

Opening of the Legal Year

2015

Welcome to the 2015 legal year.

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I add my welcome to the Attorney General, our guest speaker Julian Burnside and to our special guest from Timor Leste, Judge Deolindo dos Santos of the Court of Appeal of that country. Judge dos Santos is representing the President of the Court of Appeal of Timor Leste, Guilhermino da Silva. His Excellency cannot be here because, in his words, he is addressing several issues regarding the independence of the judiciary.

Given the significance of this year I would have thought we would be dining on a hog roast in a baronial Hall entertained by Morris dancing. As you all know on 15 June 2015 we will celebrate the 800th anniversary of the signing of the Magna Carta at Runnymede on the banks of the Thames River.

That document, which started life as a failed peace treaty, has, through subsequent developments, come to be described as the great charter of English liberty and the world's most important document. It recorded such fundamental

principles as the right to due process of law, no one is above the law, justice delayed is justice denied and no taxation without representation. It laid the foundations for our modern democracy and the freedom of the individual. The signing is a moment in history worth celebrating.

So, of course, is the opening of the legal year. In theory the Northern Territory legal year ends at the beginning of February and immediately starts again. We do not have the breaks in the judicial calendar that traditionally occur in most other jurisdictions, rather the Court sits through the whole year. We need to do this to get through the annual workload. This is not window dressing – from 5 January 2015 we have had 5 judges sitting, including running jury trials. On 19 January 2015 we had 5 judges sitting and listed 5 jury trials. Of course we could not run the five trials because we do not have five jury courts. We gambled on one falling over and, fortunately, that occurred.

I point these matters out to provide emphasis to the ever increasing workload on the court as an institution and upon the individual members of the judiciary. The members of the Court and, of course, the members of the profession, are working exceedingly hard to stay on top of the lists but, nevertheless, the lists are gradually blowing out. Whilst civil lodgments are following a slight

downward trend there is a constant and disappointing increase in criminal lodgments each year. We are approaching the time when the appointment of a seventh judge will be required.

2014 was a big year for the courts and the profession and I want to mention just some of the highlights:

- (a) The Northern Territory government announced the construction of a new Supreme Court building in Alice Springs. My predecessors and I have been calling for this for many years and finally it is underway / *The AC played a big part in ^{from} ~~that~~ ^{ACHIEVEMENT}* The Chief Minister turned the first sod on the building site on 16 December 2014. It is anticipated construction will be completed and the building opened in 2016.
- (b) The Northern Territory government also announced the creation of the Northern Territory Civil Appeals Tribunal or NTCAT which brings the Territory into line with other jurisdictions around Australia.
- (c) The Chief Minister announced the setting up of a Review Panel to review the processes for the appointment of Judicial Officers in the Northern Territory. This followed the regrettable series of events surrounding the appointment and

then resignation of a magistrate in 2014. The results of the review have not been announced but it is to be hoped that some problems of the past will be avoided in the future.

(d) In 2014 the Supreme Court hosted the annual Supreme and Federal Court Judges conference in Darwin. This was a huge success with over 200 participants, including 116 judges, from around Australia and New Zealand attending. That is an awful lot of people to host in such a small jurisdiction. The Judges of this court are grateful to the local profession for the exceptional support provided to us in looking after so many people.

(e) The Northern Territory Bar Association and Charles Darwin University also hosted a major conference being the Civil Law Conference held in Dili, Timor Leste. This was the first such conference in this location and I expect there will be many more to come.

(f) Also held during the year was the annual Supreme Court Open Day which is one of the most important ways in which we communicate with the community. The profession again provided tremendous support. We had over 700 visitors through the door with very positive feedback and very positive media coverage. This will be repeated in 2015.

(g) The Advocacy Weekend Workshop run by the Law Society and led by Rex Wild QC and myself was another successful event. This year the event will be coordinated by Hiley J and Les McCrimmon.

Looking forward to 2015 I wish to mention some forthcoming events and to identify some areas of concern. First to the events:

- (a) The biannual CLANT conference will be held in Bali around 20 June 2015.
- (b) The Supreme Court will hold the second national Language and the Law Conference late in August 2015.
- (c) The Supreme Court has already held sittings in Katherine in 2015. We will hold such further sittings as the work demands.
- (d) Work is soon to commence on the alterations to the Supreme Court building in Darwin necessary to permit the housing of the Federal Family Court and the Federal Circuit Court within the building. The work should be completed later this year.

There will, of course, be many issues with which we will have to deal in 2015. There are two significant matters that are looming and to which I wish to draw particular attention.

The first of those is the difficult funding circumstances in which our Legal Aid bodies find themselves. It must be obvious to all involved in the criminal justice system that the services of the North Australian Aboriginal Justice Agency, the Central Australian Aboriginal Legal Aid Service, the Northern Territory Legal Aid Commission and bodies of that ilk are vital to the effective delivery of justice in Australia and, particularly, in the Northern Territory. Those agencies represent some of the most disadvantaged people in Australia and people who are in the greatest need of assistance. To reduce the funds available to such bodies is to strike a blow at the heart of the justice system. It is obvious that funding cuts which result in a cut in services will not save money in the long run. It is a false economy. Unrepresented litigants and under-represented litigants will lead to significant increases in costs in areas such as the courts, the prosecution authorities and, inevitably, the Department of Corrections, particularly prisons. I urge the responsible governments, Federal,

State and Territory, to take great care to ensure that any necessary cuts in funding do not have adverse consequences for the delivery of justice in Australia and do not lead to greater problems elsewhere.

Another area of concern relates to the apparent breakdown of the rule of law in some of Australia's near neighbours. Last year I talked of the government of Nauru which terminated the employment of its only magistrate and deported him and then did not permit the then Chief Justice of Nauru, Geoffrey Eames, to return to the country. The personnel in Nauru have changed but the problem continues.

A similar concern has developed closer to home. It is of particular concern to our guest Judge dos Santos.

The people of the Northern Territory and the courts of the Northern Territory have a long-standing and close relationship with the people of Timor Leste and the courts of Timor Leste.

Judges of the courts of Timor Leste have visited Darwin on numerous occasions. Judge dos Santos has personally visited us on a number of occasions including as far back as 2003 for the Judicial Conference of Australia colloquium held in that year. The Judges of our Supreme Court have attended in Dili for productive mutual discussions. My fellow Judges and myself have delivered papers in Dili including in relation to the importance of the independence of the judiciary. The Northern Territory profession has conducted the very successful Civil Law conference in Dili and will do so again. We are close.

It is, therefore, quite disturbing to learn that the rule of law is under threat in Timor Leste. The National Parliament terminated the contracts of international judges and other legal practitioners working in the judicial system in that country. The President of the Court of Appeal, Guilhermino De Silva, supported by the judges, determined that the terminations were not lawful. The Parliament then passed a further resolution revoking the visas of five foreign judges and some others and required them to leave Timor Leste. Effectively they were precluded from fulfilling their judicial functions.

If these understandings reflect the reality then it is apparent that the rule of law is under serious threat in Timor Leste. We should do all that we can to encourage Timor Leste to honour the rule of law and we should support the judiciary in its calls for the executive to refrain from any threat to the independence of the judiciary.

Timor Leste is a new democracy. The Courts of Timor Leste and the judicial officers of Timor Leste can be assured that the legal profession of Australia will support them as they strive to achieve true judicial independence and the maintenance of the rule of law.

Here in Australia, and notwithstanding the political turmoil of the moment, we should be grateful that we live in a settled democracy.

We should be vigilant to ensure that the independence of our judiciary is maintained and that the rule of law is upheld.

I wish you all the best for 2015.