

Opening of the Legal Year

Chief Justice Michael Grant

**Nitmiluk Lounge, Level 4, Parliament House
2 February 2017**

I note the presence here today of the Attorney-General, and that of your erstwhile colleague, Jeff Collins MLA. We are grateful for their continuing support of the profession.

I also note the presence of my colleagues, the Justices and Master of the Supreme Court, and the presence of Chief Judge Lowndes and Judge Morris of the Local Court.

I am particularly gratified by the presence of my predecessor, former Chief Justice Trevor Riley. Today I continue the tradition established by my predecessor in giving what has been described as a brief “state of the union address” at the opening of the legal year.

Last Monday saw an historic occasion in this country’s legal history. Justice Susan Kiefel was sworn in as the first female Chief Justice of the High Court, and thus Chief Justice of Australia. Her appointment is well-deserved. She was the clear consensus candidate on the basis of the skill and judgement she has demonstrated on the High Court bench over the last 10 years or so, and on the Federal Court and the Supreme Court of Queensland before that.

Just as significantly, the senior puisne judge who administered the oath of allegiance and office to Chief Justice Kiefel was Justice Virginia Bell, also a woman. And so it is now that the two most senior judges in the Australian court hierarchy are female. This demonstrates that the profession generally, and the judiciary specifically, is becoming more reflective of the community which it serves. This is a good thing by any measure.

On that same day, Justice James Edelman was sworn in as a Judge of the High Court. They say that you know you are getting old when policeman start looking ridiculously young. You know that you are getting really old when Judges of the High Court start looking ridiculously

young – although Justice Edelman is somewhat of an exception to the usual style of appointment.

He was appointed a full Professor of Law at Oxford University at the age of 34 – as apparently the youngest person in recorded history to be awarded a chair in the Oxford Law Faculty. At the same time he maintained full-time practice at the London bar, where his work output was so prodigious that he was referred to “the Edelman twins” – on the basis that no one human being could produce that much work by themselves. To top it all off, he is a former Rhodes Scholar, a champion swimmer, unfairly good-looking, humble and self-effacing, and a devoted son to his elderly mother and father – just in case our inferiority complexes weren’t in full enough flush already.

Both these recent appointments are enormously positive for the profession and for the community.

These are also interesting times for the profession in the Territory. As you are all aware, there was a change of government in August last year. I would like to take this opportunity to welcome formally Natasha Fyles as the new Attorney-General for the Northern Territory, and to congratulate her on her appointment to what is an extremely important office in our system of government.

The Judges have had the opportunity to meet with the new Attorney. At the risk of embarrassing her, those meetings have been very positive. She appears to us to approach legal issues in a principled and common sense way, uncomplicated by the sort of irrelevant political considerations that sometimes plague those discussions. She is very much focused on real, positive and practical outcomes – which we all must be. I know from my discussions with the President of the Law Society that it has had a similarly positive experience.

The new government has indicated that it is generally supportive of the principles underlying the Make Justice Work program, as are the judiciary and the profession. We look forward to a productive working relationship with the Attorney.

In her previous life as a school teacher many years ago, the Attorney taught my daughters. One of my projects for the year is to break my habit of referring to her rather servilely as “Miss Natasha”. I will be aiming to address her as “Madam Attorney”, which will no doubt be a great relief to her as well.

Of course, the executive and the judiciary will not always agree on the appropriate approach to a particular issue, and nor should they be expected to. Those sorts of tensions reflect the crucial checks and balances between the various arms of government that are built into our constitutional system. Having said that, dealings between the legislature, the executive and the judiciary must always be conducted in an atmosphere of absolute and mutual respect. That respect acknowledges the importance of those institutions to the maintenance of democracy and the rule of law.

The legal profession also performs an important role in our economic structures. It facilitates commercial arrangements. It brings capital together with enterprise. It assists individuals and businesses to work their way through regulatory regimes established in the public interest. For those reasons, the position of our commercial lawyers is tied in large degree to general economic conditions. It is well-acknowledged that the Territory has entered into a difficult phase in that respect. There is no doubt that government is aware of the challenges, and we are confident that the commercial sector of the profession will work constructively with government in addressing those challenges.

The profession is fortunate that Tass Liveris has agreed once again to sacrifice himself for the common good and sign up for a further 12 months as President of the Law Society. Tass has shown himself to be a clever, calm and inclusive operator in that role – even if he does look ridiculously young to me.

We congratulate Wade Roper on his election as President of the Northern Territory Bar Association. Wade is an experienced and accomplished advocate in our courts, and he will no doubt bring that skill to his representation of the Territory bar at both the local and national level.

Finally, in terms of organisational matters, we congratulate Kellie Grainger on her appointment as Chief Executive Officer of the Law Society. She is well known to us all as the long-term manager of regulatory services with the Law Society. It is a significant achievement for somebody occupying what is essentially the “toecutter’s” role to retain the general respect and affection of the profession. Kellie has managed to do so. She is also well-known to the Court and she has our confidence.

Members of the profession may have noticed in the past few weeks reportage in the media of what was represented to be a juvenile crime wave in Darwin and Palmerston. That phenomenon was linked to the contention that judges were reluctant to sentence youths to detention as a result of the establishment of the Royal Commission. There were also insistent calls for a Youth Justice Court judge to provide an interview about sentencing outcomes.

The Supreme Court issued a statement in response. In addition to calling into question the alleged correlation between the incidence of property crime and the number of youths in detention, the statement made three points – amongst a lot of others.

The first was that there are very specific principles and statutory directions which govern the approach to sentencing juvenile offenders.

The second was that in their sentencing remarks made in court judges publicly identify all the considerations relevant to the sentencing process and explain the sentencing outcome.

The third was that there are well-recognized conventions that preclude judges from participating in public debate about individual sentencing outcomes beyond what is said in those sentencing remarks.

Of course, the article published in response to the statement went something like this.

“Chief Justice finally breaks silence on juvenile crime wave.”

“Says the public is not entitled to any explanation.”

Despite those periodic frustrations, it is important that the courts and the profession continue to play an appropriate role in the public education process. The courts do that by their sentencing remarks, by the conduct of sentencing forums during the course of Law Week and at other times, and by making considered public statements as required.

But the most important thing the courts do in that respect is to operate as open institutions. Except on those very rare occasions when a court is closed for public interest reasons, any member of the public may observe its proceedings. Schoolchildren are regularly and routinely taken through our courts. Both interested locals and tourists are regular observers. The media has free access. Decisions are published for all

to scrutinise. In fact, our courts are probably the most open institutions in society. That transparency is fundamental to the legitimacy of the work they do, and to the rule of law. That transparency and the public's right of access is a matter that is properly broadcast by all courts and practitioners.

Returning briefly to the question of youth detention, it has often been said that there are limits on what the courts can do in terms of addressing the issues which underlie that type of offending. I thought the metaphor adopted by the former principal of the North Australian Aboriginal Justice Agency in this respect was very apt. He said that courts and lawyers were standing at the bottom of the cliff dealing with the consequences of individuals who had already fallen over the edge. The real remedy is to stop them falling over the edge in the first place.

The equation is a complex one which involves early family interventions to prevent neglect and abuse, a focus on an early and sustained engagement with the educational system, the promotion of health and well-being in the domestic environment, and effective diversionary and rehabilitation programs. Of course, this is not to say that courts must not balance community expectations with responsible and rational sentencing outcomes. It is also not to say that courts must not strive to achieve therapeutic and restorative results.

We fervently hope that one of the outcomes of the Royal Commission currently in train is the allocation of more funding to those programs, and recommendations for more innovative approaches to the problem.

While I am on this topic, I should also say that the courts are deeply appreciative of the fact that our local legal practitioners on both sides of the bar table consistently take a rational and constructive approach to the very real and unique problems that present in the administration of the criminal law in the Northern Territory. That is no doubt because we have a talented legal profession, the members of which have interests and skills running well outside the narrow confines of the law.

There can be no doubt that the practice of the law is complemented by a parallel involvement in other cultural and intellectual pursuits. We saw an illustration of that in the recent Battle of the Bands which was conducted at William Forster Chambers. I am told that the musical and other talent on display was extraordinary. Unfortunately, I was interstate at the time and did not have opportunity to observe that talent. But fortunately, I was interstate at the time and was not exposed to the

spectacle of Duncan McConnell wearing a pair of tight cream-coloured flares.

There were a number of developments last year that warrant brief mention.

The new *Local Court Act* came into effect from 1 May 2016. From that time magistrates were restyled as Local Court Judges. This makes the complete and symbolic break from the historical notion of the magistrate as volunteer discharging a range of administrative and quasi-judicial tasks. It reflects the fact that our Local Court Judges are professional officers engaged exclusively in the discharge of the judicial function, and that they are entitled to the appropriate structural protection of their independence in that role.

The new Northern Territory Civil and Administrative Tribunal has come into full operation in terms of the assumption of its multiple jurisdictions. I confess that I was sceptical when the proposal was first raised. I am now a convert. It is facilitated cost-effective access to justice for many members of the community seeking an adjudication of legal issues. It has allowed a degree of specialisation in those various fields. It has also freed up the Local Court Judges to concentrate on their core function. That success is attributable to the efforts of President Richard Bruxner, Andrew Macrides and Jim Laouris, and we congratulate them for that.

There are a number of matters coming up this year which also warrant a brief mention.

First, the new Supreme Court in Alice Springs will likely open for business in late April or early May this year. We are hoping that the Attorney will officially open the building, and that the opening will be marked by the conduct of a sitting of the Court of Appeal. We will keep you posted on that.

Secondly, the Local Court has adopted of the Framework for Court Excellence. That framework provides a structure within which court performance can be measured. Those measures include such things as user satisfaction, case clearance rates, fees and costs, and employee engagement. Under the framework lawyers, users and employees will have the means to provide feedback on court performance. The Supreme Court is also giving consideration to the adoption of the framework.

I recall when a similar system was proposed many years ago one of my predecessors said that he was happy to have barristers rate the court as long as the court was also able to rate the barristers and have those results published. Although I have some sympathy for that position, things have moved along since then and we look forward to your constructive criticisms.

Thirdly, the Court will be conducting the customary programs during the course of the year – most notably during Law Week and the advocacy program which is organised and run by Justice Hiley to much acclaim. We look forward to your participation and assistance in those programs during the course of the year.

I thank you all for your attendance here today. I look forward to working together with you in the coming year in the very significant undertaking in which we are all involved. That undertaking is the administration of justice in the public interest.
