



**Law Council**  
OF AUSTRALIA

# Opening of the Legal Year Alice Springs

**Speech delivered virtually by Dr Jacoba Brasch QC, President,  
Law Council of Australia at the 2021 Opening of the Legal Year  
Alice Springs.**

**29 January 2021**

The Hon. Judge John Birch

The Hon. Judge Meredith Day

Steven Edgington MLA Shadow Attorney-General

Mr Tass Liveris, Law Council President-elect,

Ladies and Gentlemen.

Good afternoon,

Thank you for providing me with the opportunity to speak with you all today in Alice Springs, 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.

We have endured a tumultuous 12 months. COVID has impacted each and everyone of us. But our new way of working fills me with some optimism as to how we can improve access to justice, especially for those in regional, remote, and rural locations.

Three years ago, a colleague of mine, Michael Kearney SC and I gave a CPD on family law from the legal aid office in Darwin. We beamed into Katherine and Alice Springs. I remember thinking at the time what a remarkable, ground-breaking thing we were doing.

Little could I have imagined, that in 2020, we would all be beaming into courts, into offices, into chambers and to clients; that that would become our new normal and with remarkable opportunities to deliver access to justice. For my part, I now offer conferences in person, but also by IT platforms.

Frankly, in most cases, I do not see why clients need to pay their solicitors to travel three to four hours on a round trip, just to have a conference with me.

Clients too are asking to meet electronically, because it saves them time, and saves them money.

However, we cannot forget that IT poverty exists; where people do not have ready access to a computer, or bandwidth or understanding. To that end, I am still haunted by something I said to a client when I was volunteering, in my early days as a lawyer, for Women's Legal Service. I was giving a women advice about family law and how to get a divorce. In my white, privileged middle class, and naïve way, I said to her, "*you can download the forms from your computer.*" She replied, "*but I don't have one*".

That lesson to me, from 21 years ago, has stuck with me, and been ever present in my thinking as many of us were able to quickly pivot to work-by-IT last year, and for some of us, continuing to do so.

The rule of law and human rights of all people are core tenet of our modern democracy and having access to justice, is an important part of protecting those rights, as is a justice system:

- that is fair;
- just in the results that it delivers;
- accessible to the people who need to use it;

- responsive to their needs; and
- properly resourced.

All Australians have, under the law, the right to seek justice.

But this right doesn't count for much if this right cannot be exercised or it cannot be accessed.

Each year, one in four Australians will experience a legal problem substantial enough to require a lawyer, yet a lawyer may not always be within reach.

More than 13 per cent of Australians live under the poverty line, while legal aid is available to just eight per cent.

Many impoverished people are considered too wealthy to get basic legal help. That beggars belief – in my work in family law, child protection and family violence I see far too many people who are apparently too rich for legal aid, but struggling to put food on the table.

Legal issues compound other social and economic challenges creating a dire situation for those in need of assistance.

The Law Council of Australia, Law Society Northern Territory and Northern Territory Bar Association continue to be an active voice in advocating to ensure that rural, regional and remote communities have access to a high standard of justice and legal support services.

Plainly, Australia is a vast country. I was recently talking to a group of American lawyers about access to justice barriers in large countries. Sensing they thought we were a tiny island nation, they were stunned when I told them that Australia was the sixth largest country in the world, with a land mass almost as great as the USA.

That tyranny of distance, as the saying goes, presents a fundamental barrier to realising real equality before the law in Australia.

The Law Council, with directors from all states and territories and not all from capital cities, is well aware that the pure size of our great nation is one reason that access to justice is compounded in multiple ways for rural, regional and remote Australians.

However, our size; the intricate geographic dynamics of Australia's justice system; and the practical difficulties in accessing justice, do not always seem to be at the forefront of planning, by largely urban policymakers.

But I suspect I do not need to tell you that.

The Law Council of Australia's seminal Justice Project, explored the geographic dynamics of the justice system in depth, noting that around 30 per cent of people live outside major cities in Australia.

It reflected that rural, regional and remote areas are diverse and heterogeneous.

And while there are reports that some regional areas across Australia are now flourishing and indeed booming thanks to good rainfall and residential shifts made by city dwellers due to the pandemic, broadly speaking, levels of socio-economic disadvantage generally increase with remoteness and there are pockets of concentrated disadvantage in certain areas.

In fact, research undertaken to examine persistent disadvantage in Australia has found that federal electorates in regional Australia are well below the national disadvantage average.

Intwined with disadvantage is the knowledge that legal problems are not experienced evenly across the Australian population – instead, the incidence of legal problems escalates dramatically with levels of disadvantage.

An additive, or ‘trigger’ effect has been observed, in which the experience of one problem leads to more, and more severe, legal problems.

Indeed, it has been established that nine per cent of the population accounts for about 65 per cent of legal problems experienced by Australians.

These issues are all of course heavily at play across Australia’s remote areas, where there are high levels of disadvantage and therefore, very high vulnerability to multiple legal and non-legal problems – across civil, criminal, and family law.

At the same time, rural, regional, and particularly remote Australians routinely face multiple, chronic barriers in resolving their legal problems. There are too many to mention, but key factors include:

- *Financial disadvantage* – Depending on whether seasons are ‘good’ or ‘bad’, farming families are often ‘income poor and asset rich’ – affecting their ability to afford a lawyer, or to be eligible under legal aid means tests.

Justice Project consultations with non-government organisations in Alice Springs also highlighted the ‘perpetual poverty’ among many of their clients, largely reliant on income support and with high debt levels, and the subsequent stress that this places on families.

- *The tyranny of distance* – This is particularly the case in more remote areas, especially where public transport which might get you into a lawyer is inadequate or non-existent.

For some clients, this effectively prevents them from obtaining legal assistance, or attending court.

Examples raised in Alice Springs consultations for the Justice Project involved parents who, given inadequate bus services to and from outlying communities, were unable to reach court in time for hearings regarding child protection matters. Orders regarding their children were then presumably made, without their participation.

- *Lack of infrastructure* – One of the IT poverty matters I mentioned before – while many courts and legal practitioners have gone “on-line” in light of the pandemic, it is worth carefully considering the particular impact which may be felt in areas with limited telephone coverage, let alone the internet.
- *Lack of knowledge* – Research has pointed to a disproportionate lack of access to even basic information about law and justice issues affecting individuals, in many rural, regional, and remote communities. I do however applaud many community legal centres and legal aid commissions for offering phone-in services and out-reach.
- Significantly disadvantaged residents can have particularly limited awareness of their legal rights or obligations, or knowledge of who to ask for help.

- In remote Aboriginal communities, there are often broader questions of cultural relevance to be considered, with reports that some feel largely alienated by white law.

These compounded issues and others – ranging from cultural barriers to simply poor mail delivery or no bandwidth – all point towards the need for intensive policy thinking about how access to justice in rural, regional and particularly remote Australia can be appropriately achieved and delivered.

For example, the Law Council of Australia understands that while approximately 30 per cent of Australians fall into the ‘RRR’ category, just around 10 per cent of practising solicitors nationally practise outside major cities.

Research points towards whole local government areas which lack a single solicitor.

Gaps exist across both private and public legal practices, with those solicitors who do remain often practising under critical pressures.

And while recruitment of lawyers to rural, regional, and remote areas is one side of the coin, retention is, as you would well know, the other.

Scarcities of locally available lawyers necessarily have implications for access to justice, particularly where conflict of interest obligations may further limit the pool of available local lawyers able to provide crucial legal assistance.

- In Bourke, NSW, for example, solicitors in Aboriginal legal services have described having just 5-10 minutes with individual clients to obtain instructions on court hearing days, given that there could be hundred people on the list that day.
- Meanwhile, in remote Western Australia, the single solicitor of a community legal centre has described covering an area twice the size of the United Kingdom – a staggering thought.
- Private practitioners talk about insurmountable difficulties in recruiting and retaining lawyers, given the lure of the big smoke.

But interestingly, the COVID-19 pandemic marks an undeniable paradigm shift for the legal sector – by necessity granted – that has the potential to be beneficial to rural, regional and remote Australia.

Few could have predicted the rapid digital transformation of Australia’s legal sector over the past 12 months – much of which was achieved in a matter of weeks between March and April.

Interesting, prior to the pandemic, a large proportion of global literature on technology and law suggested that the legal profession was unwilling to embrace technological change preferring outdated methods of legal practice, despite the availability of more cost-effective and efficient technological processes and products.

Needless to say, the pandemic has seen a shift in this trend – to maintain the administration of justice, many courts were compelled to scale up online registry services, expand virtual hearings and the use of online mediation.

It also paved the way to secure critical funding to invest in court infrastructure and technologies – resources which were long overdue.

Even more exciting – given the considerable size of our country – is the scope of these technologies to transform the ways in which people living in rural and remote areas

access legal advice and representation and enhance their ability to protect and defend their rights.

And while the introduction of technology to legal services, may be seen by some as the solution to non-urban legal need, it is not a silver bullet.

Technology will not tear down the inequality that exists, where access to the basics of online access is still lacking.

In fact, one of the key concerns regarding the shift towards using digital technologies is the adoption of such services may create a digital rift, further disadvantaging the disadvantaged including:

- those from diverse and Indigenous backgrounds;
- disadvantaged geographical locations;
- those with disabilities;
- poor language proficiency;
- low levels of literacy; and
- low income.

So, while we can be excited with the recent progress made by the courts to digitalise services, we must be mindful of, and alert to digitally exclusion.

And so, while much can and is now being done using technology to reach clients, this will not always be possible or even the most appropriate solution.

Some matters – say sensitive family law issues, child protection or criminal charges – will only be discussed by clients face-to-face, based on their personal relationship with their lawyer. As a family lawyer, we become privileged to a client's most intimate information, details, and concerns; it is hard to develop trusted rapport by Zoom.

Whilst IT has many advantages, the challenge for Australia is how to ensure access to justice for those who might be otherwise left behind.

The alternative – that a remote mother remains subject to family violence, or loses her child or is unfairly convicted simply because of her geographic status – is unacceptable.

Postcode justice cannot be countenanced in Australia.

Of course, beyond access to a lawyer, access to justice issues are also demonstrably worse for rural, regional and remote Australians in other important ways:

- the decline in the number of local courts is an access problem, as are limited court circuits.
- Delays in being able to attend court have real, sometimes irreversible consequences – one legal aid service in Mildura has described these concerns in the following way, sentiments of which I am sure you are familiar:

*There is certainly a disadvantage for RRR clients in court. In one current example, there's a three month wait for child protection matters, compared to three weeks in Melbourne. The family is really disadvantaged. The mother in this case has lost, because in that time the new status quo is set and the baby has been put in care... It's seven*

*hours on a bus to get to Melbourne. The child protection jurisdiction won't fund our clients to get there.*

- then there is the type of courts available – the lack of courts delivering specialist, problem solving or therapeutic justice in RRR areas. While these specialist approaches are increasingly supported by evidence as being more effective – such as Drug Courts, offering integrated, multi-disciplinary responses to the underlying issues of eligible offenders – they are generally less available outside urban centres.
- to the example of specialist Drug Courts, I add Aboriginal Sentencing Court – for example, recent NSW Bureau of Crime Statistics and Research findings are that Indigenous offenders who participate in circle sentencing are less likely to receive a prison sentence, less likely to reoffend and take longer to reoffend when and if they do, than Aboriginal and Torres Strait Islander offenders who are sentenced in the 'usual' way.
- so, plainly, people who could most benefit from these interventions are missing out.
- Connected to the absence of such courts is the absence of comprehensive support services – from mental health services and supports, to bail support, to drug rehabilitation – which underpin these therapeutic approaches

These may be important underlying factors behind statistics which highlight a clear disparity between remote and urban justice. For example, the Australian Institute of Health and Welfare has recently published its findings that children aged 10 to 17 years from very remote areas are nine times as likely as those from major cities to be under youth justice supervision in Australia.

The Australian Law Reform Commission in its recent *Pathways to Justice Report* called upon state and territory governments to establish specialist Aboriginal and Torres Strait Islander sentencing courts, incorporating individualised case management and wraparound services, which are culturally competent, safe and appropriate.

In this context, the draft Northern Territory Aboriginal Justice Agreement proposal to reintroduce community courts which enable elders and community leaders to assist judges to determine the most appropriate sentence for an offender, is particularly welcome, alongside its other proposals such as expanding community-based sentencing options, and implementing specialist court responses to domestic and family violence.

Measures are required to overcome an urban-centric focus in legal policy and the delivery of legal services, to develop appropriate responses to these RRR-specific issues.

In this context;

- greater support is needed for RRR law and justice research and advocacy bodies, commensurate with that provided to other sectors.
- The decline in local court circuit services ought be reversed.
- More resources are required to maintain and expand RRR circuit courts, having regard to their important function of upholding the rule of law and fostering community engagement through a tangible local presence.

But for all those deficits, the Law Council is also consistently impressed by the strengths of many of the individuals working across the system – many hardworking lawyers, judicial and support staff, and community leaders, who continue to battle against the system's failings with courage and determination. I echo that in my personal capacity where my own work has taken far and wide across this vast country.

Without careful consideration of the geographic, cultural, demographic and socio-economic factors in which our justice system is designed and delivered in Australia, our guarantee of equality before the law will remain somewhat shaky in practice.

I am pleased that the LCAs rural, regional and remote committee has developed a strategic plan for our ongoing policy response to the challenges experienced by rural, regional and remote lawyers and the communities they service.

This plan outlines the policy priorities and projects to be implemented by the Law Council over the next three years focusing on five key areas of action, which includes recruitment, retention and succession, education, advocacy, technology and the launch of a new website.

Now, more than ever, is an opportunity to create lasting change in RRR Australia.

Thank you for the opportunity to speak with you, and I wish you all the very best for a better 2021.

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