

This is the unedited version of a profile which appeared in *Australian Doctor* in 2001. The published version may have had minor changes.

The Profile: Peter Cashman

CV in Brief

Present:	General Counsel, Maurice Blackburn Cashman
1999-2001:	President, Australian Plaintiff Lawyers Association
1990-present:	International member, Board of Governors, Association of Trial Lawyers of America
1990-1999:	Cashman & Partners
1987-89:	Slater & Gordon
1986-87:	Commissioner, Australian Law Reform Commission
1982-86:	Founding director, Public Interest Advocacy Centre

THE LEGAL TERRIER

Two men and their sons spent a week in the wilderness earlier this year, camping and fishing at a remote spot in northern Victoria. It was a time for getting away from all the pressures of their busy city lives.

Except that old habits die hard. One of the campers was up early each morning, the first to cast the fishing lines. And late at night, as everyone else was thinking of their beds, Peter Cashman would suggest putting the lines in just one last time.

“It was interesting because Pete shows the same tireless energy and tenacity when he is fishing,” says Roger West, a lawyer friend of Cashman’s for more than 20 years, since their paths crossed at the Redfern Legal Centre. “He just won’t let go.”

Not that they caught many fish. Indeed, West laughs, it’s lucky Cashman is a better lawyer than he is fisherman.

Whether you admire or detest the work of Cashman, Australia’s foremost plaintiff lawyer, you have to admit that he has done extremely well. You just have to look around the Sydney offices of Maurice Blackburn Cashman to be reminded of his success.

It's not that the decor is particularly flash. Just that the framed newspaper headlines and cartoons are a reminder of Cashman's involvement in so many of the big cases - the Dalkon Shield, the Copper 7 IUD, heart valves, breast implants, passive smoking...the list goes on.

Cashman hasn't always been on the winning side, but even his critics in medicine and the law acknowledge his tenacity in pursuing cases over many years, incurring huge costs without any certain return.

He's like a dog with a bone, say friends and foes alike. He just won't let go.

Not even when cases run for more than a decade, as with the Dalkon Shield litigation, which eventually settled in favour of Cashman and clients. And not even if he has to appear in United States courts - as he has in several cases.

Ellen Beerworth, a solicitor who represents manufacturers, has worked on the opposite side of the fence to Cashman for many years and debated him at many conferences.

She is critical of some tactics of plaintiff lawyers, their willingness to rely on what she calls "junk science", and their position that all business is evil. "There are some obvious bad eggs in manufacturing who haven't lost sleep worrying about product safety but that doesn't mean all business runs that way," she says. "My view is that most businesses get it right most of the time because it pays to get it right, it is economically in their interests.

"Plaintiff lawyers don't want to know about the political and social implications of what they are doing, that if they bring inappropriate actions they might force some products off the market. We have seen that around the world with Debendox going off the market. There was nothing wrong with it - just that people were bringing inappropriate claims. The rest of us have had to suffer from morning sickness and its consequences."

That said, Beerworth thinks there is a role for people like Cashman "who stand up for the little person". And when she gets calls from people looking for a plaintiff lawyer, she often refers them to Cashman.

“He is the most talented and skillful of plaintiff advocates in Australia,” she says. “He is committed and passionate about what he’s doing. If I were running a business I would rather he were not the lawyer coming after me.”

“He is one of a kind,” adds David Hirsch, a medical negligence lawyer, and friend and colleague of Cashman. “You can love him or hate him but he’s a vital person in keeping the bastards honest.”

As a young boy, Cashman refused to let his mother smoke in the house. No matter if it was raining or blowing a gale - she must go outside to light up. When the ambulance came to take her to hospital a few years ago, on the night that she finally died after a long and painful battle with emphysema, her main concern was to make sure that the cigarettes weren’t left behind.

“She was absolutely addicted,” says Cashman. “I’ve had a lifelong hate of the tobacco industry and a lot of my professional life has been involved in litigation against the tobacco industry. Like most people in the community, some of my family have died prematurely as a result of addiction to cigarettes.”

This seems an obvious starting point to try to understand what drives Cashman.

But he thinks the crucial turning point in his life was his politicisation at Melbourne University in the early 70s, during the days of protests against Vietnam.

“I was totally radicalised by university,” he says.

Cashman grew up in a working class family who did it tough. His grandfather was one of seven orphans, and left school young to work and get his siblings out of the orphanage. His mother worked to support her children; her husband never quite recovered from the horrors of war and left when Cashman was a baby.

Cashman was the first in his family to go to university. His mother had suggested banking or accountancy, but the law took his fancy. He liked

Perry Mason on TV, and enjoyed class debates, but had no idea of what lawyers actually did, let alone where the university was.

He won a scholarship to Melbourne University's Trinity College, where he was surrounded by the sons of private schools, wore a gown and tie to dinner, and received gold-embossed invitations to have sherry in fellows' rooms after dinner. Needless to say, he didn't quite fit in and eventually moved out.

His political interests continued when his studies were done - though he has never joined a political party - and he took up various university positions as a researcher and tutor, and worked at legal aid centres.

In late 1974, psychology graduate Robyn Vines heard of a group of left wing lawyers, including Cashman, who planned to visit East Timor, and asked if she could join them.

"The night we were due to fly through Darwin, Darwin blew away," she remembers. Vines, now director of the clinical psychology in rural general practice project at Charles Sturt University, Bathurst, instead spent the next ten days with her new friends in Alice Springs, helping the battered arrivals from Darwin.

The group then hitchhiked across Queensland, having a "great adventure", and making lasting friendships. Vines later shared a house in Melbourne with Cashman and others in the group, several of whom later travelled to London together. There Cashman undertook further studies, including a PhD, at the University of London and worked in professional negligence litigation - for the defendants.

While studying in Scotland, Vines introduced one of her new friends, the delightfully named Polly Pickles, to her old friend. "Polly and he fell in love and they've been in love ever since," says Vines. "They're a marvellous couple."

When Cashman returned to Australia in the late 1970s, he worked with the Law Foundation of NSW and in 1982 became founding director of the Public Interest Advocacy Centre (PIAC), and developed an interest in product liability and class actions.

Cashman recalls that one of his first clients at PIAC was an infertile woman who had been unable to afford legal fees to pursue a claim against the manufacturer of her Dalkon Shield.

“That one case really triggered a career of involvement in product liability in medical products,” he recalls. It also led to his move into private practice as the case became too big for PIAC, and Cashman negotiated its transfer to Slater and Gordon, for whom he set up a Sydney office.

Cashman says the case had a profound impact on him as he learnt more about the manufacturer’s conduct: “It was hard to be professionally detached. I was pretty angry about it.”

Cashman has a speech he often gives at medical conferences, where he knows many in the audience deride him as an “ambulance chaser”.

It’s about how doctors really ought to see him as a friend. He is sympathetic to the demands under which they operate - “it’s a hard job and I don’t think they are adequately remunerated most of the time” - and wants to help them avoid being sued.

“Failure to say sorry is the most dramatic and simple mistake they make, I see it time and time again,” he says, adding many doctors also would benefit from keeping better records.

The advice he gives junior lawyers is also relevant for doctors, he says. “People are afraid of disclosing uncertainty or lack of knowledge. The more senior and the more experienced you become, in my experience, the more prepared you are to concede your limitations.”

The speech also emphasises that Cashman has generally targeted medical manufacturers, rather than doctors - apart from the famous case of Breen vs Williams. (Cashman was unsuccessful in claiming that Julie Breen, who was involved in separate action over a breast implant, should have access to medical records held by Sydney plastic surgeon Cholm Williams.)

“People often don’t appreciate the important role that plaintiff lawyers play in persuading people not to pursue claims or deterring people who don’t have good claims and in diverting attention away from doctors to drug companies,” says Cashman.

“In 2000 breast implant cases we have never sued a doctor. I reckon half of the doctors involved in giving women Dalkon Shields could have been sued and many of those in the Copper 7 cases, but in each case we found evidence of things the drug companies didn’t tell doctors, so we were very sympathetic to the doctors. I don’t think they have appreciated that.”

This argument doesn’t impress the Australian Medical Association’s Trevor Mudge, who responds: “It is the manufacturers who have the money”.

Mudge, a gynaecologist, adds that much product liability litigation in his area of medicine has been based on “junk science”. “On balance, most of my colleagues would not consider product liability litigation to have contributed much to Australians’ health....but that is not a criticism of Peter Cashman, he’s an articulate and forthright spokesman for his industry.”

Apart from his involvement with the Breen case, Cholm Williams was the spokesman for plastic surgery organisations at the height of community concern about breast implants, and was often called by the media to respond to comments by Cashman and other lawyers.

Williams acknowledges there were technical problems with some implants, but argues that Cashman and others caused more harm than breast implants ever did through scare mongering about possible links to breast cancer and other illnesses.

“I think the defendants are winning that debate,” responds Cashman, referring to studies which have failed to show a link between the implants and autoimmune diseases. But, he adds, this was always a tangential issue to the main problem of failed implants.

“A lot of women were given false assurances and expectations,” he says. “I don’t think the plastic surgery community did its duty to inform them of the risks.”

While working at the AMA as a legal counsel, Charlotta Blomberg met with Cashman over shared concerns such as professional indemnity. She understands the hostility of some doctors to Cashman, but says he operates in an adversarial system where there is no other option than using “the very blunt instrument of tort law to resolve these issues”.

Blomberg found Cashman likable and straightforward: “He was the sort of person you could do business with.”

Sydney Queens Counsel, Peter Semmler, adds: “It’s only through the work of people like Peter Cashman that many people who’ve got very deserving cases ever get the opportunity to present them in the courts.”

“Without people like Peter,” says his friend Ben Boer, professor in environmental law at Sydney University, “there are thousands of people, particularly women, who would have been badly done by through their use of products manufactured by private companies, and he has been able to bring them a quality of service which you do not often find.”

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You should have a look at Cashman’s handwriting, suggests one of his friends. It’s really interesting, a curious mix of extravagant flourishes and small, neat script. The friend forgot to mention that it is also just about impossible to read.

All of which could equally be said of the man himself. Cashman, although known for throwing and enjoying good parties as well as for his hard work, is a private person. “He’s a bit of a still waters run deep person,” says a friend.

His partner, Polly Pickles, a clinical psychologist at a Sydney hospital, also guards the family’s privacy closely, and declined to be interviewed for this article.

There are all sorts of contradictions in what people say about Cashman. A generous, warm, loyal friend and host with a biting, dry sense of humour who is also surprisingly shy. He enjoys bushwalking and sailing with friends, and spending weekends as his children’s chauffeur.

Then there's the tough, intellectually arrogant, hard-headed, wealthy businessman who's made it in a field other lawyers describe as "a blood sport". And the social and political activist, who has never been backwards about courting media attention, whether on behalf of clients or the Australian Plaintiff Lawyers Association.

"Being a lawyer is just being an actor," says Ellen Beerworth. "There are different personas that you put on. I think he's a genuinely very nice person and he's one of the brightest people I know."

Roland Everingham, who worked on tobacco litigation and represented the victims of Chelmsford's deep sleep therapy while at Cashman & Partners, speaks for many when he says that his former partner sticks to his guns, sometimes to the detriment of himself and others: "If he has a conviction, it is very difficult to persuade him to the contrary. He's a very tough negotiator, depending on which perspective you're coming from, that's a strength or weakness."

Another former partner, Vera Culkoff, describes it as a "dogged determination without a capacity to appreciate when you're at the precipice, as it were, and time to step back rather than jump over."

Medical defence expert Paul Nisselle says the first thing he noticed about Cashman was his aggression but that "after a number of meetings I now know him as a dedicated tilter-at-windmills and very client focused".

David Hirsch says his partner is "fearless". "He just takes the view that you can't be a shrinking violet in this business, you have to be prepared to stand up and speak your piece. He's both venerated and vilified for that."

He adds: "I would say that Peter is the most ethically oriented lawyer that I've ever met. He is prepared to take risks for clients if he believes that their cause is worthy. He has been fighting for a better deal for Australian women in the breast implant case whereas other lawyers around the world have been prepared to take the money and run."

It is sometimes implied that Cashman's good fortune - friends speak of his beautiful waterfront home and other properties - is somehow wrong for a lawyer whose business card reads "making justice happen".

PIAC's director, Andrea Durbach, dismisses such comments: "He works damn hard and he's entitled to the benefits of that." She adds that when the Dalkon Shield case finally settled, Cashman sent PIAC a \$50,000 cheque.

Cashman says plaintiff law does not attract lawyers whose prime goal is monetary: "It's demanding emotionally, it's demanding financially, it's demanding on staff to run the sort of cases that we do. It's not the sort of work that you do for the money. If you were in it for the money, you'd go and work for Clayton Utz and work for the other side."

To say that Cashman, 50, has been moving towards a Sea Change in recent years risks overstatement, but there has been a conscious effort to pull back from the long hours that have made friends worry about his health.

When the firm he founded in 1989, Cashman & Partners, merged two years ago with the Melbourne-based trade union firm Maurice Blackburn, he negotiated a deal to avoid being a managing partner so he can concentrate on case work.

He is also trying to spend more time with his teenage children, Laura and Oliver: "I was an absentee parent for most of their childhood because I was too involved in work. I want to try and spend as much quality time with them as I can over the next few years before they leave home."

He also plans to write two books: a series of case studies highlighting the "inadequate testing of drugs and devices"; and a practitioner's guide to class actions.

Cashman says he is less likely these days to "fight to the death" in negotiations: "I am now learning that if a reasonable settlement is on the table, it may be in the interests of everyone to compromise a little more readily."

But you know what they say about old habits...

