

How to Bowl a Doosra

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In 2016, the political stars aligned in a kind of Halley's Comet moment for Northern Territorians. The people will vote in only the seventh double dissolution federal election in Australian history and some weeks later, Territorians will again vote in the Northern Territory general election.

Whether the saturation of electioneering has you spellbound or ducking for cover, one certainty is that whatever shape the next federal parliament takes, the government will inherit a legal aid system in crisis. Since 2009, an estimated 45 000 people have been required to represent themselves in court because they have not been able to access legal assistance. The legal assistance sector remains chronically under-funded, as over the past nineteen years successive federal governments have reduced their funding contribution from 50 per cent to 35 per cent, thereby shifting the burden onto the states and territories and onto the community at large.

Legal aid makes society fairer. Like Medicare, it is a vital safety net for those in the community that do not have the resources to afford representation themselves; not just those below the poverty line and not just those in the criminal justice system, but millions of people in middle Australia who need legal assistance in all sorts of disputes. Yet, only 8 per cent of the Australian population are able to access legal aid. If the government treated Medicare with such disdain, if essential medical services were beyond the reach of the majority and forced to rely on philanthropy to stay open, the electoral fallout would be severe.

In Law Week in 2016, the Law Council of Australia led law societies and bar associations in the #LegalAidMatters campaign, which called upon the federal government and the opposition to commit to investing \$350m to restore the legal aid system. The financial and social costs of an underfunded legal aid system are immense. As Law Council of Australia president Stuart Clark has bluntly stated, it is a tragedy that is destroying lives.

Leaders of the legal profession and the judiciary stood up in Law Week, not for themselves, but for the wider community who need access to legal services and cannot get it. The legal profession is determined to make this right in this election year and as part of that stand, I encourage people to support the #LegalAidMatters campaign by signing the petition at www.legalaidmatters.org.au and to share it with your colleagues and friends.

More locally, on 1 May 2016, landmark reforms to the lower courts and tribunals in the Northern Territory took effect. In the main, this included the abolition of the Court of Summary Jurisdiction and the establishment of a single Local Court with both criminal and civil jurisdiction. The civil jurisdictional limit of the Local Court has increased to \$250 000 and the Northern Territory Civil and Administrative Tribunal has been conferred original jurisdiction to hear and determine claims within the limit of \$25 000. The members of the new Local Court are judges, replacing the old terminology of stipendiary magistrate.



On 3 May 2016, this important, historical moment was publically recognised, with the Attorney-General and the Chief Judge unveiling a plaque in a ceremony at the Local Court. In his address to the full room in court 1, the Chief Judge spoke of the quaint coincidence that as duty magistrate on 30 April 2016, a Saturday, quite by accident he performed the last function of a magistrate in the Northern Territory and the following day performed the first function of a Local Court judge; a very poignant and appropriate piece of history for the Chief Judge to be involved in.

In parliament, even though the general election is only months away, there continues to be activity with several bills being introduced in the May 2016 sittings, including the so-called 'no body, no parole' amendments to the *Parole Act* and amendments to the *Bail Act*.

The amendments to the *Bail Act* were first flagged by the Chief Minister in a social media post on 17 May 2016. Eight days later, the Bail Amendment Bill 2016 (Bill) was introduced in the Legislative Assembly. Initially said to be a policy in response to a small group of youths who continue to commit offences whilst on bail, the Bill as introduced applies to both adults and juveniles. The Bill creates presumptions against bail for people in certain circumstances, as well as the requirement for a court to make electronic monitoring a condition of bail for those people who displace the presumption.

The Law Society Northern Territory (the Society) has joined with other peak representative bodies of the legal profession, including the Law Council of Australia, the Northern Territory Bar Association and the Criminal Lawyers Association of the Northern Territory in expressing concerns about the Bill. These sorts of measures are costly, will result in greater incarceration levels and expose people to the criminal justice system in larger numbers, increasing the risks of recidivism. Also, like mandatory minimum sentencing, the Bill places a needless fetter on the discretion of the courts to hear and determine applications for bail on a case by case basis.

The bail reforms in the Bill are also premature. The Society has applauded the government's justice targets, which aim to reduce the Indigenous incarceration rates of adults and juveniles and recidivism by 50 per cent by 2030. The targets are underpinned by a wholesale justice review, which is shortly due for public release.

As such, reforms of this nature should not take place before the justice review has been released and considered by stakeholders and a plan towards meeting the justice targets can be set with the benefit of the review. The government's justice targets have been widely praised, but these types of hasty measures stand to jeopardise them. The Society's position is that the response to the complex issues of incarceration and recidivism must be evidence-based, informed and made with a whole-of-government, whole-of-community focus, so as to ensure that the justice targets can be realised in 2030.

Just recently, the May 2016 Law Week was a great success, with a range of wonderful events on all throughout the week, including the extremely impressive keynote speaker, Fiona McLeod SC. As far as matters of turf and willow are concerned, collegiality once again won the day at the annual cricket game between the President's XI and the Chief Justice's XI at the Gardens Oval.

In a game where the final result doesn't really matter, but really does matter, I am very pleased that the profession was able to edge out the judiciary on the day and reclaim the trophy and the associated bragging rights, which are yours for another year. Please enjoy them, but use them with some caution and at your own risk.

Off the scorecard however, it was again inclusion that stood out above all else and made the event the great success that it was. For the first time, both teams fielded more than the minimum two female players and large numbers of spectators, families and children came to the ground to share a wonderful pre-dry season afternoon with each other. It was a fantastic way to close out Law Week and I want to thank everyone who involved themselves in the game and everyone who involved themselves in Law Week, for helping to celebrate collegiality, diversity and lawyers serving the community.

I can be contacted through the Society or at William Forster Chambers. You can also follow me on twitter: @LSNTPresident

