



Law Council  
OF AUSTRALIA

# QLS Legal Profession Dinner 2021

**Speech delivered by Dr Jacoba Brasch QC, President, Law Council of Australia, at the QLS Legal Profession Dinner, Brisbane.**

**12 March 2021**

Good evening.

Before I begin, I pay my respects to both the Jagera people and the Turrbul people and their Elders, past, present and emerging.

I acknowledge the Chief Justice, the Honourable Catherine Holmes, the Chief Justice Chief Judge of the Family Court, Federal Circuit Court the Honourable Will Alstergren, all judicial officers, and fellow speaker and our Attorney-General, the Honourable Shannon Fentiman.

I first met our Attorney over a piece of cardboard, in the cold of winter in June 2015, where we both participated in the Vinnies CEO Sleepout. I have warm memories of a not-so-warm night we spent at the Suncorp Stadium.

President Elizabeth Shearer, thank you for the kind invitation to speak tonight, and welcome to you as incoming President of the Queensland Law Society (QLS). QLS is such a strong law society with a rich history of service to the profession and the community. One thing I have noted over my five years with the Law Council of Australia (LCA) is that the QLS has always been a fabulous contributor to our submissions. I thank all members of the society who give of their time, and freely so, to contribute to policy debates and the often-thankless task of reviewing draft legislation and preparing submissions.

Thank you.

I also acknowledge all dignitaries, Executives and Directors of the LCA, and Office-bearers of the Queensland Law Society.

I congratulate Michael and Zinta and all other award winners for 2021. One of the awards is named after Agnes McWhinney, the Queenslander who was Australia's first female solicitor. I am sure Ms McWhinney would be pleased to know that 106 years after her admission, Queensland's Chief Justice, Attorney-General, Law Society President and Law Council President are all women.

It is quite a joy to gather in person tonight, three months into this new year of 2021. However, whilst I am sure none of us are desperate to look back, I will reflect on two shifts that we observed during 2020 and their ongoing significance for our profession.

The first shift was the advance in take-up of digital technology – indeed, the most frequently uttered phrase of 2020 became “you’re on mute”.

The second was the renewed focus on our states, reminiscent of a pre-federation era.

2020 was also the year in which Texan lawyer Rod Ponton shot to sudden fame, with the words, *“I’m here live, I’m not a cat”*.

In deeply serious tones, Mr Ponton, who, thanks to a Zoom filter, had appeared on screen as a somewhat endearing cat, submitted to the Judge:

*“I’m prepared to go forward with it.”*

The ensuing exchange between the e-bench and e-bar went viral with scholarly articles being published, my favourite of which was an article titled: *“The joy of ‘Lawyer Cat’ is that it teaches us nothing – it’s just very funny.”*

I admit it is difficult to conjure any deep lessons from those 40 seconds of feline proceedings.

But what the clip does point to is the new norm for our profession in the post-Covid era: virtual proceedings. It shows what's possible in this new way we connect and administrate justice; but also what can go – sometimes inappropriately – wrong.

It sheds light on the balance we must achieve in embracing technological advancement, being *“prepared to go forward with it”* for the sake of Court and Client ... but the need for justice being done and seen to be done.

Innovation and adaptability in responding to upheaval will not only see our society through the COVID-19 pandemic, but has the potential to yield rewards in our delivery of legal services, of legal practice and in Court proceedings, for decades to come.

For example, 2020 saw the rapid rollout of the electronic execution of documents. This has been and is a gamechanger for clients, especially commercial matters, but our profession must strike the right balance.

When it comes to taking a will, for example, we must consider capacity issues – which are hard enough to determine face-to-face.

The bottom line is that technology should always be a servant of the rule of law.

While many states have reinstated in-person hearings for many matters, the savings to clients for the electronic hearing of matters such as interim hearings or directions hearings are considerable. In embracing an appropriate hybrid model, of in-person for some things and on-line for others, justice becomes more accessible. With the right balance, justice becomes more efficient and, frankly, more convenient and accessible for clients.

In my own practice, solicitors and clients used to embark on four-hour round trips from Toowoomba, the Gold Coast, or the Sunshine Coast to spend one hour in chambers. While some conferences must be in person, virtual meetings are often perfectly fine and yield significant savings to the client. They also reduce the tyranny of distance in this very large country.

In addition to access to justice opportunities, I also hope that the lessons we learned last year about a new and more flexible way of working, will have positive flows on for practitioners who, in the past, had to choose between career and carer responsibilities. We now know all too well, that it is often easier to coordinate one hour on the phone or computer with school pickup or other caring responsibilities, than it is one hour in chambers or the office.

This year, we have a golden opportunity to embrace the best of both worlds in a way that yields accessibility dividends for so many in society.

Of course, there is an assumption in everything I am saying – that people have the bandwidth and the digital access – so we must be conscious of the digital divide.

Many years ago, I was volunteering at the QLD Women's Legal Service. Most of the inquiries were about family law. To one woman asking me about divorce, I replied *“you can download the court forms online.”* She looked at me and said, *“but I don't have a computer.”*

That reality check, 21 years ago, still haunts me today that my middle-class, first world life was not the common, shared experience of everyone in this nation.

It was a salutary reminder to me that we are not, in fact, all equal in accessing the law.

On the upside though, one example of technology serving access to justice out of COVID-19 in a Court context was early last year, when children due to travel for court-ordered time were caught up in snap border closures and lockdowns. There was also the challenge of family violence under with partners locked down under the one roof.

Angela Lynch CEO of the Queensland Women's Legal Service called me about it on a Tuesday; I encouraged her to write the Chief Justice, Chief Judge. By the Friday, His Honour announced the COVID-19 list – matters were heard within 72 hours and because it was all online, it did not matter where the judge was, or indeed, the parties. Today, this List endures as the Urgent List, a gift to the federal jurisdiction. The Court and the profession are to be congratulated on this outcome.

Friends, I represent a federal body, so it is fitting to observe, for my second focus, that 2021 marks 120 years since federation.

Last year put the states back into focus and revolutionised the role of state premiers.

In a 2014 survey, 71 per cent of New South Wales citizens aged 18-34 couldn't name their premier when asked. Similarly, 47 per cent of Victorians didn't know who their premier was. Queensland fared pretty well – with only 30 per cent of us having any trouble remembering the name "Campbell Newman". I imagine the Attorney-General may have some theories on why that was so. I imagine the Shadow Attorney-General will too.

But today, in the era of daily press conferences, conspicuous national cabinets and viral songs featuring premier soundbites, I have a feeling the 2021 statistics would be quite different.<sup>1</sup>

This year, in the wake of 2020, I suggest that it is more important than ever to celebrate and reinforce the importance of the patchwork of our federation.

In doing so, there is a small town just over the border, with a population of just 4,066. It is Tenterfield, also known as the '*birthplace of our nation*'.

On 24 October 1889, just three hours' drive from here, Sir Henry Parkes gave his famous Tenterfield oration. Its residents were suffering due to tariffs between the two states. Parkes said that night:

*There will be an uprising in this fair land of a goodly fabric of free Government, and all great national questions of magnitude affecting the welfare of the colonies will be disposed of by a fully authorised constitutional authority.*

In the speech, Parkes quoted the poem *Dominion* by the Queensland poet, James Brunton Stephens.

That poem shows the great intensity of feeling that accompanied the quest to federate. Stephens wrote:

*Already here to hearts intense*

*A spirit force, transcending sense,*

*In heights unscaled, in deeps unstirred, Beneath the calm, above the storm, She waits the incorporating word*

*To bid her tremble into form.*

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<sup>1</sup> <https://www.theguardian.com/world/2014/sep/13/who-is-warren-truss-poll-reveals-holes-in-australians-grasp-of-politics>

So much fervour in those words – a federating spirit that later inspired the founders of the Law Council of Australia when they brought our country’s law societies and bar associations together in 1934.

The legal patchwork of Australia needed harmony and federal leadership on national and international issues affecting the profession.

As lawyers, we had our own Tenterfield moment – an initial meeting of Australian lawyers in St. James Hall, Sydney on 18 April 1933.

At that meeting, the Minister for Justice, Lewis Martin, characterised an independent, resolute judiciary as *‘the final citadel of a liberty-loving people’*.

Federal Attorney-General, John Latham, similarly called independence a vital bulwark:

*“Upon the independence of the profession, and the Bench, the safeguards of independence depend.”*

There was another reflection that Latham made that day that captured my attention:

*“A lawyer appears for his client without fear or favour, and without any consideration of how [it] may affect his own life and prospects*

*... Lawyers have a duty to do [their] best, within the law, for [their] clients; to ... ever regard the interests of [their] clients, and never [their] own.”<sup>2</sup>*

88 years on, I am using my tenure as President of the Law Council to put into focus the significance of the work we do as lawyers.’

In addition to continuing the usual advocacy that are the staples of the LCA, one of my two specific projects is “The Lawyer Project” – which will shine a light on all the work we do – not just making trade and commerce flow or facilitating business; but pro bono work; community service; and civic value.

By the end of 2021, we will develop an easily referenced document that highlights the societal importance of what we do.

We make valuable contributions in making our democracy a democracy and making our communities work.

Yet, inherent in the work we do is a heaviness of that work, which can have terrible impacts. We have lost servants of the public good from amongst our profession, due to mental illness or inner turmoil - even when well supported by colleagues and Courts, or where many offers of support from colleagues and Court have been made.

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<sup>2</sup> <https://trove.nla.gov.au/newspaper/article/16961870?browse=ndp%3Abrowse%2Ftitle%2FS%2Ftitle%2F35%2F1933%2F04%2F19%2Fpage%2F1152691%2Farticle%2F16961870#>

So, the effect on us, of the work we do, is my second project. I don't think we do a terribly good job at looking after ourselves, nor turning to colleagues and asking, "are you OK?". Whilst each of the law societies and bar associations have excellent care programs, the LCA can do a better job of facilitating the sharing of information about those programs. If one of our constituent bodies has developed a cutting edge, best practice program, I will be inviting that ConBod to share – we ought not reinvent the wheel.

Returning to earlier themes, what is it that our federation and the advances of digital technology mentioned earlier have in common?

Both break down barriers, bringing people together around a common thread. Be it federations of states or federations of law societies, we are brought together by our commonalities in the face of regional and surface-level differences.

Tonight, we are brought together as lawyers, by the quest to promote the administration of justice and the development and improvement of the law throughout the Commonwealth.

My role is that of temporary custodian, advocating for each body and enabling cooperation between our great law societies and bar associations.

My vision for you as the legal profession is to feel empowered that you do more than just a job.

For when our fundamental principles come under attack, or the role of solicitor or barrister in society is maligned, we can feel assured that we are on the right side of history.

I will end with one more part of the poem, *Dominion*:

*So flows beneath our good and ill,  
A viewless stream of common will,  
A gathering force, a present might,  
That from its silent depths of gloom,  
At wisdom's voice, shall leap to light.*

As officers of the Court, we are all defined by that 'viewless stream of common will'.

Thank you.

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