NEWS & MEDIA
Judicial Conference of Australia

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2 June – 8 June 2018

ANNOUNCEMENTS

Proposed changes in regard to the Family Court

In response to the proposed changes to the Family Court, and following the meeting of the Governing Council on Saturday, JCA President Justice Robert Beech-Jones has issued a statement to the media entitled "Judges should not be in the cross fire of debate over court restructure". The media release has been included on page 1 of this week's *News & Media* and has been quoted in a number of articles, which have also been included.

JCA Colloquium this year in Melbourne

This year's Colloquium will be held in Melbourne from lunch time on Friday 5 to lunch time on Sunday 7 October. The venue will be the Hyatt on the Park in East Melbourne. The Colloquium Planning Committee has been hard at work finalising a very interesting and engaging program.

The second day of the Colloquium will continue with a dinner at the Melbourne Museum. Our after-dinner speaker this year will be journalist and crime reporter John Silvester.

We will be announcing more details about the Colloquium in subsequent editions of the *News and Media.* The Colloquium promises to be an engaging and enjoyable weekend.

Membership renewal time coming up

It is now time to continue your membership of the JCA. This week or early next week, all members will receive a letter or an email with instructions on how to continue their membership. Membership fees will remain unchanged, at $230 for full members and $50 for members who have retired from judicial office. New members of the JCA also only pay $50 in their first year of membership. The JCA's membership stands at record levels; well over 700. We hope to maintain and improve on that into the future.

International Association of Judges – Booklet on the Universal Charter of the Judge

At the end of this week's *News and Media,* we include a booklet issued by the IAJ regarding the Universal Charter of the Judge.

Update on Nauru 19

At the end of this week's *News and Media*, we include a media release outlining the developments in the Nauru 19 case as well as details about proposed legislation allowing executive immunity for the Nauruan Government exempting them from contempt laws.

Judicial Conference of Australia

Media release by the President
of the Judicial Conference of Australia
4th June 2018

Judges should not be in the cross fire of debate over court restructure

The President of the JCA, Justice Robert Beech-Jones, has expressed concern that the current debate about the proposed restructure of the Family Court and the Federal Circuit Court has included unfounded criticism of the performance of individual judges and groups of judges.

"Generally, an assessment of the merits of the proposed restructure is a policy matter for government" Justice Beech-Jones stated. "In the absence of further detail, the JCA does not propose to comment on the proposed restructure. However, interested groups, the press and the community at large are obviously entitled to express their views on the proposal."

"Unfortunately, some of the commentary has expressly or implicitly suggested that the necessity for the restructure is a result of underperformance by some individual judges or groups of judges within the affected courts" Justice Beech-Jones said. "This has included comparative analyses which fail to properly acknowledge the different methods of disposing of cases adopted by different courts and the different levels of complexity of individual cases that can arise within and between courts. One article conveyed a baseless assertion that the outcome of appeals in the Family Court has been affected by the feelings of the appeal judges towards the trial judge."

"There is no basis for any suggestion that any of the judges of the affected courts, including the judges assigned to the Appeal division of the Family Court, have not been working to full capacity and faithfully applying the law" Justice Beech-Jones said. "The JCA hopes that the participants in the debate will acknowledge that when contributing to the debate."

As noted the JCA does not propose to comment on the restructure at this point. However, Justice Beech-Jones stated that "The restructure and the appointments that follow should respect the tenure of existing judicial appointments".

The Judicial Conference of Australia is the professional association of judges and magistrates in Australia.

For further information, contact Christopher Roper, Judicial Conference of Australia Secretariat: secretary@jca.asn.au | 0407 419 330

The President of the JCA is not available for broadcast or television interviews on this matter.

Australian Financial Review, Australia
08 Jun 2018, by Michael Pelly

Legal Affairs, page 31 - Size: 215.00 cm²
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ID 966350147 BRIEF JUDICIAL PAGE 1 of 1

Judges' union questions data justifying family law revamp

Michael Pelly

The judges' "union", the Judicial Conference of Australia, has criticised statistics used by the government to support family law reforms and taken issue with claims about "underperforming judges".

The executive of the JCA met in Sydney last weekend and decided to make a rare intervention into public debate.

The president of the JCA, Justice Robert Beech Jones of the NSW Supreme Court, criticised "comparative analyses which fail to properly acknowledge the different methods of disposing of cases adopted by different courts and the different levels of complexity of individual cases that can arise within and between courts".

Attorney-General Christian Porter announced the Family Court and Federal Circuit Court would merge and handle all first-instance family law work. Appeals will be sent to a new division of the Federal Court.

In making the case for reform, Mr Porter cited statistics that compared the Family Court unfavourably with the Federal Circuit Court and the Federal Court. For example, he noted that 88 per cent of Federal Court appeals were heard by one judge – against only 25 per cent of Family Court appeals. Most of the Federal Court appeals involved migration matters, with little prospect of success.

Former Family Court chief justice Diana Bryant has explained the default provision in the Family Law Act was for three judges to sit on appeals. She also said a push for more one-judge appeals had been thwarted by the Federal Circuit Court.

"There is no basis for any suggestion that any of the judges of the affected courts ... have not been working to full capacity and faithfully applying the law," Justice Beech-Jones said.

Former Family Court judge Stephen Ryan said the reforms amounted to a "dumbing down of family law".

He noted Family Court judges had been paid the same as Federal and Supreme Court judges, but new family law appointments would now be paid at the same level as a District Court judge (about $70,000 less).

Mr Ryan said previous inquiries had found that contested cases regarding custody of children and property should be handed by a superior court.

"You can't assume that because family law doesn't have a commercial flavour that it is somehow less important. But this is suggesting to the community that it is less important."

NR AFRGD1 A03

Lawyers Weekly

Judges want family law court restructure to respect current judicial tenures

BIG LAW | 08 JUNE 2018

By: **Melissa Coade**

The Australian judiciary's representative body is calling for appointments to a new family super court, which the government will establish by the end of the year, to respect existing arrangements.

The Judicial Conference of Australia (JCA), comprising judges and magistrates from all levels of the nation's court system, issued a statement this week calling for the restructure of the Family Court and Federal Circuit Court not to impact the tenure of current judicial appointments.

President of the JCA, Justice Robert Beech-Jones, said that while the group did not propose to comment on the restructure at this stage, existing tenures of family court should be respected.

"The restructure and the appointments that follow should respect the tenure of existing judicial appointments," Justice Beech-Jones said.

As part of the proposed merger, the fine detail of which is yet to be made known by Commonwealth Attorney-General Christian Porter, a new super court named the Federal Circuit and Family Court of Australia (FCFCA) will be established.

By forming one court, the A-G said that the system would become a more streamlined process, with one set of forms, rules and processes to be applied across the board. It remains unclear how the institutional and legal knowledge of current judges will be used within the current system.

Given the scant detail about the restructure, Justice Beech Jones said that the JCA would not comment on the newly proposed family court configuration at this stage. He noted that group was, however, very concerned that current debate about the new court arrangement had inspired "unfounded criticism of the performance of individual judges and groups of judges" published in the media.

The judge said it was unfortunate that false reports had been published suggesting that that the government's decision to introduce the restructure, before the Australian Law Reform Commission was due to deliver a report on its comprehensive review of the family law system, was a consequence of the "underperformance" by some individual judges or groups of judges.

"One article conveyed a baseless assertion that the outcome of appeals in the Family Court has been affected by the feelings of the appeal judges towards the trial judge," Justice Beech-Jones said.

"There is no basis for any suggestion that any of the judges of the affected courts, including the judges assigned to the appeal division of the Family Court, have not been working to full capacity and faithfully applying the law" he said.

"The JCA hopes that the participants in the debate will acknowledge that when contributing to the debate."

The judge recognised that generally, an assessment of the merits of the proposed restructure was a policy matter for government. Several members of the legal profession have gone on record to express concerns about how this new merger will help improve what is an overburdened family system but most representative bodies, like the JCA, have reserved comment until more information is made known.

Justice Beech-Jones took particular exception to comparative analyses that had been published, which he said had failed to properly acknowledge the different methods of disposing of cases adopted by different courts and the different levels of complexity of individual cases that can arise within and between courts.

As conversation progressed about the looming changes to Australia's family law system, the judge asked commentators to bear in mind the nuanced approach that the bench took in deciding family law matters.

“In the absence of further detail, the JCA does not propose to comment on the proposed restructure. However, interested groups, the press and the community at large are obviously entitled to express their views on the proposal,” Justice Beech-Jones said.

Meanwhile, Perth barrister Rod Hooper SC is understood to have written to journalist Nicola Berkovic, who writes for *News Corp*. Mr Hooper took the reporter to task for an article published on May 23, which suggested Stephen Thackray had been sacked as head of the Family Court appeals division for efficiency reasons. The article suggested that Justice Thackray’s travel costs were running up expenses that the court could not afford.

Justinian published Mr Hooper’s letter in full, where he noted Ms Berkovic’s article relied on a leaked memo from Chief Judge Thackray to judges Alstergren and Pascoe concerning the handover of responsibility for management of the appeal division of the Family Court of Australia.

“A cursory reading of that memo should have made it plain to you that during the (short) time that Chief Judge Thackray had been in charge of the appeal division, considerable advances had been made in the efficiency of the division including reductions in delays for hearings, delivery of judgments and in reduction in travel costs,” Mr Hooper wrote.

“To suggest that the removal of Chief Judge Thackray was in any way linked to a desire to run the division more efficiently or reduce costs is simply wrong.

“To suggest that Chief Judge Thackray is anything other than a judge who is committed to the efficient delivery of justice in family law matters borders on defamatory. If he does not sue you and your paper for this slight it will only be because he is not as thin-skinned as some of his former colleagues,” he said.

The Australian, Australia
05 Jun 2018, by Nicola Berkovic

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ID 964255873 BRIEF JUDICIAL

Three-judge appeals 'make system robust'

EXCLUSIVE

NICOLA BERKOVIC
LEGAL AFFAIRS CORRESPONDENT

Former Family Court chief justice Diana Bryant has hit back at suggestions the court has been "inappropriately" using three judges for family-law appeals instead of one — pointing out the default of using three judges was set by the Family Law Act and the government had never tried to change it.

Ms Bryant was yesterday joined by fellow former appeal judge Stephen O'Ryan QC and family lawyers, who said using three appeal judges ensured consistency in decision-making and made the system more robust.

Attorney-General Christian Porter last week announced the government would scrap the Family Court and merge it with the lower-level Federal Circuit Court, while its appeal division would be stripped and handed to the Federal Court.

Mr Porter pointed to figures from external consultants PwC showing the Federal Court resolved 88 per cent of its appeals using one judge, while the Family Court resolved 75 per cent of appeals using three judges.

Up to an 1500 more family-law cases could be resolved each year by conducting appeals more efficiently, he said.

However, Ms Bryant, who retired in October, said no one had ever raised the issue when she was head of the court.

"In the 13 years I was chief justice, no one ever suggested to me we were inappropriately using three judges instead of one, and the government never thought it necessary to change the legislation," she told *The Australian*.

The Family Law Act requires all appeals from a single Family Court judge to be conducted by the Full Court (usually three judges and in some key cases, five).

Section 94AAA also requires appeals from the Federal Circuit Court to be heard by the Full Family Court unless the chief decides it is appropriate for an appeal to be heard by a single judge.

About 90 per cent of the Federal Court's single-judge appeals relate to migration, a court spokesman said yesterday.

Mr O'Ryan, a former Family Court appeal judge, said although some appeals did not require three judges, he would be "troubled" by a generalisation that most could be decided by a single judge. "Sometimes you can have a debate amongst those three judges, which is a good thing," he said.

"If you had a common position of single-judge appeals, it would lead to a downgrading, a depressing of the standard of jurisprudence required of an intermediate appeal court."

The head of the Law Council's family law section, Wendy Kayler-Thomson, said family lawyers relied on consistent decision-making to advise their clients about settlement. If there were less consistency, fewer cases would settle before trial, she said.

"If the appeal system is changed so that in most cases one appeal judge's discretionary decision simply replaces the discretionary decision of another trial judge, there will be less consistency in the law and settlement rates will be affected," she said.

The Australian, Australia
04 Jun 2018, by Nicola Berkovic

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ID 963883798 BRIEF JUDICIAL

'Sensible' to scrap Family Court

EXCLUSIVE

NICOLA BERKOVIC
LEGAL AFFAIRS CORRESPONDENT

The Turnbull government's decision to scrap the Family Court and dramatically restructure the courts is "sensible" and nobody should have a problem with it, says former Attorney-General's Department boss Roger Wilkins.

Mr Wilkins said the plan, from what he had seen of it, would allow the courts to make "the most efficient use of judicial resources".

"I think it's actually a pretty sensible reform," he told *The Australian.*

"I would even go so far as to say I don't see why anyone would have a problem with it unless they're one of the judges."

Attorney-General Christian Porter this week announced he would merge the Family Court with the lower-level Federal Circuit Court, while the Family Court's appeal division will be stripped and handed to the Federal Court. The reforms are aimed at resolving up to an extra 8000 cases a year and reducing waits of up to five years, in some cases, for custody and property disputes to be resolved.

While some Family Court judges were deeply unhappy with the changes, Mr Wilkins said he believed the government was on safe legal ground.

"There's no constitutional problem here," he said. "We're not removing anyone from any court."

However, Mr Wilkins, who was attorney-general's department head when the Rudd government tried and failed to restructure the courts, warned the reform would be problematic if the judiciary went "in to bat against it".

Efforts to reform the courts 10 years ago had "foundered on the rocks of judicial opposition", he said.

This was "an Australian thing", because the public trusted judges more than politicians.

Former Family Court chief justice Diana Bryant this week told *The Australian* that specialist judges with family-law experience and an understanding of child development and attachment were needed to decide parenting disputes and appeals.

Family lawyers warned it would be "disastrous" to have judges who were not experts deciding complex cases involving violence because it could compromise outcomes for children, and make it difficult for lawyers to advise their clients of the likely outcome of litigation. They argued the delays would not be resolved without more resources.

Mr Wilkins said he believed the government would "sensibly appoint" judges who had an understanding of family law.

But Federal Court judges were eminently qualified to decide appeals, because family law was not as complex as other areas of law, he said.

The backlog of family-law cases has ballooned to 21,000, from 17,200 cases five years ago. About 1200 families a year bounce between the two courts.

Age, Melbourne
08 Jun 2018, by Jenna Price

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ID 966153302 BRIEF JUDICIAL PAGE 1 of 1

End of Family Court puts women, children at risk

Jenna Price

There have been some highly unsuitable appointments made to the Federal Circuit Court. They were made as grace and favour appointments.

Now those grace and favour appointments will be presiding over the most serious family law cases in the country. Cases where there are incidents of sexual abuse, of child abuse, and of family violence.

I believe this to be the case – but much more important than my own view is that these are also the views of the leading family law academic in Australia, Patrick Parkinson, soon-to-be dean of the University of Queensland law school. He's speaking out now because last week the Attorney-General, Christian Porter, announced the Family Court would be folded into the Federal Circuit Court.

That announcement surprised anyone who knew the Australian Law Reform Commission had been asked to review the family law system late last year. That review is only now at the stage where commissioners are reading submissions so the final report is nowhere near final, yet the Attorney-General's decision is – apparently – final.

Yet those in the know were not entirely shocked by the peremptory decision-making or by the utter lack of consultation. Former attorney-general George Brandis, long an opponent of the Family Court, outlined his plan before he left for his sinecure as High Commissioner to the United Kingdom.

There was no serious consultation with those who know anything about how the court works. Brandis then handed off his plan to Christian Porter and the rest is misery. It is a pragmatic dismantling of the Family Court and its appeals process, run by some of the most experienced family law judges in the land. Some describe those judges as the cream of the crop. Now all that expertise will be hearing cases in the Federal Court, not bringing their intellect and analysis to bear on the kinds of cases that break our hearts.

Parkinson is not troubled by the amalgamation but he is desperately troubled by the calibre of a few of the judges in the Federal Circuit Court.

"I say this with all seriousness, the government and the opposition, they need to come together to devise an independent, merit-based and non-political appointment process for all judges in federal courts or tribunals."

Christian Porter's decision to close the Family Court will put women and children in Australia at risk. While he was not the architect of these catastrophic changes, he has enacted the plans of Brandis, yet any resultant disasters will be on Porter's head.

As Alastair Nicholson, one of only three previous Family Court chief justices, points out, the Liberal Party has never been a great supporter of the Family Court. "[John] Howard started this destruction ... this insidious process. It shows a complete lack of respect for the importance of family law and there will be long-term harms for Australian families."

Nicholson also fears this is the legacy of the former attorney-general. He has previously described this decision as an act of vandalism and now says that the Coalition government has allowed the entire Family Court to degrade – starved the court of funds, destroyed the counselling service, reduced its effectiveness, refused to replace judges.

This is also a way to save money – those expert Family Court judges who have completed 10 years of service get a judicial pension.

The death of the Family Court marks the end of a specialist court dealing with families and may increasingly mean that the cases of families at their most vulnerable will be presided over by those who know nothing about parenting orders. Those who know nothing about child assault, about child sexual assault. And those who know even less about family violence.

There will be pretend expertise and I predict that will worsen the situation for these families.

They will come before appeals judges of the Federal Court of Australia who know nothing more than maritime law or tax law.

I fear they will make decisions that will cost lives.

Jenna Price is an *Age* columnist and an academic at the University of Technology Sydney.

West Australian, Perth
05 Jun 2018, by Simon Creek And Aleta Shilton

General News, page 16 - Size: 398.00 cm²
Capital City Daily - Circulation: 147,676 (MTWTF--)

ID 964298710 BRIEF JUDICIAL

Cheaper, faster results in family law overhaul

Simon Creek and Aleta Shilton

Interesting times are afoot for those who are affected by, or work within, the family law system. Federal Attorney-General Christian Porter recently launched details of a big overhaul of the administrative and structural aspects of the Federal Family Court system.

Proposed reforms are scheduled for January next year, and are in addition to any recommendations contained in the anticipated Law Reform Commission report which is investigating family law in Australia from multiple angles.

Assuming the Federal Government is able to sell its agenda, the reforms will affect the way in which family law matters are dealt with by the courts in all States and Territories, including WA. The stated aim is to make the system "user-friendly and cheaper". That is an aim we openly support.

Just as importantly to "high conflict Australian families", Mr Porter aims to cut down the time it takes for families who cannot agree on a settlement to access a judicial officer to make the ultimate decision.

The Attorney-General has announced that at the heart of the proposed reforms is the creation of one larger court to deal with all family law matters. The new "super court" will have two divisions, but it is predicted by the Government to be a vastly more streamlined organisation on a day-to-day basis.

How these proposed changes will translate to WA, save for how any appeals are conducted, remains to be seen. This is because unlike the Eastern States, WA operates a separate State-based Family Court. Although it is very similar, and has adopted many of the processes of its Eastern States counterparts, the court in WA is rather unique.

And whilst it is still the case that the WA court experiences delays, those delays are by no means as bad as those reported to be occurring in the Eastern States. In contrast to the other States and Territories, WA already has a single-entry Family Court system and so avoids (lots of) the administrative duplication experienced elsewhere.

What will affect WA — along with the rest of Australia — is one of the more controversial aspects of the Attorney-General's proposals. The introduction of a faster and cheaper appeal system, whereby one judge instead of three will sit in the Appeal Court, sits at the centre of the planned reforms. This does not occur in the majority of appeals including in other non-family law jurisdictions.

One judge reviewing the decision of another single judge has already caused some concern, with former Family Court chief justice Diana Bryant arguing that the proposed reforms will possibly dilute the use of specialist judges for family law matters.

It is a wholesale, fundamental change that challenges traditional thinking about the review of judges' decisions and how that should be done.

The prevailing view of the administration and conduct of any appeal (whether that be in a family law or any other matter) is that three judges sitting on an appeal are inherently safer than one.

Having said that, many Federal Court appeals are conducted by a single judge. Mr Porter, a senior lawyer himself, seems to have adopted the view that if "single judge appeals" are good enough for the Federal Court

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ID 964298710 **BRIEF** JUDICIAL

(which currently also deals with family law matters in the Eastern States), it is good enough for the Family Court.

In WA, to some extent we are in the privileged position of being able to observe "from afar" what happens in the Eastern States, giving our local Family Court the opportunity to adopt those procedural and efficiency changes that result in positive and productive reform. However, notwithstanding this anomalous reality, the Government would expect that once any procedural changes are delivered over east, WA will follow suit.

Regardless of politics, it would be a brave individual who argued that the current approach is delivering judgments quickly enough, or within a system that is affordable by all.

On the flip side, whether the reasons for all the current problems have been properly understood by the Government, and its independent advisers, remains to be seen.

Simon Creek is a director and Aleta Shilton is an acting associate director of HHG Legal Group

Unlike the Eastern States, WA operates a separate State-based Family Court.

Courier Mail, Brisbane
02 Jun 2018, by Amanda Horswill And Margaret Wenham

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ID 963116440 **BRIEF** JUDICIAL

Standard-bearer sets new goals

After a groundbreaking legal career, retired Queensland judge Margaret McMurdo has turned her attention to family, fitness and philanthropy, write **Amanda Horswill** and **Margaret Wenham**

TRAILBLAZER Margaret McMurdo, AC, has wasted no time tossing aside the horsehair, jabot and silks after retiring as president of the Queensland Court of Appeal a little over a year ago.

She hinted as much in her valedictory speech in March last year when she said she had "wide community and cultural interests and a much loved, large, extended family" and she'd had to place a great many things on the back burner for her career.

"I hope that my departure from the Court at this time will allow me to build a productive post-judicial life," she said at the time.

Her retirement, which came a couple of years after the public spat involving senior members of the judiciary – McMurdo among them – and the Newman government-appointed Chief Justice Tim Carmody, followed years of hard graft to get ahead in what was a thoroughly male-dominated profession when she graduated from the University of Queensland's law school.

Admitted to the Queensland bar in 1976, McMurdo was just 36 when she became the first female judge appointed to the District Court in 1991 and then the Children's Court in 1993. When she became president of the Court of Appeal in 1998 she was the first woman to head an appellate court in Australia.

She wasn't kidding about catching up on quality time. In an interview with Insight, McMurdo says that immediately after her retirement she began "unshouldering and started my long to-do list".

This included a few days kayaking and camping with her sister and her partner, undertaking a creative writing course at the State Library, and delivering the 30th anniversary Griffith University 2017 Tony Fitzgerald lecture as well as a wide range of other speaking engagements.

In between the guest lecturing was some travel that took in Cambridge, London, Paris and cycling 260km along the Canal de Garonne from Bordeaux to Toulouse, gardening, "more precious time with family and friends", studying French, mastering the souffle "sometimes", attending an oil painting course (a present from her children), and relishing daytime performances of plays and concerts and gallery visits.

"And I played the wicked stepmother in the panto *Cinderella, Queen of the Desert*, directed by Clarissa Rayward of the Brisbane Family Law Centre," she says. "It was a hoot and raised $12,000 of much needed funds for the Women's Legal Service.

"I also try to stay fit – jogging, walking the dog, swimming, body surfing, yoga and pilates."

But there are also labours of love – some old and some new.

"I have the great pleasure of chairing the board of Legal Aid Queensland – it's a privilege to work with so many talented, good-hearted people.

"I'm also the patron of Women's Legal Services, Caxton Legal Service and LawRight's Civil Justice Fund, and together with prominent lawyers and other retired

Courier Mail, Brisbane
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ID 963116440 **BRIEF** JUDICIAL

judges, I've been assisting the Australia Institute lobby for a federal anti-corruption body."

Among her newer labours, McMurdo has taken over as chair of the Queensland Community Foundation, a charitable trust set up in 1997 by former premier Mike Ahern.

Of this she says: "I enjoy it. I'm seldom happier than when with like-minded philanthropic people.

"I genuinely get a kick out of taking small steps to improve the community, locally and globally.

"I would love Queenslanders all over this vast decentralised state to know what QCF does – that it's a vehicle through which you can make tax deductible donations which will keep on giving to charities in Queensland forever.

"(And to know) that charities can apply for grants from the QCF general fund, that the foundation has grown its capital fund from $300,000 to over $80 million and has given more than $20 million to charities in Queensland over the past 20 years."

QCF money has gone to a vast range of charities and community agencies, including health and medical research, and children and youth, disability and animal welfare groups.

McMurdo says QCF's structure, which relies on sponsors to cover administrative costs, means every dollar donated goes into the fund.

"But this means we have limited finances for marketing and public relations."

McMurdo agrees the nature of philanthropy is changing.

"I think the new philanthropists want to see value for their donation and that's a good thing.

"They want immediate proof their gift has made a difference and expect a degree of personal connection with the resulting positive change.

"With new technologies and the global village phenomena we're certainly seeing more widespread community giving.

"For example, communities of interest are springing up among individuals who feel empathy for someone, somewhere in the world, whose plight touches their heart. This leads to spontaneous 'go fund me' internet-based campaigns, which are outside the traditional charity structure.

"Technological change is renewing philanthropy and in some ways democratising it so it's now within the means of many individuals or small groups to set up campaigns for diverse projects throughout the world.

"While this is wonderful, QCF also wants to fill the needs of charities here in Queensland doing vital work which might not have such an immediate heartstrings appeal.

"The new philanthropy is fantastic but we need philanthropy in all its wonderful guises."

On June 15, during Philanthropy Week, the QCF will be hosting the annual philanthropy awards at a gala lunch at Brisbane's City Hall. The awards will recognise Queenslanders who have given to a range of charities and causes around the state.

Businessman Anthony Pratt, who has pledged to give away $1 billion in his lifetime, will be guest speaker.

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Victoria's courts alter sitting times

The Magistrates' Court of Victoria has altered its sitting times to reduce pressure on the judiciary and other staff.

Victoria's magistrates' courts will start later, in an effort to reduce pressure on the judiciary and other court staff.

From Monday, all of the state's magistrates courts will sit from 10am, rather than 9.30am, and run to 4pm.

Meanwhile, bail bids will be heard at Melbourne Magistrates Court until 9pm seven days a week.

The changes aim to recognise that magistrates and judicial registrars have been sitting in court for longer, due to an increasing number of proceedings.

"The workload of the judiciary and administrative staff of the court staff poses an issue for health and wellbeing," Chief Magistrate Peter Lauritsen said in a statement on Friday.

"The changes to sitting times will reduce pressure for everyone working in the justice system."

The changes come after the widow of a magistrate who took his own life spoke of the pressures of his job and its "unrelenting workload".

Former state MP Jo Duncan, the widow of magistrate Stephen Myall who died in March, told ABC radio in April that magistrates were working under increasing workloads and her husband sometimes oversaw more than 90 mentions a day.

Ms Duncan said the workload for magistrates had increased by about one-third since 2011.

Mr Lauritsen said the revised sitting hours would contribute to creating a "well-functioning, sustainable justice system" with the wellbeing of its staff a key focus.

Court registry hours will remain the same under the changes.

The Australian, Australia
05 Jun 2018, by Luke Griffiths

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ID 964237215 BRIEF JUDICIAL

End in sight for 'gay panic' murder defence

LUKE GRIFFITHS

South Australia will remove "gay panic" as a defence for murder, making it the last jurisdiction in Australia to abolish the archaic and "discriminatory" law.

Currently, a defendant can use "gay panic" to have a murder charge downgraded to manslaughter if they successfully argue they were provoked into killing someone because of homosexual advances.

In a submission to the Marshall Liberal government, the University of Adelaide's SA Law Reform Institute called the law "offensive and discriminatory in modern society".

The institute report, to be released today, is a result of extensive consultation with the LGBTIQ community. Its central recommendation is that provocation as an excuse to murder should have no place in criminal law. Provocation can arise in other cases, such as family violence, where those who have experienced violence or other abuse kill the perpetrator.

The report found the current law favoured men over women and was especially unfair to women who had been subjected to family violence.

Institute deputy director David Plater said the provocation was outdated and flawed.

"It allows unfair blaming of the deceased victim and, as a basic issue, we believe that our laws in the 21st century should make it unacceptable for anyone to lose self-control and kill someone," he said. "Murder is still murder."

State Attorney-General Vickie Chapman welcomed the recommendations and committed to removing "gay panic" as a defence. "This is simply no longer acceptable," she said, adding that the state government gave in-principle support to other recommendations. "Importantly, the report looks at the use of provocation in circumstances of family and domestic violence," she said. "It is in this area where substantive change is required to ensure victims of long-term domestic violence have a partial defence open to them."

David Bleby QC, a retired Supreme Court judge and member of the institute's advisory board, said if provocation were abolished, it must be done so alongside a review of sentencing in murder cases.

Murder in South Australia carries a mandatory sentence of life and a mandatory non-parole period of 20 years. "The present law in South Australia is very strict in scope," Mr Bleby said. "Greater flexibility in sentencing and fixing non-parole periods would give judges the option, when passing sentence, to depart in certain limited circumstances from the mandatory life sentence and to fix a non-parole period which takes into consideration all the circumstances of the case and of the offender, for example where an offender has a mental illness or intellectual disability."

He said he did not expect that this would lead to more lenient sentences. "In fact, in some cases of provoked homicide they may even increase," he said.

Advertiser (Adelaide), Adelaide
06 Jun 2018, by Tory Shepherd

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ID 964830623 **BRIEF** JUDICIAL

Changing the 'gay panic' law might help us become a society where everyone has less to fear — Tory Shepherd

I ONCE set some youth hostel curtains on fire trying to kill a spider. The fly spray wasn't working quickly enough so I pulled out a lighter and firebombed the blighter. It was arachnophobia-induced madness; a wave of fear overrode my frontal cortex and I hit out.

On the other hand, having drinks at the local – the Steyne in Manly – you got your bum groped so often it was barely worth chucking a beer at a fellow. Well, that was true for women. If a bloke groped a bloke at that Manly bar, the reaction would likely be incendiary. That was 25 years ago, but "gay panic" still exists in some bars, in some people.

The Advertiser revealed yesterday that at least it'll be taken out of legislation. South Australia will be the last state to remove so-called gay panic laws; a legal defence that allows alleged killers to argue they were "provoked", to try to get a lesser sentence.

In 1993 Malcolm Green admitted murdering his friend Donald Gillies in NSW, saying: "Yeah, I killed him, but he did worse to me. He tried to root me." The High Court eventually found he was provoked, and found him guilty of manslaughter instead of murder.

The State Government has said it will support ("in principle") recommendations from the SA Law Reform Institute to abolish provocation as a partial defence that can downgrade a murder charge to manslaughter. SA had a rainbow era of reform after gay academic George Duncan was murdered – in the 70s – only to bring in "gay panic" laws in the 90s. What a throwback.

But as always, it's complicated. Provocation is not *just* about unwanted sexual advances. A long time ago a similar defence was used to save men who bashed their wives to death from the gallows.

Even in more modern times, there's the idea that if your partner cheats on you, that could be a provocation. Back in 2012 Adelaide-based FamilyVoice Australia argued that in some cases infidelity could get someone off a murder charge in cases where "there is genuine provocation and no intention to kill".

In a submission FamilyVoice referred to "the classic case of a husband unexpectedly arriving home to find his wife engaged in a sexual act with another man".

As with "gay panic", it's hard to work out if that notion is inspired by Wild West films or the Bible. But provocation has also been used when a woman, after years of abuse, has killed her abuser. A perhaps slightly more proportional response. The Institute's report says once provocation is gone, family violence victims need clearer protection – possibly through the self-defence argument.

Back to gay panic. What difference will it make if that partial defence is no longer available?

We'll never really know what drives someone to kill a person who makes unwanted sexual advances.

How is someone so viscerally homophobic that they can murder someone for a non-violent approach?

The science shows that the old adage about protesting too much has some truth. A range of studies summarised in *The Conversation* conclude that people who are sexually conflicted "tended to be more anti-gay themselves".

Parenting was also a factor – those with a more conflicted sexual identity were also more likely to have controlling and homophobic parents.

Some defendants have blamed their own abuse for their homophobia.

And there are demographic factors too. Older people are more likely to be homophobic, as are men.

We have come a long way since the gay-hate murders of the 70s. (Heck, the gays can even marry now!)

But there's more to be done before we reach the gold at the end of the rainbow.

The same-sex marriage debate showed homophobia is alive and well. And the arguments are dribbling on thanks to the inquiry into freedom of religion, which has been deluged by concerns about bakers being forced to bake gay cakes (panic!).

Changing the law is unlikely to do anything to stop incidences of ragingly violent homophobes lashing out.

But it might help us become a society where everyone has less to fear.

The Australian, Australia
08 Jun 2018, by Nicola Berkovic

Legal Affairs, page 26 - Size: 168.00 cm²
National - Circulation: 94,448 (MTWTF)

ID 966124449 BRIEF JUDICIAL

Inquests are dying art in NSW

EXCLUSIVE

NICOLA BERKOVIC
LEGAL AFFAIRS CORRESPONDENT

A critical lack of resources has been blamed for a huge slump in the number of inquests in NSW, prompting warnings that families are missing out on answers about suspicious deaths and the community is forgoing opportunities to prevent future tragedies.

The total number of inquests completed in NSW last year dropped to 84 — just a third of the 290 inquests conducted in 2011.

The figure is a 30 per cent reduction on the previous year's total of 120 inquests and down from 150 inquests completed in 2015.

The decline has occurred despite a substantial increase in deaths reported to the Coroner.

There were 6602 deaths reported last year — up from 5960 deaths the previous year and 5694 deaths reported in 2011.

NSW spent $6.8 million on the Coroner's Court in 2016-17 — about half the amount spent in Victoria ($13.2m) and substantially less than Queensland ($10.7m), according to the Productivity Commission's Report on Government Services.

The NSW expenditure was up from $5.8m in 2015-16.

NSW opposition spokesman for legal affairs Paul Lynch said "chronic underfunding" was to blame for the fall in inquests.

He said fewer inquests meant fewer families able to find out what had happened to loved ones, and fewer opportunities for recommendations to prevent tragedies.

"The latest dramatic decline is simply the consequence of the state government not providing the resources that are needed for the Coroner's Court to do their job," he said.

NSW Law Society president Doug Humphreys said underresourcing of the NSW Local Court, including the Coroner's Court, was a "significant concern" and was hampering its ability to conduct inquests.

He said inquests were "a valuable mechanism by which governments may be held to account", if, for example, a death occurred in the care of a government agency, prison or hospital.

Mr Humphreys called on the government to provide "substantial additional funds" for the courts, which did not have sufficient resources to manage existing backlogs.

NSW Attorney-General Mark Speakman said the government was committed to proper resourcing of the Coroner's Court but the allocation of magistrates was a matter for Chief Magistrate Graeme Henson.

"The NSW government is committed to ensuring the Coroner's Court is adequately resourced to carry out its difficult work and supports the court's innovations to reduce delays," he said.

This included a coronial case management unit to help grieving families obtain earlier, clearer engagement with the court, and a University of Sydney study to identify ways to reduce unnecessary reporting of natural causes deaths to the Coroner, he said.

"I remain open to considering any further ideas to improve the performance of the Coroner's Court," he said.

Lawyers Weekly

Prison population grows as NSW police get more funding: Law Society

POLITICS | 05 JUNE 2018

By: **Melissa Coade**

The NSW Law Society has warned that court backlogs and delays will worsen if the state government fails to balance its investment in the courts by pouring money into policing alone.

President of the NSW Law Society, Doug Humphreys, said that delays in the justice system will become worse should the state government continue with its uneven distribution of resources.

A recent announcement that the NSW government would devote new funding to bolster policing across the state was welcomed by Mr Humphreys. However, he cautioned that that money would need to be "matched" by extra resources for the court, the Director of Public Prosecutions and to Legal Aid NSW for the system to cope with the "down-stream effects of more police".

"Resourcing police must be backed up by adequate resourcing for the rest of the justice system," Mr Humphreys said.

"Many victims of crime are already languishing for long periods waiting for justice because the courts do not have sufficient resources to manage the existing cases."

According to Mr Humphreys, over the past year NSW criminal courts have had to contend with a 2.2 per cent growth in the number of defendants. This growth had led to an exacerbation of what was an already overcrowded prison population, he said, and added to long delays in the number of matters before the courts.

"NSW is spending more on prisons than ever before," Mr Humphreys said.

"Surely as a society we would prefer to spend our money on more teachers, nurses and fire-fighters than keeping people locked up who could be more promptly dealt with if the courts were able to."

Mercury (Hobart), Hobart
04 Jun 2018, by Greg Barns

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ID 963893709 BRIEF JUDICIAL

Tassie court system living in the past, failing to deliver justice

Outdated habits and easily-fixed flaws cost money and add to delays, writes **Greg Barns**

ONE of the failures of Tasmanian policy reform has been the justice system. It is characterised by inefficiency and anachronisms. Too many minor cases end up in court, judicial officers are hearing cases that should be allocated to a specialist tribunal and the way courts present themselves to the community needs a major overhaul.

The easy part is the latter. We need to stop using terminology that bears no relevance to the 21st century. Let's start by calling magistrates judges. There is no logical reason why we should use a term which is increasingly being phased out across the world. Ask this question, what do Tasmania's magistrates do? They judge cases. So why are they not called judges? They are in New Zealand, the US and most parts of Canada. Of course there will be arch conservatives and snobs who think magistrates are inferior to judges of higher courts, but that opposition should be seen for what it is.

And why does Tasmania still use the term "petty sessions"? In Victoria and most other Australian states this is the name of a cafe near to a local court house. But here in Tasmania we still use the term to denote the Magistrates Court. Why don't we reflect the work and reach of the magistrates court by calling it, for example, the Local Court, the Regional Court or the District Court? This better reflects the fact that these courts, as opposed to the Supreme Court, are based in various regions, communities and districts of this state.

And speaking of courts is it really necessary in the 21st century to use terms like "draw nigh" and to wear absurd 18th century costumes which reflect the values of imperialism, elitism and repression? There are enough fancy dress shops, theatre wardrobes and of course eBay, to which these ridiculous costumes could be sent and sold.

There is of course the mater of the inefficiency of the court system itself. Long waiting times to have cases heard in Tasmania, particularly in the Magistrates Court, is primarily due to two issues.

First is the refusal by Tasmania Police to allow proper disclosure of the material the prosecution relies on when it brings a person to court, and second is the fact that some cases currently before the Magistrates Court simply should not be there at all.

Tasmania has the dubious distinction of being the only place in Australia, New Zealand, the UK and Canada, where a person who is charged by police has to pay to find out what evidence is being used against them! There are exceptions, such as if you are the recipient of legal aid or the matter is an offence going to the Supreme Court or otherwise very serious. Otherwise you have to pay over $50 to Tasmania Police.

Furthermore, unlike every other place in this nation there is no timeline or date by which police have to get you the material they rely on in a case. These two fundamental flaws lead to delays and are quite obviously designed to reward obfuscation, laziness and delay.

This columnist has long agitated to end the practices. Former police minister Rene Hidding, to his credit, questioned police about these practices back in 2014 and since then there has been an all too typical rearguard action from police in trying to stop reform. A draft piece of legislation to address these two bad practices has been floating around the bureaucracy for over two years. Inquiries to advisers to the Attorney-General generally result in a vague, we will get to it type response.

Then there is the fact the Magistrates Court is clogged up with cases such as drink driving, tenant disputes, cannabis possession and use, and low level infringements such as failing to obey the direction of a police officer, abusive language, having an open container of alcohol in public etc.

These are all matters which could be dealt with by on the spot fines, warnings, or infringement notices. If you want to contest the matter then you can opt to go to court. This would be a much better way of dealing with these cases. Think of it this way; does one train for six years, the time it takes to obtain a law degree and undertake professional training, in order to represent a person on their first drink driving offence when the penalty is already set out in the statute?

Mercury (Hobart), Hobart
04 Jun 2018, by Greg Barns

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ID 963893709 BRIEF JUDICIAL

And when it comes to landlord and tenant matters, why do we have representatives of real estate firms and tenants coming to the magistrates court when in other places there is a specialist, low cost and quick tenancy tribunal which deals with such matters?

There is much to be done. It just needs an attorney-general who is prepared to being Tasmanian justice into the 21st century. One would have thought that was the core business of the state's first law officer.

Barrister Greg Barns is a Hobart-based human rights lawyer who has advised state and federal Liberal governments.

Age, Melbourne
07 Jun 2018, by Erin Pearson

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ID 965557216 BRIEF JUDICIAL

State bail justices fleeing system

EXCLUSIVE

Erin Pearson

There has been a mass exodus of bail justices from the court system, with fewer than 30 per cent of those trained now active in the role.

Bail justice sources say their colleagues are deserting the unpaid job or making themselves unavailable due to scrutiny the role started attracting after a high-profile incident.

The state government moved to change the Bail Act after it was revealed that an accused man was released by a bail justice just days before allegedly committing a major crime. Only about 50 of the 180 volunteers are now active.

On Saturday night police piled a cognitively impaired man into a police van in Geelong, bound for Melbourne after repeated calls for a bail justice went unanswered.

The man needed to have his remand case heard but without an available bail justice at one of the state's busiest police stations, the only option was for police to drive from station to station in the dead of the night.

Bail justices, who are responsible for hearing bail applications outside of court hours, say these situations are now commonplace.

Some bail justices rule on up to 250 cases a year, at all hours of the night. In the country, they often drive up to 100 kilometres each way.

With no one to hear bail applications, police are forced to "babysit" those in custody in police cells and interview rooms until they can be bailed or remanded to a proper prison on the next court sitting day.

Bail justices now rule on more than 12,000 bail hearings and 1000 child protection cases each year.

The figures include youth offenders, drug dealers, armed offenders and hearings concerning the rehousing of children into state care.

Continued Page 2

Age, Melbourne
07 Jun 2018, by Erin Pearson

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ID 965557216 BRIEF JUDICIAL

State's bail justices fleeing court system

From Page 1

"On the weekend just gone, there were zero [bail justices] available in Werribee, zero in Geelong and only one at Colac and just a handful across the rest of the south-west including Warrnambool, Ballarat and Ararat," one bail justice said.

"Bail justices just aren't rostering on and the impact is police can't get anyone to run after-hours court hearings, and that impacts on police resources. The police, they either have to babysit those in custody or take them to another area to find a bail justice."

Following Victoria's Bail Act review, the government in February set up a night court to conduct bail hearings for metro areas at Melbourne Magistrates Court from 5pm to 9pm. From July 1, outside of these hours police will have the power to remand many defendants in custody for up to 48 hours until a court is available to hear the bail application.

Bail justices will rule only on cases involving children, vulnerable adults and Indigenous people. However, these cases make up a significant proportion of cases heard.

One bail justice said the change would make little difference. He said that in May alone there were over 20 occasions in one of the state's busiest regional stations where no bail justice could be found, leaving people confined to police station cells until a solution could be found.

"Spring Street doesn't know how it works, they've rammed the legislation though and now the wheels are falling off," the western region bail justice said.

Former bail justice Peter Wadeson retired in January after 26 years. He handled upwards of 200 cases a year. He said these issues had been forecast but no one in government would listen.

"We're people with doctorates and master's degrees, ex-police and very talented people who've just volunteered in this regard… many now who've just given up," he said.

Shadow attorney-general John Pesutto said the government had alienated bail justices to the point they were deserting the system.

"I've been inundated with complaints from bail justices who, as volunteers, feel betrayed by the Andrews government, which has given them an ongoing role under bail changes, but no real support, training or assistance," Mr Pesutto said.

Attorney-General Martin Pakula acknowledged the decrease in bail justice numbers in the past year and encouraged anyone with concerns to contact the Honorary Justice Office.

"Bail justices provide a valued voluntary service, and continue to hear hundreds of matters per month," Mr Pakula said.

Advertiser (Adelaide), Adelaide
05 Jun 2018, by Ben Cameron

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ID 964181832 BRIEF JUDICIAL PAGE 1 of 1

Victims pay price for court closure

BEN CAMERON

VULNERABLE women are finding it harder to take abusers to court on domestic violence charges since the closure of Holden Hill Magistrates Court, lawyers say.

A northeastern solicitor of more than 30 years, Chris McDonough, is backing the Law Society of South Australia and Tea Tree Gully councillors, who all want the court to be reopened after it was closed by the former state government in 2015 to save money.

The call to reopen the court comes as the SA Police CIB department and Crime Prevention Section, also based at Holden Hill, are set to be shut in early July – a move a widely opposed at a local government level.

Tea Tree Gully Council has voted to write to the State Government calling for "immediate intervention" to stop a reduction in services at the Sudholz Rd precinct.

Mr McDonough, pictured, told the council some domestic violence victims found it too hard to attend court because of the "nonsensical" decision to close the courthouse.

"It appears as if there are more matters being dropped because witnesses are not turning up," he said.

"It's common sense, when you've got vulnerable people who are not completely skilled at dealing with life's stresses, if you put more roadblocks in front of them, like having to get public transport to Elizabeth (Magistrates Court), it's just going to get too hard.

Attorney-General Vickie Chapman said she alone was powerless to change the court situation, but an increase in State Government funding to the Courts Administration Authority could make a difference.

"We will look at that," she said.

Age, Melbourne
06 Jun 2018, by Miki Perkins

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ID 964901521 **BRIEF** JUDICIAL

Aboriginal legal service faces the axe

Miki Perkins

"I'm a lost cause, aren't I?" It was a despairing statement from the teenager to his lawyer, and proved to be the catalyst for a legal centre tailor-made for Victoria's Aboriginal children and young people.

Balit Ngulu was launched by the Victorian Aboriginal Legal Service (VALS) in July last year. It was born out of frustration, after the service had to launch a court challenge to have children taken out of the adult Barwon Prison.

The young people had been moved to Barwon after Parkville Youth Detention Centre was damaged during riots in 2017.

But a year on, the small Broadmeadows-based centre is threatened with closure because its funding is running out.

The need for the type of legal advocacy Balit Ngulu provides is stark: Aboriginal children are 10 times more likely to be removed from their parents than non-Indigenous children, and 24 times more likely to get a custodial sentence.

On Monday, Victoria's Children's Commission announced it would hold an inquiry to examine the files of 250 Aboriginal children and young people in the state's youth justice system to establish why Indigenous young people are so heavily over-represented.

Luke Edwards, one of Balit Ngulu's client service officers, knows this trajectory first-hand.

Growing up in Shepparton, he got himself into trouble "like most of the young fellas" but had an uncle who taught him Indigenous culture and told him he needed to get an education to be successful.

Mr Edwards took his advice, and has worked in justice and youth work since.

He makes a folder for each Balit Ngulu client that details their country, family history, and other information that can be shown to magistrates.

"I sit down and have a yarn with the lawyer, make sure they're breaking it down for the young fellas to understand," says Mr Edwards.

Although Balit Ngulu (it means "strong voice" in Wurundjeri) was created to provide help to Indigenous young people faced with child protection and court matters, it doesn't end with legal help.

Mr Edwards and a fellow support officer – both Aboriginal – guide young people through the alien court environment, hook them up with social services and instil in them the importance of Aboriginal culture. They even give them a lift to court if they can't get a ride.

It costs about $1 million a year to run the centre, with a staff of four lawyers and two culture support workers.

Balit Ngulu is the only legal

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ID 964901521 BRIEF JUDICIAL

service in Australia that exclusively represents Aboriginal youth. Last week, the centre's managing lawyer, Leah Tolley, sent out a pile of letters appealing for funding.

"We're trying to change that systemic pattern of Aboriginal kids ending up in out-of-home care and in the criminal justice system," Ms Tolley says.

"We get in early and provide a culturally appropriate service."

She had been hoping the state government would provide extra funding for Balit Ngulu in the budget, beyond the amount it committed to VALS. But that didn't happen.

There are also times when VALS has a conflict of interest and is unable to act for Indigenous children because their Aboriginal parents are already clients.

She says the advocacy provided by Balit Ngulu has made the difference between having children placed in out-of-home care or within their kinship networks.

Thirteen-year-old Paul* went to court on an assault-related charge, and with the support of Mr Edwards was placed into a diversion program and didn't get a criminal conviction.

He says having an Aboriginal case worker means he's more likely to listen to the advice.

A spokesman for the government said it had never provided separate funding for Balit Ngulu, and VALS had funded it with their existing funding.

Attorney-General Martin Pakula said that in 2017 the state government provided $11 million over four years to be shared between VALS and Djirra (formerly the Family Violence Protection Legal Service).

Culturally appropriate legal services were provided by these two services, he said.

*Not his real name

'We're trying to change that systemic pattern of Aboriginal kids ending up in the criminal justice system.'

Leah Tolley

INTERNATIONAL ASSOCIATION OF JUDGES
UNION INTERNATIONALE DES MAGISTRATS
UNION INTERNACIONAL DE MAGISTRADOS
INTERNATIONALE VEREINIGUNG DER RICHTER
UNIONE INTERNAZIONALE DEI MAGISTRATI

THE UNIVERSAL CHARTER OF THE JUDGE

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THE UNIVERSAL CHARTER OF THE JUDGE

Adopted by the IAJ Central Council in Taiwan on November 17th, 1999

Updated in Santiago de Chile on November 14th, 2017

PRESENTATION

Between 1993 and 1995 the different regional components of the IAJ adopted charters on the statute of judges:

- the "Judges' Charter in Europe" adopted by the European Association of Judges in 1993
- the "Judges' Charter in Ibero-America" (Estatuto del Juez iberoamericano) adopted in 1995 by the Ibero-American Group of the IAJ
- the "Judges' Charter in Africa" adopted in 1995 by the African Group of the IAJ

Some years later, in 1999, after a long work of reflexion, the Central Council of the IAJ, during its meeting in Taiwan, adopted a universal Charter of the Judge.

Beside such IAJ internal texts, a number of internationally recognised standards have been adopted. Their aim is to provide, in the interest not only of judges and prosecutors, but also of justiciables, a set of rights and duties, which may allow to preserve the independence and impartiality of the judiciary.

This is the case for the following documents:

- some texts adopted within the UN since 1966, more specifically the basic principles on the independence of the judiciary, adopted in 1985;
- Recommendation 94/12 of the Committee of ministers of the Council of Europe, elaborated in 1994 and updated in 2010 (Recommendation CM/Rec(2010)12 on judges: independence, efficiency and responsibilities) ;
- European Charter on the statute for judges, elaborated by the Council of Europe in 1998;

- the various opinions of the Consultative Council of European Judges since 2001 and particularly the "Magna carta of European judges," which is a compilation of the above mentioned opinions, drafted in 2010;
- the Bangalore principles on judicial conduct (2002) and the resolution 2006/23 of the Economic and Social Council of the UN;
- the report of the Venice Commission on the independence of the judicial system (study n. 494/2008)
- the Kiev recommendations on the independence of the judiciary in Eastern Europe, adopted in 2010;
- the opinions of the European Network of Councils of Justice.

Other associations, such as the Commonwealth Association of Judges, have adopted as well standards aiming at assuring the independence of the judiciary (in particular the "Victoria Falls Declaration" in 1994, or the statute of Commonwealth judges in 2013).

As of 1999, after the adoption of the Universal Charter in Taiwan, a work on the minimum standards on judicial independence has been done by the IAJ.

This was the case, in particular, for the First Study Commission, which examined after the year 2000 following subjects:

- *The relationship between effective management of the courts and the delivery of justice by independent judges – 2015*
- *Media, including social media, in the courtroom and their effects on judicial independence and the proper administration of justice – 2014*

- *The Independence of Judges as Protectors of International Human Rights Law – 2013*
- *Judicial Specialisation – 2012*
- *The physical, structural and economic conditions of judicial independence – 2011*
- *Criteria to be considered when assessing the independence of the judiciary (follow up) – 2010*
- *Criteria to be considered when assessing the independence of the judiciary – 2009*
- *The relationship between the executive and the judiciary in a democratic society – 2008*
- *Access to justice – 2007*
- *Consistency of appointment and assessment of judges with judicial independence – 2006*
- *Economics, jurisdiction and independence – 2005*
- *Rules for the ethical conduct of judges, their application and observance – 2004*
- *High Council of Justice or analogous bodies in judicial systems – 2003*
- *The appointment and the role of presidents of courts – 2001*
- *The independence of the individual judge within his own organization – 2000*

Beside this, the various Regional Groups and the Central Council of the IAJ adopted a number of resolutions that, by referring to such standards, have little by little set up a compilation of rules which are specific to our organisation.

During the meeting in Foz do Iguaçu in 2014 the Central Council of the IAJ approved the proposal of the Presidency

Committee to update the Charter adopted in Taiwan in 1999.

During the Barcelona meeting (2015) a working group was set up, with the task to prepare a draft for a new Charter.
It was composed of

- Christophe REGNARD, President of the IAJ (France), President of the working group
- Giacomo OBERTO, Secretary-General of the IAJ (Italy)
- Janja ROBLEK (Slovenia)
- Julie DUTIL (Canada)
- Alyson DUNCAN (USA)
- Walter BARONE (Brazil)
- Mario MORALES (Puerto Rico)
- Marie Odile THIAKANE (Senegal)
- Scheik KONE (Mali)

To this work was also associated Günter WORATSCH, Honorary President of the IAJ (Austria), in his quality of President of the Council of Honorary Presidents.

The draft charter was discussed:

- within the working group during the meeting in Mexico City in October 2016,
- during the springtime Regional Groups meetings in April and May 2017.

A discussion and a validation of the proposals of the working group was done in June 2017 by the Presidency Committee.

The formal adoption occurred during the meeting of the Central Council on 14 November 2017 in Santiago de Chile.

INTRODUCTION

"*There is no freedom if the power to judge is not separated from the legislative and the executive powers*," wrote Montesquieu in his "Spirit of the Laws."

Very influenced by Montesquieu's philosophy, the famous American stateman and lawyer Alexander Hamilton characterized in the 1780ies by article n°78 of "the Federalist, or the new Constitution" the position of the judiciary vis-à-vis the other state powers by the striking words: "*Whoever attentively considers the different powers must perceive, that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them. (…) The judiciary is beyond comparison the weakest of the three departments of power; It can never attack with the success either of the other two; and all possible care is requisite to enable it to defend itself against attack*s"

An essential part of the rule of law is undoubtedly represented by the independence of the judicial power.

It is therefore imperative to consolidate this power as a guarantee of protection of the civil rights against the attacks of the State and other special interest groups.

Fundamental principles relating to the independence of the judiciary were enacted since 1985 by the United Nations. A special rapporteur in charge of the independence of the judges and lawyers is appointed to ensure the respect of these standards and to make them evolve up to always higher levels, in the interest of the citizens.

International organizations at regional level, in particular the Council of Europe, also enacted in these last years many standards.

"*Noting that, in the performance of their legal duties, the role of the judges is essential with the protection of human right and of fundamental freedoms," and "wishing to promote the independence of the judges, which is an inherent element of the rule of law, and indispensable to judges' impartiality and to the functioning of the judicial system*," the Council of Europe, in the preamble of Recommendation 2010/12 on the judges: independence, efficiency and responsibilities, stressed that "*the independence of the judiciary secures for every person the right to a fair trial and therefore is not a privilege for judges, but a guarantee of respect for human rights and fundamental freedoms, allowing every person to have confidence in the justice system*."

Despite the usefulness of this corpus of protective rules, it is up to an organization such as the International Association of Judges to promote its own rules and to strive in order to give them a binding character throughout the world, as well as to pay attention to the evolution of such standards, in order to grant judges and prosecutors more guarantees.

After the adoption between 1993 and 1995 of regional charters, a Universal Charter on the Statute of Judges was unanimously adopted by the IAJ in Taiwan in 1999.

Since then, many subjects appeared, which could not have been considered at that time. This is the case for ethics and deontology, which developed on the base of increased and legitimate requests from the citizens and as a development of the concept of impartiality.

This is also the case for communication, in a world which is more and more open and "connected." Finally, the same is true, in the framework of a difficult economic context, for budgetary matters, as well as for the question of remunerations and workload of judges.

Other subjects were tackled by the IAJ within the works of its First Study Commission. Conclusions of such works are liable to be integrated into the Charter.

At a moment in which, in many countries, the rights of the judiciary are threatened, judges are attacked, prosecutors are blamed, the update of the Universal Charter on the Statute of the Judges adopted in 1999 becomes a need.

During the meeting in Foz do Iguaçu in 2014, the Central Council of the IAJ approved the proposal of the Presidency Committee to update the Charter adopted in Taiwan in 1999.

During the Barcelona meeting a working group was set up, with the task to prepare a draft for a new Charter.
It was composed of

- Christophe REGNARD, President of the IAJ (France), President of the working group
- Giacomo OBERTO, Secretary-General of the IAJ (Italy)
- Janja ROBLEK (Slovenia)
- Julie DUTIL (Canada)
- Alyson DUNCAN (USA)
- Walter BARONE (Brazil)
- Mario MORALES (Puerto Rico)
- Marie Odile THIAKANE (Senegal)
- Scheik KONE (Mali)

- Günter WORATSCH, Honorary President of the IAJ (Austria), in his quality of President of the Council of Honorary Presidents.

The draft charter was discussed during the springtime Regional Groups meetings in April and May 2017, them during the meeting of the central council in Santiago de Chile.

The following Charter, which presents the minimal guarantees required, was unanimously adopted, in the presence of M. Diego GARCIA SAYAN, Special Rapporteur of the United Nations on the independence of judges and lawyers, on November 14th, 2017.

THE UNIVERSAL CHARTER OF THE JUDGE

ARTICLE 1 – GENERAL PRINCIPLES

The judiciary, as guarantor of the Rule of law, is one of the three powers of any democratic State.

Judges shall in all their work ensure the rights of everyone to a fair trial. They shall promote the right of individuals to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, in the determination of their civil rights and obligations or of any criminal charge against them.

The independence of the judge is indispensable to impartial justice under the law. It is indivisible. It is not a prerogative or a privilege bestowed for the personal interest of judges, but it is provided for the Rule of law and the interest of any person asking and waiting for an impartial justice.

All institutions and authorities, whether national or international, must respect, protect and defend that independence.

ARTICLE 2 – EXTERNAL INDEPENDENCE

Article 2-1 – Warranty of the independence in a legal text of the highest level

Judicial independence must be enshrined in the Constitution or at the highest possible legal level.

Judicial status must be ensured by a law creating and protecting judicial office that is genuinely and effectively

independent from other state powers.

The judge, as holder of judicial office, must be able to exercise judicial powers free from social, economic and political pressure, and independently from other judges and the administration of the judiciary.

Article 2-2 – Security of office

Judges - once appointed or elected - enjoy tenure until compulsory retirement age or termination of their mandate.

A judge must be appointed without any time limitation. Should a legal system provide for an appointment for a limited period of time, the appointment conditions should insure that judicial independence is not endangered.

No judge can be assigned to another post or promoted without his/her agreement.

A judge cannot be transferred, suspended or removed from office unless it is provided for by law and then only as the effect of disciplinary proceedings, under the respect of the rights of defence and of the principle of contradiction.

Any change to the judicial obligatory retirement age must not have retroactive effect.

Article 2-3 – Council for the Judiciary

In order to safeguard judicial independence a Council for the Judiciary, or another equivalent body, must be set up, save in countries where this independence is traditionally ensured by other means.

The Council for the Judiciary must be completely independent of other State powers.

It must be composed of a majority of judges elected by their peers, according to procedures ensuring their largest representation.

The Council for the Judiciary can have members who are not judges, in order to represent the variety of civil society. In order to avoid any suspicion, such members cannot be politicians. They must have the same qualifications in terms of integrity, independence, impartiality and skills of judges. No member of the Government or of the Parliament can be at the same time member of the Council for the Judiciary.

The Council for the Judiciary must be endowed with the largest powers in the fields of recruitment, training, appointment, promotion and discipline of judges.

It must be foreseen that the Council can be consulted by the other State powers on all possible questions concerning judicial status and ethics, as well as on all subjects regarding the annual budget of Justice and the allocation of resources to the courts, on the organisation, functioning and public image of judicial institutions.

Article 2-4 - Resources for Justice

The other powers of the State must provide the judiciary with the means necessary to equip itself properly to perform its function.

The judiciary must have the opportunity to take part in or to be heard on decisions taken in respect to the budget of the Judiciary and material and human resources allocated to the courts.

Article 2-5 - Protection of the judge and respect for judgments

The judge must benefit from a statutory protection against threats and attacks of any kind, which may be directed against him/her, while performing his/her functions.

Physical security for the judge and his/her family must be provided by the State. In order to ensure the serenity of judicial debates, protective measures for the courts must be put in operation by the State.

Any criticism against judgments, which may compromise the independence of the judiciary or jeopardise the public's confidence in the judicial institution, should be avoided. In case of such allegations, appropriate mechanisms must be put in place, so that lawsuits can be instigated and the concerned judges can be properly protected.

ARTICLE 3 – INTERNAL INDEPENDENCE

Article 3-1: Submission of the judge to the law

In the performance of the judicial duties the judge is subject only to the law and must consider only the law.

A hierarchical organisation of the judiciary in the sense of a subordination of the judges to the court presidents or to higher instances in their judicial decision making activity, save for the review of opinions as described below (see Article 3.2), would be a violation of the principle of judicial independence

Article 3-2 – Personal autonomy

No influence, pressure, threat or intervention, either direct or indirect, from any authority, is acceptable.

This prohibition of orders or instructions, of any possible kind, onto judges does not apply to higher courts, when they quash rulings by previous instances, in compliance with legally established procedures.

Article 3-3 – Court administration

Representatives of the judiciary must be consulted before any decision affecting the performing of judicial duties.

As court administration can affect judicial independence, it must be entrusted primarily to judges.

Judges are accountable for their actions and must spread among citizens any useful information about the functioning of justice.

Article 3-4 – How cases should be allocated

Allocation of cases must be based on objective rules, which are set forth and communicated previously to judges. Any decision on allocation must be taken in a transparent and verifiable way.

A case should not be withdrawn from a particular judge without valid reasons. The evaluation of such reasons must be done on the basis of objective criteria, pre-established by law and following a transparent procedure by an authority within the judiciary.

Article 3-5 – Freedom of expression and right to create associations

Judges enjoy, as all other citizens, freedom of expression. However, while exercising this right, they must show restraint and always behave in such a way, as to preserve the dignity of their office, as well as impartiality and independence of the judiciary.

The right of a judge to belong to a professional association must be recognized in order to permit the judges to be consulted, especially concerning the application of their statutes, ethical and otherwise, and the means of justice, and in order to permit them to defend their legitimate interests and their independence.

ARTICLE 4 - RECRUITMENT AND TRAINING

Article 4-1: Recruitment

The recruitment or selection of judges must be based only on objective criteria, which may ensure professional skills; it must be done by the body described in Article 2.3.

Selection must be done independently of gender, ethnic or social origin, philosophical and political opinions, or religious beliefs.

Article 4-2 : Training

Initial and in-service trainings, insofar they ensure judicial independence, as well as good quality and efficiency of the judicial system, constitute a right and a duty for the judge. It shall be organised under the supervision of the judiciary.

ARTICLE 5 - APPOINTMENT, PROMOTION AND ASSESSMENT

Article 5-1 – Appointment

The selection and each appointment of a judge must be carried out according to objective and transparent criteria based on proper professional qualification.

The selection should be carried out by the independent body defined by Article 2-3 of this Charter, or an equivalent body.

Article 5-2 – Promotion

When it is not based on seniorship, promotion of a judge must be exclusively based on qualities and merits verified in the performance of judicial duties through objective and contradictory assessments.

Decisions on promotions must be pronounced in the framework of transparent procedures provided for by the law. They may occur only at the request of the judge or with his consent.

When decisions are taken by the body referred to Article 2-3 of this Charter, the judge, whose application for a promotion has been rejected, should be allowed to challenge the decision.

Article 5-3 – Assessment

In countries where judges are evaluated, assessment must be primarily qualitative and be based on the merits, as well as on professional, personal and social skills of the judge; as for promotions to administrative functions, it must be based on the judge's managerial competencies.

Assessment must be based on objective criteria, which have been previously made public. Assessment procedure must get the involvement of the concerned judge, who should be allowed to challenge the decision before an independent body.

Under no circumstances can the judges be assessed on the base of judgments rendered by them.

ARTICLE 6 – ETHICS

Article 6-1 – General Principles

In every circumstances, judges must be guided by ethical principles.

Such principles, concerning at the same time their professional duties and their way of behaving, must guide judges and be part of their training.

These principles should be laid down in writing in order to increase public confidence in judges and the judiciary. Judges should play a leading role in the development of such ethical principles.

Article 6-2 - Impartiality, dignity, incompatibilities, restraint

In the performance of the judicial duties the judge must be impartial and must so be seen.

The judge must perform his or her duties with restraint and attention to the dignity of the court and of all persons involved.

The judge must refrain from any behaviour, action or expression of a kind effectively to affect confidence in his/her

impartiality and independence.

Article 6-3 – Efficiency

The judge must diligently and efficiently perform his or her duties without any undue delays.

Article 6-4 – Outside activities

The judge must not carry out any other function, whether public or private, paid or unpaid, that is not fully compatible with the duties and status of a judge.

He/she must avoid any possible conflict of interest.

The judge must not be subject to outside appointments without his or her consent.

Article 6-5 – Judge's possible recourse to an independent authority in order to get advice

Where judges consider that their independence is threatened, they should be able to have recourse to an independent authority, preferably that described under Article 2-3 of this Charter, having means to enquire into facts and to provide them with help and support.

Judges should be able to seek advice on ethics from a body within the judiciary.

ARTICLE 7 – DISCIPLINE

Article 7-1 – Disciplinary proceedings

The administration of the judiciary and disciplinary action towards judges must be organized in such a way, that it does not compromise the judges genuine independence, and that

attention is only paid to considerations both objective and relevant.

Disciplinary proceedings should be carried out by independent bodies, that include a majority of judges, or by an equivalent body.

Save in case of malice or gross negligence, ascertained in a definitive judgement, no disciplinary action can be instituted against a judge as the consequence of an interpretation of the law or assessment of facts or weighing of evidence, carried out by him/her to determine cases

Disciplinary proceedings shall take place under the principle of due process of law. The judge must be allowed to have access to the proceedings and benefit of the assistance of a lawyer or of a peer. Disciplinary judgments must be reasoned and can be challenged before an independent body.

Disciplinary action against a judge can only be taken when provided for by pre-existing law and in compliance with predetermined rules of procedure. Disciplinary sanctions should be proportionate.

Article 7-2 – Civil and penal responsibility

Civil action, in countries where this is permissible, and criminal action, including arrest, against a judge must only be allowed under circumstances ensuring that his or her independence cannot be influenced.

The remedy for judicial errors should lie in an appropriate system of appeals. Any remedy for other failings in the administration of justice lies only against the state.

It is not appropriate for a judge to be exposed, in respect of the purported exercise of judicial functions, to any personal liability, even by way of reimbursement of the state, except in a case of wilful default.

ARTICLE 8 - REMUNERATION, SOCIAL PROTECTION AND RETIREMENT

Article 8 – 1 – Remuneration

The judge must receive sufficient remuneration to secure true economic independence, and, through this, his/her dignity, impartiality and independence.

The remuneration must not depend on the results of the judge's work, or on his/her performances, and must not be reduced during his or her judicial service.

Rules on remuneration must be enshrined in legislative texts at the highest possible level.

Article 8-2 – Social protection

The statute provides a guarantee for judges acting in a professional capacity against social risks related to illness, maternity, invalidity, age and death.

Article 8-3 – Retirement

The judge has a right to retirement with an annuity or pension in accordance with his or her professional category.

After retirement, the judge may exercise another legal professional activity, if it is not ethically inconsistent with its former legal activity.

It cannot be deprived of his pension on the sole ground that it exercises another professional activity.

ARTICLE 9 – APPLICABILITY OF THE CHARTER

Article 9-1 – Applicability to all persons exercising judicial functions

This Charter is applicable to all persons exercising judicial functions, including non-professional judges.

Article 9-2 – Applicability to Public prosecution

In countries where members of the public prosecution are assimilated to judges, the above principles apply mutatis mutandis to these public prosecutors.

Article 9-3 – Independence of prosecutors

Independence of prosecutors–which is essential for the rule of law–must be guaranteed by law, at the highest possible level, in a manner similar to that of judges.

NAURU GOVERNMENT IN NEW CRACK DOWN ON FREE SPEECH WITH DRACONIAN NEW "ADMINISTRATION OF JUSTICE" LAWS

In a development labelled a "*chilling and extraordinary attack on the rule of law and democratic freedom*", by a former Minister for Justice, the Parliament of Nauru has passed extraordinary laws to stifle discussion of court cases in the mainstream media and on social media.

The laws also seek to grant effective immunity to the Nauru Government for clear contempt of court offences committed in 2014 when the Resident Magistrate was deported in breach of an injunction issued by Chief Justice Eames QC, and the Chief Justice was banned from the country.[1]

It is feared the laws also pave the way for the retrospective prosecution of the Nauru 19 and their legal representatives for contempt of court.

The laws, contained within the *Administration of Justice Act 2018*, came into force on 15 May 2018. They create possibly the world's most sweeping contempt of court laws. (See analysis below of the provisions).

"Lawyers for the Government have made it clear that the Government has been monitoring our media and social media and cataloguing any comments made by us or our lawyers about the case. Now we see this absurd new retrospective law that creates contempt of court laws that we believe are the most draconian in the world," Mathew Batsiua, a former Nauruan Minister of Justice, and one of the Nauru 19 said.

"We have instructed our lawyers to consider seeking a pre-trial ruling from the trial judge on the constitutional validity of these new laws. They are a chilling and extraordinary attack on the rule of law and democratic freedom and undermine our right to a fair trial. They are also blatantly unconstitutional," Mr. Batsiua said.

"These laws need to be looked at in light of the history of this case. The Government has already threatened our lawyers with contempt of court, sought personal costs orders

[1] By imposing a 12 months statute of limitations on all proceedings for contempt of court. See

against them, threatened them with visa cancellation and denounced them in Parliament. Now these new laws hang over us and our legal team," Mr. Batsiua continued.

"Yet again we see this irresponsible government responding to developments in the case by passing new laws and undermining our legal system. This is the same government who illegally deported the Resident Magistrate in breach of an injunction (because he tried to stop their arbitrary use of immigration powers), then banned the serving Chief Justice from the country, banned associations of three or more people, banned Facebook, removed the High Court as an appeal court without replacing it. The dictatorial behaviour of the Waqa government is an embarrassment to our country," Mr. Batsiua said.

The new legislation passed also extraordinarily provides an immunity to the Government and any of its officials, deeming their conduct, statements or publications not be to contempt.

Mr Batsiua said "*What an outrageous step by the Waqa government this is – creating these sweeping criminal offences aimed at silencing critics of the government and then giving the government free reign to say and do whatever they want with no consequences."*

Administration of Justice Act 2018

In addition to creating relatively typical contempt of court provisions, the Act creates a sweeping array of draconian offences that makes it a crime in respect of ongoing court proceedings to:

- Criticise any witness;[2]
- Criticise any party to a case;[3]
- Criticise any judicial officer;[4]
- Criticise any legal representative;[5]
- Attempt to or predict outcomes of court proceedings in the media;[6]
- Do any act that has the potential to undermine public confidence in the justice system[7] or which undermines the authority of the courts or the justice system in any manner whatsoever;[8] or
- Publishes or picturises (adapts into a film) a judgment, decision or order of the Court.[9]

The Government, however, has exempted itself from these provisions, the Act stating:

> *"A statement or publication made under this section, on behalf of the Republic about the subject matter of or an issue in a court proceeding that is pending, is*

[2] Section 7(2)
[3] Section 7(2)
[4] Section 7(2)
[5] Section 7(2)
[6] Section 7(2)
[7] Section 7(1)(a)(ii)
[8] Section 7(1)(g)
[9] Section 7(1)(e)

not contempt of court, if the Republic believes that such statement is necessary in the public interest, national security or administration of justice."[10]

And further:

"No servant or agent of the Republic shall be convicted of contempt of court for the execution of his or her duties in good faith"[11]

Section 41 effectively grants the government immunity for their own clear contempts of court in deporting Peter Law in violation of an injunction from the Chief Justice, and in banning the CJ from the country, stating:

"No court shall initiate any proceedings for contempt of court either on its own motion or otherwise after the expiry of a period of 12 months from the date on which the contempt of court is alleged to have been committed".

The law also creates the concept of contempt of court by an 'association of persons',[12] which might have obvious application to a group of accused persons such as the Nauru 19 and their lawyers. The law even contains specific provision for the liability of a 'spokesperson or leader' of an association of persons.[13]

The laws are expressed to apply outside of Nauru[14] and to even apply to foreign media organisations.[15]

The law provides that contempt of court is a strict liability offence, meaning there is no requirement that a person intends the crime of contempt of court to even be committed.[16]

The law is intended to codify the law of contempt of court and applies to conduct that occurred before the law was passed, where a publication has not been removed.[17]

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[10] Section 7(3)
[11] Section 43
[12] Section 13
[13] Section 13(5)(ii)
[14] Section 16
[15] Section 16
[16] Section 22

The law creates a number of potential defences, proof of which lies on the person accused, on the balance of probabilities. These include fair and accurate reporting, and a relevant observation or comment made by a party or legal representative in submissions made for the sole purpose of a court proceeding.[18]

[17] Section 45
[18] For example, sections 23 to 25 and section 32.

Appendix A: History of the Case

The long-running case against the Nauru 19 relates to a June 2015 protest outside the Nauruan Parliament that descended into violence. Protestors had marched on the Parliament aggrieved by the then ongoing suspension of several members of the Nauruan opposition. The suspension of the MPs had occurred because they had criticised the Nauruan government's interference in the judiciary in the international media and been "unruly" in parliament.

The interference in the judiciary has included the unlawful deportation of Resident Magistrate Peter Law and the banning from the country of Chief Justice Geoffrey Eames QC.

The protest was arranged for the day the budget was due for debate in the Parliament. With one third of the parliamentarians excluded from debate, there were concerns that the allocation of funds across the small Pacific island would be uneven.

In late 2016 Mr Jeremiah, Mr Cecil and Mr Kepae pleaded guilty to a number of offences arising out of the protest and almost three years after their offending their sentences are still yet to be resolved. The men were initially sentenced in November 2016 to terms of imprisonment of three and six months by Magistrate Emma Garo (now the Chief Magistrate of Solomon Islands). Ms Garo was terminated by the Nauru Government shortly afterwards.

In May 2017, Acting Chief Justice Mohammed Khan upheld an appeal by the Director of Public Prosecutions against the leniency of the sentences and substituted his own sentences for those of the Magistrate, drastically increasing the men's prison terms by up to 700 per cent.

The three men then applied to the High Court of Australia to overturn the decision of the Nauruan Supreme Court. The Nauru Director of Public Prosecutions late last year conceded to the High Court that Judge Khan had made errors in the handling of the appeals. As a result the High Court sent the case back to the Nauruan Supreme Court to be reheard according to law and before a judge other than Judge Khan.

Chief Justice Kiefel and Justices Gageler and Keane were also unanimous in their decision that the Republic of Nauru should have to pay the three men's legal costs of the appeal. These costs remain unpaid by the Republic.

Following the successful High Court appeal by the three men, the Nauru government sacked a high-profile team of Australian lawyers who had been hired to prosecute the case on behalf of the Republic. Leading law firm Ashurst Australia had retained Peter Davis QC (now a Justice of the Supreme Court of Queensland) and a team of Brisbane-based barristers to prosecute on behalf of the Republic from mid-2017. The former Director of Public Prosecutions, David Toganivalu, who had been instructing the Australian prosecutors has also been terminated. The unusual move of appointing a foreign law firm to prosecute the case came in mid-2017 after lawyers for the accused persons had applied for the dismissal of the case on the basis that the Nauru judiciary lacks independence from the government of Baron Waqa.

The lawyers have now been replaced by an employee of the Nauruan Justice Minister, Mr Rabuku.

The sentence appeals were heard again on 21 March 2018 and Mr Rabuku called on Chief Justice Jitoko to impose lengthy sentences of imprisonment on each of the three defendants, including seeking the maximum penalty for the offence of riot despite the mens' guilty pleas and limited role in the offence.

Chief Justice Jitoko re-sentenced each of the men to terms of imprisonment between four and nine months, but granted them bail until their appeal is heard in the High Court of Australia. The men expected to file their applications to the High Court shortly thereafter. However, unbeknownst to the Nauru 19, their lawyers, and apparently the Chief Justice, the Government of Nauru terminated the treaty with Australia which gave the High Court jurisdiction to hear appeals from Nauru. This left the three men in limbo with no appellate court established in Nauru. In May 2018, the Parliament of Nauru passed a raft of legislation, including amending the Constitution to get rid of appeals to foreign courts and to create a local Court of Appeal. The

men were granted a stay of their sentences and bail pending the creation of the new Court of Appeal.

The accused persons - who include former President Sprent Dabwido, former Justice Minister Matthew Batsiua and former MP Squire Jeremiah – have been represented by a pro bono team of Australian lawyers.

The trial of the former MPs and their supporters is scheduled to conclude just days before the tiny Pacific country will host international leaders from across the region at the Pacific Islands Forum in September 2018. It is expected the hosting of the forum will allow rare access to the island to journalists. The trial will be presided over by a retired Australian judge, who was appointed to hear the case after the Nauru 19 sought a stay of proceedings on the basis the Nauru Judiciary was insufficiently independent of the government of Baron Waqa.

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