



Law Council  
OF AUSTRALIA

# National Press Club Address 'Justice State of the Nation'

**Speech delivered by Fiona McLeod SC, immediate past-President,  
Law Council of Australia at the National Press Club, Canberra.**

**14 March 2018**

Thank you, Morry/Sabra.

I also acknowledge the Ngunnawal people, the traditional custodians of the land upon which we meet, and pay my respects to Elders past, present and future.

The Justice Project is one of the most significant pieces of the work The Law Council has ever undertaken, a landmark project to review the state of access to justice in Australia—particularly for disadvantaged people—and gather the evidence to make the case for reform.

I want to acknowledge the dedicated efforts of the Law Council Justice Project team and the contribution of our expert Steering Committee of eminent lawyers, jurists and academics, chaired by former High Court Chief Justice, the Hon. Robert French AC.

There is widespread commitment among the legal profession, in government, in the non-profit and community sector, and indeed in the business sector – to push for legal reform, to ensure that justice remains the right of all. I want to thank the many individuals and organisations who have taken the time out of their demanding schedules to engage with us on the Justice Project—over the past year, we have received 129 submissions and conducted around 150 direct consultations—with many more we could not reach.

Our headline recommendations, if implemented, would:

- transform the way the justice system works to greatly enhance access;
- prioritise legal rights and access for all within the broader policy and budget frameworks of government; and
- restore the legal assistance sector as a crucial key to ensuring the most disadvantaged Australians are not excluded from justice.

The big ideas of the Project have the capacity to completely change the way key features of our justice system work—ideas like moving to joined-up services, where the lawyer, doctor, social worker, housing specialist, and child health nurse are all co-located, taking services to people and providing combined care.

Ideas like the Justice Impact Test, which takes account of the downstream impact on the justice system of new laws and policies and the cost implications of change.

My inspiration for the Project came from my own personal experience acting for people caught up in the system, women who had been trafficked and exploited, men with manageable mental illness facing involuntary treatment and detention, women lined up outside the women's legal service looking for a way out of family violence but with nowhere to go and nowhere to take the kids - cases where early intervention could have made all the difference.

It also came from the experience of campaigning—as the Law Council has done so effectively—for funding for the legal assistance sector armed with the social and economic evidence—and the moral imperatives for greater funding.

I've been perplexed that justice has appeared to be seen as a minor issue, quarantined to the Attorney General's portfolio and relatively limited budget—and yet impacted upon by an extraordinary range of laws, policies and practices across the whole of government.

And I've been frustrated at the need to continually build the case for structural reform—despite the fact that the evidence of need and economic good sense has been well documented over the decades; yet this has not been enough to move decision-makers to act.

It was clear in my mind that there was a need for a fundamental shift in the narrative about the critical connection between democratic rights and access to justice. And the key to this is 'access'.

We realised that it is only through gathering real stories that we can reveal the real picture of what it means to not have access to justice.

So, last year, I was on the road with the Project team, and we were talking to people:

- people all over Australia;
- people working in frontline justice services, and people who were their clients;
- people in prisons and detention centres, bush courts, refuges and cultural centres, country halls, mothers' groups, nursing homes, hospitals and legal centres; and
- people on the margins, who desperately need the justice system to protect them, and people for whom justice has been systematically denied.

We sat in the red dirt in Kalgoorlie and in Maningrida, we shared high tea in a retirement village in Townsville, we spent hours in courts, in cramped back offices and in bare concrete rooms in prisons across the country.

We met those who had to navigate the very difficult issues of homelessness, domestic violence, unpaid fines, child removal, government benefits, abusive corrections officers, police interactions and court appearances.

I watched as elders spoke with stern authority to young men whose lives were in tatters—as lawyers half my age offered hope to hopeless cases.

I watched as field officers squared their shoulders for another day confronting violence and dysfunction in their communities.

I witnessed the courage of ordinary people in the face of the most extreme difficulty dealing with family, with government and big corporations.

I heard countless disturbing stories.

Stories of traumatised women, new mothers, people with severe mental illness and disability, children without homes, men without social supports or jobs. Of generations of young men lost to jail time. Of older people tricked into unfair contracts and stripped of their assets.

I also felt the palpable desperation of front-line legal assistance lawyers, the absolute heartbreak for them to have to turn away one critical case after another—because of a lack of funding, resources, or personnel.

Obviously, I don't have the time this afternoon to share with you the full extent of what we heard, the detail of every person I met—all of whom have left an indelible impression on me.

The Final Report of The Justice Project will catalogue them all. Based upon compelling data about the structural and procedural failings of our legal system and drawing upon the close-up experiences of the Project team, the report paints a picture of a system under extreme duress—in fact, a system in crisis—and it provides us with the absolutely necessary steps we have to take to remedy that dire situation.

In Brisbane, for example, I met with Sisters Inside – a support organisation for women in custody.

I heard that women seeking protection from police in cases of domestic violence then end up in custody for unpaid fines.

That simple official response can have catastrophic consequences. The average time that women spend in jail in Queensland is just under five weeks, but a single week can result in removal of a child. The end result is that women are refusing to call police to seek help out of fear of losing their children.

In Silverwater and Darwin Correctional Centres we also heard that support services for pregnant women were severely limited—we heard reports of children being born on cell floors, ‘consent to removal’ being taken by child protection officers whilst women were under anaesthetic, of babies being removed from their mothers within 24 hours of birth and placed into state care.

I heard of a mother’s anguish as she waited for news with diminishing hope of ever being reunited with her baby. I heard of hospital staff gaming the system so that mothers could stay with their new born babies for a few precious extra hours.

We spoke with staff at services in Kalgoorlie who lamented the repeat offender legislation in Western Australia which meant that kids are detained under ‘third strike’ laws—for stealing a bottle of coke valued at \$1.50.

We heard of children in foster care being charged with criminal offences for trivial matters—for instance, we heard of a child who was charged with criminal damage for spilling tomato sauce on the floor and the bench.

We heard from people at Regional Alliance West in Western Australia, an organisation servicing an area more than twice the size of Great Britain. This organisation has just one solicitor!

In Victoria, on any given day, almost 3000 people are subject to compulsory mental health treatment – yet fewer than one of five of those appearing before the Mental Health Tribunal as it considers issues of involuntary detention and treatment, has access to legal representation.

These are not isolated examples of a legal system in crisis, and to frame this whole situation more broadly, it might help to hear a few statistics:

- 14 per cent of the population of our country live under the poverty line, yet legal aid grants are only available for eight per cent of Australians.
- Last year, Community Legal Centres turned away 170,000 people.
- One remote Aboriginal Legal Service told us that they could have 100 matters on a single list in one day. That adds up to about five minutes of time with a lawyer for each person—including time in Court.
- Our courts and tribunals are also facing critical pressures. For example, in some Family Court registries the wait for a trial can be three years from the time of the initiating application. Delays in judicial appointments have also caused significant court backlogs and delays.
- In 2016, the Victorian Chief Magistrate estimated that up to 50 per cent of all accused persons in criminal matters were now representing themselves in court.

Our visits leave a nagging certainty that we are pushing difficult social problems to the legal fringes, towards good hearted individuals in the legal assistance sector who are struggling to provide the service they want and their clients need—and who are destined for burn-out and despair.

More than that, it's absolutely clear that a systemic lack of access to justice contributes enormously to cycles of intergenerational trauma and disadvantage within communities.

My concluding point is this: let us learn from the findings of the Justice Project concerning what is working and what is not.

This is a project that transcends party politics—it is about supporting our most vulnerable and lifting them out of disadvantage.

It is about fulfilling the solemn promise of our democratic way of life where equality before the law is sacrosanct. It is, in other words, about insisting that justice be available to everyone—especially to those who for reasons of poverty and disadvantage need it most.

So, let us be worthy of the lofty but vital ambition of equality before the law.

For the sake of the people I met during our consultations, and all those I could not, we must realise that defining ambition of our democracy.

The recommendations of the Justice Project will tell us how.

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