

## **Opening of the Legal Year**

**Chief Justice Michael Grant**

**Grand Ballroom, Hilton Hotel, Darwin**

**27 January 2022**

I acknowledge the presence here today of Ms Marie-Clare Boothby MLA, representing the Leader of the Opposition. We are grateful for her support of the profession.

I also acknowledge the presence of my colleagues, Justices Blokland, Barr, Brownhill and Huntingford, Chief Judge Morris of the Local Court, Annmarie Lumsden, the newly appointed Director of the Northern Territory Legal Aid Commission, Sally Sievers, the Anti-Discrimination Commissioner, and, of course, the Presidents of the Law Council of Australia and the Law Society.

As a legal profession, and as a broader community, we have experienced another quite extraordinary 12 months. However, the profession has shown its resilience by adapting and continuing to function over that time. There is some cause for celebration of achievements during the past 12 months, and some cause for optimism for the coming year.

The pandemic has caused people to reassess their priorities, both personally and professionally. The Northern Territory has been somewhat sheltered and less affected than most southern jurisdictions, and that is something which has worked to our advantage in many respects.

Among those consequences, we are particularly fortunate as a jurisdiction to have taken the benefit of a number of recent appointments of highly experienced, capable and qualified lawyers, which, quite possibly, would not have ensued in different times.

We have been most fortunate to have had Nicholas Papas QC acting as the Director of Public Prosecutions since July last year, pending a permanent appointment to the position. He has done a wonderful job working around staffing shortages in that office, and continuing the conduct of trials notwithstanding the logistical difficulties which have presented during the pandemic.

He has proven himself to be a great communicator and an inspirational leader in that job. Unfortunately, family ties in Melbourne meant that his tenure was always going to be temporary in nature.

However, the Territory has been equally fortunate in securing Lloyd Babb SC as the new permanent Director of Public Prosecutions. Lloyd will commence in the office in March this year. As many of you will be aware, Lloyd has recently finished a 10 year term as the New South Wales Director of Public Prosecutions. He brings a wealth of experience, common sense and legal acuity to the position.

Complementing that appointment, in December last year Annmarie Lumsden was appointed as Director of the Northern Territory Legal Aid Commission. She was previously the Director of Crime with New South Wales Legal Aid, and has 23 years' experience with that organisation. She is widely recognised as a leader, a reformer, a strategic thinker and a lawyer's lawyer.

With both those appointments, New South Wales's loss has very much been the Northern Territory's gain. I look forward to working with them to address the very substantial challenges which now present in the administration of justice in the Northern Territory, and particularly criminal justice.

While executive government's principal focus is understandably on health issues and funding in the current climate, the Northern Territory is rapidly reaching crisis point in the administration of justice.

Speaking just of the Supreme Court for the moment, the Court has had six permanent judges since 1997 in circumstances where it has experienced a 300 percent increase in workload over that time. While I do not want to burden or bore you unnecessarily with statistics, they are compelling.

In 1998 there were approximately 2000 criminal listings. In 2021 there were 6254. That necessarily has an impact on listing times, delays in the delivery of judgments, and the time it takes for an accused to be allocated a trial. By way of example, the average time between first mention and finalisation in 2006 was 135 days, and that has now blown out to 271 days. That is to say, the delay in finalisation has doubled in little more than 10 years.

The general difficulty in that respect has been exacerbated in recent times. The number of criminal matters commenced annually has doubled since June 2019, in both Darwin and Alice Springs. It is not entirely clear why that is so. It would not appear to be directly related to the pandemic, and perhaps in part reflects an increasingly rigorous investigative and “no drop” approach to criminal prosecutions, particularly in relation to allegations of sexual and violent offending, in response to contemporary community expectations.

That backlog has been exacerbated by an increase in the number of criminal trials which have been vacated without resolution over the last couple of years. By way of example, approximately 160 criminal trials were vacated in 2015, whereas last year approximately 250 were vacated. While some of those vacations were attributable to logistical difficulties as a result of the pandemic, relatively few trials were lost for that reason. In my observation, the loss of trials can be attributed to a combination of a number of factors.

The principal factor is that the Office of the Director of Public Prosecutions and the legal aid organisations do not have sufficient resources to allow adequate preparatory trial work to identify and resolve preliminary issues in advance of trial, to conference with witnesses at an early stage to identify evidentiary weaknesses, and to assess properly whether the matter is capable of proceeding by way of guilty plea. That is ultimately a function of funding.

A second factor is the difficulties often encountered securing interpreters. One of the very welcome developments in the administration of justice over the past decade in particular, is the requirement for the provision of interpreters where the conduct of a fair trial requires that use. Interpreters are now almost the rule rather than the exception in relation to matters involving Aboriginal parties and witnesses from remote communities. One of the corollaries of that welcome and necessary development is that interpreters in a particular language group are not always available, and the trial is unable to proceed for that reason. That problem is not limited to Aboriginal interpreters. That is also, at its root, a function of funding.

The Supreme Court had previously adopted a benchmark of six months from committal to jury trial, and prided itself on the achievement of that benchmark. As a consequence of these matters, that time has now blown out to almost 12 months, and on current trends that time will blow out to two years in the near future if something is not done to address the funding and related structural issues.

One of the suggestions which has been put to address these difficulties, and particularly perceived difficulties as a result of the pandemic, is the conduct of Judge-alone trials. That is a misguided proposal. During the course of this pandemic, any disruption to the conduct of jury trials has been unrelated to the empanelment of juries. It has been as a consequence of the logistical difficulties arising from such matters as the restrictions on witnesses travelling in from remote communities, the restrictions on witnesses travelling from interstate, and the difficulties sourcing interpreters in the current circumstances.

The provision for trial by Judge alone will not obviate any of those difficulties. Rather, it will only exacerbate the current delays, because Judges would be required to produce extensive written judgments in relation to each and every criminal trial.

Those arguments against the introduction of Judge-alone trials stand quite apart from the fundamental importance of trial by jury in maintaining public confidence in the criminal justice system.

As I have said, I look forward to working with Mr Babb and Ms Lumsden in seeking to initiate a dialogue with the executive in relation to these matters with a view to improving the current circumstances and alleviating the current delays. That is the source of the cautious optimism I expressed at the beginning of this address.

As I also said at the outset, there have been some notable achievements during the course of the year.

First, the Judicial Commission commenced on 1 October 2021. That is a welcome development for the profession, and one that I first foreshadowed in my address at the Opening of the Legal Year in 2018. Since that time, the judiciary and the Law Society have worked in conjunction with the executive for the drafting of legislation to establish the Commission. It is an important step in the development and maturation of the Territory as a body politic.

Secondly, as you are all aware, our keynote speaker Tass Liveris has been elected as President of the Law Council of Australia. Anybody who has had any exposure to or experience with national bodies of that nature will understand how extraordinary an achievement it is for somebody from the Northern Territory – as the smallest Australian jurisdiction – to be elected to the position of President.

That Tass has achieved that is testament to his highly refined skills and qualities. The Territory has been fortunate in punching above its weight in that forum for 20 or so years now. The position has previously been held by Justice Southwood when he was a member of the Northern Territory Bar, and by Duncan McConnel SC, the current President of the Northern Territory Bar Association. These are achievements of which we are rightly proud. We wish Tass all the very best in the role, and I look forward to hearing his address this afternoon.

Finally, I congratulate Duncan McConnel, Wade Roper and Mary Chalmers on their appointments as Senior Counsel. There is a public interest in recognising advocates who have shown themselves to be exemplary through years of practice in the courts. By their continuing demonstration of the qualities of integrity, legal acuity, industry and respect for the law, they will be leaders of the Bar and will assume responsibility for maintaining its role in the administration of justice.

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.

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