

Remarks of the Hon Marilyn Warren AC – Chief Justice of Victoria
Commonwealth Law Conference
Plenary Theatre, Melbourne Convention Centre

Tuesday, 21 March 2017

Welcome Address and Introduction of Keynote Speaker

Good morning and may I formally welcome you to the 20th Commonwealth Law Conference and thank and congratulate all those who have organised it.

The exchange of ideas and commingling of judicial methods is critical to the development of legal systems. Ideas bred in isolation are rarely tested for their strength or tried for their flexibility. It is from interaction with different contexts that ideas are able to develop and evolve to become rounded and defensible principles. These occasions are valuable opportunities to reflect on our differences and on our shared legal heritage and the doctrines central to our legal system that are consistent and similar.

The ‘commonality’ of the Commonwealth is our legal inheritance. We are all beneficiaries of the common law. Lord Bingham noted numerous instances in which British law had been ‘strengthened’,¹ ‘refined’,² and ‘enriched by the injection of international jurisprudence’.³

The Australian Chief Justice, Susan Kiefel has spoken of the ‘ideal’: ‘a Court the members of which are receptive to other ideas’.⁴ Sir Anthony Mason noted the relevance of what ‘other systems of law might say about a problem because legal problems are human problems and not unique to one legal system’.⁵

This year’s conference topic - Thriving in a Global World; Building on the

¹ Ibid 23.

² Ibid.

³ Ibid 82.

⁴ Ibid.

⁵ Ibid.

Rule of Law - is one of those shared legal problems. From Britain, the Commonwealth countries all inherited a legal system dedicated to the maintenance of the rule of law. The work in Britain on establishing a rule of law, expressed in part in embryonic form in the Magna Carta, has shaped our priorities, our jurisprudence and perhaps ensured the very employment of the people in this room.

After the promise in clause 39 of the Magna Carta that:

No free man is to be arrested, or imprisoned, or disseised, or outlawed, or exiled, or in any way destroyed, nor will we go against him, nor will we send against him, save by the lawful judgment of his peers or by the law of the land the Magna Carta goes on to put individuals in place to ensure this was not an empty promise.

Clause 45 reads:

We will appoint as justices, constables, sheriffs, or other officials, only men that know the law of the realm and are minded to keep it well.

The generosity of the promises in the Magna Carta and its true legacy for English jurisprudence have been debated.⁶ But what cannot be denied, again as Lord Bingham said, is that '[the Magna Carta] represented and expressed a clear rejection of unbridled, unaccountable royal power, an assertion that even the supreme power in the state must be subject to certain overriding rules'. And it confirmed the judicial institution: we justices who 'know the law of the realm' and must ensure compliance with those rules.

⁶ Justice Patrick Keane, 'Magna Carta: A Less Pious Perspective' (2016) 4 *Judicial College of Victoria Journal* 15.

Knowing the brilliance that can spark from discussions between our shared but differentiated legal systems, we may look forward to a meaningful and fruitful exchange in the days ahead on how we keep our promise to these ancient ideas and ideals in a modern and rapidly changing world.

With those remarks may I extend a very warm welcome to all delegates and formally open the conference. I encourage you in any spare time to visit the Supreme Court of Victoria in William Street, a short tram ride away. It is a gem of Victorian court architecture with a library which is stunning. All delegates have my personal invitation.

Now to welcome today's keynote speaker, Ms Fiona McLeod SC.

Ms McLeod is a graduate of the University of Melbourne. She is a member of the Victorian Bar. She was appointed senior counsel in Victoria in 2003. She has practiced in commercial, public, constitutional and common law.

She was lead counsel for the legal team for the Commonwealth of Australia in the Victorian Bush Fires Royal Commission and the Queensland Floods Commission of Enquiry. She has and always has had an extremely busy civil law practice as one of the senior women of the Victorian Bar.

Ms McLeod is a former chair of the Victorian Bar and, also, former President of the Australian Bar Association. She is the current President of the Law Council of Australia. One of the important contributions Ms McLeod has made to the administration of justice has been the acceptance of the equality in briefing practices policy, established to achieve greater diversity across advocacy representation in the courts. Most recently as President of the Law Council of Australia, Ms McLeod has announced the Council's *Justice Project*. It will be a national review into the impediments to access to justice in Australia. It will be a significant body of work

Please welcome Fiona McLeod.