



Law Council  
OF AUSTRALIA

# President's Dinner 2017: Opening Address

**Speech delivered by Fiona McLeod SC, President, Law Council of Australia at the Law Council's President's Dinner, Canberra.**

**30 November 2017**

## Introduction

Good evening everyone, and welcome.

What a pleasure it is to host the Law Council of Australia's President's Dinner for 2017.

I would like to acknowledge the Ngunnawal people, the traditional custodians of this land on which we meet and offer my respects to their Elders past and present.

I extend these respects to all Aboriginal and Torres Strait Islander peoples in attendance today.

I acknowledge:

- Senator The. Hon George Brandis QC, Attorney-General of Australia;
- The Hon. Mark Dreyfus QC MP, Shadow Attorney-General and former Director of the Law Council;
- Solicitor General for the Commonwealth, Stephen Donoghue QC;
- Former Law Council director Matt Keogh MP;
- Gordon Ramsey Attorney-General for the ACT;
- Rachel Stephen-Smith, Minister for Aboriginal and Torres Strait Islander Affairs and Disability, Children and Youth;
- The Hon. Justice Michael Elkaim;
- Magistrate Bernadette Callaghan;
- A little further from home, Kathryn Beck, President New Zealand Law Society;
- Representatives of Embassies of Korea, Japan, United States, China and Thailand; and
- Dr Vaughan and Allan Myers representing the National Gallery – thank you for your hospitality.

Distinguished guests and members of the Law Council family.

Tonight we reflect on the work of the Law Council this year – and acknowledge all of those who have contributed this year. Some of you here have contributed the benefit of your time and your energies and expertise over many, many years and I am very grateful.

This is the first time we have invited parliamentary guests in recognition of the close working relationship we have enjoyed with each of you and the staff of your offices.

Assisting you as we can to develop good laws, and good policies.

As the peak body for lawyers in this country, of course we have our members interests close to heart. The work we undertake on these matters are not always the subject of headlines but is work we continue to pursue on behalf of those 65,000 members.

The headlines have focused understandable on the important social and legal debates that have flourished this year in Federal Parliament and in major national inquiries, on laws that impact some unfairly or that, in our view, overreach.

We have engaged on these matters in the interests of improving our legal and policy frameworks, and in the interests of delivering justice to the community.

An important feature of our influence is the regular briefings we have been able to provide to all parliamentarians, regardless of party, and the precious consultations we have with senior public servants and ministers offices.

So thank you all for your willingness to engage with us.

## The last twelve months

It has been an absolute honour to be President of the Law Council for the last twelve months.

And what a big twelve months it has been. Our staff are outstanding as is reflected in the expertise of their policy work and balanced authoritative communications. We tap into an extraordinary depth of expertise within our constituent bodies, our expert committees and our sections, sometimes responding under enormous time pressure.

I have been privileged to lead this organisation at a time when our role is more important than ever. When we see such a need for careful critical analysis of populist narratives and rational debate in support of long standing protections of human rights and the rule of law.

The Law Council profile has increased in important ways and through our active advocacy and leadership, has become a very public and recognisable voice for the rule of law and justice.

The Law Council is being listened to by increasingly broader audiences.

We have played a critical role in high-profile legislation

We have briefed countless times, at critical times throughout the year.

Now I'm told that we have generated around 1400 stories, reaching around 65 million people with an advertising equivalent value of \$16.8 million.

Many of these interviews are conducted running from one place to another. In studios but also on the floor of airport halls, in cars and also once, to escape the noise, in a broom cupboard.

I have started a list of things they don't teach you at media school – never walk with the wind behind you; don't hold your mate's baby before you go on camera; and the hardest lesson of all – the camera man will say you look fine, but he does not really care about hair and makeup.

Our most powerful tool is the rational, evidence based legal analysis. Thanks to our excellent policy team, led by Nick Parmeter and his deputies Natasha Molt and Leonie Campbell and our communications team led by Patrick Pantano under the watchful eye of Jonathan Smithers our CEO, we have been able to exercise sound judgement about what to say, and what not to say, where to say it and when.

I am very grateful for the respectful close relationships we have developed with the Attorney-General and his office, and the Shadow-Attorney and his, for the ready access they have both provided and the close relationships of trust that we have developed.

We have provided significant oversight and influence throughout the recent marriage equality debate, including ensuring legislative safeguards during the postal survey period, advocating for the 'yes' vote during the campaign, and most recently, advocating for the swift passage of Senator Dean Smith's Bill.

Our support has been acknowledged in meetings and in second reading speeches on the Bill.

We argued consistently and strongly against mandatory minimum sentences in Federal legislation – and have seen success with the defeat of these provisions this year.

We provided strong submissions and numerous political briefings on our concerns with the Australian Citizenship Legislation Amendment Bill. This was a Bill which sought to give the Immigration Minister sweeping powers to control citizenship and override the AAT – and a Bill that failed to get through the Senate.

We have provided expert input into a large number of Bills.

We influenced the Government's reversal of proposed cuts to legal aid and legal assistance through strong and consistent advocacy to government – and thank the Attorney-General for his guidance and support on these matters.

Significantly, and with the help of Senators, we drove the passing of a Senate motion on the Justice Funding crisis calling for immediate increased funding for legal assistance and resourcing of the courts.

A motion supported by the Nick Xenophon Team, Senator Hinch, Senator Hanson, Senator Lambie, Labor and the Greens.

We argued against proposed amendments to the Human Rights Amendment Act arguing against changing s18C (Racial Discrimination). We offered advice then and have since explained the careful balancing of important human rights and freedoms – freedom of speech and privacy, freedom of religion and freedom from discrimination.

We are guided by the need to uphold and strengthen the rule of law – including the principle of equality before the law, access to justice and the right to a fair trial, the right to review executive decision making by a strong independent judiciary.

So we argued to prevent the Australia-China extradition treaty.

We have had good success in regards to integrity issues and whistleblower reform with direct input into the Open Government Partnership work of improving accountability and transparency – I have co-chaired this work on the National Action Plan with former PMC Deputy Secretary now Secretary Steven Kennedy and a number of senior government officials attending tonight.

This work will no doubt continue – we have established our National Integrity Working Group and working towards effective whistleblower reform to strengthen and harmonise whistleblower protections across all sectors. This work and our contribution to discussions around beneficial interests disclosure, AML, a national integrity framework including a national corruption commission will continue into 2018.

We have also been working hard across an array of other matters, including work on labour exploitation and slavery, business and human rights, mandatory detention, counter-terrorism reforms, advocacy for the courts, family law reform.

A highlight of our international program during my term as President was hosting the 2017 International Bar Association Conference in Sydney – a wonderful opportunity for the Australian legal profession to host over 4000 colleagues practising law internationally.

I was privileged to be able to present on a wide range of important legal topics, including inclusion and diversity, legal technology, and migration and security.

And our important work on Indigenous issues has continued. We made a substantial contribution in the public arena and in submission work on the issue of incarceration and law reform, and were united in our support of the referendum council recommendations – for a voice to parliament, for truth telling and a treaty process. I am sure we will remain committed to this important national healing work.

I was privileged to attend the Garma festival in Arnhem land this year and to meet with many Indigenous Elders from across the country. Their generosity and enthusiasm to share with me their well considered solutions to the challenges they are facing was inspiring and I look forward to visiting many of those communities in a private capacity next year.

## The Justice Project

I am particularly proud of the progress we have made on our signature Justice Project – one of the most important pieces of work that the Law Council has undertaken for many years.

As our own national review into the state of access to justice in Australia, we are shining a light on justice barriers facing those with significant social and economic disadvantage as well as identifying what is innovative and what is working to break through those barriers.

Our final report is due out next year.

I would like to sincerely thank The Justice Project team, led by the indefatigable Leonie Campbell, for their incredibly hard work on the project – and their company on the road - so far. Without their dedication, their unflagging commitment the project could not succeed.

And I am honoured to have been working alongside them throughout the year.

Our steering committee, chaired by the former Chief Justice Robert French AC has been rigorous and of great assistance. I acknowledge the members of our committee who were able to attend tonight including David Neal SC, Dan O’Gorman SC and Cheryl Axelby.

I would like to say something about my inspiration for the project.

Over the years of engaging acting for individuals and also campaigning for funding for the legal assistance sector I saw that we were continually met with the same response

That legal aid and legal assistance generally:

- is money for lawyers;
- is money for the defence of criminals ;
- it is money that has to come from the Attorney's budget; and
- is work undertaken by do-gooders intent on frustrating the executive.

It is, you might think, work that is 'Un – Australian'.

We heard many MPs say – but I don't have legal issues in my electorate. Plainly a shift was needed in the narrative, a shift that focused on the stories of individuals.

Stories that touched us and resonated. Stories that reached across the responsibility of the whole of government.

So the Justice Project aimed to do just that – to gather the stories of real people deprived of access to justice – to arm research with an unassailable argument for reform with tangible, grassroots evidence.

I was determined that we would engage in a way that told people's personal stories of hardship and hope, because I saw that in all the reasonable evidence-based arguments we kept making, this is what is most likely to move decision-makers, to make the case for reform, and impress upon them that resourcing of the justice system so critical.

It is also, at the end of the day, most likely to move the public to embrace the need for change.

The power of the Justice Project is that it is about the people. The ordinary people who have desperately needed legal assistance. The stories they have so generously shared.

And the lawyers and solicitors, unsung heroes who are providing legal services in locations across Australia under incredibly difficult circumstances, committed to their responsibility as the last legal line of defence for thousands of people in their community, the community organisations, the health workers, the police officers, the prison workers.

The Justice Project has allowed us to bring all these stories, and all these experiences together to provide a roadmap for what we do next.

Our consultations have taken me across the country, to prisons and detention centres, bush courts, refuges and cultural centres, remote communities, nursing homes and hospitals.

I have heard stories that have moved me and stunned me.

Of a new mother in jail, whose child was removed within 24 hours of birth and placed into state care in 'the best interests of the child'.

Hearing of her anguish as she waited for news with diminishing hope of ever being reunited.

Of women jailed after calling the police to report domestic violence because they had unpaid fines.

And stories of the difference legal advice can make – the elderly amputee with hearing loss, diabetes and mental impairment who had fallen into serious financial difficulty due to loans from an unscrupulous lender, unable to afford food or basic medicines – and the Community Legal Centre was able to represent him to extricate him from this exploitation.

Staff in outback towns have told us there are no real sentencing options for young offenders saying “there is nowhere for kids to detox in rural areas: it’s backwards that you can go to juvie at 10, but can’t go somewhere to detox.”

This lack of services in rural and remote communities was a theme repeated again and again – a private regional legal practitioner told us “there are whole regions of Australia are worse off than urban areas due to lack of diversionary options – a whole layer of sentencing is missing”.

It became clear that people working in all aspects of justice have enormous concern and enormous goodwill to collaborate to fix this.

So we need a plan. The Justice Project will refresh the work and restate the priorities – it will provide us with a roadmap going forward.

We have found that access to justice is compounded by overly-punitive laws and policies that disproportionately affect people experiencing disadvantage.

Things like mandatory sentencing, tough bail conditions, public nuisance offences, fines and civil infringements, three strike policies and migration and asylum seeker policies.

As well there is clear evidence that laws are applied in discriminatory and inappropriate ways, with broad discretions in policing playing to prejudices and inequities.

We also heard cases of children being kept in detention for 12 months for stealing a \$1.50 bottle of coke, and children in out-of-home-care who get criminalised for things that should never be a legal matter – for example a young girl was charged for spilling tomato sauce on furniture in a group home.

But is a symptom of a larger malaise – part of broader societal attitudes and entrenched prejudices, within a context of lack of understanding of laws and rights, and a tone of a social divide that we have to tackle as urgently as we must tackle the individual practical impacts on the ground.

As the Victorian Aboriginal Legal Service told us: “Over-incarceration is a symptom, but you need to address the underlying causes – poverty, trauma, mental health, housing, racism.”

The take-home messages are immediate and clear.

The key is that a preventative, early intervention and diversionary approach to justice is essential, as is addressing the underlying issues that lead to problems with the law.

By using therapeutic diversions, years and lifetimes of injustice can be avoided.

But it can include things like:

- effective and timely legal assistance, which helps to avoid downstream costs to individuals and the community;
- justice reinvestment models, which seek to redirect resources into disadvantaged communities to address underlying issues, provide positive education and job pathways, prevent crime and reduce recidivism rates;
- legal health checks and health-justice partnerships, which ensure that emerging legal problems are identified and addressed earlier; and
- critical supports to help people avoid unnecessary incarceration, such as access to bail accommodation, residential rehabilitation programs and post-release transitional accommodation.

Many of the answers lie outside the formal justice system, including measures to address the underlying causes of legal problems such as: poverty, intergenerational trauma; racism and prejudice; poor housing, education, health and employment; and substance abuse.

Tonight, I want to float the idea of a Justice Impact Test to be factored into the development of all government laws and policies – the concept of ‘user pays’ as a check for best practice.

If you roll out a Centrelink debt recovery program, factor in the push of thousands of individuals to financial and welfare advice services; if you instigate a fast track asylum seeker process, engage, ahead of time, with the resource and legal centres who will be providing pro bono assistance – and remove the unfairness inherent in the process.

There remains is a clear and urgent need for real money, and real human resources on the ground, available across the whole of Australia.

So now the question is how can we engage and compel our partners including governments to address the need?

And what can we do ourselves, as a legal profession, as the Law Council to make change?

There are some wonderful, effective, community-based approaches and interventions that we have witnessed that really point the way to how we can improve things across the board.

Interdisciplinary teams including interpreters, youth workers, cultural and community liaison officers, disability advocates, ongoing case management, working with community leaders – these are happening in pockets and are showing some promising results.

While we have also heard many examples of how technology can help to deliver justice effectively within such communities, this means that we do need to think carefully about how we don’t inadvertently leave many vulnerable people behind as we embrace the digital age. Almost without exception, staff at Community Legal Centres told us – face-to-face is best for many vulnerable populations who lack trust in the justice system.

Without access to justice for all citizens, Australia cannot consider itself advanced liberal democracy.

It isn't good enough that hundreds of thousands of Australians simply cannot access justice.

Not in this day and age.

Not in this country.

Not for us.

Access to justice underpins healthy, functioning communities. It is about empowerment, lifting people up to happier productive lives. It is a goal that transcends the political divide.

As I step down at the end of this year, I am assured that I leave the project and the Council, in capable hands.

It has personally been a long journey to this place, and I can think of no better way to finish off my involvement in the work of those bodies representing our members.

And I for one will continue to be as vocal, as rigorous, as noisy as I can be, on behalf of all those who cannot, including for those I have met through The Justice Project consultations whose courage in sharing their experiences will I know contribute to vital reforms.

I would like to now share with you a short film that showcases just one of our project stories. With more to come.

Thank you.

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