

LAW COUNCIL OF AUSTRALIA

ORGANISATION AND MANAGEMENT OF THE LEGAL PRACTICE

FOREWORD TO THE AUSTRALIAN EDITION

The Hon. Mr. Justice M.D. Kirby, C.M.G.
Chairman of the Australian Law Reform Commission

January 1983

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THE HAND OF FATE

Exactly 20 years ago I began my professional career in law as a young solicitor. I might still be in that branch of the legal profession, but for the hand of fate. The ungrateful people of a Sydney electorate, turned out of office as a Member of Federal Parliament and Federal Minister, a worthy solicitor who thereupon had to return to his Sydney practice. An offer of a position to me had to be hastily withdrawn, in a flurry of embarrassment. I took another post, for things were easy in those times. After five years in practice as a solicitor, three as a partner in a large Sydney firm, I transferred to the Bar and my road to the Bench and to my current appointment followed orthodox lines.

I offer these personal anecdotes in part justification of these introductory remarks. I have lived the daily life of a solicitor. I have had the special discipline of direct dealings with clients, their families, their witnesses, their opponents. In England, most members of the Bar and therefore most judges have never been solicitors. I believe Australian barristers and judges are the better, generally, for a period of service in a firm of solicitors. However that may be, the overwhelming majority of legal professionals in Australia are solicitors. Rightly, Mr. Justice Brennan of the High Court of Australia called them 'the ministers of the judicial branch of Government'¹ in our country.

When, in 1962, I embarked on the life of practice of a solicitor, I had little preparation for many of the practical concerns of day to day life. In a period of articles of clerkship, bound to a person now himself a judge, I learned much of office routine, interview techniques, use of the library and professional standards. Nowadays even this apprenticeship training (in my case over three years) is denied to many young solicitors

entering legal practice. They must gain such skills, if at all, through Colleges of Law and formal instruction.

But even this experience in articles was scarcely a preparation for my life as a newly qualified solicitor working in, and later a member of, a large, busy, prosperous city firm. I knew, from background, education and training, next to nothing about organisation and management. My knowledge of financial management and control of the office was rudimentary. My contributions to discussions about office layout and design were banal. I did not have to grapple with word processors, work stations, computerised legal information retrieval and the multitude of technological problems which now confront the Australian solicitor. But even in the practical problems that are still with us, of partnership life, financial arrangements, branch offices and techniques of leadership and innovation, I was ill prepared. What a splendid help and companion this manual would have been in those far off days.

ADAPTING THE MANUAL

The manual is the only one of its kind marketed in Australia. It is an adaptation of an English original into an Australian edition, undertaken as a project of the Law Practice Management Section of the Law Council of Australia. The project has been under the direction of Rosemary Howell, the indefatigable Secretary-General of the Law Council. In adapting an English original, the Section merely did what lawyers in Australia and other English speaking countries have been doing, throughout the world, for hundreds of years. How fruitful have been the lawyers of England, both in their law and methods of legal practice. It is probable that, as with other adaptations, Australian readers will find some parts of the text less relevant to Australian conditions than might have been the case had Australian authors started from scratch. Perhaps even a paragraph or two will be found erroneous, out of date, unsuitable or otherwise in need of further revision. I am sure the Australian editors have done their best to contain such problems to a minimum. As with the borrowing of English law itself, whilst ever alert to the needs for local modification, we should never forget our debt to the talented and hardworking lawyers of England. This is a book by lawyers for lawyers. It has been written in a practical vein to capture the experience of modern methods of business management and professional competence needed by lawyers everywhere if they are to serve their clients, the courts and the community.

The manual is intended as a practical reference book to cover all stages in the development of a legal practice in Australia. It is designed to be relevant to practices of all sizes: from the dwindling numbers of sole practitioners to the special efficiency problems of the large metropolitan firm. It provides useful information, especially about the way in which lawyers conduct their practices. It should be of particular assistance to

lawyers contemplating partnership decisions. The text is the first major project to be sponsored by the Law Practice Management Section of the Law Council of Australia. One of the general editors, and a principal author, David Andrews visited Australia in November 1982, significantly enough to lead discussion on the subject of computers and law.²

TIMES OF CHANGE

Three factors are at work in the Australian legal profession today which make the preparation of a manual such as this a somewhat dangerous task.

* Reform of the profession: The first is the phenomenon of legal professional reform.

Things are changing in the professional rules of the legal profession in Australia, at a pace and to a degree that is remarkable, when compared to the stability of legal practice at least during the preceding decades of this century. The major inquiry into the legal profession of New South Wales by the New South Wales Law Reform Commission is now almost complete. In August 1982, the State Attorney-General, Mr. Frank Walker, Q.C. tabled in the New South Wales Parliament the third report of that Commission, this one dealing with reform of lawyer advertising. In advance of legislative action in New South Wales, advertising by Victorian lawyers in the popular press commenced, with professional blessing, on 2 October 1982 - but so far within strict limits. In Western Australia, the President of the Law Society of that State has indicated that advertising is under consideration there too. Some reforms have occurred, others, as a result of enquiries in New South Wales, Western Australia and elsewhere, are still to come. Future editions of this manual will have to be rewritten as the changing role, duties and expectations of the practising solicitor in Australia develop. Our Federal system of government has both the advantage and the complication that experiments will occur in one State which are not reflected elsewhere. Words of generality for the practising legal profession may suffice in Britain and New Zealand. They can be dangerous where issues of law and professional ethics are concerned in Federal countries such as Australia.

* Economic downturn: The original English text was written in earlier, more buoyant economic times. The Australian edition is published at a time when economic recession is hitting the country hard. Lawyers are not immune. The New South Wales Law Society recently disclosed that land title conveyancing, the life-blood of a majority of legal practices in Australia had fallen by about 60% during 1982. Suburban and small city practices were seriously affected by this decline in profitable work. Unhappily, this is not short-term phenomenon. Nor is it a local

crisis. In October 1982, the President of the Canadian Bar Association, Yves Fortier, disclosed the first economic survey of law firms conducted in Canada. 'In human terms', he said 'the recession has to be the most serious problem facing the [Canadian legal] profession today'. Earnings of law partners have not kept pace with inflation. Young lawyers are being laid off and staff of law firms is being reduced. The crisis is especially severe in small towns.³ These features are reflected in like developments in Australian legal practice. They make attention to the efficiency aspects of a manual such a this imperative. It is to be hoped that growing attention to efficiency will improve the speed and economy of service to solicitors' clients without destroying human concern, the desire to help people in their personal crises and attention to communicating with the 'whole client'. These are amongst the best aspects of professionalism. I do not take this manual to undervalue them.

* Technological change: Thirdly, the legal office today is a microcosm of society. We are living through a period of remarkable technological change. One of the most dynamic of the new technologies is informatics. The linkage of telecommunications and computers has already begun radically to alter our society. It has penetrated legal offices, big and small. We have only begun to see its consequences. No office manual can be written which can anticipate the continuing revolution in 'the wired office'. Informatics will profoundly affect the very work solicitors do in Australia. Land title conveyancing in particular appears vulnerable, in the medium term, to a high level of computerisation. Australian lawyers and their representatives should be considering urgently the implications of the new technology to the work and methods of the next generation of Australian solicitors.

In times of reform, in hard times, in times of technological change, there is a need as never before for a legal profession which evidences a happy mixture of continuity and adaptability. Our tradition of legal practice is 800 years old. I hope that the generation of Australian solicitors who dip into these pages will do so conscious of the need to uphold the best traditions of the profession, whilst at the same time, adapting to unprecedented demands for reform.

Sydney

5 January 1983

M.D. KIRBY

Footnotes

1. F.G. Brennan, address to the Monash University Law School Graduates Association, 18 November 1982, [1982] Reform 28.
2. See e.g. D. Andrews, 'Practising Law in Tough Times' in Law Council of Australia, Australian Law News, Vol 17 No.12, December 1982, 15.
3. See 'Recession Hitting Hard: Survey' in Canadian Bar Association National, Vol 9 No 9. October 1982, 1.