



Law Council
OF AUSTRALIA

Opening of the Northern Territory Legal Year 2018

Speech delivered by Morry Bailes, President, Law Council of Australia at the Opening of the Northern Territory Legal Year 2018.

1 February 2018

Director of Public Prosecutors Jack Karczewski QC, President of the Law Society Maria Savvas, President of the Bar Association Miles Crawley SC, My fellow Executive member Mr Tass Liveris, Our former President Mr Duncan McConnel, Ladies and Gentlemen.

Good afternoon, and may I say how pleased I am to speak to you today as the current President of the Law Council of Australia to mark the occasion of the beginning of the Northern Territory Legal year.

I pay my deepest respects to the traditional custodians of the land on which we meet, and to Elders past, present and future. I also acknowledge all aboriginal and Torres Strait Islander people present this morning, and Elders from visiting nations.

As chief advocate for the legal profession in this country, I am pleased to be afforded this honour in the Northern Territory, as the Territory is emblematic of many of the challenges we face in other parts of our country.

From the outset may I say that the Law Council exists to be the voice and the champion of the profession, and for a smaller jurisdiction, we hope, a resource to your profession, and the Law Society and Bar Association.

Australia stands at an interesting point, with an ongoing battle with Executive government, to retain rights previously taken for granted. As Chief Justice of New South Wales Tom Bathurst AC QC put it:

Many such encroachments, taken individually, arguably have little effect. Taken cumulatively over time and across state, territory and commonwealth jurisdictions they can be the death by a thousand cuts of significant aspects of those rights and freedoms.

In the face of these challenges we need to employ the best of our skill, our knowledge, our passion and our intellects, we need to mount our most articulate arguments, and we need to represent the finest of our legal traditions, to speak not only on behalf of ourselves, but on behalf of all Australians.

The modern Law Council is not however merely a voice of advocacy, but a critical institution in our national affairs. It is no exaggeration to say our Federal Parliament is being led in many instances, by our advice to it as a Council.

Some of the most difficult federal legal issues fall within the jurisdiction of the Northern Territory—proper access to justice, over representation of aboriginal and Torres Strait Islanders in this Territory's gaols, and scarcity and under resourcing of rural, regional and remote areas.

Our priorities in 2018 reflect these issues and these concerns that face you here, but additionally recognise that, in accordance with the Law Council's agreed strategic pillars, the welfare of the profession itself must also be our focus.

During 2017 the Law Council undertook the Justice Project. It is an ongoing body of work. The project, advised amongst others, by the former Chief Justice of Australia Robert French AC QC, is attempting to comprehensively analyse what the impacts of a lack of access to justice is having in Australia.

After an exhaustive literature review, the project engaged in as broad a consultation process as we were able to with our resources, to compile facts and testimonies, from individuals, families, and communities affected when proper access to justice is denied.

We thank the ordinary Australians who told their stories, and the legal practitioners, in CLC's, legal aid centres, and in private practice, young and old, who have been on the frontline of helping people with disadvantage or challenges, in our society.

Their shared stories have enabled the Law Council to build a picture and a map of what Australia looks like when it comes to the provision of legal services, and the ability to get legal help and justice. It is confirming that that we already know: that there is an enormous job to do in order to provide justice and equity for all Australians.

In its report to Federal Parliament regarding civil justice in Australia, tabled in late 2015, the Productivity Commission recommended an immediate injection of \$200m for the legal aid sector to just 'right the ship', recognising that the recommendation did not address the requirements of the criminal justice system.

There are of course some very stark examples of access denied, which need to be seen against a broader mosaic of a lack of health and mental health, education, employment opportunity, housing, early childhood and parenting, and family and domestic violence services.

Each aspect lacking, compromises a community's ability to thrive spiritually and economically, and to be self-determining. This of course is a well understood challenge in the Northern Territory, and in particular with respect to Aboriginal and Torres Strait Islander communities, manifest in the indefensibly disproportionate number of our first people, not on their lands, but in our gaols.

In what was a seminal Law Council Symposium highlighting the problems of Aboriginal and Torres Strait imprisonment in this nation, occurring during the presidency of our former President and yours, Duncan McConnel, I saw for the first time not only the problems but also the remedies. I saw that with the will and commitment of parliaments, Federal, State and Territory, there is a way through.

It is a matter that as a profession we have a unique insight into and a unique opportunity to impact. As a Council we are continuing efforts to end mandatory minimum sentences and see off attempts to introduce them.

Mandatory minimum sentencing in this Territory is a significant reason explaining the disproportionate number of Aboriginal and Torres Strait Islander people in gaol.

In the 16th State of the Judicature address, former Chief Justice French rejected mandatory sentencing, lamenting the "national disgrace" of indigenous incarceration, and urged a stand against the erosion of common law rights, that I touched on before.

As a Council we will be advocating for COAG to adopt an intergovernmental strategy to reduce rates of youth detention and distinct strategies in relation to reducing imprisonment of Aboriginal and Torres Strait Islander men and women.

We must lend our voice in the debate regarding national recognition and redress for our first Australians.

Now some 25 years since the Royal Commission into Aboriginal Deaths in Custody reported, and with a worsening not improving circumstance, we have recommendations from another the Royal Commission, that into the Protection and Detention of Children in the Northern Territory.

As Commissioners Mick Gooda and Margaret White have written:

...systemic and shocking failures are evident. The time for tinkering around the edges and ignoring the conclusions of the myriad of inquiries that have already been conducted must come to an end. Only fundamental change and decisive action will break the seemingly inevitable cycle we have found...that have cost children and families greatly, they have not made communities safer and they are shocking.

The Royal Commission has given us some very clear recommendations, and we must play our part as a profession to ourselves help governments act upon those recommendations

We ought not stay passive, indeed we cannot. In a recent Human Rights report the United Nations concluded that Australia exhibits some very concerning trends in regard to human rights, and that it is the responsibility of all Australians to address them.

Of course, access to justice for rural, regional and remote communities extends beyond the issues facing Indigenous communities, and beyond the particular challenges faced by the Northern Territory.

They are in part a measure of the physical and historical circumstance of this country, this continent we inhabit. A landmass greater than mainland United States, yet with a population of only around 24 million people.

The great historical drivers of our economy—mining and agriculture—led to thriving country and regional populations, communities who although often isolated have largely been robust, self-reliant, bringing out the very best of the Australian spirit.

But life in many such places has been very tough.

They have been subject to policy and economic settings that have seen services reduced or removed over time.

These people have as much need for legal services as every other Australian. Often, they may have more need, dealing with financial, business or family issues, but doing so in isolation, without recognising that a lawyer's timely advice could change or save their lives.

Around 30 per cent of Australia's population live outside a major city, but only 10.5 per cent of our lawyers reside in and service those populations.

Legal issues can be severely compounded due to lack of access to lawyers in rural, regional and remote areas, or a lack of understanding of the legal character of a problem. This includes areas like business succession planning, environmental laws, family and domestic violence issues, that affect victims and offenders alike, criminal and family law.

The way these oft complex issues are navigated without proper legal representation and advice can become deeply vexed.

Mental health services in the bush are already pushed to breaking point and suicide is a serious and terrible consequence – consistently 40 per cent higher than rates in metropolitan areas

The pressures are only exacerbated if you need legal advice and you can't get it, and we intend a focus on the needs of regional, rural and remote areas during my Presidency.

The solution has several aspects, but a system of funded universal legal support would greatly strengthen our system and our democracy.

As I made reference to before, restoring funding to Legal Aid, with an estimated initial injection of \$200 million – would in the meantime be a good start.

Those who cannot access legal services are not only the most disadvantaged in our communities, but also large sectors of the middle class, the 'missing middle' as the Productivity Commission refers to them – many who reside in the RRR areas.

How we recruit and retain lawyers to these communities must also be one of our key areas of interest. Perhaps we could model the system on the indentured training system for rural doctors, with incentives and support to encourage young people in rural communities to train in Law, and then to stay connected to their home communities.

To put in another way, why train so many lawyers in this country without creating opportunities in the bush to employ them

In many European countries before the event insurance has played a significant role in addressing legal need, yet in Australia the conversation about insuring against legal risk has not even begun

And in addition, we must explore the application of technology to meet needs in RRR communities. This is another of the priorities of my presidency, but it is one that requires thought and care.

Online and technological legal services undoubtedly have a role to play, but only if there are safeguards built in, only if the frameworks guarantee that the rule of law remains undiluted and paramount, and only if we recognise that even technology has hierarchies of access and entitlement, and that poorer communities may simply not have the same access that many of us enjoy.

And another thing I do want to stress – which has been confirmed in our consultations through the Justice Project – there will never be any substitute for person-to-person interaction. That will always be true.

Indeed, people in the most vulnerable and marginalised groups can be suspicious of and alienated by – online services. For lawyers, it is the connection, the time, the personal relationships, that allow them to garner the true story, and provide the best quality advice. Often it is only by being in the community and reading the people and the dynamics that true justice can be served.

However, how we take advantage of technology to try and bridge access gaps is one of the challenges we must undertake, because there is great upside.

When justice is denied to some, we are no longer the democracy we want to be, and if the rule of law is eroded, then we are in perilous waters indeed.

In addition to the areas of interest I have already outlined, the Law Council this year will also continue to focus on a number of other key themes.

The Australian Law Reform Commission review of the Family Law system is one of our key priorities, having as it does such significant implications for so many of our citizens and lawyers.

With a choking Federal Circuit Court, and the rise and rise of underrepresented litigants, the Law Council has welcomed the review and will work to assist. Submissions will be made throughout 2018, with an anticipated final report in 2019.

We will look to secure the future of our profession, to meet the challenges of the present, and to assist promote the profession, as it grapples with innovation, technology and changing client needs and demands.

Profound technological change is coming whether we like it or not, so must adequately prepare the legal profession for it.

To that end The Law Council will host a national summit on “The Future of the Legal Profession”, and I hope to see some of you there.

We will support the development of a national action plan on Business and Human Rights, continue our advocacy for a Modern Slavery Act, and continue our advocacy for greater funding for legal aid and the legal assistance sector.

And of course, we will continue building the Law Council’s strong reputation as a trusted advisor on law reform initiatives. The more we can engage with members of parliament and represent the interests of the legal profession to government, the more we can ensure strong and good law is passed, that federal courts are well funded and that the judiciary remains strong and independent.

The future health of our democracy depends on our work on this front.

There is already a formidable array of legislation before Parliament, introduced before Christmas with significant rule of law implications, impacting on fundamental rights.

These include national security laws, foreign interference laws, substantial new Commonwealth criminal offence provisions, proceeds of crime, welfare laws, changes affecting the family law jurisdiction, immigration law, bankruptcy and tax. This agenda will build considerably, and we are making our voice and views heard on a daily basis

Conclusion

I come to my role as President of the Law Council of Australia, I hope, able to bring a diverse experience

I have been Principal Legal Advisor to state police associations, for Indigenous community organisations, and state education bodies. I have expertise across a range of areas including business, ethics, corporate governance, and risk management.

I bring a lifetime’s love of, and work in, South Australia, and more recently in Western Australia and the Northern Territory.

I also know that I come to the job on the backs of the many great advocates of our profession that have gone before, and I am responsible to them, and to all of you who every day work at the coalface of the legal system, where every individual is demanding of you, and deserves from you the best you can deliver.

I will always take my hat off to the many Australians who serve the public - who witness the darkest and most difficult of our lives – police men and women, paramedics, social workers, nurses, doctors. Their work can be stressful, dealing with people often at their most vulnerable.

I know that many of you have and will encounter similar challenges in your professional life, and that it is not easy sometimes to survive the emotional cost of working at the coalface, in a system under pressure, and sometimes maligned for the work you do.

I urge you to recognise the importance of prevailing, in supporting one another, and recognise too, that the Law Council stands with you to advocate for you, for our work, for our principles that we uphold as lawyers, and for the betterment of Australia and the lives of every Australian.

In the simplest terms, that is the key that I wish to bring to my new role – passion, a clear understanding of the sacrifices you make, but also the utmost necessity of us strengthening our advocacy, pushing for change, and protecting the rule of law, in these sometimes uncertain times.

I will do my utmost to fulfil that task during my tenure.

The freedoms enjoyed by all Australians are owed to our robust belief in the rule of law, the independence of the judiciary and ability to access justice. We must raise the alarm when we believe these pillars are under threat.

The Northern Territory offers us perhaps some of our greatest challenges, but also the greatest opportunities, to make a difference, to influence governments, and to enact change.

I wish you well for 2018, I thank you for your time today, and I look forward to what I know we shall achieve together over the coming year.

It leaves only for me to declare the Northern Territory Legal Year open.

Thank you

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