

Revealing Secret Clerks' Business

The NSW Barristers' Clerks Association



Clerks from NSW, ACT, VIC and QLD in attendance at the 2019 Barristers' Clerks Conference at Manly on Friday, 18 October 2019
Front row third from the left: Conference MC; Andrew Hansen

What is a Barrister's Clerk? What do you do? Do you have a job description? Are all clerks the same? How do Floors operate? Why do you do it?

These are questions we are often asked by friends and family. They are questions we ask ourselves sometimes, and unfortunately, these are also questions asked by some barristers, regardless of whether they have been at the Bar 3 months or 10 years.

The NSW Barristers' Clerks Association ('NSWBCA') is pleased to provide a regular page in *Bar News*. Many of us are B Class members of the NSWBA, we serve on Bar and industry Committees, and we look forward to keeping you informed about the varying roles and functions of Barristers' Clerks in future editions. There are many tasks and attributes we have in common but there are other functions as unique as the personalities on of our floors; no two are ever the same.

Ours is not a new job title: the existence of the Clerk in its current form dates as far back as the early 1800's in England. Much, and some argue little, has changed since then, but others will argue everything has

changed. The Clerks have embraced those changes and adapted as required to new and old demands. Some of our members remember Chambers without computers, fax machines, mobiles and emails, before a dishwasher, and the joy of being a one trolley floor. Or when the corridors of chambers clicked to the sound of many secretaries on noisy typewriters. The Chambers' environment has changed a great deal in a relatively short period of time.

Technology has been both friend and foe. Gone are the days of the 8-6pm clerk when switchboards were turned off with the lights. Now Clerks, like the barristers we serve, are always accessible.

**But what do you do?
Why were you selected?**

That is an even greater mystery that only the Floor that employed a Clerk can answer.

The necessity and purpose of a Clerk is to manage Chambers so barristers can get on with the business of being an advocate. It is a difficult and demanding job with a political edge, social demands, and many logistical challenges. The position requires negotiation

and mediation skills, compassion, resilience and most importantly a sense of humour.

Clerks support their barristers, often a large number of them; they are the managers, the administrators, the agents, the multi-skilled all-rounders who keep Chambers ticking at the fast-paced tempo it necessarily must go. All the while the Clerk is thinking about the big picture of their Chambers in the wider legal community, and the needs of those individuals. As legal historians have noted: Barristers' Clerks are 'the law's middlemen'¹ in Chambers, although in current times the majority are "the law's middlewomen"

Clerking as a Profession

The NSWBCA is a professional representative body of 83 Barristers' Clerks, serving just over 2400 barristers in NSW, operating predominantly in a close huddle around Sydney's major court complexes. Other members in Parramatta, Newcastle, Lismore and Wollongong, operating with the same needs and demands as their CBD peers. The NSWBCA is a voluntary association of professionals facilitating raining and

information seminars, and mentoring, and providing networking and communication between Clerks and Chambers. As many NSW barristers also practice interstate and overseas, the NSWBCA maintains strong links with our interstate and overseas colleagues, including offering membership to them. For this reason, some of our members also maintain membership of associations such as the Institute of Barristers' Clerks in the UK, which keeps us abreast of changes and ideas from their system.

The NSWBCA recently held their fifth biennial Barristers' Clerks Conference in Manly on 18 October, where a host of speakers from law firms, government, private sector agencies and a range of industry specialists gathered to discuss the important role of Clerks, their reliance on them, and how Clerks are adapting to respond to the needs of today's evolving legal market.

The President of the NSW Bar Association, Tim Game SC, at the recent Heads of Chambers evening noted *"the clerks are the central point of contact for chambers"*. Adding that he was *"impressed by the Barristers' Clerks recent conference and its program, which was indicative of their professionalism and dedication to their role, given the varied responsibilities and duties they are required to perform"*.

Executive Director of the NSW Bar Association, Greg Tollhurst has said; *"Clerks, how could the Association function without them? They are a two-way communication line to Chambers; they are a sounding board for ideas and they can be an army of volunteers when needed. The successful roll-out of many initiatives involves the Clerks. The recent launch of online renewals would not have worked smoothly without the Clerks. In 2020 it will be the escrow account. A particular highlight of our close working relationship in recent years has been the role played by Clerks in conjunction with the Practice Development Committee in educating in-house counsel and solicitors firms regarding how to brief the Bar. The Clerks have run a Briefing Roadshow, visiting various firms and government and in-house teams over the last year. The Clerks have also made an essential contribution through their presence at the ACC National Conference each year"*.



2019 Barristers' Clerks Conference
Opening Event for Clerks,
Barristers and Judges held on
Thursday, 17 October 2019 in the
Supreme Court of NSW
Banco Court; Level 13 foyer area



2019 Conference Program – Clerking: Power of the past, force of the future



The Honourable T. F. Bathurst AC, Chief Justice of New South Wales Guest of Honour at the 2019 Barristers' Clerks Conference Opening Event held in the Supreme Court of NSW Banco Court; Level 13 foyer area



Left to Right: Tiffany McDonald, NSW Bar Association; Alistair Coyne, Clerk of Nigel Bowen Chambers and Bali Kaur, NSW Bar Association

Clerking is a career in legal services

The experience of current NSW Clerks varies from a few weeks to over 3 decades. The retirement of some senior Clerks in recent years has not diminished the wealth of our knowledge or expertise. Over 62% of the Clerks have more than 10 years' experience. It is not a career for the faint hearted: you either love being a Barristers' Clerk or you move on.

After specialising in this unique area

of the legal sector the reach and database of a Clerk will run the full spectrum of service providers and members of the legal profession. The NSWBCA is committed to expanding the general community understanding about what Barristers' Clerks do in the legal industry, while helping to further educate and mentor those who choose to travel down this professional path. Like members of the Bar, the education the NSWBCA organises is ongoing.

Angela Noakes, the President of NSWBCA, reports *"The NSWBCA's aim is to promote the role of Clerks and assist in the understanding of our position in the profession."*

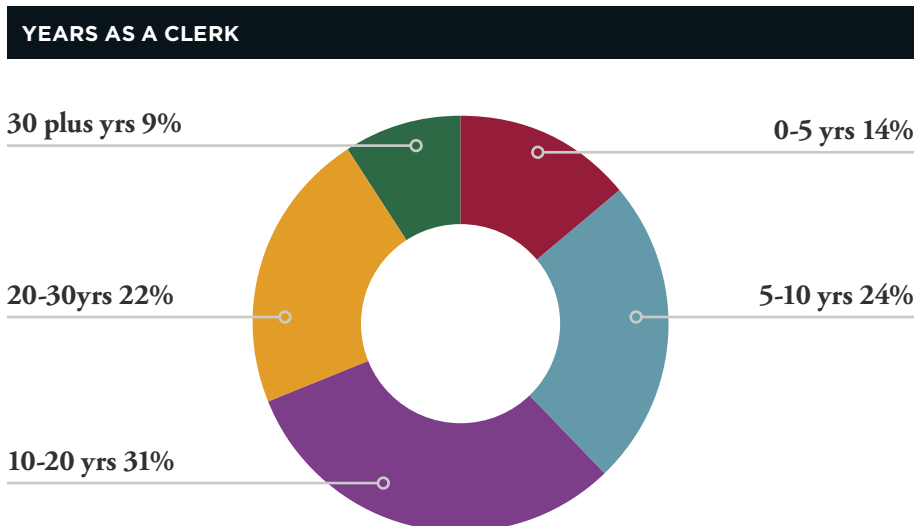
The Association facilitates several initiatives to assist Clerks, including a mentoring program for junior Clerks to 'buddy up' with senior Clerks. The juniors benefit from the sharing of knowledge with a more experienced Clerk, who can also help guide junior Clerks in managing the multitude of varying expectations from barristers within Chambers.

The NSWBCA is striving to strengthen the professionalism of the clerking industry, in order to help barristers adjust and keep ahead in today's highly competitive and ever-changing legal landscape.

Recently appointed Judge of the Land and Environment Court Justice Sandra Duggan, ruminated at her swearing in ceremony:

"The job of a Clerk is not an easy one, they are the frontline of a barrister's practice. Unfortunately, that often puts them in the range of both enemy and friendly fire. They do everything from keeping the lights on to keeping the diary ticking over.

They do this for multiple individuals who all expect individual attention. I do not know how they do it without regularly running into Phillip Street screaming.





Left to Right: Anna Moule (Clerk), Sarah Warren, John Turnbull SC and Brendan Jones of 9 Windeyer Chambers at the 2019 Barristers' Clerks Conference Opening Event



Left to Right: Jane Paingakulam of Denman Chambers; Marea Wilson of Denman Chambers; Melissa Brown (Clerk) of Maurice Byers; Manal Hamdan of Maurice Byers and Michelle Borg (Clerk) of Denman Chambers at the 2019 Barristers' Clerks Conference Opening Event



Left to Right: Simon Walker (Clerk), Michael Wells, Julie Granger, Eli Ball and Helena Mann of 7 Wentworth Selborne at the 2019 Barristers' Clerks Conference Opening Event

Whilst that list of horrors is the life of every clerk, my now former clerk also braves the pastoral care of her tribe: divorces; marriages; births; deaths; ill health; and late in life sporting ambitions (with the consequential medical attention that requires). Managed all of it with unquestionable loyalty, grace and care. ... friendship and also stewardship of a career."

A typical day for many Clerks can be a very long one, spent switching roles at the drop of hat. These include managing the daily administration of their barristers' practices, attending to never-ending emails from solicitors, responding to calls to Chambers, all while multiple barristers task the Clerk with different job requests as they head to Court.

Within a short space of time the Clerk may have organised numerous diaries, accepted briefs and instructions, arranged conferences, negotiated fees, dealt with accounting, attended to Chambers' maintenance issues while somehow also being able to have simplified the onerous list of individual requests from barristers, dispersed trolleys and staff to tasks, and attending to marketing and organisation of upcoming Chambers events or functions and also attending to the personal and pastoral care needs of some, as required.

Clerks can be, and often are, the trusted advisers of barristers in the same vein that barristers are the trusted advisers of their clients. We share the highs and lows of every one of our barristers and our floors as a whole.

At the opening event of the recent Clerks' Conference, the Chief Justice of New South Wales, the Honourable T F Bathurst AC noted:

"Further, the technological changes that have disrupted the profession over recent years does not mean that clerks are becoming redundant. Quite the contrary. But there are large differences in the roles of a clerk between the time I commenced practice and today. First, clerks are operating in a far more complex commercial environment than many years ago.

"As chambers have grown their management has become more complex. Clerks remain responsible for promoting barristers, not in the same way, but in a more corporate sense, which will only continue if the experience in England and Wales is anything to go by. Barristers remain reliant on clerks for an assessment of the market in which they operate and for advice on matters ranging from whether their practice is heading in the appropriate direction to how much they should charge. They have a responsibility on behalf of their barristers for keeping abreast, not only of technological

changes, but of other changes in the market and the attitudes of those who brief barristers".

In future editions the NSWBCA will introduce you to the various aspects of clerking today, the essential tools required to promote diversity and success of the modern, respectful, resilient barrister and the new terminology; 'knowledge holders'; 'soft skills'; 'safe workplaces'; 'instilling equality'; 'mentoring for the whole profession'; 'a digital future'; 'competitive advantage'; 'marketing is not a dirty word'; 'young lawyers engagement', 'In-house with General Counsel'; 'Clerks roadshow'; 'health and wellbeing in chambers'; 'STP' 'everything starting with e'; 'reconciliation action plans' and 'respect'.

The NSWBCA hopes to engage with and remind you that Clerks, are employees of our Chambers: we implement your policies and guidelines; we promote you; and we have your back. We also want to help our Chambers better balance the responsibilities and expectations of their Clerk, to capitalise on their talents and skills, and to support and recognise the value they add to the legal profession. We are partners in promoting Barristers and the NSWBA, working with our Floors and the Bar; we want to strengthen the wheel, not re-invent it.

The NSWBCA would like to thank the NSWBA for sponsoring the Conference Opening Event and for their ongoing support of the Clerks.

Our Association looks forward to providing you with a summary from the recent Barristers' Clerks Conference in the next Bar News. **BN**

ENDNOTES

1. J. Flood, Barristers' Clerks: The Law's Middlemen, Manchester University Press, 1983