



Law Council
OF AUSTRALIA

Opening address: 29th Presidents of Law Associations in Asia (POLA) Conference

Speech delivered by Morry Bailes, President, Law Council of Australia at the POLA Conference, Canberra.

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Introduction

Good morning to all our distinguished guests, and welcome to the 29th Presidents of Law Associations in Asia Conference.

It is my very great honour to be hosting the conference this year as the President of the Law Council of Australia.

Before I go on, I want to acknowledge the traditional custodians of the land we are meeting on, the Ngunnawal and Ngambri peoples, and pay my respects to their Elders past, present and future.

I also acknowledge all Aboriginal and Torres Strait Islander peoples who are attendance this morning.

If we look to the theme of the conference this year 'Matching Rhetoric to Action', it provides us with clear guidance on our discussions throughout the conference as well as reinforcing for me, my own role, as Law Council of Australia President, as a voice of advocacy for our profession, and as the host of the conference this year.

For it is perhaps without precedence in modern times that we find ourselves as emissaries on the frontline of seismic geopolitical, technological and socio-economic shifts – shifts that are having a profound influence on long-held norms and structures that have underpinned our international rules-based order since the end of the Second World War.

May this conference, and our discussions together over the next few days, serve as a clarion call to all in our profession across the region – and all of us here as leaders and representatives of our national law bodies – to accept the challenge being laid down by these big shifts, by populist politics and the forces of disruption, to defend the rule of law, the principles of justice and human rights, to advocate for what is right and the maintenance of our professional ethics, even when we may never have been more under siege.

For it is this fact that requires us to 'double-down' as they say – to re-double our efforts, to be clearer, firmer, more adamant, more united and more articulate and even obstinate in our advocacy of the law.

The rights of millions of our fellow citizens, as well as the stability and correct function of our liberal democratic systems – depends on our courage, and our resolve at this time.

The Law Council of Australia – standing firm against disruption in unfamiliar territory

This year has been a busy one for the Law Council of Australia and for the entire legal profession.

The laws and what they mean for the citizens of this country can have profound and lasting effects, and the Law Council takes its role as educator, counsellor, mentor, and defender of justice very seriously indeed.

We have become, through our advocacy and leadership a very public and recognisable voice for the rule of law and justice. And in fact, in Australia we have found ourselves repeatedly in unfamiliar territory of late – having to work to defend and protect rights previously taken for granted.

In the words of Chief Justice of New South Wales, Tom Bathurst QC:

“Many small encroachments, taken individually, arguably have little effect. Taken cumulatively over time ... they can be the death by a thousand cuts of significant aspects of our rights and freedoms.”

Australia as a country has long been recognised for its stability, for its adherence to international principles of human rights law, as well as other critical legal frameworks that govern our peaceful and lawful interactions and negotiations as sovereign nations: trade law, the laws of conflict and engagement, business and commercial law, humanitarian, refugee and criminal law – including being a fierce long-term opponent of the death penalty, and an active member of peace negotiations and peacekeeping and rebuilding missions across our region and the world.

Friends, allies and neighbours, and even our opponents, have long looked to Australia for guidance on the rule of law – reasonable, law abiding, pragmatic, highly skilled, just and ethical.

But unfortunately, in recent times, this longstanding reputation as a fair, open-minded and open-hearted and prosperous country with a strong legal system and a history of justice advocacy and leadership – has distracted us from an uncomfortable truth.

That we have growing numbers of people who are unable to access justice, who are excluded from that system and therefore from equality before the law.

And this is not good enough – not for me, not for the 65,000 Australian lawyers I represent, not for the millions of vulnerable Australians who need our help.

The Law Council is convinced that we need to value a just society – not merely one which keeps law and order. The values of equality, of democracy and justice underpin who we are as a nation. If those values are compromised, so are we.

As we progress with our discussions throughout this conference, we will explore the many challenges and conundrums that face us as a profession throughout our different jurisdictions, with varying regimes of power in play, diverse cultural values and political pressures we operate within.

To respect and understand the different challenges we all face, and to discuss approaches and solutions that honour our professional ethics and help us deliver justice to the best of our ability wherever we are practising, is an important part of our work here, and one of the principles that underpins our organisation.

And Australia, as a beacon of the rule of law, cannot shy away from the challenges we also face.

Honest discussion about these will form part of our talks here.

But our solidarity as collective representatives for, advocates of and indeed, soldiers for justice – is one of the greatest protections we have when justice and the rule of law is under threat.

And I am in no doubt that I do not overplay the state of affairs across the world – to call it ‘a threat.’

From the United States, to North Korea, from Russia to the Philippines, Venezuela through to Nauru, the Maldives to Myanmar – and throughout our country too – violations of the law are taking place, often it seems with impunity.

And the anti-judicial rhetoric, the undermining of our legal institutions through many different means including the loose talk of politicians – as it proliferates, should serve only to galvanise us further.

As cerebral and mild as we lawyers may appear, as servants of reason and argument, as representatives of centuries of careful and learned legal deliberation – make no mistake – we are soldiers in the battle for justice – and now is the time for courage and determination.

The Law Council has been and continues to be busy, as a trusted advisor to the Parliament, including on some recent contentious and problematic national security legislation.

But for this morning's opening remarks, I wish to speak in detail about some signature pieces of work that the Law Council has been undertaking, and which distil for me the core of our challenges at this present time.

The Justice Project

The Justice Project is one of the most important pieces of work the Law Council of Australia has ever undertaken – one of the most comprehensive national reviews into the state of access to justice in this country.

It reveals the true crisis of justice access through the lens of lived experience – those who need representation and those who strive to deliver it, sometimes in the most difficult and heart-wrenching of circumstances.

We have gathered a comprehensive survey of stories – real stories of real people in Australia whose lives have been deeply affected by a lack of justice services, at critical times in their lives.

Poverty often unites them.

The worst outcomes were often related to the postcode of where they lived – rural, regional and remote Australians consistently fared the worst, and face devastating consequences.

Australians with mental illness, refugees, those with disability, and the aged, are also in high risk groups for being unable to access legal representation and therefore are excluded from access to justice.

Aboriginal and Torres Strait Islander peoples – suffer deeply, are grossly over-represented in our gaols, are often impeded from accessing even basic legal advice in dire situations including family and domestic violence and child protection situations.

Due to the tyranny of the 'three-strike' laws in Western Australia and the Northern Territory, we heard frankly terrible stories of the detention of children. Our age of criminal responsibility is 10.

In tandem with the scandalously high figures around Aboriginal and Torres Strait Islander and Aboriginal and Torres Strait Islander youth suicide – clearly the state is abrogating its responsibility to its citizens, including some of its most vulnerable – whose justice needs, are often the most pressing, but whose access is virtually non-existent.

Additionally, we see a large cluster of people that we call the 'forgotten middle' – ordinary Australians who don't seek legal advice at times of crisis – with contracts, domestic

issues, business concerns – because they can't afford it, or there is no service available – and the flow on consequences of this lack of legal advice can sometimes be incredibly destabilising.

What can we do about this state of affairs?

The Justice Project Steering Committee was chaired by former High Court Chief Justice, the Hon. Robert French AC, and included eminent lawyers and academics. The Justice Project team will hand down the final report, including more than fifty recommendations, shortly.

The project and its findings will give us a huge body of evidence which we will use to insist on and guide urgent change.

We must get more lawyers to rural, regional and remote areas, and better support them.

We must restore and then increase funding to the legal aid sector, to enable those with the least means to still have access to justice and have their legal rights upheld.

We must fundamentally and categorically change the way the legal system as a whole engages with Aboriginal and Torres Strait Islander peoples and communities – they must be equipped with the right supports, and services and be empowered to drive their own change.

The Project will also make a number of recommendations around justice impact tests – insisting that all government policy costings, factor in the real cost of proper justice services, – as well as the need to move toward joined up services, where the social worker, the nurse, the lawyer, the doctor and the housing officer all work together to case manage social and legal needs.

I greatly look forward to the launch of the final report, and I encourage you all to read it. In fact, I believe the Justice Project offers a model for other jurisdictions to conduct their own comprehensive reviews – where real life stories give weight to the push for systemic change.

It does require resourcing, and our team travelled the length and breadth of the country to meet the people who were willing to share their stories. The compilation of the stories and the report has been a mammoth effort by the project team – but we very much hope it will provide the catalyst for change in Australia – and perhaps could do the same in your countries.

We would be happy to work with you to scope out your own Justice Projects in the future and share our learnings with you to help guide the way forward.

The Future of the Profession

The Law Council of Australia has been very active briefing Parliamentarians about key fundamental issues like adequate funding for the Federal and Family Courts – we had a win in March when the Senate passed a motion calling for this to be addressed – as well as pushing for a restoration of funding to the legal aid sector – one of the major impediments to ordinary people accessing justice services when they need it at critical times in their lives.

And as I mentioned earlier, legislation that seeks to expand ministerial powers and undermine the independence of the judiciary has been vociferously contended by the Law Council in recent weeks.

One of our other pressing priorities, as I mentioned in the context of the Justice Project, is how to bridge the justice gap for Australians living in regional, rural and remote parts of the country.

During the project our team spoke with one lawyer, for example, in Western Australia who relayed to them that they were solely responsible for servicing an area twice the size of the United Kingdom.

These are matters of great importance to our profession – and I anticipate we will discuss them in greater depth throughout the coming days. And your insights about approaches you are taking in your jurisdictions, will be most a valuable and welcome addition to this discussion.

But I do now want to focus on another large issue that has been occupying the Law Council of Australia, and myself, in recent times and that is the question of the future of our profession.

It seems to me that for POLA – this is a key issue for us to think about and talk about, and our different perspectives will enable us to articulate a strong case in defense of what we do, and the role we perform in our communities, and in the broader society in protecting people who cannot protect themselves, in advocating for the rule of law, in pursuing what is just and what is good.

Many different professions, industries, businesses – have been grappling for some time with this notion of disruption – the changing world, the unprecedented pace of change and technological advancement, changing the nature of work, the nature of the way different professions and industries work.

The legal profession it seems is no exception.

Will we be replaced by robots?

Will the self-service model of legal advice offered nominally by the Internet make us obsolete?

Can we envisage a future where software programs analyse contracts, do our research, sort out family law matters, resolve financial disputes?

Or where people only have contact with us through remote access technology – a face on a screen?

My view is yes and no.

The main thing is to take advantage of the useful aspects of change and resist the things that are counterproductive to our aims, obligations and the rule of law.

Technology can improve the way we practise – but the law is essentially a human practice and one that requires human judgement, human relationships and human insight.

That is another reason why our shared commitment to POLA and to gathering together in this way is so important.

In this current climate seismic power shifts are undermining some of the professions and institutions that underpin democracy, and that hold that democracy to account.

If the lawyer and the journalist are prevented from conducting their work – then we are on dangerous ground indeed.

If we are not united in our commitment to prosecuting human rights – in a climate where human rights are under siege in many parts of the world – then democracy and the rule of law will be rendered very fragile indeed.

In considering the future of the legal profession we must also have a clear strategy about how to continue to attract students to the law, how to support them in their training and in their work, and how to retain them for the future good of our communities and our profession.

Investing in the development of young lawyers is a critical part of our responsibility as law societies and councils.

So, my call to you all, on behalf of the Law Council of Australia, is to renew your commitment to the justice cause, to build on the legacy of this organisation, and to chart a path of ethical resistance together if we have to.

We must continue to share views, and hold one another to account, as well as working to determine ways to improve conditions for vulnerable people all over our region.

The fundamental values, the rights and freedoms that belong to all people – upholding those rests with us.

And whilst it may not always be easy, it is beholden on us to be disciplined, and resolved.

Together we represent the rule of law, and now is not the time to become afraid or complacent.

We have to be bold and work together for the common good. It is the time for action and not more rhetoric.

I look forward to our continuing discussions – it is an honour to host you all here. On behalf of the Law Council of Australia – welcome to Australia.

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