

State of the Judicature dinner

Glen Albyn Estate,

Hobart, Tasmania

29 April 2016

Patrick O’Sullivan QC – President of the Australian Bar Association

Before I begin I acknowledge the traditional owners of the land on which we meet, and pay my respects to their elders, both past and present.

It is a pleasure to join you all this evening and I am privileged to have the opportunity to give a note of thanks to those involved in this special event. Tonight is an important opportunity for members of the legal profession to come together and reflect not only on how far we have come but also, against the background of experience, to consider the important challenges which lie ahead.

As President of the Australian Bar Association, it is fitting that we gather here in Hobart tonight, as Hobart was the location for the Australian Bar Association’s first executive meeting, held in 1963. While perhaps not in the spectacular dining room we find ourselves in tonight, I’m sure Hobart’s Hadley’s Hotel provided a very satisfactory setting for an evening of planning, collaboration and innovation for the early members of the ABA Executive.

As an aside, Hadley’s Hotel was known as somewhat of an institution for innovation in Australia. In a promotional flyer from 1934, it boasts of providing both hot and cold water in all bedrooms. The hotel also installed one of Australia’s first electric elevators and was ahead of its time with the installation of electric lights “in every room” and telephones “on every floor.

The legal profession, of course, like any other, must take time to reflect, question and adapt.

And that is exactly what we have heard from Chief Justice French this evening. Chief Justice, thank you for your speech tonight and for sharing your insights, borne from years of experience, understanding and the intuition that accompanies that experience and understanding.

Public Criticism of the Judiciary.

I note your comments about the unfair public criticism of the courts and the Judiciary that is made from time to time.

Whilst accepting that courts, judges and the profession are not immune from criticism, in the current geo-political climate, that criticism stems from a wide range of factors ranging from petulance from some commentators who don't like a particular decision, possibly because it falls on the wrong side of their own political divide, to self-serving populist statements from individuals who given their position in our community, should know better.

As has been said previously, personal attacks on the Judiciary are a bright line for the ABA. Whereas restraint is called for in responses by heads of jurisdiction to criticism of the institution or individual judges, the effective administration of justice is dependent upon public confidence in judges and the courts. This is an area that the ABA will continue to show leadership in countering unfair public criticism of Judges, particularly when the criticism is:

- serious and likely to have more than a passing or minor negative effect in the community,

- displays a lack of understanding of the separation of Powers, the Judicial process or the Rule of Law; and/or
- is predominantly materially inaccurate.

Domestic Violence and Indigenous Incarceration

I am delighted with your comments regarding the Judicial Council's access to justice project for women in the context of domestic violence – and specifically that of migrant, refugee and indigenous women. The importance of this issue cannot be overstated. Family and domestic violence is a tragic and deadly epidemic, and we must be able to partner with Indigenous peoples and communities to provide culturally sensitive services to anyone experiencing it. It is an alarming statistic that Indigenous women living in rural and remote communities are 45 times more likely to experience domestic violence than non-indigenous women; and 34 times more likely to be hospitalised as a result of domestic violence than their non-indigenous counterparts. The Council's continued effort to promote equal justice for all through the removal of cultural barriers is not only commendable, it is vital.

Further to the issue of indigenous people and the justice system, as the Chief Justice mentioned, both the ABA and the Law Council have recently publicly commented on the issue of indigenous incarceration as a national disgrace.

As we know, indigenous Australians are vastly over-represented in the Australian juvenile and criminal justice systems. It is a sobering and damning statistic that the re-imprisonment rate for Aboriginal young people is higher than the school retention rate and on an average night, over half (53%) of young people in detention are Indigenous.

We will continue to advocate forcibly for change to what is, a national tragedy.

Let me also say that these two areas are examples of why cuts to legal aid and the efficient use of legal aid funds as well as justice re-investment are not just questions of economics.

International Engagement

I also applaud the Judiciary's efforts to enhance the profile and presence of Australia's legal services internationally. The nature of legal practice, particularly in the commercial area, is becoming increasingly global. The plans for enhanced judicial cooperation, promotion of the convergence of commercial law and practice in the Asia Pacific and the delivery of legal services across national borders are fundamental to strengthening business opportunities for the profession as well as the relationships we hold with our neighbours. Both the ABA and the LCA are working on, and will continue to work together on, this important area

Conclusion

In conclusion, may I thank each of you for attending tonight's dinner, many of you have travelled to be here and I hope you have found it rewarding and enjoyable.

Thank you also to the entire organising team from the Australian Bar Association and the Law Council of Australia whose substantial efforts have contributed to tonight's success.

Finally, Chief Justice French thank you once again for an enlightening address. I hope you have all enjoyed and will continue to enjoy your evening.

Good evening.