

Speech given at Opening of the Law Year ceremony

Cairns, 15 July 2024

Her Honour Judge Tracy Fantin, District Court of Queensland

We are honoured to be joined today by so many esteemed guests. Chief Justice, President of the Court of Appeal, Chief Judge of the District Court, Justices of the Court of Appeal, Supreme Court, and District Court, Deputy Chief Magistrate, Far Northern Coroner, Magistrates, Commissioner (Meriba Omasker Kaziw Kazipa), Shadow Attorney General, Mayor of Cairns Regional Council, Director General of the Department of Justice and Attorney General, First Nations Justice Officer of the Department, retired judicial officers, members of the legal and broader community, colleagues and friends. I particularly welcome all Aboriginal and Torres Strait Islander people here today.

Thank you, everyone, for joining us to mark the opening of the law year.

I acknowledge the Gimuy Walubara Yidinji people as the traditional owners of this place. I acknowledge their survival, their care for and management of this beautiful country we live and work on, their living culture, their elders, and their unique role in the life of this region.

I particularly thank them for their generosity in being involved in this event each year.

The law has a tradition of marking the opening of the law year with a ceremony at which legal practitioners and judicial officers solemnly reflect on their professional obligations and their shared mission of delivering justice according to law.

For many years it involved a church service where lawyers prayed for guidance. For the last four years in Cairns, it has involved a different kind of ceremony. A secular ceremony that enhances the traditional theme of professional renewal by recognising, respecting and involving the traditional owners of the land upon which we strive to deliver justice to all. I thank Justice Henry for his leadership in initiating this.

Every legal practitioner takes an oath. They promise to truly and honestly conduct themselves, in the practice of a lawyer of the court, according to law to the best of their knowledge and ability.

Every judge takes an oath. They promise to at all times and in all things do equal justice to all persons and discharge the duties and responsibilities of the Office according to law to the best of their knowledge and ability without fear, favour or affection.

I want to say something about truth and courage in the context of those oaths.

Baroness Carr Of Walton-On-The-Hill, Lady Chief Justice of England and Wales, recently gave a lecture entitled ‘To Know the Law and Observe It Well – Magna Carta and Criminal Justice’.¹ In it, she spoke of the oaths taken by judges and lawyers. She made three points.

First, and obviously, judges and the legal profession must not only know the law but know how to observe it well, meaning deliver it or give effect to it.

But that alone is not enough.

Second, to know the law requires us to know its spirit. And the spirit of our law has always been one that draws on a diversity of experience. The common law is one that is made of many threads, and we have drawn them historically from many sources.

The spirit of the law must be one based on a recognition of and learning from diverse experiences, and a proper understanding of our nation’s history and the consequences of colonialism on our First Peoples.

What does this mean for us?

I think that being true to our oaths requires us to reckon with the history of our nation.

Noel Pearson has said that there are three equally epic parts to our national story. Three verses or epic stories, which form part of one song, which we must recognise to unite the nation.²

The first is our ancient Indigenous heritage, which is our nation’s foundation.

The second is the British institutions built upon it, including its system of laws.

¹ Baroness Carr Of Walton-On-The-Hill, Lady Chief Justice, ‘To Know The Law And Observe It Well – Magna Carta And Criminal Justice’ (Kalisher Lecture, 19 March 2024) <<https://www.judiciary.uk/wp-content/uploads/2024/03/Lady-Chief-Justice-Kalisher-lecture-2024.pdf>>.

² Noel Pearson, ‘A Rightful Place: Race, recognition and a more complete commonwealth’ (2014) (55) *Quarterly Essay* 1.

The third is the triumph of multicultural migration.

To be true to our oaths we must educate ourselves about the richness and complexity of our First Peoples' history, culture and laws.

We must educate ourselves about our colonial settler history and its consequences for our First Peoples.

About the frontier massacres which occurred at the hands of the Native Police, a semi-military force which operated without the intervention of judge, jury or the law and whose role it was to 'disperse' (which became a euphemism for kill) Aboriginal people.³

In Far North Queensland this history is painfully close to home, and relatively recent.

We must educate ourselves about what followed that: the system of reserves in Queensland that subjected Aboriginal people to total, arbitrary control for the next seventy years, and lasted into the 1970s.

We have become a carceral culture. Like every other jurisdiction across Australia, Queensland continues to disproportionately imprison First Nations adults and children.⁴

The overrepresentation of First Nations people in Australian and Queensland prisons is evidence of a chronic failing in the administration of justice.

We know from the research that how likely someone is to end up in jail depends on a number of factors, underpinned by structural causes:⁵ being in foster care, poor education, early contact with police, unsupported mental health or cognitive disability, alcohol and drug problems, unstable housing or homelessness, coming from a poor and disadvantaged neighbourhood – and being Indigenous.

We know from the research that addressing these factors, and the underlying structural 'causes of these causes' – such as early abuse, racism, discrimination and poverty – with

³ See, e.g., David Marr, *Killing for Country* (Black Inc Books, 2023); Dr Rosalind Kidd, *The way we civilise – Aboriginal affairs, the untold story* (University of Queensland Press, 1997).

⁴ Justice Reform Initiative, *Alternatives to Incarceration in Queensland* (Report, May 2023).

⁵ Ibid; see also Ruth McCausland and Eileen Baldry, 'Who does Australia Lock Up? The Social Determinants of Justice' (2023) 12(3) *International Journal for Crime, Justice and Social Democracy*, 37.

early intervention and support materially reduces the risk of someone offending and ending up in jail.

Following the failed referendum on constitutional recognition and a Voice to Parliament we must strive to meaningfully recognise First Peoples and their rights.

Work must continue to provide First Peoples with meaningful roles and decision-making power in matters that uniquely affect them.

Returning to the Lady Chief Justice's remarks, the third point she made is that observing the law requires moral courage.

The judicial oath is not mere words. It reflects that judges must approach their duty fairly and without prejudice or bias. That they must act with moral courage. That they should be able to stand up to pressure, covert or overt, direct or indirect. That they should be able to make decisions that will be unpopular with politicians or the media, or indeed the public.

Judges must treat friends and foe alike – that they should secure equal access to justice, that they should not discriminate or permit prejudice to taint their decisions, and that they should not accede to the commands of the powerful, remains at the heart of the judicial oath. They must set aside their own social, religious or political views in trying cases.

This moral courage does not magically arrive upon appointment to the bench. Rather, moral courage is something that judges and magistrates develop in their careers before appointment. Where the judiciary is concerned, we do so as lawyers.

That is demonstrated by the independence of the Bar. Counsel in court demonstrate their courage every day. As do solicitors. In representing the difficult or unpopular client irrespective of their personal views, whether because of the nature of the offence with which they are charged or the cause they represent. Moral courage also stands behind the cab rank rule, which requires barristers to take instructions no matter what their views of their client may be.

It is in that context that you will now hear a judicial officer and lawyer reaffirm their respective oaths.

Thank you.