



Law Council
OF AUSTRALIA

National Press Club Address 'Justice State of the Nation'

**Speech by Morry Bailes, President, Law Council of Australia at
the National Press Club, Canberra.**

For distribution

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Introduction

Good afternoon and thank you for the warm welcome.

I acknowledge the traditional owners of the land we're meeting on, the Ngunnawal peoples, and pay my respects to Elders past, present and future.

I acknowledge all other Aboriginal and Torres Strait Islander peoples and Elders here today.

I also acknowledge:

- the shadow Attorney-General;
- staff from political offices;
- members of the judiciary;
- fellow legal practitioners;
- members of the media; and
- invited guests.

Ladies and gentlemen, this afternoon Fiona and I are here on behalf of the Law Council of Australia to deliver the first 'Justice State of the Nation' address.

It's 15 years since the Law Council last appeared here, and in that time a lot has changed in Australia, in the world, in our laws, and in the consequences of those laws.

We now find ourselves in unfamiliar territory – having to work to defend and protect rights previously taken for granted.

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

"Many small 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 our rights and freedoms."

For more than 80 years, the Law Council has been the peak body representing the legal profession; a leading light and a strong and trusted advocate for the rights and laws that maintain our democracy.

We're here to make the case today for significant reforms necessary to ensure our justice system can serve all people and keep our democracy strong.

It is with a deep sense of responsibility that I assumed the position of President of the Law Council of Australia for 2018.

I was the product of a state school education and had no thought of doing law. We had no lawyers in the family, but my elder brother – a PhD in history after studying at Kings College, London – suggested that I think of studying law as a way to address my love – and his – of history and language.

So, I took his advice.

What started for me as a job and then a business has become much more. I have a strong commitment to the legal profession and the courts. They are often the only vehicles for righting a wrong and correcting injustices.

Law is also the lifeblood of business, and independent courts underpin our democracy and economic and social well-being.

Of course, the rule of law must be there for all of us in equal measure.

Justice – State of the Nation

If we are to reflect on the current state of our nation's justice system, the reality is the system is not able to ensure access to the rule of law is available to all.

We certainly have a strong and independent legal profession respected at home and internationally. The Law Council represents more than 65,000 lawyers across this country - a group of people bound by long-held professional values; by their duty to the court; to uphold the rule of law, and to always act with integrity.

We have a strong and independent judiciary. The rule of law has been tested and not found wanting.

The Law Council itself is strong and independent. We not only understand the challenges and issues of the day, but actively seek and advocate for the solutions.

But – our longstanding reputation as a fair, open-hearted and prosperous country with a strong legal system has distracted us from an uncomfortable truth: the growing numbers of people unable to access justice who are excluded from that system and thus from equality before the law.

The people who are cut off include the most disadvantaged and impoverished among us, but also the growing numbers in the 'missing middle'.

These are the ordinary working people who cannot afford legal representation for everyday legal concerns such as commercial matters, family law, injury compensation.

Those in the 'missing middle' would never be able to qualify for legal aid assistance so they fall through the cracks in our justice system.

That's why the work of the Law Council is now more important than ever.

It is a time when we must bring our strongest and most measured arguments to the table to defend the rule of law and the rights and freedoms we all assume we have by virtue of being Australian.

The Law Council's priorities

In this context the Law Council has set its priorities for the next twelve months. They include:

- Being a trusted advisor to parliament on key legislative matters;
- Defending an independent judiciary;
- Working to safeguard the future of the legal profession;
- Aboriginal and Torres Strait Islander peoples justice issues; and
- Rural, regional and remote justice issues.

Providing rigorous advice to Parliament will always be one of the Law Council's key strategic responsibilities.

We've built relationships of trust with Parliamentarians. There are a large number of bills currently before them and we will continue to engage and offer counsel to ensure strong legal outcomes.

Pending legislation covers areas that may have significant rule of law implications: national security, foreign interference, changes to family and immigration law, welfare reforms, the national redress scheme for survivors of institutional child sexual abuse.

There are also charities and not-for-profit laws that may impinge on freedom of speech; substantial new criminal offence provisions; bankruptcy and tax laws.

We'll continue to call for a national action plan on business and human rights and a Modern Slavery Act.

We'll be working on a national action plan on business and human rights and continue our advocacy for a Modern Slavery Act.

Distinguished guests and members of the press, it will always be the role of the council to continue to defend an independent judiciary – one of the fundamental principles of our profession and our democracy.

An independent, impartial and competent judiciary and an ethical legal profession are essential to upholding the rule of law and facilitating access to justice.

The judiciary must always be allowed to perform its duty without executive interference and unwarranted criticism.

We will also continue to work to protect the future of our profession.

Part of that is how to address overloaded courts, waiting times, the lack of available services particularly in rural, regional and remote Australia, and chronic funding shortfalls.

It is also how we protect and preserve professional values and the rule of law in a changing world; how to adapt to innovations such as technological change without compromising our integrity and the fundamental principles that underpin all our work.

To the fourth priority.

The urgent need to address the catastrophic over-incarceration of **Aboriginal and Torres Strait Islander peoples has been an enduring aim of the Law Council.**

It's a situation that shames us all.

Current figures include alarming increases in the imprisonment of Aboriginal and Torres Strait Islander women and people on remand.

Defending the rights of Indigenous Australians will always be one of the central tenets of our work. We will continue to work closely with elders and communities, advocating for them to have control over solutions they themselves know will work.

We need to tackle the many contributing factors like the state of bail and parole conditions, mandatory sentencing laws, and the failure to institute early intervention strategies and address intergenerational trauma.

We will advocate for COAG to adopt an intergovernmental strategy to reduce rates of indigenous incarceration of young people, men and women.

We will be a strong voice in the fight for recognition of our first peoples and the recommendations of the Uluru statement.

We will continue to advocate for the implementation of the recommendations of the royal commission into the protection and detention of children in the northern territory.

Most importantly, we will advocate for the inclusion of justice targets in the closing the gap strategy. Success should be measured by outcomes, not the money spent.

There's simply no room for compromise or delay on this very basic issue of human rights in a modern Australia.

And finally, another priority area for the Law Council today: the needs of **regional, rural and remote communities.**

Thirty per cent of Australians live outside major centres, but only around 10 per cent of legal practitioners operate there.

This is a serious issue for Australians in our rural towns, our remote areas, and our regional centres.

Former High Court Chief Justice, and Chair of the Law Council's Justice Project steering committee, the Hon Robert French AC, put it this way:

"Regional, rural and remote Australia, and its people, are important to all of us in a variety of ways. They are embedded in our history, our culture, and our national identity. They are also very important to our economy. They are entitled to the same benefits of living in Australia so far as is practicable (and there's the rub) – as those who live in cities."

Barristers and solicitors working in many non-city locations are relying on us to find a different way of doing things in the bush, so they have more support and services are more comprehensive.

We may need to develop minimum servicing standards to ensure that people in the bush don't miss out compared to their urban counterparts.

We should also consider more support for young lawyers, better resourcing to encourage them to practice in smaller communities, and a young rural lawyer placement and mentoring scheme, much like the one for young rural doctors and teachers.

Like rural doctors, nurses, paramedics, the police, teachers, and emergency services, solicitors and barristers in these areas work hard and often alone. These people deserve our recognition, our support, and our gratitude.

Without them, the framework of our civic life would cease to function. Their capacity to continue to deliver their care and services to rural people is directly linked to tackling disadvantage.

This brings me to the signature piece in the Law Council's recent work: our landmark *Justice Project*.

The Justice Project

The plight of those excluded from justice in Australia – the disadvantaged and marginalised Australians – prompted the Law Council to launch the Justice Project.

It is one of the most important pieces of work we've ever undertaken.

The Justice Project is the most comprehensive national review into the state of access to justice in Australia for disadvantaged people since Ronald Sackville conducted his royal commission of inquiry into poverty and the law forty years ago, it aims to expose flaws in the system of access to justice and identify systemic weaknesses and gaps.

It will also identify what is working well and highlight the considerable innovation that exists within the justice sector despite major resourcing pressures.

The Justice Project reveals the true crisis of justice access through the lens of lived experience. We have gathered the stories of real people – the hard evidence from their lives – to make the case for urgent reform.

I'm very grateful to have my immediate predecessor as Law Council President, Fiona McLeod SC, here today to talk in detail about the project. She was heavily involved with it during her presidency.

We are pleased today to release a progress report outlining some key themes that have emerged during our research and consultations.

The final report is expected to be released in the middle of the year. In the meantime, the progress report is available online at our justice project website: (www.justiceproject.com.au).

Early recommendations include:

Joined-up services

Firstly, we need a whole-of-system approach to reform.

We simply must move beyond thinking about justice issues within the silos of law enforcement, courts and legal services.

Justice issues have far-reaching implications for policy-makers across different portfolios and governments. They are integral to addressing disadvantage.

Broader portfolios both depend on and contribute to justice outcomes.

We need the lawyer located with the doctor, the nurse, the social worker, and the mental health professional – all providing advice and support to whomever walks through the door.

Policy frameworks that link justice, health and social outcomes are critical, and we need to work diligently to build this recognition.

Justice impact tests

Secondly, justice impact tests, now in place in the UK, are a way to build that whole-of-government thinking.

Every government policy process must factor in how new policy impacts on the justice system, from health to welfare and from education to housing.

The questions must be asked: how would this policy affect access to justice? To the legal system? And how much will it cost the system?

Restore and increase funding

Thirdly, real, serious money is required.

Not money for lawyers. Money for a just and fair system.

This means dedicated, stable and long-term injections of extra funding to legal aid commissions, community legal centres, Aboriginal legal services and family violence prevention legal services.

In 2014, the Productivity Commission recommended an extra \$200 million a year as an urgent but only interim measure for civil law assistance alone. That recommendation remains unfulfilled.

The Law Council estimates that as a minimum – to include criminal law – an extra \$390 million a year is needed to get legal assistance back on its feet.

There are currently no national goals for the provision of legal assistance to a minimum percentage of the Australian population. Many people living below the poverty line simply miss out on legal aid.

We need to sustainably resource our courts and tribunals.

We need to resource the system so it's more accessible to people with non-English speaking backgrounds, including Indigenous people in remote areas. A National Justice Interpreter Scheme would fit the bill.

Without qualified, professional and available interpreters, delays and miscarriages of justice can – and do – occur.

We also need to ensure that the system is better at identifying and responding to people with disability, a worrying proportion of whom wash through the criminal justice system.

Distinguished guests and members of the media, the Law Council is the defender of justice and a just society.

We need to value a *just* society – not merely one which keeps law and order.

The values of equality, of democracy, and of justice underpin who we are as a nation.

If those values are compromised, so are we.

The preventative, everyday role of timely, effective legal assistance stops simple problems from escalating into more serious, often criminal matters at great cost to the taxpayer and community.

It's time this was recognised.

We must value a legal system that delivers us freedoms and our way of life, and that serves all Australians equally.

The Law Council is determined to achieve this outcome.

I will now hand over to my colleague, Fiona McLeod SC, to share her personal experiences with the Justice Project, and the moving case studies that drive home the pressing need for reform.

Thank you.

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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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