

Departing Directors

Belinda Baker interviews Lloyd Babb SC and Sarah McNaughton SC



Lloyd Babb SC is the NSW Director of Public Prosecutions. Sarah McNaughton SC is the Commonwealth Director of Public Prosecutions. Both will complete their respective tenures within the coming months.

Belinda Baker (BB): Sarah and Lloyd thank you both for agreeing to be interviewed by Bar News.

What are the terms that you have each served, and when will you complete your tenures?

Lloyd Babb SC (LB): I was appointed in July 2011, I will finish on 17 July 2021

Sarah McNaughton (SM): I was appointed in May 2016. I will finish in mid-May 2021.

BB: *At Justice Jacqueline Gleeson's recent swearing in as a High Court justice, Jane Needham SC said:*

'It is not easy for a barrister to make the transition to paid employee, least of all in the public service... But you rolled up your sleeves, learnt how to read Powerpoint slides and to draft inoffensive emails and set to work.'

Lloyd, you had been in the public service for many years, and had presumably been reading powerpoint slides and drafting



Lloyd Babb SC

inoffensive emails for some time – so this is more a question for Sarah - How did you find the transition from private barrister to DPP?

SM: I was a young solicitor at the DPP for 8 years and it was also handy that I had a taster of being back in the APS [Australian Public Service] when I was Senior Counsel Assisting the Trade Union Royal Commission, because they were in that family in terms of infrastructure and computers and getting me back into that mindset. Also, I did a lot of work for the DPP at the private bar, which assisted the transition.

BB: *How much of your work is legal work compared to management?*

SM: There's probably a category in between as well. In terms of straight court work, it is up to me and it depends on how much of that work that I decide take on. And, of course, I have work across the country, so I have to be careful not to take on too much. And also its hard to find that block of time that is necessary to prepare.

In terms of straight admin – we are part of the APS, which is a fascinating thing to be part of. We have over 50 partner agencies that feed us work, which is very different to the NSW DPP. This includes State and Territory police; and also the Federal Police, and Border Force, and the ATO, and ASIC and others.

There is also decision making, which is not something that I did at the Bar per se. This is a fairly constant stream of work. And then there is the leadership work. It's a nice mix.

LB: Yes. I am the same. I like to have regular appearance work. Its always a proportion of my time. The leadership and culture building is also important. I put a lot of time into that. There is also policy work that factors in. It's a matter of trying to get the right balance.

BB: *How many lawyers do you have in each of your respective Offices?*

SM: We have about 450 staff across Australia in 10 offices. We have offices in all of the capital cities and Cairns and Townsville. Of those, about 300 are lawyers.

LB: We have 100 barristers and 460 solicitors.



Sarah McNaughton SC

BB: *Both of you regularly appear in High Court litigation - what are the advantages and challenges of being a barrister appearing in the High Court for an organisation, and regularly appearing as a repeat litigant?*

LB: I don't think that there are disadvantages. It is very interesting work. You are opposed to the most competent of counsel. The issues have been refined in the intermediate appellate court. You get probing questions from the bench. As far as I'm concerned it is a privilege.

BB: *There is a self-represented litigant aspect of your positions: Is it hard to be the advocate and the client; is that different to being at the private Bar?*

SM: I have also appeared in many of the State intermediate appellate courts. I think that you have a sense of – you can say matters of principle which you know that you are comfortable with. And the fact that you are appearing, potentially gives a message itself.

LB: I agree. I'm always conscious of wanting to appear in significant cases and difficult cases and cases where the Court may really want to know the Director's position.

SM: I brief some cases out, and do some myself, depending on my workload and how much time I think that it is going to take. I ask: 'can I value add by doing it myself?' Or is it something that I don't personally need to be in?

BB: *This leads into my next question: which is that you have both spoken about the challenges of balancing legal work, administration, leadership and policy within the job – but outside of the job, there are family demands – for example, both of you had children doing the HSC while doing the job. How do you manage balancing family, with children who are themselves under stress, with the demanding work as DPP?*

SM: The whole of my Directorship except for this year was with one or both of my children at school. But I had both of my children while I was at the private bar, so I was quite experienced in time management. And quite frankly, I now have in this job 450 people to help me. I also had some help at home. You have to be pretty ruthless with your time management. But you have to also really pare down what is really important – both what is in the job and at home. You have to do what is important for you to do – not what is symbolic or traditional. You have to ask – 'what do I personally have to focus on?'

LB: I'd agree with that. I also would try to deliberately prepare myself to be 100% present when I was at home. As I was

getting home, I would think – 'how do I be present for the family when I come in?', and be there; not thinking about the particular challenges of the day.

BB: *Following on from that, how does the stress of being the Director compare to the stress of being a private barrister?*

SM: It's really interesting. In some respects, because you're not in court every day and not making hard evidentiary calls and arguments and preparing all the time for the next day in court, to that extent it's not as hard as being at the private bar. To the extent that you have some very weighty matters on your shoulders the whole time and sometimes have to make some big calls at short notice, it's obviously more stressful. You also have other obligations and duties and you are more of a public figure. That's a different kind of stress.

LB: It is different. I think one of the things that weighed on me was the buck stopping with you. As a private barrister you make decisions about cases you're running. But here the buck ultimately stops with me. You need to set up good systems and culture to set up the best organisational structure for good delegated decision making.

BB: *The pandemic has been a particularly stressful time. What was it like leading your organisations through the COVID-19 period?*

SM: The Commonwealth DPP is a national organisation, so it was obviously not straightforward in terms of what different restrictions were in place in any State or Territory on any day. My 'people team' did an amazing job of staying on top of all of that. I started doing a weekly all-staff email – a national one, that had to take into account, for instance, that at times Darwin and Perth were living quite naturally, and Melbourne was in lockdown and Sydney in between. And a lot of people were at home. And trials were not operating in different States at different times.

It was an extraordinary time. Of course, we shouldn't forget that it was also a bit of a scary time at the beginning; we didn't know what was going to transpire. My job very much felt like – 'I've got a real role to play'. It was also sort of liberating; it was so unknown and unprecedented. I thought, 'I don't have to abide by any rule book; there is no rule book. I will do what I feel – within the confines of being a public sector leader – what I think should be done'. I felt it was liberating in terms of my leadership style.

LB: It was an amazing time to be a leader. It was completely unprecedented. It was a time when communication was the most

important thing. I communicated weekly by video so that my thoughts and my face were in front of the staff. I also thought it's good that I have had many years' experience as a leader. It was a time when you had to be aware that there were legitimately different views among your staff. Some people were worried about appearing in a public court; and some were not. We had to empower people to let us know what they were comfortable doing. Like Sarah, I look back on it as something that was an opportunity. The fluidity of the situation made it a challenging time to be a leader.

BB: *Was there anything that you particularly enjoyed about being Director?*

LB: I have enjoyed leading a large number of committed people. You come into the role on the basis of legal ability. I have enjoyed developing leadership and management skills and working with people who are really committed.

(SM): I have really enjoyed engaging with people all over this amazing country of ours; I have enjoyed working with and leading talented and dedicated people. I also have enjoyed learning about how Canberra works and having engagement with so much of that community. It has been a huge honour for me to travel and to meet local people.

BB: *Finally, what direction do you see hope your respective Offices going after you leave?*

SM: Two major things: first, flexibility in work. We had worked hard to develop a flexible work plan even before Covid. I would like that to continue to flourish. I would like women in the organisation to continue to think that they can become leaders. On the other side of the coin, we have done a lot of work about digitisation, including how to manage huge prosecutions. I would very much like that to continue.

LB: That's really interesting. Similarly, my organisation is 63% women. I'd like to see women at the highest levels of the organisation in greater numbers. And we are also on a path towards digitising. We have a way to go there. I think that it will improve this organisation for courts and the defence to be able to receive material digitally. Wellbeing of the staff is also a key issue. It's something that I've focussed on. Its challenging and stressful work. To provide the right environment and support will continue to be important.

BB: *Thank you both very much for your time.*