

THE HON T F BATHURST
CHIEF JUSTICE OF NEW SOUTH WALES
ACCESS TO JUSTICE IN REGIONAL NEW SOUTH WALES
NEWCASTLE BUSINESS CLUB MONTHLY LUNCHEON
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1. Thank you for that introduction and for inviting me to speak this afternoon. I would like to begin by respectfully acknowledging the traditional owners of the land on which we meet and pay my respect to their elders, past and present.
2. It is always a pleasure to be invited to speak at gatherings such as these, particularly after you have all been well fed. I hope this means that you will be a forgiving audience. One of the first lessons I learnt when I came to the Bench was some advice by a current justice of the High Court. The advice was that judicial speeches should generally aim to be inconsequential and dull. While, unfortunately for you, I may be able to fulfil the second of those requirements, I do believe that the topic on which I will be speaking about today is of some great consequence, particularly to the people in this room. Today, I would like to take the opportunity to share a few words on the importance of access to justice and improved legal facilities in regional areas such as the Hunter region.
3. The Supreme Court has a long and proud association with the Hunter region. The first Supreme Court sitting outside of Sydney took place in east Maitland in 1829. Justice Dowling, who was later the second Chief Justice of the Supreme Court, travelled from Sydney to Maitland on horseback. Presumably, he would have camped along the way on a journey that must have taken several days, if not a week.¹ I am very pleased that my trip to speak with you this afternoon was more comfortable and did not require a

* I express thanks to my Research Director, Ms Sarah Schwartz, for her assistance in the preparation of this address.

¹ G Graham, Address at the formal opening ceremony of the Supreme Court sitting at Newcastle (22 February 1999).

saddle; I am not particularly good at camping and horses have never very much liked me.

4. Given the reduced travel times, I am always excited by the opportunity to make the trip to Newcastle. In 2011, Newcastle was named as one of the top 10 best cities in the world. Sydney, however, my hometown, did not even make the list, being deemed “too dull”.² Being here, it is not hard to see why. The Hunter region has a rich heritage, great educational institutions, an ever expanding arts and cultural scene and a world renowned beautiful coastline. The “visitnewcastle” website even boasts that you can “leave the office at lunchtime and enjoy a refreshing surf or swim only minutes from the city centre”.³ Not only is Newcastle a great place to live, but it has also seen a huge amount of new business and investments given its diversified commercial, trade and industrial economy. In order to meet the shifting needs of the broader Hunter community, in 2013, the construction of a new Newcastle courthouse commenced.
5. As I’ve said on other occasions, I have been eagerly following the development of the new Newcastle court complex. In March 2014, I had the opportunity to visit Newcastle to inspect progress at the construction site of the court. If I am being completely honest, I didn’t just want to inspect the site. A little secret is that because judges are not politicians, we generally get very excited about any chance to don a fluoro vest and a hard-hat. Unfortunately, I was stymied by the fact that the builders were in the process of pouring concrete on the first floor, which, so I was told, was about as exciting as watching paint dry. However, I am guessing that they did not want the hassle and occupational health and safety issues of having a Chief Justice on the site.
6. So, like most of my work, I have been resigned to watching the progress of the court from my desk through the online webcam that was installed on a building opposite the worksite. While I can’t pretend to understand how the video was compiled, my Associate showed me a “timelapse” of the site’s

² <http://www.news.com.au/travel/australian-holidays/newcastle-named-among-worlds-top-10-cities/story-e6frfg89-1225946167212>.

³ <http://www.visitnewcastle.com.au/living-here>.

construction – which might make one believe that the construction took a matter of minutes. Needless to say, at its completion, the new Newcastle courthouse now houses ten courts and two tribunal rooms in an impressive seven story building. The courthouse is a symbol of how far we have come in providing improved access to justice to regional centres.

7. However, I remember a time when the Newcastle courts were not always what they were today. This was a time when BHP's steelworks was in Newcastle. It was the hay day of industrial action and BHP was a large employer, not only of people working in the steelworks, but also of hordes of lawyers. These lawyers had their work cut out for them as BHP seemed to always be running civil cases or, more often, having civil claims made against it. Much of the list of the Newcastle courthouse was made up of litigation involving BHP. The civil litigation list churned along as usual until one day when everything went horribly wrong. That was the day when a former Chief Justice of New South Wales payed a surprise visit to Newcastle to sit as a judge on the civil litigation list. Needless to say, that day, all of the cases miraculously settled.
8. Those days seem to have passed. I don't think that the lawyers running civil litigation in Newcastle would be particularly frightened by my presence. I hope that this is due to improved legal services in Newcastle and not because of my lack of formidable legal prowess.
9. However, it is still incredibly important for improved legal services in regional centres to remain a top priority. People living in regional and rural areas are entitled to the same benefits as those who live in cities. This is especially the case for the provision of legal services and access to justice. Access to justice is an essential component of the rule of law. Unfortunately, the rule of law is a principle that is often referred to – particularly by lawyers and, it must be said, judges – however, it is a concept that is not always clearly articulated. Former High Court Justice and Governor-General Sir Ninian Stephen described the attraction of invoking the rule of law when he said that the phrase

...has a splendid ring to it; there are few politicians other than rigorous Marxists who can resist its siren song when speaking of the ideals they stand for, few writers on political science who deny its high virtue.⁴

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

11. Now for those of you who I can begin to see shift in your seats, don't worry; I have no intention to turn today's lunch into a legal theory lecture. My point is only to emphasise that the rule of law is meaningless if members of the community are unable to access our legal institutions.

12. In 1993, prior to being an acting justice of the New South Wales Court of Appeal, Ronald Sackville chaired the 'Access to Justice Advisory Committee'. The Committee's report, which was released in 1994, recognised the particular importance of access to justice in regional areas. The report stated:

[a]ll Australians, regardless of their place of residence, should enjoy, as nearly as possible, equal access to legal services and to legal services markets that function competitively. To the extent that there are variations in access among States or regions, they should have to be justified by reason of special, identifiable circumstances. Uniformity is not necessarily a goal to be pursued in itself. But the Australian Government, in particular, should prevent people being denied access to legal services simply because of where they happen to live.⁵

13. These objectives have been reiterated time and time again. A 2012 report by Deakin University discussed the legal needs of small business owners in regional Victoria. The report detailed a series of consultations with 275 participants, including 207 regional small business owners and 68 regional lawyers in order to identify their degree of satisfaction with existing services and identify current and potential demand and supply gaps. By doing so, it sought to determine ways in

⁴ Sir Ninian Stephen, "The Rule of Law", St James Ethics Centre Lawyers' Lecture (November 1999).

⁵ Access to Justice Committee, "Access to Justice and Action Plan" (1994)

which regional law firms and legal facilities can improve, expand and refine their services to meet the demands of the communities they serve.⁶ Another project by Deakin University titled, 'Postcode Justice: Rural and Regional Disadvantage in the Administration of the Law in Victoria' also conducted research on the factors disadvantaging people from rural and regional areas when using justice system services.⁷

14. Each of these reports identified specific disadvantages faced by regional and rural communities in accessing legal services. These include:

- The poor physical amenity of regional courts;
- The limited availability of video conferencing facilities and information and communication technologies;
- The limited availability of quality mediation services to regional communities, particularly in relation to commercial and civil matters;
- The lack of hearing date certainty;
- The limited availability of senior barristers; and
- The declining ratio of private law firms to regional populations.⁸

15. Let me now turn to discussing some of these disadvantages and ways in which they have and can be resolved.

16. First, in regard to the physical amenity of regional courts, access to good court facilities is integral to the justice system. The features of courtrooms – from architecture to technology – as well as their processes, not only create the setting for justice; they can be instrumental or detrimental to it. For example, one research project considers the potential for the modern security features of the dock to prejudice the defendant's

⁶ See Richard Coverdale, Lucinda Jordan and Jean du Plessis, 'Providing Legal Services to Small Business in Regional Victoria: Final Report' (Deakin University Centre for Rural Regional Law and Justice, March 2012).

⁷ See Richard Coverdale, 'Postcode Justice: Rural and Regional Disadvantage in the Administration of the Law' (2011) 16(1) *Deakin Law Review* 155.

⁸ See Centre for Rural Regional Law and Justice, National Rural Law and Justice Alliance, 'Joint Submission to Productivity Commission Inquiry into Access to Civil Justice' (September 2013) available at <<http://www.pc.gov.au/inquiries/completed/access-justice/submissions/submissions-test/submission-counter/sub020-access-justice.pdf>>.

right to a fair trial.⁹ The new Newcastle courthouse provides facilities for trials to take place at all levels, including criminal, civil, commercial and family matters. Prior to the building of the Newcastle courthouse, it was widely agreed that the old courthouse no longer met the practical legal needs of the Hunter community.

17. The last courthouse to open in Newcastle was built on Church Street in February 1892. As noted in the Newcastle Herald, the guiding principle of court architecture during this period “was to highlight and shame perpetrators”.¹⁰ The new courthouse places a strong emphasis on physical design in order to create a “nonthreatening, welcoming, high quality and easily navigated justice experience to provide a positive justice message to stakeholders, users and the community.”¹¹ Indeed, even for experienced lawyers and business professionals, coming to court can be a stressful experience. The new courthouse is designed to minimise this stress and enable potential litigants to better understand court processes.

18. In regard to its electronic facilities, the Newcastle courthouse has been described as the most technologically advanced outside of Sydney.¹² It has facilities such as sound and video recording facilities and video conferencing capacity. This enables cases to be conducted and evidence to be presented from multiple locations. The Supreme Court has an ongoing obligation to try and streamline the judicial process to maximise efficiencies. Undoubtedly, particularly in regional areas, modern technology, such as the use of virtual courtrooms and video recording facilities does indeed facilitate access to justice. So does the establishment of online dispute resolution processes.

19. The Supreme Court has also undertaken a number of steps to improve access to its facilities in Sydney for parties and lawyers from regional centres. Technological steps that we have recently taken include conducting arraignments electronically, developing and expanding our

⁹ Tait et al, ‘The Dock on Trial: Courtroom Design and the Presumption of Innocence’, pending report.

¹⁰ Tim Connell, ‘Newcastle courthouse opens before leading justice figures’, *The Newcastle Herald*, 16 February 2016.

¹¹ Cox Richardson, ‘Design Overview for Newcastle Courthouse’ (March 2013) at 4.

¹² Tim Connell, ‘Newcastle courthouse opens before leading justice figures’, *The Newcastle Herald*, 16 February 2016.

online registry capabilities, launching a new Caselaw website and free Court Lists mobile phone application, and continuing to encourage and facilitate the production and distribution of subpoenaed material in electronic format. I am also pleased to say that the Court will be launching an electronic courtroom system in the near future. This system will offer a flexible and efficient alternative to physical court attendances. This includes directions hearings and interlocutory matters in civil cases, particularly where parties have reached agreement on these matters.

20. The new Newcastle courthouse also has six mediation or arbitration rooms. This means that there is now capacity for court annexed mediation procedures to take place in Newcastle. I am sure that many of you are aware of the problems associated with the costs and delays of civil litigation. In this context, the provision of alternative dispute resolution procedures serves an increasingly important role in facilitating access to dispute resolution services for all citizens and in reducing the time and cost spent on litigation.

21. Another issue which continues to affect regional areas is lawyer shortages. The Law Council of Australia has expressed concerns that there are insufficient numbers of the private profession in regional areas. While there has been an increase in the legal needs of people in regional areas, the number of private lawyers servicing these areas has gone down.¹³ Some have suggested that the government create financial incentives to encourage more lawyers to move to remote, rural and regional areas. Members of the Law Council have suggested the implementation of incentives such as relief of HECS or HELP debts, employers not having to pay certain fringe benefits tax and wage subsidies.

22. In my view, more research needs to be done into the ways that we can encourage graduates from both city and regional law schools to stay and practice in regional areas. Importantly, local specialised practices should be maintained and fostered. As stated in the 2012 Deakin University report,

¹³ See Louise Fitzroy, 'Regional lawyer shortage could jeopardise access to justice says Law Council: The Law Council says a lawyer shortage in rural areas threatens access to justice in regional Australia', *ABC Regional News*, 5 November 2015.

legal practitioners with local knowledge and mediation or collaborative practice skills, who foster a less adversarial approach, are vital in smaller communities where those in dispute need to continue to live and work together. In many instances, effective advice requires a local understanding of the unique circumstances of a particular region or industry, placing regional law firms in a prime position essential for providing small business with the capacity to optimise the commercial opportunities arising as a result of these evolving specialist areas.¹⁴

23. Ultimately, despite our best intentions, law reform is often an industry only exercise. Wider community engagement with business professionals such as yourselves can be frustrated by legal technicality and legal elitism, both real and perceived. Some of this is unavoidable. Nevertheless, in my opinion, reforms seeking to improve legal service provision to regional areas should always strive to take into account the perspectives of the wider community.

24. It is vital for business professionals such as yourselves, as the ultimate users of legal services, to tell us the ways in which we can improve legal service provision. While the new Newcastle courthouse has great facilities, it will only be functional where there is demand for it and where it accommodates your needs and concerns. I am aware that you have all come from different organisations and associations and, accordingly, have different interests in and perspectives on the legal system. Equally, no one person's experience of the legal system could ever be the same. I suspect however that you all have a common interest in seeing accessible, affordable and comprehensive legal service provision in the Hunter region.

25. So let me end by saying this. In the absence of research and advice from users of legal services, little can be done to ensure that legal service provision in regional areas meets the needs of clients, is well-targeted, efficient and sustainable. I encourage you to advise the courts, law society and regional bodies about your concerns and suggestions for improvement.

26. As I mentioned at the beginning of this address, we no longer have to travel for weeks on horseback to get between Newcastle and Sydney. With

¹⁴ Coverdale et al, above n 6, 2.

increased technological advances, there should also be a reduction in the differences between the justice system services accessible throughout New South Wales. On that note, I look forward to leaving “dull” Sydney and coming back to Newcastle soon.