

THE HON T F BATHURST
CHIEF JUSTICE OF NEW SOUTH WALES
REMARKS, TOONGABBIE LEGAL CENTRE ANNUAL
FUNDRAISING DINNER
BOWMAN HALL, BLACKTOWN
SATURDAY 12 OCTOBER 2013

1. Thank you very much for inviting me to make a few short remarks at this evening's event. It is a great pleasure to join you at this important sixth annual fundraising dinner for the Toongabbie Legal Centre. I would like to begin by respectfully acknowledging the traditional owners of the land on which we meet and pay my respects to their elders, past and present.

2. Several years ago, Justice Bell of the High Court noted that the essence of speaking at dinner functions is to be inconsequential. More importantly for me, her Honour went on to advise that this requires serving judges to express no views on topics of controversy and to generally aim to be dull. I don't know if I entirely agree in relation to discussing controversial topics and sadly I must accept that whether I am dreary is probably not for me to decide. However, I am very much aware that my primary duty in speaking to you this evening is to be finished before the main course is served.

3. In the minutes that I have available I would like to say a few short words about access to justice and the important function that community legal centres perform in facilitating access to our legal system. In addition, I also want to reflect a little on the excellent work that is being done by organisations such as Toongabbie Legal Centre here in Western Sydney.

4. First, it is important to emphasise at the outset that access to justice is an essential component of the rule of law. Unfortunately the rule of law is a principle that is often referred to – particularly by lawyers and, it must be said, judges – however, it is a concept that is not always clearly articulated. Former High Court Justice and Governor-General Sir Ninian Stephen described the attraction of invoking the rule of law when he said that the phrase

“...has a splendid ring to it; there are few politicians other than rigorous Marxists who can resist its siren song when speaking of the ideals they stand for, few writers on political science who deny its high virtue.”¹

Sir Ninian identified four principles of the rule of law that he said are of particular concern for the legal profession: first, that government is under the law; second, the independence of the judiciary; third, that the law is general in application, equal in operation and certain in meaning; and finally, that citizens can readily access the courts of law.

5. Now for those of you who I can see beginning to shift in your seats, there is no need to worry; I have no intention of turning this evening’s festivities into a legal theory lecture. My point is simply that the rule of law – which is one of the most important pillars of our legal system – becomes almost meaningless if members of the community are unable to access our legal institutions. At an event much like this evening’s to celebrate the 10th anniversary of the Public Interest Law Clearing House, Sir Anthony Mason, former Chief Justice of the High Court, captured this idea when he said that “A first class court system and a first class legal profession are of no avail to a person who cannot afford to access them.” It must be said that Sir Anthony’s assessment is a far more optimistic and less cutting

¹ Sir Ninian Stephen, “The Rule of Law”, St James Ethics Centre Lawyers’ Lecture (November 1999).

critique than the old saying that “In England, justice is open to all, like the Ritz hotel.”

6. Many steps have been taken over the years to continually improve the ability of members of our communities to gain access to justice. Some examples that immediately spring to mind are the increasing role being played by tribunals in fields such as tenancy and for consumer-related issues; tribunals operating in these areas aim to resolve disputes quickly, at minimal cost and often without the need for any legal representation. An increasing emphasis on pro bono work by legal practitioners and the development of concepts such as pro bono targets have also facilitated greater access to justice. For instance, the New South Wales Supreme Court has in place a court appointed pro bono assistance scheme that enables the court to refer litigants to legal practitioners who are members of the Court’s Pro Bono Panel. This scheme allows the Court to contribute in certain circumstances to the process of assisting unrepresented persons to obtain legal representation. Of course, there are many organisations that facilitate access to pro bono legal assistance including private firms, the New South Wales Bar Association and the Law Society.
7. Legal aid commissions and community legal centres are an essential layer in the support structure that endeavors to facilitate access to our legal system. As you know, the eight state and territory legal aid commissions are independent statutory bodies established to provide legal services to the community, and particularly to disadvantaged community members. Against this background, community legal centres came into being to address legal needs in areas that were seen as not being adequately met. In particular, and as the name suggests, community legal centres have the great advantage of being located directly within their community and can therefore respond to the specific needs of their clients. This is reflected in Toongabbie Legal Centre’s mission to provide legal assistance and advice

- to culturally, socially and economically disadvantaged persons in the area.
8. It is always useful to be reminded of the sheer scale of the services that community legal centres are providing across Australia. Around 40 years ago, community legal centres emerged on the very fringe of the legal profession as a product of movements for social and political change. While it is now some time ago, I vividly recall the protest movements of the 1960s that contributed to the establishment and growth of community legal centres. There was of course some precedent in the form of free legal services that were offered to those who served in the World Wars upon their return.² Now despite what some of you are thinking, unlike the 1960s I don't have any recollections from those times. Today, however, it would be difficult to argue with the proposition that community legal centres have become an essential and entrenched pillar of Australia's legal landscape.
 9. From humble beginnings, there are today more than 200 community legal centres across Australia that are operating in all of our communities – metropolitan, suburban, regional, rural and remote. Importantly, the communities that CLCs serve are not only geographic; many provide assistance to interest-based communities that have particular legal needs. By focusing on the needs of their specific communities, CLCs in turn develop a particular expertise that perhaps enables them to respond more appropriately than other generalist services might otherwise be able to.
 10. The work that is being done by community legal centres is essential in a number of respects. First, CLCs obviously provide frontline services to individuals who would otherwise be unable to afford legal advice or representation. In this respect I understand that over 80% of people helped by community legal centres receive less than \$26,000 a year in income and nearly half of CLC clients are wholly reliant on income

² For a brief history of community legal centres see J McCulloch and M Blair, "From Maverick to Mainstream: Forty Years of Community legal Centres" (2012) 37 *Alternative Law Journal* 12.

support.³ If not for community legal centres, these individuals would likely be required to navigate the law and its institutions without any support.

11. Second, community legal centres typically offer a holistic approach to legal issues. There is a tendency among CLCs to engage with a range of other important community service providers, to focus on early intervention in order to prevent legal issues arising, and there is also a strong emphasis on general awareness and community education. An excellent example of this type of community legal education is the guidance materials that Toongabbie Legal Centre has produced in relation to fines and penalty notices. Education of this nature leads to greater community awareness of legal issues and consequently reduces the workload of CLCs, the need for advocacy provided by legal aid commissions and, of course, the number of matters requiring the attention of courts and tribunals.
12. Third, community legal centres provide an important link between on the one hand individuals who are engaging with the legal system and utilising the services provided by CLCs, and on the other, those who are involved in the making, enforcement and interpretation of our laws. It is essential that there are effective channels of communication between community legal centres and the relevant arms of government. For example, communication between government agencies and organisations that provide frontline legal services has the potential to minimise the number of legal issues that arise by learning from past experience and putting in place systems to address or even prevent issues from reoccurring.
13. What is perhaps more impressive is that community legal centres are not just providing such a broad range of essential services – they are doing so in significant quantities. For example, and while now probably outdated,

³ Community Law Australia, *Unaffordable and out of reach: The problem of access to the Australian legal system* (July 2012) 6; Australia Council of Social Services, *Australian Community Sector Survey 2013*, 34.

there are figures suggesting that in 2006-2007 CLCs provided more than 220,000 legal advices and completed more than 2000 community legal education projects.⁴ In addition, a more recent review has found that on average community legal centres return a benefit to society of 18 times their cost.⁵ Obviously it is not possible or desirable to measure the broader social benefit of every individual piece of work that is completed in each CLC across Australia. However, it is useful to have a general understanding of the extent of the work and the broader societal benefits that are derived from community legal centres. In this respect, the Productivity Commission is currently carrying out a review into access to justice and it will be interesting to see if the Commission attempts to quantify the amount of work that is being done undertaken CLCs.

14. There are of course some troubling figures in relation to the ever-increasing need for the services provided by community legal centres. For instance, I am aware that in a recent survey nearly two thirds of community sector legal service providers reported that they were unable to meet demand, while the turn-away rate from such services was 1 in 5.⁶ These statistics indicate the real difficulties that many members of our communities face in understanding and resolving everyday legal issues. As I mentioned earlier, it is an essential component of the rule of law that individuals have the means to approach the courts to seek legal redress.
15. The challenges that people may face in obtaining legal advice and gaining access to institutions to resolve issues can, if ignored, have significant consequences for the fabric of our legal system. In preparing for this evening I read an interesting report that considered community perceptions of the legal system. The vast majority of respondents agreed

⁴ National Association of Community Legal Centres, *Why Community Legal Centres are Good Value* (2008) 2.

⁵ Judith Stubbs & Associates for the National Association of Community Legal Centres, *Economic Cost Benefit Analysis of Community Legal Centres* (June 2012).

⁶ Australia Council of Social Services, *Australian Community Sector Survey 2013*, 34.

with the proposition that only the wealthy can afford to protect their legal rights, and most agreed that courts are no place for an ordinary person.⁷ Community legal centres, legal aid commissions and other avenues directed at facilitating access to justice such as pro bono legal work are essential in addressing such attitudes. The community must not only have confidence in the independence of the judiciary but also in their ability to access it.

16. I am sure that many of you attending this evening work on a day-to-day basis in the community legal sector. For you, these observations in relation to community-based legal work will not be at all new. However, on occasions such as this, it is important to reflect on the legal needs that those of you who work in community legal centres are servicing and the extent of the demand that exists for your skills. Addresses in relation to community legal centres and community-based lawyering generally focus on government funding and the levels of services that are able to be provided to clients. However, while it is important to emphasise the ongoing need for assistance and the relationship between access to justice and the rule of law, we must at the same time remember that it is equally important to acknowledge and celebrate the work that is being done by those working in community legal centres across Australia.

17. Before I finish I would like to say a few words about the important work that community legal centres like Toongabbie are doing here in Sydney's west. It is truly staggering to reflect upon the fact that Western Sydney is home to just over 1 in 11 Australians, and its population is greater than Tasmania, the Northern Territory and the Australian Capital Territory combined. It is a vibrant, diverse and rapidly growing part of our city that no doubt has an increasing need for legal assistance provided by centres such as Toongabbie. This is clearly apparent based on Toongabbie Legal

⁷ R Denniss, J Fear and E Millane, The Australia Institute, "Justice for all", Institute Paper No. 8 (March 2012) 2.

Centre's expansion from Toongabbie into the Blacktown area in the few short years since it was established in 2007.

18. One aspect of the work being done by Toongabbie Legal Centre that has particularly impressed me is the Centre's Community Legal Assistance Network program. This pilot project trains members of the community in the procedures of tribunals and local courts so they may in turn assist people who wish to take minor matters to court but who are unable to otherwise obtain assistance and cannot afford to pay for a private lawyer. In my opinion, this project has a number of potential benefits. First, it gives participants the skills to assist others to better understand and navigate the legal system. While those who complete the program are not legally trained, the project is intended to instill a better understanding amongst community members of the processes of tribunals and courts. This is vital, as one thing that can undermine the rule of law is a belief amongst a significant number of members of the community that the law is incomprehensible, isolated from their needs, at best a mechanism by which rich people resolve their disputes and at worst a system designed to oppress them. Second, educating the community about the nature of our legal system has the potential to assist judicial officers and tribunal members by minimising the challenges that can arise when engaging with persons who have no familiarity with the legal system. Finally, it is perhaps most significant that those who volunteer are themselves empowered by learning about the structure and workings of our legal system. Participants are then able to share that knowledge with family, friends and other members of their communities. It is this is the type of innovative community legal education that distinguishes community legal centres.
19. I would like to end my remarks this evening by congratulating Toongabbie Legal Centre, its Management Committee, its patron Justice Beazley and,

most importantly, its volunteers for the work they are doing and all that they have achieved since 2007. Much like communities across Australia, the residents of Toongabbie and now Blacktown are very fortunate indeed to have the presence of an organisation like Toongabbie Legal Centre.

20. As I have mentioned, access to justice is an essential aspect of the rule of law which is a fundamental principle that underpins our legal system. Community legal centres are now an established layer of the mechanisms that operate to assist disadvantaged members of our communities by providing advice and representation, and also delivering community education. Nights like this evening's provide an opportunity to reflect on the demand for the services offered by community legal centres and also to celebrate the achievements of those who work and volunteer in the community legal sector.
21. I thank you for inviting me to attend this excellent event and I wish the Toongabbie Legal Centre the very best for work that lies ahead.