

Uppers and Downers

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With the Opening of the Legal Year complete I welcome you to this below the Berrimah Line edition of *Balance*.

In this issue we feature stories from outside of Darwin.

Opening of the Legal Year

The tradition of marking the opening of the legal year has been handed down from the Middle Ages, when Judges attended Westminster Abbey and would pray for guidance in the upcoming legal term. This was the second year that the Society dispensed with the more formal aspects of the affair, being the Church service and the procession. Whilst I have commiserated with the few of you that have strong feelings about the matter, unfortunately, the profession and the community have voted with their feet. Dwindling attendances and the survey of the profession means that the formalities are unlikely to return. However, the purpose of OLY endures and it is to ensure the legal profession is taken into the new legal year with appropriate reflection.

Around the country the Opening of the Legal Year was celebrated in many different ways, but frequently with a gathering of the profession. In New South Wales, for example, the "Opening of Law Term" 2012 was celebrated in the Gallipoli Mosque in Auburn for the first time, recognising the "diverse

community and cultures that we serve as lawyers."¹

This year's OLY functions were well attended with 140 at the lunch in Darwin and 50 at the dinner in Alice Springs. The introductory remarks from the Chief Justice provided an opportunity for the legal community to reflect on the profession and its role, as well as to focus on relevant topics and concerns for the future. This included highlights of 2011 and what to expect in 2012.

The Society's guest speaker, Mr Jonathan Temm (President of the Law Society of New Zealand), was well received. Mr Temm raised issues of importance to the legal community, such as disaster planning and the rule of law in our near neighbour Fiji. Mr Temm also encouraged the examination of the role of Legal Aid in our legal system. The Society gratefully acknowledges the support of the Public Purposes Trust which provides sponsorship for the event and also the Attorney-General who hosted the event at Parliament House in Darwin. This event is clearly compatible with the Trust's objects.

Mr Temm spoke of important legal values and issues that are fundamental to the Australian (and New Zealand) legal systems:

- The threats to the rule of law and justice in Fiji
- The importance of an independent judiciary
- Legal Aid that should ensure

that all people are treated equally before the law

- The freedom to question administrative decisions

Mr Temm also spoke on the principles of procedural fairness, judicial precedent and the separation of powers, particularly in relation to the emergency measures legislation passed after the Christchurch earthquake in 2010.

Advocacy

The Society continues to advocate on behalf of the profession and the broader community and it is one of the functions of the Society to promote the administration of justice and development and improvement of law throughout the Territory² and to consider proposed changes in the law and to aid such amendments and reforms thereof as are likely to benefit the public.

To this end the Society's new Policy and Research Officer, Manuela Seiberth, has been hard at work. In her role Manuela participates in a number of committees and attends various stakeholder consultations on behalf of the Society. Whilst Manuela does not hold a law degree, she has a Masters Degree in Political Science, with a major in international law, which stands her in good stead to support the work of the Society.

Stronger Futures

Late 2011 the "Intervention Mark 2" took life in the form of three

pieces of legislation forming the framework for Stronger Futures.

- Social Security Legislation Amendment Bill 2011
- Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011
- Stronger Futures in the Northern Territory Bill 2011

The legislation was referred to the Senate Standing Community Affairs Committee. In the Society's submission the Society called for the following:

- Recognition of the legal needs created by the framework and adequate funding to ensure those needs are met.
- Recognition that community engagement includes ability to exercise legal rights and access justice.
- Recognition that Natural Justice and Procedural Fairness dictate that administrative decisions ought to be reviewable.
- The modification of the framework to allow access to the existing decision-making review mechanism available through Centrelink.
- Express provision subjecting the framework to the Racial Discrimination Act
- The urgent establishment of a Remote Tenancy Legal Advice Service

Public hearings were held in Darwin and throughout the territory in late February.

Remote Tenancy Advice

The Society has been urging the establishment of a Remote Tenancy Advice Service since August 2010 and whilst this has met with positive responses in face to face meetings with both Northern

Territory and Federal Government no tangible steps have been taken.

COAG Regulatory Reform

The Society also made a submission to the Council of Australian Governments future COAG Regulatory Reform Agenda Stakeholder Consultation in which it signalled that the absence of a multi-purpose tribunal put Northern Territorians at a distinct disadvantage with the unrelenting rollout of uniform national reforms.

It has at times been suggested that given the low number of administrative review matters in the Local Court (or the Supreme Court) there was an absence of a need for such a tribunal. The 2004 Northern Territory Law Reform Committee (NTLRC) found this argument illusory³. The report of the NTLRC concluded that the absence of matters further strengthened the conclusions of the report that the plethora of modes of reviewing administrative decisions amounted to "a statutory labyrinth [that] effectively deprive[d] the ordinary citizen of the means of challenging an administrative decision by simple, direct and inexpensive means." Anecdotally, this conclusion is borne out by Northern Territory lawyers expressing reluctance to encourage clients to review administrative matters due to the complexity and lack of uniformity of the process.

Legal Services Jurisdictional Forum

The Society is also participating in the Legal Services Jurisdictional Forum. The establishment of this forum arose from a Northern Territory Government commitment under the Legal Services Partnership Agreement. This agreement is up for review in 2013. Whilst the reporting date for the review is not until 2013 much work is needed to be done now to secure appropriate funding

of legal services into the future. The Society has also attended the inaugural meeting of the Legal Assistance Forum (LAF) which provides an important opportunity for the legal assistance sector to work collaboratively. The Society is mindful of the New Zealand review that resulted in sweeping changes, and a lump sum funding model arrived at by averaging out the costs – "uppers and downers" as Mr Temm described it.

Legal Aid funding is not funding for lawyers. Indeed, with rates that have remained unchanged for in excess of 10 years, that mythology is unsustainable. Legal Aid is about people's rights to access justice, irrespective of socioeconomic factors.

Secretariat

On another note, and there have been some big staff changes at the Society. In February 2012 the Society saw the departures of Jill Farrand (Trust Account Supervisor) to pursue consulting, Allison Smart (Manager Regulatory Services) to pursue litigation with the Department of Justice; Emily Boswell (Reception) to pursue tertiary studies and Karen Beach (Professional Development Officer) to pursue greener pastures in rural Victoria. We wish everyone well and have managed to retain Allison's assistance on various committees. You will meet the new faces in this and the next few editions of *Balance*.

Until we meet again ●

Endnotes

1. Justin Dowd (president Law Society of NSW) *Law Society Journal* February 2012 vol 50 No1 president's message
2. Law Society Northern Territory constitution 3(b)
3. NTLRC Report 29 of 2004