



Law Council  
OF AUSTRALIA

# The Call for Change – Law, Culture, Diversity, Voice

Speech delivered by Dr Jacoba Brasch QC, Law Council of Australia  
President at the Law Society of Western Australia's Law Week  
Breakfast, Perth.

19 May 2021

Good morning. Thank you, Jocelyn, your President and David, your CEO, for inviting me to speak this morning – and Jocelyn, after we've shared some very successful and enjoyable Zoom Rooms – we're finally together in a real room.

Oral, thank you for your powerful and thoughtful welcome to country. I acknowledge your land. Thank you.

I also acknowledge all dignitaries already mentioned.

Historically it has been a tradition for the President of the Law Council of Australia to travel to the west during Law Week, both to meet with the Executive of your Law Society (as I did yesterday afternoon), and to attend a Law Week event.

But tradition or not, meeting together like we are this year is certainly not something any of us take for granted anymore. It would have been unthinkable for a President from the east coast to travel here to be with you a year ago. WA's main border line, situated at 129 meridian east – the eastern boundary of this State since the settlement of the Swan River Colony in 1829<sup>1</sup> – has for its entire history been open to the east, until the decisions taken in April 2020. I come from Queensland with a similar border policy approach.

One year on, in the wake of a year of difficult calls to close borders to keep citizens safe – borders that had been open for generations, and only weeks after your State (and mine of Queensland) again experienced a circuit breaker lockdown, I am so glad to be standing here with you all in what we all hope will be a much better year for our country, our states and territories, and our profession.

## Law Week

Yet again, the Law Society of Western Australia has done a stellar job at coordinating community awareness activities about the law, supported by Law Week sponsor the Public Purpose Fund and Community Events Sponsor, Murdoch University. Thank you.

This year, Law Week is in full swing in Western Australia. In true 2021 style, the Law Access Walk for Justice was a hybrid event, with a walk along the CBD foreshore or a virtual equivalent. I was delighted to hear pets came along this time, just as they did last year, albeit virtual appearances then.

There are also community events on scam awareness, family violence, a law week quiz night, the Attorney-General's Community Service Law Awards today, the Law Week Art

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<sup>1</sup> [http://www.foundingdocs.gov.au/resources/transcripts/wa5i\\_doc\\_1831.pdf](http://www.foundingdocs.gov.au/resources/transcripts/wa5i_doc_1831.pdf)

competition, rental rights sessions, a CPD day for country practitioners and a cocktail party.

This is a truly impressive program of events for which the Law Society of Western Australia, its government and NGO partners, should be commended.

Law Week has focused on the community since its inception in 1980 – 1983 for Western Australia, but 1980 as the genesis. At the same time though, Law Week is designed to elevate in the minds of the public, the significance and accessibility of the law.

In or about 1980, then-President of the Goulburn Valley Law Association, Christopher Riordan, pitched an idea to Law Society Presidents: a festival designed to demystify the law for the general public.

Little did he know that his idea would spread across Australia and develop into a thriving annual festival that has endured for more than 40 years.<sup>2 3</sup>

Indeed, at an address to open the second year of Law Week in Victoria in 1981, then-Commissioner for Community Relations, Al Grassby – often called the father of multiculturalism - reflected on Australians as a society comprising “140 different backgrounds, speaking 90 different languages at home and practising 80 different religions.”<sup>4</sup>

Undoubtedly, those figures would be even more richly diverse in 2021. Grassby believed the legal system had historically been geared towards "antipodean Englishmen" and spoke of lawyers needing to be cognizant of the impacts of "age, sex, ethnic origin, education, occupation, and individual difference."

Today's Law Week celebrations certainly fulfil that awareness. As a profession, we are still challenged to turn that awareness into reality.

I join with you all in celebrating this showcase week of law – your Law Week.

## Crisis as Inflection Point for Change

There is no denying that we have all just endured an exhausting year of intense change. Following periods of great disruption, it can be comforting to welcome stability when it

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<sup>2</sup> <https://web.archive.org/web/20210413111017/https://lawweek.net.au/news/why-do-we-have-law-week-looking-back-on-a-40-year-history/>

<sup>3</sup> <https://victorialawfoundation.org.au/about-us/our-history/>

<sup>4</sup> <https://trove.nla.gov.au/newspaper/article/127062551?searchTerm=%22Law%20Week%22>

comes rushing back in. It is tempting to fall back into old rhythms and carry on just as we were “BP” – before pandemic.

But my address this morning is to embrace change – and indeed a call for even more change.

I will not be the first to reflect that a period of crisis is the perfect opportunity to forge innovative paths in many areas. Indeed, it was the unprecedented mobilisation of science and research during the Second World War that gave us such domestic technologies as the microwave, duct tape, and synthetic rubber tyres.

Similarly, the vaccine rollout and effects of the global pandemic have illuminated opportunities for new ways of working. However:

- It has brought into sharp focus the inequalities between countries and economies.
- It has shone light on the strain on intensive care units and hospital systems, showing the importance of funding and operational efficiency.
- And the unemployment and underemployment sparked by the pandemic have tested social security systems the world over in a way not seen arguably since the Great Depression.

On the subject of crisis, US President John F. Kennedy observed in 1959 that “when written in Chinese, the word ‘crisis’ is composed of two characters – one represents ‘danger’ and one represents ‘opportunity’.”<sup>5</sup>

This observation has since been corrected a little by Victor H. Mair, Professor of Chinese Language and Literature at the University of Pennsylvania. Professor Mair explains that the Chinese character depicts danger, yes, but the second half of the character refers to an *‘incipient moment;’* a *‘crucial point’*.<sup>6</sup>

Whether JFKs ‘danger’ and ‘opportunity’ or the Professor’s ‘danger’ and ‘crucial point’, that is precisely where we are at today.

In this *‘incipient moment’*, this *‘crucial point’* that is moving to a post-COVID era, Australian lawyers have an opportunity to call for, and effect, profound change. We can seek that change in law, in how we practice, in culture, and in the way we raise our collective voice.

In a practical sense, we ought be questioning how we deliver our services. For example:

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<sup>5</sup> <http://itre.cis.upenn.edu/~myl/languagelog/archives/004343.html>

<sup>6</sup> <http://www.pinyin.info/chinese/crisis.html>

- does a client really need to drive six hours each way to have a conference with their lawyers – or can the conference occur by Zoom, Teams or other IT platform.
- do we need wet ink signatures on contracts and deeds – I would venture yes for Wills and like personal documents, but probably not for commercial transactions.
- do Arbitrators need to convene arbitrations in person, especially if multi-party, multi-location disputes – probably not, which I say from considerable experience last year convening arbitrations by Zoom with people in a variety of locations.
- do we really need to attend a court mention or Directions Hearings in person – depending on the clients and court’s IT capacities, probably not.
- do some lawyers now need to choose between career or caring responsibilities - I hope the new ways of working have opened minds to new flexibilities, efficiencies and opportunities, that such choices are no longer mutually exclusive.
- perhaps appositely here, what IT infrastructure improvements need funding so the courts can make a better A2J offering for appropriate services.

That said, technology should always be a servant of the rule of law, and we cannot forget the digitally poor.

Where lawyers traditionally balk at change, I encourage you all to critically examine how we operated over the last 14 months, and as a consequence how we can offer our services more efficiently.

## Changing the Culture and Sexual Harassment in the Profession

Consistent with one of the purposes of Law Week, it is important to reflect upon the fact that our community looks to our profession as upholders of the public good and as members of an important and trusted profession.

Integrity in all dealings – whether in law firms, in Courts, in Chambers and with clients – is of utmost importance.

Conversely, if a lawyer represents their clients with distinction and great fidelity to the letter of our law, but perpetrates or excuses sexual harassment, bullying or intimidation, then, every element of that lawyer's practice is undermined. Indeed, the law is undermined.

In June last year, your Law Society said in a powerful statement that “*Harassment in any form hurts not only the people suffering it, but also the administration of justice.*”

Absolutely right.

Harassment and sexual harassment are unacceptable in any context. Yet, it is a persistent and shamefully prevalent problem in our profession.

As lawyers, we are rightly held to a higher standard of conduct than the general community. After all, we are officers of the court first and foremost. That carries with it, a solemnity in what we do and how we conduct ourselves. In turn, there are serious duties incumbent upon regulatory and disciplinary authorities to investigate allegations of harassment and sexual harassment as misconduct. Notwithstanding, in a profession where anecdotal evidence is startling and vast, reports are few and far between.

However, 2021 so far, has been a flashpoint for change; for bringing that which has been done in darkness, into the light.

By shining that ignited light onto our own institutions, and holding perpetrators to account, we can make ours a stronger, safer profession.

For the Law Council of Australia, we have, this year, commenced the rollout of our National Action Plan for addressing sexual harassment in the legal profession.

The Plan was made public shortly before Christmas last year based on our National Roundtable in July 2020.

It brings together the determination of the Law Council's state and territory Constituent Bodies to address sexual harassment and maps a path forward that addresses the regulatory and cultural change factors necessary to facilitate better experiences for legal professionals.

One of the measures recommended in the NAP is this *Time for Change: Addressing Sexual Harassment* portal, as a centralised information suite for people seeking information and resources about sexual harassment.

Education is important too, as sexual harassment can be subtle and socially excused. It does not always take place in a certain context or fit a certain stereotype.

We are also advocating for federal law reform amendments to the Sex Discrimination Act 1984, a ground-breaking Act at the time, but one that no longer meets community standards and expectations. Amongst other issues with the Act, the focus on employer-employee is problematic. For example, if I go down to a law firm and in the company of a young lawyer, a partner does or says something harassing; I am probably not covered by the Act because I am not an employee of the firm. If the young lawyer is, say, on work experience, they may not be covered either. Then there is the lack of clarity in the Act

about Judges and Associates. Judges do not employ Associates, so their coverage is again not clear. Clarity is required.

*Everyone ought feel safe everywhere.*

In terms of regulatory aspects, in 2020, the Law Council concluded a review of the entirety of the Australian Solicitors' Conduct Rules – which doesn't quite yet apply in WA (and let me put in a plug Mr Attorney-General about passing the Uniform Laws). The review commenced with the release of a Consultation Discussion Paper in 2018 and concluded with the lodgement of a Final Report with the Legal Services Council at the end of 2020.

The Law Council is now working with the states and territories regarding the implementation of the Final Report.

In developing the National Action Plan, strong support was shown for revising what we call Rule 42, with respect to Anti-Discrimination and Harassment, to better express the profession's view that the ethical proscription of discrimination and harassment must apply beyond the narrow legal practice workplace, to any setting or situation connected with the practice of law.

The proposed amendment, for which consultation closed early this month, will look to make clear the profession's view that the ethical duty set out in Rule 42, to not engage in conduct that constitutes discrimination and harassment, applies not only to conduct occurring directly in the course of legal practice, but also to such conduct occurring in any situation or setting connected with legal practice.

But all these structural changes will be in vain if they are not accompanied by true cultural change, in which we all have a role to play. Embrace and engage with your Law Society's four pillars of cultural change.

## Change for our good

Let me now talk about two further changes that headline my Presidential Plan for 2021.

The first is my ambition to change the way we are viewed. Only last month saw the annual publication of the Australian Reader's Digest 'most trustworthy professions'. Doctors, nurses and paramedics won gold, silver and bronze. Other professions in the top 10 were firefighters, scientists, police officers, teachers, pharmacists, pilots, and vets.

At the other end of the spectrum, Australia's politicians were the least trusted class of professionals closely followed by journalists. Lawyers ranked 21<sup>st</sup> out of 30, with, e.g.,

financial planners and accountants faring better, and social media producers amongst those faring worse.

The poor view of lawyers disappoints me greatly, as I am sure it would many of you. It is a largely unfounded view based on misconceptions and myths.

Many of you will remember the Law Council's extensive and expansive *The Justice Project*, which was overseen by an expert steering group led by the former Chief Justice of the High Court, the Hon. Robert French AC. It is one of the most extensive reviews of its type in the past 40 years.

It examined the state of access to justice in Australia for those experiencing significant disadvantage and continues to drive and inform much of what we do.

One of my projects is a variation on the theme – not *The Justice Project*, but *The Lawyer Project*. A project about the value of what we do – by that I do not mean we will put a dollar figure on what we do; that would take a body like the Productivity Commission years to undertake, and then we would all argue about the methodology and conclusions in any event.

Instead, *The Lawyer Project* is looking at the breadth and depth of our many and varied contributions to the fabric of society – not just making trade and commerce flow or facilitating business; not just going to court, resolving disputes and being problem solvers, but also, our pro bono work; our community service; and our civic value – for example, every community association we join, be it your child's P&F association at their school, or a local sporting or arts association, we inevitably bring our 'lawyer brain' to those extra-curricular activities ... conducted, of course, in our "down time".

By the end of 2021 we will develop an easily referenced document that highlights the societal importance of what we do. It will be a document which all law societies and bar association might refer to when countering the cheap shots that often come our way, or in initiating discussions about our profession.

Frankly, we make valuable contributions in making our democracy a democracy and making our communities work. We do more, much more, than just a job. We ought feel proud of what we do. And, when the role of solicitor or barrister in society is maligned, we ought feel assured that we are on the right side of history.

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 Courts have been made.

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. Our societies and associations should not have to reinvent the wheel.

Equally, we need to change the idea that, to be a lawyer means to be tough at all times, and that any sign of weakness is, in fact, a weakness.

To the contrary, it's OK, not to be OK.

In October last year, we lost a colleague of ours, a judicial colleague in Brisbane. Out of that tragedy, the family law profession came together and resolved to be a little kinder to ourselves, and a little kinder to each other. I would encourage you all to do so too.

Jocelyn, thank you again for the kind invitation to speak this morning. WALs 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 5+ years with the LCA is that the WALs 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 and time-consuming task of reviewing draft legislation and preparing submissions.

I spoke earlier of incipient moments, of crucial points in history.

This Law Week, let's not allow the moment to pass us by.

Let's continue making a call for change in our profession and as a profession, so we may realise:

- the principles of equality before the law;
- of access to justice;
- respect for what we do and how that may impact upon us; and
- true diversity across the entire spectrum of the law, society and culture.

This will be for the good of the profession and the good of all Australians.

Have a wonderful rest of your Law Week.

Thank you.

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