

Duty Barrister Scheme

By Kate Traill

The history of the scheme

Historically, the junior Bar made itself available to indigent defendants through the old 'dock brief' system, without the intervention of instructing solicitors. However, by 1993 this practice had fallen into disuse. In 1993 there was a change to the New South Wales Barristers Rules to allow litigants 'direct access' to the Bar. This allowed the 'dock brief' system to be revived.

The concept of the Duty Barrister Scheme grew out of the New Barristers Committee. In August 1993 I put a proposal before Bar Council for a six month pilot project in the Downing Centre Local Court. Bar Council supported the proposal and the Duty Barrister Scheme commenced operations in August 1994.

Expanding coverage

The scheme has since expanded its coverage to include the District Court's criminal jurisdiction,¹ the Local Court (in both civil and criminal jurisdictions) the Downing Centre annexes of North Sydney and Central Criminal Local Court, the Australian Industrial Relations Commission and the Bidura Children's Court during the Olympics.

Objects of the scheme

There are four key objects of the Duty Barrister Scheme. The first is to provide high quality access to justice for members of the public who did not qualify for legal aid and who did not wish to represent themselves and who had not engaged a solicitor or barrister privately. In 1993-4 there was a Duty Solicitor Scheme operating at the Downing Centre, but it only had one participating solicitor.

Secondly, there was a pressing need to assist the courts with the numerous unrepresented litigants, who appeared daily in the Local Court. The scheme would facilitate a more efficient and fairer



Left to right: Temby QC, Tobias QC, Barker QC, Traill, Porter QC, Bellanto QC.

administration of justice, particularly in the local courts, the level of justice encountered most by the public. It would also shorten the delays in the Local Court, as it would decrease the magistrate's time they spent dealing with unrepresented litigants each day.

Third, the scheme would raise the public profile of the Bar, which would be seen by the public as helping those who were less fortunate. The launch of the scheme attracted some media attention and an article appeared in the *Sydney Morning Herald*. The photograph that appeared in the *Herald* accompanies this article.

Finally, in the early 1990s there seemed to be less work for barristers in the lower courts, as solicitors were doing most of the mentions and motions themselves. The scheme was seen as a way to assist the junior Bar, particularly those under five years experience, to obtain greater court experience with increased opportunity to improve their advocacy skills in the local courts.

Guidelines and brochures

Once Bar Council gave its approval I had the task of drafting the guidelines and putting the scheme into practice. This involved liaising with a range of people and organisations, including the chief magistrate, Mr Pike, other magistrates, the registrar, Graeme Roberts, the Law Society, Legal Aid, the Sheriffs' Office, the Salvation Army, the NSW Probation and Parole Service and the List Office, both civil and

criminal. It also involved visiting Burwood Local Court and speaking with Bill Wheeler, to see how other schemes operated, and spending hours sitting in various courts and recording procedures.

The result was a guideline booklet, which includes details on:

- the operation of the scheme
- the listing procedure in the Local Court, both civil and criminal
- Legal Aid guidelines
- Functions of duty barristers
- Contact numbers
- Fee disclosures
- District Court Downing Centre procedures

The Bar Association also prepared brochures to inform community legal centres and members of the public about the functions of the scheme and to provide general information about barristers. Copies have been further distributed by the Redfern Legal Centre, the Aboriginal Legal Service, the Domestic Violence Advisory Service, the Department of Consumer Affairs, the Salvation Army, police stations and Victims of Crime, to anyone seeking legal assistance.

How it works

The system was initially set up as a roster system. More than 120 barristers volunteered for the roster in April 1994 and although many come and go, the number remains constant to date. The scheme was launched by our then president, Murray Tobias QC and was supported by mentors such as Ian Barker QC, Chester Porter QC, Ian Temby QC, Tony Bellanto QC and Tom Hughes QC and other senior silks. Their role was to be on call and assist the duty barristers with any problems that may arise and also give advice. Some of them found themselves acting for litigants on the scheme. One lucky duty barrister managed to get Chester Porter QC to appear with him.

In April 1994 the accommodation in the Downing Centre was sparse, so we were given a small conference room on level five which contained table, chairs, telephone and a *Civil Claims Practice* and *Criminal Procedure Practice* and a diary. Today there is a special room on level five that has been built specifically as a duty barrister room which is much more salubrious and contains a locker and many looseleaf services.

A duty barrister that volunteers for the scheme is placed on a roster. There are three barristers rostered per day. It is intended that at least two will cover the Local Court, both civil and criminal, and one will cover the District Court.

If a duty barrister becomes 'jammed' in a part-heard matter, it is their responsibility to pass the brief for that day to another barrister who is willing to take on that duty barrister's brief. Continuity in matters is important in the scheme. Each barrister

has a copy of the duty roster with the names and phone numbers of each participant. When I do the list every three months, I try and list new barristers and readers with more experienced barristers.

Positive feedback

Over the years, the Duty Barristers Scheme has received many letters from magistrates and litigants who have been impressed by the scheme. At its inception, the then chief magistrate, Ian Pike, was a great supporter of the scheme. He wrote to the president of the NSW Bar Association on many occasions to say 'how impressed he was with the representation provided by many of those barristers who participated in the scheme'.

In September 1996 Magistrate Malcolm Beveridge wrote:

Hurrah, for the Bar's pro bono scheme at the Downing Centre. I am firmly of the view that unrepresented defendants in criminal cases are a menace to themselves, as well as to the justice and efficiency of the courts in which they have the misfortune to appear. As barristers employ no fee earners but themselves, the sacrifice to remedy this through the Bar's pro bono scheme is personal and genuine. All judicial officers should be grateful (letter to president of 18 September 1996).

He then recounted a piece of 'outstanding work by Mr Babb', who was rostered on the scheme.

Experiences of duty barristers on the scheme varies. Some barristers have many matters on a day, some have very quiet days. The more enthusiastic barristers go into court and announce their appearance in a busy court rather than sit in the room waiting for someone to come to him or her. There are small duty barrister name tags in the room for those who wish to be conspicuous.

Initially, it was intended that a duty barrister would negotiate a fee at a very reduced rate. However, over the years a diary, which was kept in the duty barrister room, was monitored periodically and it was found that most did not charge for their rostered day. In 1998, a meeting of duty barristers was called, at which approximately 60 attended. The majority of duty barristers said that they did not want to charge a fee at all. The guidelines were amended to say that on the rostered day there would be no fee charged. If any matter continued after that, the duty barrister could negotiate their own fee. However, there were complaints that many litigants had money and unless they paid some sort of nominal fee, were reluctant to take advice. The scheme has now been changed back to the original practice.

2000

Last year the Duty Barristers Scheme was expanded into the Australian Industrial Relations Commission. Ingmar Taylor prepared the guidelines and case material and it was launched in the Bar Association on 13 July 2000 by The Hon. Senior Deputy President L E C Drake. There are approximately 50 volunteers participating in that scheme, sufficient to keep appearances to one or two per year.

Future expansion in 2001 is planned for the Children's Court and Parramatta Local Court and Drug Court.

To assist the duty barristers, there are annual advocacy workshops on apprehended violence orders, bail and plea problems. To date, we have had teachers with enormous experience and wisdom who have tutored and judged the participants. All have been extremely informative and helpful.

The scheme continues to be a valuable community service and we appreciate those who act either on a reduced fee or pro bono and give up their time to participate in the Duty Barristers Scheme.

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- 1 In 1996, when the scheme was expanded to cover the criminal jurisdiction in the District Court, it covered the Appeal Court and the Short Matters Court. Due to a change in the listing procedures in the District Court, it now covers only the Short Matters Court (LG2).

TRIBUTE

Jennifer Blackman

By Andrew Bell

Jennifer Blackman retired from full time practice at the New South Wales Bar at the end of last year, having been admitted in 1968. Her association with the Bar and 11 Wentworth/Selborne, in particular, goes back however to 1958 when she was engaged as a 'stenographer to the Society' at a meeting attended by David Hicks, Doug Staff, Preston Saywell and Barry McKenna. The only member of the 11th Floor who remains from the time of her appointment is the evergreen Frank McAlary QC.

In 1965, Jenny Blackman left the 11th Floor to become Associate to Mr Justice Else-Mitchell who had been a member of the floor. It was during that time that Jenny completed the Barrister's Admission Board course, upon completion of which she returned to the 11th Floor and forged, over many years, a successful practice specialising, in particular, in land and environment work.

She also served terms as an Acting Judge of the District Court and as a judicial member of the Administrative Decisions Tribunal of New South Wales. Extra curricula involvements include her position as Chairman of Meridan School and Vice Chancellor of the Anglican Diocese of Bathurst.



Judge Herron QC; The Hon. Ray Loveday QC; Jennifer Blackman;
Mr Justice Dunford; The Hon. Rae Else-Mitchell QC.

A dinner in her honour was recently held by the 11th Floor with speeches from The Hon. Justice Giles and The Hon. Rae Else-Mitchell QC, who had travelled from Canberra for the occasion. The Bar wishes Jenny all the best for her retirement.