



**Law Council**  
OF AUSTRALIA

# Access to justice in RRR Australia

**Speech delivered by Morry Bailes, President, Law Council of Australia at the Symposium of Constitutional Law, Malaysia.**

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Thank you Mr Moderator.

Your Honours, fellow panelists, ladies and gentlemen.

I am delighted to be here. I love Malaysia as I love our region, and it is a privilege to have been invited to speak. I have travelled I think to every country represented here save Pakistan, Your Honour I will have to correct that.

I am to address access to justice in Australia with an emphasis on what we describe as RRR areas, and I shall express some of my views and that of the Law Council of Australia on the subject, about the responsibility of government.

There is no value to the maintenance of the rule of law if there is no access to it.

RRR to us in Australia is a reference to regional rural and remote areas.

To understand better our challenges, let me tell something of our country. We are not only a country but a continent. We are a land mass as big as mainland USA, but with a population of only about 24 million people. Thus, we have vast tracts of land that are sparsely inhabited.

What do our RRR areas entail?

The first thing to appreciate is that the tale is one of difference and diverse experience, depending upon where you are in Australia, starting with the first R.

## Regional

To service agriculture in the first instance regional towns sprang up in Australia. Some are relatively affluent such as the eastern board coastal towns that are regarded as desirable places to live, but some are doing it very tough indeed.

Whilst GDP from primary production is still very significant we are no longer a country that 'lives off the sheeps back', so there are some casualties along the way.

There are also mining towns that are quite typically boom and bust, living or dying (often slowly) according to commodity prices.

Places like Kalgoorlie and Boulder out west; Roxby Downs, home of the largest known deposit of uranium in the world, in South Australia, and regions like the Kimberley.

Populations can differ from a few hundred people to a couple of hundred thousand in larger regional cities.

## Rural

We are a big primary producer so there are lots of farmers and agriculturalists some on very large areas of land. For example, pastoral leases held by S Kidman & Co (Australia's largest cattle station company) cover approximately 80,000 square kilometres in three states and the Northern Territory.

Due to industrialisation, drought, environmental degradation, and mismanagement of water supplies many farmers are doing it tough, particularly in the sheep and wheat belt that stretches from NSW, through Victoria and into South Australia.

My brother in law is a sheep and wheat farmer in the Murray mallee and it's not always easy.

## Remote

Australia has remote and very remote areas often home to Aboriginal and Torres Strait Islander people. Some of the conditions have to be seen to be believed. They are not what one would expect in a first world western country.

I was in Nulambouy and Groote Island last year, and aside from the fishing and beauty, it's pretty grim.

Aboriginal and Torres Strait Islander people are grossly over represented in our country's justice system and in our jails. It is a national problem and a matter of national shame.

In poorer RRR areas there are:

- falling standards of literacy and education;
- declining youth populations; and
- struggling local economies.

To cap off the list of challenges, whilst some 30 per cent of our population live outside a major capital city, only about 10 per cent of lawyers reside in and service RRR populations.

In short, access to justice in these places is a real challenge.

The problem is characterised by people who have a legal problem but don't recognise it.

They may think of the problem as debt related or financial, they may think it is due to family problems or family and domestic violence, or that it is just a business related issue.

Without being able to easily consult a lawyer the legal aspect of the problem may remain unrecognised.

Also laws are city centric. Take mandatory disqualification of a drivers license following a road traffic offence. There is no allowance for country people to have any differences in the period or conditions attached to their disqualification. Once they are disqualified from driving it is a blanket disqualification.

The result, particularly amongst Aboriginal and Torres Strait Islander people, is that they drive whilst disqualified from holding a license which is regarded as contempt of court, resulting in certain imprisonment.

To give some perspective, in the bush you may have to travel hundreds of kilometres to attend a hospital or see a doctor. How else to get there but drive?

Regional courts have also been closed to rationalise services, and superior courts on circuit have been reduced for budgetary reasons.

## Why is that significant?

Let's just take, as an example, Port Augusta, a coastal town with a population of 15,000, in my home state of South Australia.

Port Augusta lies some 300 kilometres from the nearest large city, Adelaide.

When there is no circuit court in Port Augusta, it means a trial must be conducted in Adelaide.

The accused can obviously appear in Adelaide or be transported from custody in Port Augusta to Adelaide, but every witness must also travel.

In the case of Aboriginal witnesses, that may be the very thing that sees a complaint withdrawn, or for witnesses to be unwilling to attend court.

Meanwhile, the jury will be comprised of jurors who are not locals.

This will often mean that, in regional locations, justice is not being seen to be done.

Legal issues in RRR are of course diverse. These are some examples:

- business succession resulting in partnership or inheritance disputes for farmers;
- environmental laws regulating primary producers and fisherman
- criminal law;
- family and domestic violence issues rife in RRR areas touching victims and offenders alike; and
- family law.

The list goes on. So how to help?

I have five areas of suggestion.

Firstly, it may surprise you to learn that 13 per cent of Australians are regarded as living below the poverty line. Notwithstanding that, only 9 per cent of Australians qualify for legal aid in our country.

The funding of legal aid in Australia has been a standstill for two decades. It is not at all acceptable for an advanced western democracy to ignore this problem as successive governments have.

The Law Council has adopted the recommendation of our Federal Productivity Commission that an immediate injection of \$200m is required as a starting minimum.

We are still waiting.

Secondly, that is only bottom echelon of our society in economic and monetary terms. We also have a struggling middle class who are unable in reality to afford legal services and certainly not in many RRR areas.

It is what our Productivity Commission has referred to as the 'missing middle'.

Europe has addressed this problem in many places with before the event legal insurance. In Australia we should at least be looking at it. Before the event insurance is by no means a cure all, but it could be a part of the jigsaw.

Third is how to recruit and retain lawyers in RRR areas. Firms and community legal centres repeatedly tell the tale of lawyers coming to the country to practise but not remaining.

Our firm lost a lawyer in Whyalla, an iron town of about 22,000 people, and we had to close our office.

For doctors our country has developed sophisticated federal tax incentives and state based grants. There is not a single thing available to lawyers. Let's do it. It can only help.

Fourthly, is use of technology to help people in the bush. Undoubtedly technology can help and must play a big role. But there is a potential downside. If one party, say a bank, has access to technology because of IT literacy and better education and resources, and another litigant for instance does not, it may exacerbate an unequal playing field.

Nevertheless, as technology is transforming professional services more broadly, it will similarly transform legal services in the bush.

Fifthly and finally, have you ever felt like health always seems to have priority over law in budgetary spend?

If we are serious about maintaining the rule of law, then we must be serious about enabling access to justice and that means adequate funding for court infrastructure, and lawyers to act for those who cannot otherwise afford legal services and so forth.

We are very proud in Australia of our Medicare system that provides a high standard of universal health care. What then of the idea of legal care?

It may be asking for Nirvana, but it certainly would not cost anything like what it costs to adequately resource medicine, and yet it would have a transformative effect on many peoples lives.

When justice is denied to some, we are no longer the democracy we want to be.

We need to maintain the fabric of a truly democratic society.

For that rely on law. No person should be left out of the justice system.

If that is gone then we are in perilous waters.

Just like in the provisions of health services, it is simply not okay in a civil democratic society to permit some to not be served by our legal system, and in a country like Australia it is a government responsibility.

Thank you.

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