criteria.



The closing date for nominations is **Monday 24 August 2009.**



Your opportunity to contribute your views about CLE options for government lawyers – Electronic Survey coming in May 2009

A feedback form is contained on the final page of this newsletter which gives you the opportunity to provide your feedback in relation to the experience of Law Society Membership for government lawyers.

The Government Solicitors Committee is also interested in gaining your views on continuing legal education (CLE) options available to government lawyers. In early May, you will receive an email from the Law Society inviting you to complete a short online survey on the CLE needs of government lawyers. The survey will take about 5 minutes to complete. The survey is being conducted to review your satisfaction with past CLE activities and to gather your suggestions about the content, format and range of future CLE programs aimed at government lawyers.

The survey is confidential and anonymous. A report on responses to the survey will be published in the newsletter. A further opportunity to provide feedback on CLE options for government lawyers will be available at follow up meetings which will be organised to further explore trends and issues revealed by the initial survey results.



The Law Society of NSW would greatly appreciate your feedback in relation to the experience of Law Society membership for government lawyers. Feedback gathered will be used to better service your needs as government lawyers.

(including Working with barristers handbook, client brochures etc)

(Lawyers Assistance Program etc)

(discounts and specials offered by partner companies i.e. Qantas club, Voyages Hotels & Resorts, AMEX etc)

To return this form by email use the submit button:

SUBMIT

or, print and post or fax to: Sarah Sherborne-Higgins Executive Officer Government Solicitors Committee DX 362 SYDNEY Fax 9231 5809 Email ssh@lawsocnsw.asn.au

Enhancing the experience of Law Society Membership for Government Lawyers

1. How long have you been a member of the Law Society?

- less than 6 months
6 months to 1 year
1 - 3 years
4 - 5 years
6 years or more

2. What was your primary reason for joining the Law Society and why do you stay a member?

Empty text box for response to question 2.

3. Please rank the value of the following Law Society member benefits. 1 being Least Important and 5 being Most Important.

Table with 6 rows of benefits and 5 columns of ranking options (1-5). Rows include Monday Briefs, Law Society Journal, Other publications, Discounted CLE, Representation of the profession, Practice/professional support, Member privileges, and Other.

4. What kind/s of membership benefits would you like to see offered to government lawyers? (For example: enhanced services, more CLE events, further networking opportunities, more representation, other).

Empty text box for response to question 4.

5. Would you be interested in gaining specialist accreditation in Government/Administrative Law if it was offered?

- Yes No Maybe