



Law Council
OF AUSTRALIA

National Indigenous Legal Conference 2018

Speech delivered by Konrad de Kerloy, Treasurer, Law Council of Australia, at the National Indigenous Legal Conference, The University of Western Australia.

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Introduction

Good afternoon to everyone and thank you for the opportunity to speak to you at this important national conference.

I acknowledge that I stand on Whadjuk Noongar land and the Noongar people remain the spiritual and cultural custodians of their land who continue to practice their traditional values, languages, beliefs and knowledge.

I pay my respects to Elders past, present and future and acknowledge each Aboriginal and Torres Strait Islander person here today and their respective lands, language and practices.

It is indeed an honour to be included in the program of your conference – and to speak on behalf of the Law Council of Australia. We are very pleased also to be sponsors of the conference this year.

The National Indigenous Legal Conference is a very significant conference in the annual calendar. For the last 13 years, this conference has provided a vital forum to bring Aboriginal and Torres Strait Islander lawyers, academics, students, and teachers, experts and leaders together – to share their knowledge and expertise and focus on legal matters critical to Aboriginal and Torres Strait Islander communities, and to the status and welfare of those communities.

From the outset, I want to reiterate the Law Council of Australia's full and unqualified support for the work of the Referendum Council and the Uluru Statement from the Heart, the recommendations from which included a call for a constitutionally enshrined First Nations Voice to the Parliament.

The Law Council considers that the creation of a representative body providing a Voice to the Parliament be a unique opportunity to recognise and respond to the will of Aboriginal and Torres Strait Islander Australians.

It would also allow the potential for Aboriginal and Torres Strait Islander Australians to lead and design how our legal system and legal solutions can better serve and meet the needs of Aboriginal and Torres Strait Islander communities.

The Law Council is deeply committed to supporting change and reform to improve justice outcomes for Aboriginal and Torres Strait Islander Australians that are authentic for each community across Australia.

As the body representing the legal profession, our role is also to uphold the rule of law and to ensure our justice system serves each Australian equally, and that justice is accessible to all.

Sadly this is not always the case, which is why in early 2017 the Law Council decided to conduct The Justice Project.

Today, I would like to talk through some of the details of the project – which we hope will contribute to important reforms to the justice system over the coming years and be of assistance to First Nations people in your determination of workable solutions.

The Justice Project

The Justice Project is one of the most significant pieces of work ever undertaken by the Law Council. A national, comprehensive review into the state of access to justice in Australia, particularly for Australians experiencing significant disadvantage.

The project looks at key target groups and has taken particular care to recognise intersectionality and existing overlaps between the groups and their experiences with the justice system.

There is a chapter dedicated to issues affecting Aboriginal and Torres Strait Islander peoples.

Other chapters also focus on Aboriginal people and issues of relevance to Aboriginal communities, including those on people living in rural, regional and remote communities, people with disability, families experiencing violence, people who are homeless, children and young people and prisoners and detainees.

The Final Report was released at Parliament House on the 23rd of August, the culmination of 18 months' work and provides 59 recommendations.

A very important aspect of the project was the involvement with Aboriginal and Torres Strait Islander advisors, experts and community leaders who bring innovative solutions to the challenges that present themselves.

The Justice Project Steering Committee included National Aboriginal and Torres Strait Islander Legal Services representatives Cheryl Axleby and Wayne Muir along with key NATSILS staff and National Family Violence Prevention Legal Service staff, who provided extensive guidance.

Consultations were held with numerous Aboriginal organisations and community leaders across Australia, their submissions and observations were reflected in the development of the Final Report.

These included Aboriginal controlled community legal services and networks, the National Congress of Australia's First Peoples, First Peoples Disability Network and community Elders in Maningrida and Kalgoorlie.

The report emphasises that leadership on access to justice issues has long been advanced by Aboriginal and Torres Strait Islander organisations who know 'what works', and it highlights that there is no shortage of ideas and solutions in this space.

It makes recommendations in support of community-led solutions and frameworks first and foremost, and for the proper resourcing of these efforts.

Its findings reflect and support the Australian Law Reform Commission's recent Pathways to Justice report on Indigenous incarceration – a critical report whose recommendations must be urgently implemented, as the Law Council and others have recently stressed.

However, the scope of the Justice Project is also broader – focusing not only on criminal law issues and incarceration but on fundamentally important civil and family law issues – matters such as child protection, debt, tenancy and family violence.

It calls for increases in funding for legal services for Aboriginal and Torres Strait Islander peoples and it is also distinctive in calling for a focus on addressing the underlying drivers of engagement with the justice system through specific resourcing of early intervention programs and services, that address the underlying drivers of engagement with the justice system.

The details within the Final Report provide a roadmap for change.

The second part of the report analyses the justice system as whole, and outlines both what is working and what is still needed to make a difference with respect to each aspect of the system. Much of this content focuses upon Aboriginal and Torres Strait Islander peoples.

For example, the Legal Services Chapter outlines why Aboriginal legal services are the preferred model for Aboriginal and Torres Strait Islander people, and together with later chapters makes recommendations about funding these services, including arguing for funding contributions from state and territory governments.

The Legal Services Chapter also discusses the need to improve cultural competence and diversity within the legal profession and makes recommendations in this regard, including some to be taken-up by the Law Council itself.

It provides examples underlining the effectiveness of joined-up, holistic service delivery.

The Courts and Tribunals Chapter in a similar fashion makes the case for specialist, culturally competent and therapeutic courts and highlights a number of models proven to be effective.

The Court and Tribunals Chapter also explains the value of diversionary approaches with respect to reducing recidivism, bolstered by statistics, research and case studies.

The Critical Support Services Chapter outlines pathways into, through and out of the justice system, and into and out of disadvantage.

It focuses on the need to address underlying causes of imprisonment and engagement with the justice system through early intervention and prevention approaches, such as family support programs, youth engagement programs, strength-based approaches and justice reinvestment and support services at various points in the justice system, including interpreters and disability support at every stage, along with accessible/culturally competent rehabilitation facilities, bail accommodation and mental health services.

In particular, this chapter calls for the resourcing of critical support services to underpin diversionary/therapeutic strategies in Rural, Regional and Remote areas, in order to address discrepancies in justice outcomes for Rural, Regional and Remote people (or 'postcode justice' outcomes).

Exit strategies, including throughcare for prisoners and young detainees, and support and accommodation for those exiting out-of-home care or prison are also covered in the Critical Support Services Chapter.

It also highlights the need for safe and secure housing as a key component of better justice outcomes, not only for bail and parole accommodation but for example people experiencing family violence and people found unfit to plead.

The Broader Justice System Players Chapter focuses on the role of administrative and enforcement bodies within the justice system, including police, corrections, and child protection, the practices of which are intrinsically connected to access to justice outcomes.

In particular, it highlights concerns regarding police practices around over-policing in Aboriginal communities and responses to family violence; child protection practices with respect to the treatment of Aboriginal mothers and inconsistent application of the Child Placement Principle; and corrections and youth detention practices, and the need for trauma informed approaches, such as with respect to women prisoners and children.

It emphasises the importance of comprehensive training, guidelines/protocols and oversight/accountability mechanisms to address these issues in each context and highlights examples of what is working well including what can be expanded in order to address these issues.

The Governments and Policymakers Chapter discusses the need for whole-of-government solutions that take into account the role of many different actors at state, territory and federal levels, and implement unified approaches and accountabilities.

For example, this chapter recommends the implementation of a Justice Impact Test, that requires government departments to take into account downstream impacts of new policies and laws on the justice system to avoid critical pressures on legal services, courts and prisons.

The chapter also encourages the development of similar tests that enable consideration of the social impact of new laws, including in particular their impact on Aboriginal and Torres Strait Islander people and communities through better upfront consultation and meaningful engagement with Aboriginal and Torres Strait Islander communities.

The Governments and Policymakers Chapter also recommends the adoption of federal Justice Targets as part of the Closing the Gap strategy to reduce rates of incarceration, family violence and child removal.

It calls for the review and reform of laws, policies and practices which disproportionately impact Aboriginal and Torres Strait Islander peoples and undermine their equality before the law. These include: mandatory sentencing, fine regimes, bail and parole conditions, welfare programs such as the Community Development Program and the Cashless Debit Card.

It also calls for urgent reform of juvenile justice systems and raising the minimum age of criminal responsibility.

The Law Council has been very encouraged by the response to the project report since it has been launched, and we look forward to working closely with all our colleagues, with government and with the leaders in your communities – to push for the recommendations to be introduced.

It is the Law Council's belief that change must come, and quickly.

We acknowledge the deep complexity of Aboriginal and Torres Strait Islander Australians' relationship with the law, the vital importance of the growing representation of Aboriginal and Torres Strait Islander practitioners within the law, and how essential community-led solutions are to resolving many of the complex issues, the suffering and the injustice that continues to be experienced by Aboriginal and Torres Strait Islander people in our country.

It is a fact that cannot be denied – the Justice Project has collated the evidence from the grassroots to make this clear – the disproportionate numbers of incarcerated Aboriginal and Torres Strait Islander peoples, children and youth in detention, unfair outcomes when interacting with the justice system. This cannot be shied away from.

But the project has also given us enormous encouragement and inspiration for the kinds of approaches that are being taken by communities that are making a difference and that we all, as a profession and as a country, can learn a great deal from.

Looking forward

The Justice Project team found the process of travelling and meeting with people across Australia to hear their stories both humbling and enlightening.

They gathered many case studies which illustrate both why the system needs to change and how it can fundamentally make a difference when working.

I'd like to acknowledge the important successes that have been documented.

To sincerely commend and pay tribute to the tireless work of the Aboriginal Legal Services and Family Violence Prevention Legal Services across the country.

To acknowledge the fundamental importance of constitutional recognition, sovereignty, and the Uluru Statement to Aboriginal and Torres Strait Islander peoples wellbeing, empowerment and rights.

To recognise the trauma, but to celebrate the enormous achievements of communities in proactively addressing their own challenges in culturally appropriate ways.

For example, through a program run by the Maranguka Justice Reinvestment Project in Bourke is the SOS 'Out of School Hours' program, part of a broader justice reinvestment strategy focusing on eight to 18-year-olds at risk.

In response to the identification of the school holiday period as a 'high-risk crime period', a range of community services and government agencies, including the Department of Education, the Bourke Shire Council and the police helped to develop and support the SOS school holiday program.

A range of activities were provided for program participants including sport games, cultural tours and volunteering. The SOS program 'resulted in a reduction in crime—for just under a month, no offences in Bourke were committed by participants.' (Submitted by JustReinvest NSW)

Or from the Redfern Health Justice Partnership where 'a 28-year-old mother presented at hospital at 20 weeks gestation in pregnancy. She was referred to a social worker due to psychosocial issues, and because all her other children had been removed at birth and were in the care of Family and Community Services (FACS).

She also had ongoing drug use, mental health issues, and was a victim of domestic violence perpetrated by the father of the unborn child. The client was absolutely terrified of working with FACS. The health worker referred her to a solicitor ... She was provided with advice about the way FACS worked, her rights, and their processes.

She engaged with FACS in the pregnancy for the first time and entered into residential rehabilitation. She continued to see the solicitor to get advice on FACS directives and a

case plan. She was discharged with the care of her baby into a long-term residential rehabilitation service. The solicitor also helped her to get an intervention order ... and she currently still has her baby in her care. The baby is thriving and meeting all her developmental milestones.' (Redfern nurse)

These are just two small examples of services that are targeted carefully to meet the difficult needs of particularly vulnerable clients.

Working in partnership with Aboriginal-led coalitions, the Law Council is committed to pursuing the implementation of Justice Project recommendations, and anticipates that the Project will inform our advocacy for years to come.

We hope that it will be a useful resource to you (and to Aboriginal community organisations/legal services generally), and that you are able to utilise it for your own advocacy on access to justice.

Conclusion

The Justice Project will, I hope, make a serious contribution to assisting Australia's First Peoples in determining how Australia's justice system can be reformed so that the practical experience of equality before the law may be achieved.

The Law Council is absolutely committed to this aim.

Thank you.

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