

A history of the Navy Legal Panel

The New South Wales Bar has for many years now had a close association with the Australian Defence Force. In particular, each of the branches of the Defence Force has practising barristers as legal reservists, who provide the respective branches and their members with legal advice and legal representation in varying fora and in the context of many different types of proceedings. No doubt these reservists will continue to provide such advice and representation in relation to proceedings before the newly established Australian Military Court (the details of which are discussed in the accompanying article by Cristy Symington (at pp. 49-50 of Bar News Winter 2008 edition)). But the roles of and responsibilities undertaken by these reservists are not now nor likely in the future to be so limited.

This breadth of what may be asked of a legal reservist can for instance be seen from the experience of the members of the New South Wales Reserve Naval Legal Panel, who have been providing legal services and assistance to the Royal Australian Navy and its members for over 40 years now.

The Naval Legal Panel was first established in 1964. Its genesis lay in the collision between the destroyer HMAS *Voyager* and the aircraft carrier HMAS *Melbourne* on 10 February 1964 and certain consequences flowing from the Navy's participation in the subsequent Royal Commission into that incident. According to a note of the history of the Panel written by Sir Laurence Street¹ :

The Naval Board and its advisers were not equipped with the knowledge or provided with reliable advice as to the approach that should be taken by the Navy in relation to the Royal Commission. Whilst the legal aspects of disciplinary matters such as Courts Martial and lesser disciplinary procedures were well understood, as were Naval Boards of Inquiry, a civil Royal Commission involved significantly different considerations. The Navy did not have the benefit of experience in, or advice in relation to, the forensic nature of a Royal Commission such as this.

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The uncomfortable position in which the Navy had been placed in consequence of the initial decision to retain a single team for the Navy and HMAS *Melbourne* clearly demonstrated the importance of the Navy having access, within its own establishment, to sound and experienced legal advice.²

Following the conclusion of the Royal Commission, the then Chief of Naval Staff, Admiral Harrington, approached Laurence Street QC (as he then was) and asked that he put together a group of lawyers who could constitute a Naval Reserve Legal

Branch for the purpose of providing legal advice, assistance and support to the various branches of the Navy. Sir Laurence was at that time a leader of the New South Wales Bar and had previously served with the Australian Navy from 1943 to 1947, including as a seaman officer in an Australian corvette attached to the British Pacific Fleet in 1945.

In response to Admiral Harrington's request, three panels were established. The principal panel was located in Sydney and included responsibility for the Fleet and naval establishments in New South Wales and Queensland. Panels were also established in Melbourne and Perth. The former was responsible for Victorian and South Australian naval establishments; the latter was responsible for naval establishments in Western Australia and the Northern Territory.

The Panel was initially headed by Sir Laurence Street, until his appointment to the Supreme Court of New South Wales in October 1965. Sir Laurence was succeeded by (in turn) Harold Glass QC (who was to be later appointed to the New South Wales Court of Appeal), John Sinclair QC (later Sinclair DCJ), Terence Cole QC (who was later appointed a judge of the Supreme Court of New South Wales and later still to the New South Wales Court of Appeal and who is currently heading the Australian Government's inquiry into the sinking of the HMAS *Sydney* off the Western Australian coast during World War II), Murray Tobias QC (who was also later appointed to the New South Wales Court of Appeal, a position which he still holds), Peter Callaghan SC and Michael Slattery QC. The Panel is currently headed by Jeff Hilton SC, with the Bar Association's Treasurer, Alexander Street SC, the Deputy Head of the New South Wales Panel.

The size of the Naval Legal Panel has grown considerably since its inception and currently has more than 40 members (almost half of whom come from the New South Wales Bar). The Naval Legal Panel is the largest of the legal reservist panels in the ADF. The current members of the Panel include both practising lawyers with no prior naval experience as well as a number who left employment in the permanent Navy to take up private practice at the Bar, but upon doing so retained their link with the Navy by becoming members of the Panel.

In relation to the work of the Panel, Sir Laurence Street wrote in his history of the Panel :

It was envisaged from the outset that Officers from the Reserve Legal Branch would be available to appear in Courts Martial and other Inquiries and proceedings involving the Navy, that they would be available to provide general advice to the Navy as well as to individual Navy personnel in that connection, that they would be available generally for use where required in all other disciplinary proceedings and that over time they would be available to provide pastoral advice and help Naval personnel in relation to personal problems somewhat akin to, but extending far beyond, what had theretofore been the role of Divisional Officers.

It was also envisaged that the Reserve Legal Branch would grow to become a source of advice, both at sea and ashore, on the international law complexities of peace time and wartime Naval operations.³

Not only have these initial expectations been achieved since the Panel's inception, but its role has expanded and its importance not diminished.⁴

Over the last 40 years, the Panel has provided Judge and Deputy Judge Advocates-General; naval judges and magistrates, prosecutors and defending officers in connection with courts martial and criminal proceedings; counsel presiding over, assisting and representing interested parties in Boards of Inquiry (now Commissions of Inquiry); and advisers on international, criminal, administrative and other branches of the law. Professor Ivan Shearer (of Sydney University) played a particular role (as a member of the Panel) in providing advice and assistance in relation to international law. Prior to joining the Panel, Professor Shearer had been an officer with the Royal Australian Air Force and member of its legal reserve. The participation of Panel members in Boards of Inquiry has included most recently the Sea King Board of Inquiry, which was established to inquire into the cause of an Australian Navy Sea King helicopter which crashed in the town of Amandraya, on the island of Nias, in Indonesia in April 2005 and in which nine Australian service personnel died and two others were seriously injured.

Since its inception, Panel members have provided advice to all ranks from sailors up to Chiefs of the Defence Force. During this time, members of the Panel have also lectured both serving defence personnel (including for example on national security law) as well as those training to join the Navy (including as part of the service's staff of permanent lawyers); provided relief staffing at the Fleet Legal Office thereby making sea-ready legal officers available for sea deployment; been themselves

appointed to HQ, operational and sea-going postings; and conducted investigations for and on behalf of the Navy under the Defence Inquiry Regulations and other investigative powers. The above list is not exhaustive.

Similar functions have also been performed by the many legal reservists in both the Australian Army and Royal Australian Air Force.

Whilst many of the foregoing functions and responsibilities are broadly similar to those performed by members of the Bar in private practice, a number of the members of the Naval Legal Panel have also been being involved in less conventional or orthodox legal roles, including in or in relation to theatres of war and operational matters.

For instance, in 2003 Michael Slattery QC swapped the luxury and comfort of his room and a half at Seven Wentworth Chambers for the narrow bunks and crowded mess room of HMAS *Kanimbla* in Iraq's territorial sea, whilst conducting an inquiry into complaints associated with the vaccination against anthrax of Navy personnel scheduled for deployment in the Middle East at that time. The full account of Slattery's Middle East *tour of duty* is recounted in Bar News Summer 2003:2004 edition at pp. 36 to 39.

Such experiences are not confined to the senior members of the Panel. Prior to being called to the New South Wales Bar, Felicity Rogers had been employed as a lawyer in the permanent Navy for about eight years. In that capacity, she worked closely with members of the Naval Legal Panel, including members from the New South Wales Bar who persuaded her to go to the Bar. However, upon doing so, Felicity retained her links with the Navy by joining the Naval Legal Panel. As a Panel member, Felicity has been deployed on exercises with the military from the US, UK, Canada, Malaysia and Singapore, providing advice on the Rules of Engagement, Law of the Sea and Law of Armed Conflict. She has also flown off the aircraft carrier USS *Independence* in an EA6 Prowler aircraft. Through her participation on the Panel, Felicity also found herself in Dili as part of the contingent of Australian servicemen and service women assisting East Timor on its path to independence. This is said by her to have entailed sleeping both with a rifle under her pillow and under a desk under

a window in order to avoid any incoming missiles (precautions that are rarely necessary whilst napping at one's desk in Phillip Street).⁵

Participation in the more traditional operational role is not confined to the members of the Naval Legal Panel. David McLure, an army reservist, is currently serving a tour of duty with the Australian Army in Afghanistan. Members of the army reservists were also involved in the preparation of the security put in place for last year's APEC conference.

To assist in preparing for the possibility that they may have to provide legal services in other than the relative comfort and safety of a court room and in conditions and circumstances more usually experienced by permanent members of the Navy, applicants to the Naval Legal Panel are required to undertake a Reserve Officer Entry Course (REOC) which includes schooling in the Navy ways (just like a real sailor) and a programme of rigorous physical training. In an accompanying article (at pp. 54-55 of Bar News Winter 2008 edition), Kate Traill, one of the Panel's latest recruits, gives a personal account of the arduous imposed by this strenuous and demanding programme and of her successful completion of that programme (despite all of the obstacles placed before her) on the tranquil turquoise waters of Jervis Bay and the sun kissed sands of Hyam Beach.⁶

Whilst each of the branches of Australia's armed forces undoubtedly benefit from the participation of their legal reservists, including those from the New South Wales Bar, it is also said by those who participate as reservists that this is a not a one way street. Michael Slattery QC has described his participation in the Naval Legal Panel as both very fulfilling and a privilege. As he concluded his 2003 article on his visit to the Middle East :

Almost every working day of the year a member of the New South Wales Bar will do legal work for the Navy, Army or the RAAF. We are all privileged to do so.⁷

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Endnotes

- ¹ Sir Laurence established the Naval Legal Panel (in the circumstances identified later in this article) and was the first Panel leader
- ² “*The Naval Reserve Legal Branch – An Historical Note on its Origin*” in The New South Wales Reserve Naval Legal Panel – 40 Years of Service (Sea Power Centre – Australia Working Paper No. 17) at pp. 1 and 4
- ³ *ibid* at p. 6
- ⁴ Foreword to The New South Wales Reserve Naval Legal Panel – 40 Years of Service (Sea Power Centre – Australia Working Paper No. 17) by Lieutenant Commander James Renwick RANR at p. vii
- ⁵ Felicity is quick to point out that there is no truth in the rumour that Lisa McCune’s role in Sea Patrol was modelled on Felicity and the work that Felicity has undertaken as and since becoming a panel member.
- ⁶ Kate denies that she is modelling herself on Lisa McCune’s role in Sea Patrol and that it was Kate’s desire to emulate that role and the prospect of wearing Navy whites that prompted her to apply to become a panel member in the first place
- ⁷ Bar News Summer 2003:2004 edition at p. 39

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