

THE HON T F BATHURST
CHIEF JUSTICE OF NEW SOUTH WALES
BOOK LAUNCH
‘JUSTICE IN ARMS: MILITARY LAWYERS IN THE
AUSTRALIAN ARMY’S FIRST HUNDRED YEARS’
FRIDAY 4 APRIL 2014

1. It is a great pleasure to have been invited to launch this important work that chronicles the role of legal officers in the Australian Army, the development of Australian military law, and the formation of the Australian Army Legal Department, which is now known as the Australian Army Legal Corps.

2. I must begin by applauding those involved in publishing *Justice in Arms*.¹ However, these congratulations have nothing to do with the content of this significant work of Australian legal history; I will come to that later. It seems only appropriate that I give credit to those who organised not one, but two launches of *Justice in Arms* – delivered by not one, but two chief justices. That is no mean feat and says a great deal indeed about this publication.

3. There are various similarities between the judiciary and the armed services. A few obvious parallels are our shared reliance on discipline – the military through its chains of command and the judiciary’s observance of the

¹ Bruce Oswald and Jim Waddell (eds.), *Justice in Arms: Military Lawyers in the Australian Army’s First Hundred Years* (Big Sky Publishing, 2014).

doctrine of precedent; our broad objective of service to the community; our use of ceremony and uniforms; and finally, our hierarchical structures. It is this last similarity that is noteworthy because, as we all know, Chief Justice French outranks me. He launched *Justice in Arms* in October last year and it is probably only right that my launch should rank second in line! However, I have been reliably told that the book hadn't yet been printed at the time of his launch, so perhaps I am in fact in a better position.

4. Having confirmed my position in the Australian judicial hierarchy and the effect that has on book launches, I should probably say a few serious words about *Justice in Arms*. That is not a difficult task, as this work makes a significant contribution to the documentation of Australian military and legal history. *Justice in Arms* has obviously been a labour of love for its editors and contributors. The detail that is included is extraordinary: the sketches, photographs and even a number of cartoons give the reader a clearer impression of the practice of law in the Australian Army during the course of the twentieth century. The names of officers at the end of several chapters and also as an appendix to the book are an important record of those who served in the Australian Army Legal Department and Australian Army Legal Corps. Also, for a civilian like me with little military knowledge, the list of abbreviations and acronyms was an essential guide when reading the book.

5. In his foreword, Chief Justice French makes the point that *Justice in Arms* is not a series of brief biographies; rather, it gives a coherent narrative of the development of military justice in Australia and the tensions that entailed. As we approach the centenary of the First World War, I was particularly drawn to the chapters by Colonel Jim Waddell that chart the early role of legal officers in the Australian Army and the conditions that created the momentum for establishing the Australian Army Legal Department in 1921.

6. Recently there has been an increasing focus on the upcoming commemoration of the Gallipoli landing. *Justice in Arms* gives a brief account of the tragic events at Gallipoli from a military justice perspective. There were apparently two factors that impeded the work of courts martial in the early months of the War: first, a lack of familiarity with the Imperial Army Act that applied in active service (as some of you may know, for many years two disciplinary codes applied to the forces); and second, Australian fatalities at Gallipoli. Colonel Waddell notes that the losses “were so great that soldiers were being commissioned to take the place of fallen officers” before they were trained in how to conduct courts martial. The experiences of the First World War plainly demonstrated the need for trained legal officers in the military. This was underpinned by the Darling Committee’s report in England, which found that courts martial in the British Army had been hampered by the sheer number of cases during the War. It is difficult to comprehend that more than 250,000 cases were heard in that period.

7. It is interesting to consider the work of early legal officers compared to the demands of recent military legal practice that are explored in the latter chapters. As Brigadier Andrew Dunn and Colonel Bruce Oswald explain, the late 1980s and 1990s saw the increasing influence of administrative and international law, the changing nature of modern operations law and an increase in operational tempo. This included deployments as part of United Nations forces and notably the International Force East Timor operation. The nature of the modern forces has required officers to provide advice in relation to a broad range of civil and military issues. This has varied from providing soldiers with basic legal aid before they deployed and preparing submissions seeking tax-free status for ADF members on deployment, through to election monitoring roles and investigating mass atrocities. In this respect, Colonel Oswald refers to his experience in Rwanda in 1994, which is a topic that he has written about more extensively elsewhere.²

8. As I have said, it has been noted that *Justice in Arms* is not a work of minor biographies. However, neither is it simply an earnest account of the development of military law in Australia. It provides an engaging portrait of the men and women who have served as Army legal officers, and it certainly doesn't leave out some of the more amusing stories and the characters involved. For instance, there is a very dry humour in Captain David

² See Major B Oswald, "Peacekeeping in Rwanda – A Lawyer's Experience" (1996) 70 *Australian Law Journal* 69.

Benjamin's letter to a friend in which he described his work as a staff officer in the Middle East in 1942 as "not exactly heroic, but still moderately useful".

9. For the duration of World War Two Army Headquarters were located in Melbourne. Apparently there were a significant number of legal officers based in Melbourne who often referred to themselves as 'St Kilda Road commandos'. Captain John Norris, who studied law at Sydney University, is recorded as having written with obvious irritation that

"...sometimes Melbourne resembles an outpost of Phillip Street, and lesser breeds without the law are heard to mutter that lawyers are like rabbits and to class them equally as a pest."

Some would probably say that the reputation of lawyers, on Phillip Street and elsewhere, is not dissimilar now to what it was in Melbourne in 1942.

10. Lieutenant Colonel Edwin Brissenden, who was the first person appointed Deputy Judge Advocate General in 1921, also sounds like a character. The renowned war historian C.E.W. Bean recalled that when military authorities brought Brissenden a message offering that he return to Australia to take up a judicial position, he replied, "Not on your life – I've just been made a second lieutenant in the A.I.F!" While he accepted a later offer to sit as a

District Court judge, he resigned before commencing his duties. There are many benefits of life at the bar and Brissenden clearly knew all about them.

11. However, perhaps one of the most extraordinary characters was Alec Sheppard, who in 1940 was appointed Legal Staff Officer to Headquarters 6th Division, which was at the time serving in the Middle East. He was later appointed by General Blamey as the most junior member of a three-person committee headed by Justice Norman O'Bryan, and ultimately rose to the position of Director of the Civil Affairs Office of Coordination in 1945.
12. There are three remarkable things about Alec Sheppard. First, he was the only person during World War Two to be decorated for gallantry while serving as a Legal Staff Officer. Second, he had a keen eye for swift justice. He apprehended a suspected fifth columnist and, after carrying out an elaborate plan to test the man's bona fides, ordered that the man be shot without trial. When he couldn't assemble a firing squad – because the men as he described them were 'squeamish' – Sheppard shot the man himself. Third, he advanced to a position of distinction in the Army Legal Corps while hiding an important fact. He was neither qualified nor admitted to practice.
13. There is one final fragment of the book that I wanted to mention. It records Senator Brigadier General Drake-Brockman as describing the Imperial Army Act (presumably without sarcasm) as “one of the most perfect specimens of

draftsmanship in existence on any statute-book in the world.” This is high praise. While I’m not anti-statute, I wonder when ever-expanding tomes like the *Income Tax Assessment Act* and the *Competition and Consumer Act* were last complemented as being ‘perfect specimens of draftsmanship’?

14. To conclude, *Justice in Arms* makes an invaluable contribution to the study of legal and military history in Australia. It weaves the evolution of military law and practice in this country – from the separate forces of the six states at Federation to the implementation of, and constitutional challenges to, the *Defence Force Discipline Act* – together with the stories and experiences of the individuals who fostered that progress. It is comprehensive, engaging, meticulously researched and, as I have said, beautifully presented.
15. I congratulate those who contributed to *Justice in Arms* and, in particular, Colonel Oswald and Colonel Waddell for their stewardship as editors. As Colonel Oswald and Colonel Waddell note in their preface, there was a significant gap in Australian military history regarding the legal officers of the Australian Army and, importantly, there was the potential for that history to be lost forever. Those involved in the writing and production of *Justice in Arms* should be commended for their work and dedication, and for ensuring that this important aspect of Australian legal and military history is captured.