

Opening of the 2024 Legal Year

Chief Justice Michael Grant AO

Hilton Darwin, 15 February 2024

Doubletree by Hilton Alice Springs, 16 February 2024

This afternoon/yesterday Fran Kilgariff was sworn in as the new Deputy Administrator resident in Alice Springs. There is a certain symmetry in that, because our guest speakers, Sheila and Peter Forrest, are also the authors of the definitive history of the Kilgariff family. The family has deep roots in the Central Australian community. Fran Kilgariff's grandfather and great uncle came to the Northern Territory in the 1920s. Her father was a Senator for the Northern Territory for 12 years. Fran herself taught at St Philip's College for a decade, and was then an Alderman and subsequently Mayor of Alice Springs for eight years. Throughout that time, and continuing, Fran has undertaken a huge amount of community work by her service on various boards.

The Deputy Administrator's position has been vacant for some years since the retirement of Mrs Pat Miller. I will say something more about Alice Springs shortly, but it is both appropriate and long overdue that the town will once again have a resident vice-regal representative. It provides an important additional voice for a region which requires all of the support it can muster at the present time.

Moving then to the legal sphere, last year saw the retirement of Chief Justice Susan Kiefel and the appointment of Stephen Gageler as Chief Justice of Australia. As well as being an outstanding jurist, Chief Justice Gageler is a great friend and supporter of the Northern Territory, and takes a keen interest in the issues which present in this unique jurisdiction.

That support is reflected in the fact that the High Court will be sitting in Darwin this year in the week commencing 5 August. This will be only the second time the High Court has sat in Darwin since its establishment in 1903. As many of you here will recall, the first time was in 2018 for the purpose of hearing the Timber Creek native title appeal. Both Chief Justice Gageler, and Chief Justice Kiefel before him, recognise that it is beneficial for our national court to sit in the Northern Territory to hear appeals which involve important Northern Territory issues. That is because it enhances the community's confidence in the administration of justice if they can observe the court processes.

The Northern Territory Supreme Court and the profession will do whatever it can to encourage that practice, and I am sure that Chief Justice Gageler will continue to be supportive of the initiative.

The High Court sittings in August this year will coincide with the celebration of the 50th anniversary of the establishment of the independent bar in the Northern Territory. The Northern Territory Bar Association will host a dinner to mark that milestone on Friday, 9 August. We hope and we anticipate that most, if not all, of the High Court judges who will be in Darwin for the sittings will also be able to attend the dinner. That dinner will also coincide with the close of the Australian Association of Crown Prosecutors' Conference which will also take place in Darwin that week. Those two events take place right after the Garma Festival. So there will be a lot happening in the Top End in August this year which is of significance for the legal profession.

There are two other recent appointments which are of interest to the legal profession and which warrant mention.

The first is the appointment of Chansey Paech as Deputy Chief Minister of the Northern Territory. Minister Paech has been our Attorney for the last two years, and has kept that portfolio following his elevation to the deputy leader's position. Students of politics will understand that deputy leaders are entitled to a choice of portfolio, and that many look to assume one of the major economic portfolios such as treasury, mining or industry. It is testament to the importance which Deputy Chief Minister Paech attaches to the justice portfolio that he has chosen to keep it. This is a good thing for the legal profession and those involved in the administration of justice. It demonstrates that justice issues are afforded a high priority by government, and that the portfolio has a strong voice in Cabinet. As Richard Henschke has previously suggested, it might also demonstrate that Minister Paech is one of those rare Attorneys who actually likes lawyers.

The second appointment which warrants special mention is that of Tass Liveris as the resident Northern Territory Judge of the Federal Circuit and Family Court. Most of you will know that Judge Liveris served as President of the Law Society for three years, and subsequently as President of the Law Council of Australia. He was also a barrister of long-standing in this jurisdiction.

During that time, and in all those roles, Tass has shown himself to be a clever, calm and inclusive operator. I am sure that he will bring those same qualities to his new judicial role. It is also pleasing to see that the Commonwealth Attorney-General has continued the practice of appointing Northern Territory practitioners to the Federal Circuit Court position in this jurisdiction.

I would like to turn now from those positive developments to consider a significant challenge which the legal profession is currently facing. There has been much discussion in recent months about disruptions to legal aid services in the Northern Territory, and particularly the difficulties which NAAJA is currently experiencing. Those difficulties have also placed additional burdens on the Northern Territory Legal Aid Commission, which is obviously not staffed or funded to assume the NAAJA caseload.

I do not intend to add to the public commentary about the management of the Aboriginal legal aid service or which body should be allocated the funding for that purpose. However, I do wish to make some comments about the crucial place of structured legal aid services in the administration of justice.

There was no form of structured legal aid in the Northern Territory until the North and Central Australian Aboriginal Legal Aid Services were established as Commonwealth initiatives in 1973. The Australian Legal Aid Office did not commence operations in the Northern Territory until 1975. Prior to that time, defendants were reliant for representation on one-off grace and favour allocations of funding by government agencies, or the *pro bono* activities of the legal profession. Otherwise, they went unrepresented.

Responsibility for legal aid was gradually devolved to the Territory government, and the Northern Territory Legal Aid Commission was established as the successor to the Australian Legal Aid Office in 1990. NAAJA was then established in 2006 as an amalgamation of NAALAS, KRALAS and Miwatj, and in 2018 NAAJA also assumed responsibility for the Aboriginal legal aid function in Central Australia.

The necessity for structured legal aid services was heightened even further by the 1992 decision of the High Court in *Dietrich v The Queen*. That case established the principle that a person charged with a serious criminal offence should, except in exceptional circumstances, have their trial stayed until they can obtain legal representation.

Almost invariably, the legal aid services are the only means by which people in that situation can obtain legal representation. Without properly funded and functioning legal aid services the administration of criminal justice would quickly come to a grinding halt. That is demonstrated by the current situation in Alice Springs following the suspension of some of the legal aid services there.

At the most recent criminal directions hearings conducted in the Local Court in Alice Springs, there were 20 self-represented defendants, almost all of whom were remanded in custody and almost all of whom did not speak English as their first language.

The prosecution briefs had not been served on them because the only means of contact was through a generic prison email address which is entirely inadequate for the purpose of prosecution disclosure.

Even had the prosecution briefs been received, the defendants had no ability to properly review – or even read – that material, and no recourse to explanation or advice. Many of these defendants are now forced to the position of making pleas of convenience in order to get off remand so that they can either be released or transferred into the general prison population.

As I understand it, the current legal aid staffing crisis in Alice Springs is not due in any direct sense to the unavailability of funding to employ lawyers. Rather, it is due to the difficulty in attracting appropriately qualified lawyers to practice in the criminal jurisdiction in Alice Springs. There are no doubt a number of factors at play there, including the recent spate of negative reporting on social disorder in the town.

The inability to attract good lawyers to work in Alice Springs is a relatively recent phenomenon. There was historically a strong relationship between the Central Australian Aboriginal Legal Aid Service and the Melbourne and Sydney bars. Leading criminal barristers like Frank Vincent QC lent their services at reduced rates to represent Aboriginal accused charged with serious crimes. It was also a rite of passage for many juniors at the criminal bar to move to Alice Springs to undertake employment with CAALAS for a couple of years.

In doing so, they were providing an important service and facilitating access to justice for some of the most disadvantaged litigants in the Australian legal system.

At the same time, they also gained experience and assumed responsibility for significant matters far more quickly than they would have done at the Sydney or Melbourne bar. Some never left, including, most notably, Colin McDonald and Jon Tippett.

That is a tradition which should be encouraged. It seems that the current crisis may be reinvigorating that tradition, as barristers and solicitors from Sydney and Melbourne rally to provide relief services for NAAJA while they complete the recruitment process.

Without seeking to understate the significance of the difficulties which currently present in Alice Springs, the same professional satisfactions and advantages of practising in Alice Springs remain. It also remains a unique and beautiful place to live. It is a place of stunning landscapes, a richly diverse community, and a vibrant cultural scene. That is the message which as a profession and as a community we should be communicating about the attractions, advantages and satisfactions of legal aid work throughout the Northern Territory, and particularly in Alice Springs.

I wish you all well for your endeavours in the coming year, as together we seek to further the interests of the administration of justice in this jurisdiction.