

Speech by Attorney General Mark Speakman SC

LAW AND JUSTICE FOUNDATION RESEARCH SYMPOSIUM

‘Reshaping Justice: Client-centred service delivery, technology and innovation’

TUESDAY, 20 JUNE 2017

1. Thank you, Aunty Norma, for such a warm Welcome to Country. It is an honour to be here on the land of your people.
2. I would like **acknowledge** the traditional custodians of this land: the Gadigal people of the Eora Nation, and I pay my respects to their Elders, both past and present.¹
3. I acknowledge any Aboriginal people who are among us today.
4. And I’d like to note a few distinguished guests:
 - Dame Hazel Genn DBE QC
 - The Honourable Justice Ronald Sackville AO
 - The Honourable Justice Joe Harman²
 - Professor Pascoe Pleasence
 - Pauline Wright, President of the Law Society of New South Wales
 - Geoff Mulherin
 - Colleagues, friends

¹ The text of this acknowledgement of country is recommended by the City of Sydney Council. See <http://www.cityofsydney.nsw.gov.au/council/about-council/welcome-to-country> (accessed 14 March 2017.)

² Judge Harman is a judge of the Federal Circuit Court of Australia. See <http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/about/judges-senior-staff/judges/judges-parramatta/judge-harman> (accessed 5 June 2017.)

INTRODUCTION TO THE SYMPOSIUM

5. Thank you, Geoff, for inviting me to open this exceptional event. I can't think of a more fitting way for one of the foremost law and justice research organisations to **celebrate its half-century** than with a symposium that features a remarkable array of research and policy powerhouses!
6. What a tremendous program the Foundation has put together for us all today. The gallery of speakers is extraordinary:
 - 6.1. **Dame Hazel Genn**, the Dean of Laws at University College London, is tantamount to royalty in the realm of legal need and the responsiveness of the justice system.³ Dame Hazel's 1999 book, *Paths to Justice*, remains almost biblical in the field of legal need;⁴
 - 6.2. **Justice Ronald Sackville AO**, the Commissioner of the landmark Australian Government Commission of Inquiry into Law and Poverty in Australia;⁵

³ Dame Hazel Genn's University College London profile page is at <http://www.laws.ucl.ac.uk/people/hazel-genn/> (accessed 3 June 2017).

⁴ Dame Hazel Genn's book, *Paths to Justice: What people do and think about going to law*, was published in 1999 and presented the results of the largest survey of public attitudes to the civil justice system ever conducted. The survey looked into the behaviour of the public in dealing with potential legal disputes and problems, and provided a model that considered 'legal need' beyond using legal services to create court-based solutions. See more at <http://www.lawfoundation.net.au/report/roundtable> (accessed 5 June 2017). The book reference is on the publisher's website at <http://www.bloomsbury.com/au/paths-to-justice-9781841130392/> (accessed 5 June 2017).

⁵ The 'Sackville Report', the report of the Australian Government Commission of Inquiry into Law and Poverty in Australia, was published in 1976. See reference at <http://trove.nla.gov.au/work/9665201?q&versionId=45425674>.

- 6.3. **Professor Pascoe Pleasence**, a leader in empirical legal research methodologies and analyser of ‘legal needs’ surveys the world over, and the Co-Director of the Centre for Empirical Legal Studies in the UCL Faculty of Laws.⁶
7. Extraordinary people, all – yet **only three** of today’s outstanding line-up!
8. And then there are all of you! Almost 300 practitioners, researchers, service providers, policy makers – an incredible congregation of **talented, dedicated people** with the foresight and good judgment to come today. Victorians. New South Welshmen. New Zealanders. Britons. Even a Canadian by the miracle of modern technology later today.⁷ Well done, all!
9. I’m really delighted to be here with you all. It is truly heartening to share the room with so many people for whom access to justice is our daily work. Our **defining** work.
10. As Attorney General – as the ‘First Law Officer of New South Wales’ – ensuring people in our state can **come to our justice system when they need it** is one of the most important parts of my job. I am focused on a justice system that provides ‘fast, fair and accessible’ justice for everyone, **without exception**.

⁶ Professor Pascoe Pleasence’s University College London profile page is at <https://www.laws.ucl.ac.uk/people/pascoe-pleasence/> (accessed 3 June 2017).

⁷ Shannon Salter, Chair of the Civil Resolution Tribunal of British Columbia, Canada, will present in the session ‘The Human Face of Technology’ at 3.35pm, via video link.

CONGRATULATIONS TO THE LJF – 50TH ANNIVERSARY

11. It's hard to believe we're already halfway through the Foundation's **50th anniversary** year.
12. Back at the end of March – though it seems like only a few weeks ago – the Law Society hosted a cocktail reception to kick off these anniversary celebrations.
The sentiment in the room that night was incredibly warm and I can feel that same warmth this morning – we all have the utmost respect for five decades of **dedication to improving access to justice in NSW.**⁸
13. Congratulations to Geoff and his team. Those of us who have attained 50 years know that getting this far is no mean feat and definitely worthy of some fanfare!

NOTEWORTHY WORK OF THE FOUNDATION

14. Let me remind you – or fill you in on! – some of the initiatives the Foundation has been instrumental in over the last 50 years:

⁸ Section 5 (1) of the *Law and Justice Foundation Act 2000* (NSW). See <http://legislation.nsw.gov.au/~/~view/act/2000/97/part2/sec5> (accessed 20 March 2017).

- 14.1. **Establishing** the College of Law, and AustLII, and the Centre for Plain Language Law – as well as facilitating **plain language law** in the community more generally, including by establishing the Legal Information Access Centre at the State Library of NSW. I know there's at least one LIAC librarian here today – thank you for the invaluable service you provide.
- 14.2. The Foundation was one of the pioneers of **providing legal information online**.
- 14.3. And it was intimately involved in establishing the **Public Interest Advocacy Centre** in 1982, which was in response to the need for specialist legal skills – in legal proceedings as well as campaigning – to protect the public interest.
15. You may not know that the **Foundation is established by legislation** – the *Law and Justice Foundation Act* – and that legislation gives the Foundation a very clear – and very important – purpose.
16. That purpose is:

“... to contribute to the development of **a fair and equitable justice system that addresses the legal needs of the community and to improve access to justice by the community.**”⁹

⁹ Section 5 (1) of the *Law and Justice Foundation Act 2000* (NSW). See <http://legislation.nsw.gov.au/~view/act/2000/97/part2/sec5> (accessed 20 March 2017).

17. The *Law and Justice Foundation Act* goes on to empower the Foundation to achieve this purpose in a number of ways, but the Foundation’s **research function is the very heart and soul** of its work today.
18. Back in 1967, the year the ‘Law Foundation’ – as it was originally known – was established, the *Law Society Journal* reported that:
“... *the spheres of legal education and research have been **badly neglected** in this state – to the public detriment.*”
19. Fast-forward to the 21st century and the **need for legal research** that the Law Society Council identified in 1967 **has not diminished** one bit.
20. When the Foundation was reconstituted in 2000, its **research function was made explicit** in the *Law and Justice Foundation Act*.¹⁰
21. In his Second Reading speech, the parliamentary secretary, on behalf of the then-Attorney General Bob Debus, said that the Foundation would:
“... ***fill the gap** in the provision of **applied research** into the **practical operation of the justice system** and its **impact on the community.**”¹¹*

¹⁰ Section 5 (2) of the *Law and Justice Foundation Act 2000* (NSW). See <http://legislation.nsw.gov.au/~view/act/2000/97/part2/sec5> (accessed 20 March 2017).

¹¹ See the Second Reading speech on the Law and Justice Foundation Bill, given 17 November 2000, at <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-23198> (accessed 20 March 2017).

22. And that is just what the Foundation has dedicated itself to doing: using **rigorous, evidence-based approaches** to identify our community's legal needs – and how to address them.
23. The Law and Justice Foundation's role in legal research is **adding tremendous value to the body of work on legal need** – not only in Australia, but internationally.¹²
24. The Foundation is currently working with the Department of Justice on a detailed examination of **civil claims in NSW courts and tribunals** – I'll tell you more about this in a few moments.
25. And I'm sure everyone here knows – and can probably quote from! – the **internationally-renowned LAW Survey** from 2012,¹³ which remains the largest and most comprehensive survey of legal needs, from the citizen's perspective, anywhere in the world.
26. So it makes **perfect sense** that we're celebrating the Foundation at this **research symposium!**

THE THEME OF THE SYMPOSIUM

27. And what a motivating theme: '**Reshaping justice: Client-centred service delivery, technology and innovation**'. Let's take that

¹² Details of each of the Foundation's research programs are available on the Law and Justice Foundation website's 'Research' page at <http://www.lawfoundation.net.au/research> (accessed 2 June 2017).

¹³ Coumarelos, C., Macourt, D., People, J., MacDonald, H.M., Wei, Z., Iriana, R. and Ramsey, S., *Legal Australia-Wide Survey: legal need in Australia*, Law and Justice Foundation of NSW, Sydney, 2012. Available online at <http://www.lawfoundation.net.au/ljf/app/&id=FC6F890AA7D0835ACA257A90008300DB> (accessed 20 March 2017).

apart. What are we being asked to do today? What are we being asked to think about?

RESHAPING JUSTICE

28. The idea of ‘reshaping justice’ demands **expansive thinking**. **Reshaping** justice doesn’t call on us to consider tinkering around the edges.
29. On the contrary, reshaping justice asks us to take a step back and consider **what justice is**. What’s the justice system there for? Is it fulfilling its purpose?
30. Justice and the justice system provide the framework for civil society. They’re pillars of our democracy. Our justice system **facilitates relationships**: it enables **peaceful social interaction** between people with different interests; it enables **disputes to be resolved peacefully** or prevented; and it **protects the vulnerable** people in our community.

CLIENT-CENTRED SERVICE DELIVERY, TECHNOLOGY AND INNOVATION

31. And so a **client-centred** – or a people-centred – or citizen-centred – **approach** to delivering justice services, to using technology for justice services, to embracing innovation in our justice system, is both **a noble goal and a complete no-brainer**. Because everything we do in justice is **for people** – making sure that people have access to the justice system that exists to serve them.

32. Our justice system **has to keep pace with community needs** and expectations. This means it has to be responsive. Innovative. Adaptable. **Accessible**.
33. And it's critical that every single person in our society can **participate fully in the justice system** – irrespective of their economic or social status.

ACCESS TO JUSTICE IS PARAMOUNT

34. Let's stop and think about access to justice for a moment —

*Making sure that people who need our justice system know that **it's there**, know that it **can help them**, know **what to do** when they need our justice system, and can be **confident** and **capable** when a legal need arises.*

35. **'Access to justice' is a heartbreakingly simple concept.** But simple, as we know, does not mean easy.
36. I'd like to refresh our memories about some **key findings** from the *LAW Survey*.¹⁴

¹⁴ The Law and Justice Foundation published the *Legal Australia-Wide Survey: Legal need in Australia* in 2012. According to the Foundation, the survey "provided the first comprehensive quantitative assessment across Australia of an extensive range of legal needs on a representative sample of the population." See Coumarelos, C., Macourt, D., People, J., MacDonald, H.M., Wei, Z., Iriana, R. and Ramsey, S., *Legal Australia-Wide Survey: legal need in Australia*, Law and Justice Foundation of NSW, Sydney, 2012. Available online at <http://www.lawfoundation.net.au/ljf/app/&id=FC6F890AA7D0835ACA257A90008300DB> (accessed 2 June 2017).

'An overview of findings for NSW' is available on the Law Foundation website at [http://www.lawfoundation.net.au/ljf/site/templates/LAW_NSW/\\$file/NSW_LAW_Survey_Summary_FINAL.pdf](http://www.lawfoundation.net.au/ljf/site/templates/LAW_NSW/$file/NSW_LAW_Survey_Summary_FINAL.pdf) (accessed 2 June 2017).

- 36.1. Every year, **around 2.8 million people** in NSW – that’s half the NSW population aged 15 years and over – **have a legal problem.**
- 36.2. Of these, **approximately 85% are civil law problems** – everyday problems – and about 15% are criminal law problems.
- 36.3. People **seek advice for only half** of all legal problems.
- 36.4. And for **19% of legal problems, people take no action** at all.
37. Why is this the case?
38. I expect the famous quote from the Productivity Commission’s Report on Access to Justice Arrangements in 2014 resonates in the hearts of everyone here – that our system of *civil* justice in particular is “**too slow, too expensive and too adversarial.**”¹⁵
39. Things like court processes and dealing with lawyers are **daunting for many people** – present company included! – yet **neither of these things may even be necessary** when people have a legal problem to deal with.
40. And as we know, so many people in our community face real barriers when they need the justice system. Barriers like **time**. And **stress**. And **cost**. And **complexity**.

¹⁵ Productivity Commission, *Access to Justice Arrangements Inquiry Report*, Vol. 1, No. 72, 5 September 2014, p.2. Available at <http://www.pc.gov.au/inquiries/completed/access-justice/report/access-justice-volume1.pdf> (accessed 2 June 2017).

41. What the *LAW Survey* and the Productivity Commission Report tell us is that we have a **sizeable problem with access to justice** in Australia.
42. But how can we **make sure we understand** exactly what we're looking at, what we need to do, and what will work?

IMPORTANCE OF EVIDENCE-BASED POLICY

43. Well, I'm glad you asked! We need **evidence!** We need **data!** We are seeking the holy grail of '**evidence-based policy!**'
44. I don't imagine I need to sell anyone here on the benefits of evidence-based policy, or the problems that a lack of data about the justice system can cause.¹⁶ But if you're yet to be sold, **Dame Hazel will shortly turn us all into evidence evangelists**, I am certain! —
45. Because taking a **people-centred approach** to improving access to justice requires us to **know what we're dealing with**. We need evidence to **create a baseline** so we can compare what things look like before and after¹⁷ – which is essential if we're to understand **which strategies have had an impact** – and so we can **identify the priority areas** we need to address in the first place.

PEOPLE-CENTRED CIVIL JUSTICE FOR NSW

¹⁶ See, for example, Productivity Commission, *Access to Justice Arrangements Inquiry Report*, Vol. 2, No. 72, 5 September 2014, Chapter 5, 'Data and Evaluation', p.879ff. Available at <http://www.pc.gov.au/inquiries/completed/access-justice/report/access-justice-volume2.pdf> (accessed 3 June 2017).

¹⁷ Gary Banks, then Chair of the Australian Productivity Commission, stated in a speech to the ANZSOG/ANU lecture series on 4 February 2009 that baseline data is essential for before-and-after comparisons. Banks, G., *Evidence-based policy-making: What is it? How do we get it?*, p.12. Available online from http://www.pc.gov.au/news-media/speeches?result_141300_result_page=3 (accessed 13 May 2017).

46. In New South Wales, the Bureau of Crime Statistics and Research – BOCSAR – has rigorously recorded, analysed and reported **information about our criminal justice system** since 1969. And when it comes to crime in our state, the *body of evidence* that the bureau has amassed – please excuse the expression! – has helped to inform policy in criminal law for many years.
47. But – and this is something many people may not know – we have **no equivalent bureau to tell us about civil matters**.
48. And this has been **a real barrier to providing people-centred civil justice** for our community.
49. In New South Wales, we want to help people **avoid common problems**. We want to help people **deal with everyday problems** early. We want to **provide help and information** when and where it's needed. And we want to make sure we have **accessible dispute resolution methods** when matters need to be resolved more formally.
50. And so the Department of Justice is working on a **Civil Justice Strategy – a program of civil justice reforms** for New South Wales. This is a project many of you know about, and some of you have contributed directly to this work through our Civil Justice Collaboration Group – I'm really grateful for your expertise and your insights – thank you.
51. The department commissioned the Law and Justice Foundation to **help us get a complete picture** of all the civil claims that are filed

in the New South Wales courts and tribunals that the Department of Justice services.

52. The Foundation is helping us understand the **who, what, why, when, where and how of civil justice claims**.
53. This is the first time this evaluation has been done in NSW or, as far as I am aware, anywhere else in Australia. And it will be invaluable in helping us undertake policy reform that will **really make a difference in people's lives**.
54. The reviews of the **Local Court** and the NSW Civil and Administrative Tribunal – or '**NCAT**' – were **conducted first** – these two jurisdictions deal with 90% of the civil justice workload in New South Wales. The evaluation reports have been released – they're on the Foundation's website if you would like to have a look.¹⁸
55. The review of the **District Court** was completed recently and I expect to release the findings from that review shortly.
56. Reviews of the **Supreme Court** and the **Land and Environment Court** are underway and I expect they'll be finished by the end of the year.
57. **Maureen Tangney**, the Executive Director for the Civil Justice Strategy, is speaking to you **this afternoon** about using **evidence for civil justice reform** and she'll take you through some of the things we have already learned from the Foundation's evaluations.

¹⁸ See 'Data insights in civil justice' on the Law and Justice Foundation website at <http://www.lawfoundation.net.au/ljf/app/5141D05E8AC0EF1D85258078004EC072.html> (accessed 3 June 2017).

58. At the risk of stealing a little thunder – forgive me, Maureen! – I might give you a couple of **snippets from the District Court** evaluation. Just a couple.
59. We now know that in 2015:
- 59.1. The District Court **finalised** 6,327 civil claims.
 - 59.2. Nearly **two thirds of these were tort claims**, including personal injury, professional negligence and work injuries.
 - 59.3. Almost all the **other claims** were about money, the sale of goods or services, or building disputes.
- 60.
61. We're already using the information from the Foundation's reviews to **set actions and priorities** for the Civil Justice Strategy. This information is helping us **focus our efforts** on things that will provide real benefits for people with everyday legal needs.
62. I look forward to announcing more about the strategy in the coming months.

LCCSC RESPONSE TO PRODUCTIVITY COMMISSION REPORT

63. Of course New South Wales isn't the only jurisdiction in Australia that's **taking a strong, evidence-based approach** to justice.
64. In May, the Law, Crime and Community Safety Council that supports COAG – the 'Council of Australian Governments', for our international friends – met. I was at that meeting and one of the

agreements our council made was to **work on some of the Productivity Commission's recommendations** from its report into access to justice arrangements.¹⁹

65. **New South Wales is taking the lead** on a couple of those items and I must say it's very heartening that the need for robust data and rigorous research in civil justice is being acted upon at a national level.

USING TECHNOLOGY TO IMPROVE ACCESS TO JUSTICE

66. Of course one of the ways that we can help **break down some of the barriers** to accessing the justice system is with **technology**.
67. The range of online services that we all take for granted nowadays continues to grow – whether it's registering our car, paying our bills, Skyping a far-flung friend or relative, or buying new shoes, the **opportunities to use digital services are immense**.
68. And with those opportunities come **community expectations** that services they need – including services provided by the government – will be – or at least **should be** available electronically. In our own time. At our own place. From our own device.

¹⁹ See the Law, Crime and Community Safety Council Communiqué from the meeting on 19 May 2017 at <https://www.ag.gov.au/About/CommitteesandCouncils/Law-Crime-and-Community-Safety-Council/Documents/19-May-LCCSC-Communique.pdf> (accessed 4 June 2017). The decisions about the Productivity Commission report into Access to Justice Arrangements are on pages 4 and 5 of the communiqué. The civil justice data clearinghouse is at item d) ii; the Civil Justice Evaluation Advisory Committee is at item d) iii.

The Productivity Commission's *Access to Justice Arrangements Inquiry Report* is available online from <http://www.pc.gov.au/inquiries/completed/access-justice/report> (accessed 4 June 2017).

69. The NSW Government acknowledges these community expectations, and we have made it a **State Priority** to see 70% of government transactions conducted electronically by 2019.²⁰ We want to **make it easier** for people to find and use the government services they need day-to-day.

DIGITAL SERVICES IN THE COURT SYSTEM, FOR EXAMPLE

70. The Department of Justice is making great headway with **digital services in the courts and tribunals** area, which can have a really positive impact on client-centred service delivery – **making it easier for people** to do what they need to do with the court system and with justice services more broadly.

71. Let me give you **one example**: the Online Registry.

72. Before about 2013, our courts in New South Wales **relied heavily on paper-based**, manual processes. That meant lots of travel to courthouses during business hours and lots of waiting in queues to make submissions over the counter. Does that send a shiver down your spine?

73. Well, in 2014 the Department of Justice launched the **Online Registry**. The Online Registry – and given that we now have more than 65,000 registered users, many of you may be quite familiar with it! – is an innovative response to the changing needs and expectations of our community and our legal practitioners.

²⁰ 'Better government digital services' is part of the 'Better services' State Priority. See the NSW Government website at <https://www.nsw.gov.au/improving-nsw/premiers-priorities/#better-services> (accessed 5 June 2017).

74. The Online Registry provides and **end-to-end online suite of self-services for civil cases**. And these services are accessible anywhere, any time.
75. Making these sorts of services available online is much **more convenient** than the manual processes of a few years ago, but even more than that, the **time savings** can translate to **lower costs** for the people who really need the registry's services.
76. Let me give you an idea of **some of the conveniences** that the Online Registry has delivered so far:
- 76.1. A legal practitioner can file a form like a **Statement of Claim** through the Online Registry in about **15 minutes** – down from around **five days** using the over-the-counter process.
- 76.2. Close to **6,000 forms are filed online every week**. Our record week was in March – just a couple of months ago – with 6,416 forms filed one week. Sounds a bit like 'Click Frenzy' for civil claims!²¹
- 76.3. In the first quarter of this year, almost 97%²² of Local Court civil cases that were available in Online Court had **orders granted online**. That's the equivalent of 1,725 matters for which legal practitioners didn't have to travel to and from court and then wait to have their matters heard.

²¹ This is a light-hearted reference to the annual online shopping sale in which hundreds of vendors offer significant online shopping discounts at the same time, creating a 'click frenzy'.

²² The Courts and Tribunal Services Division of the Department of Justice quotes this figure as 96.8%.

77. We're continuing to **listen to feedback** to make sure that our online forms are up-to-date and that they're providing a **quality service** for the people who need them.

TECHNOLOGY MUST BE CLIENT-CENTRED AND ACCESSIBLE

78. We **really have to listen to community feedback** when it comes to designing and rolling out services that use **technology**.
79. And we need to recognise – this is really important – that while technology makes many things **possible**, does it make those same things **desirable**? **Possibility doesn't necessarily equate with utility.**
80. We need to be certain we're offering services in the way that people who **need** those services **can in fact access** those services. Or **want** to access those services. This gets down to **basic audience analysis**, really.
81. We need **an accessible mix of service delivery channels** – online, face-to-face, over the phone. Sustainable, yes. Efficient, yes. **But above all, accessible.**
82. For example, while in the city we may think of data and connections as cheap and efficient, that's not the case everywhere. All the online services in the world aren't going to make justice more accessible for someone in a **remote part of the state** with an unstable, or slow, or – heaven forbid! – unstable **and** slow – internet connection.

CLOSING REMARKS

83. I know that we all **share a commitment to making sure justice services are people-centred**. Whether they're technology-enabled, delivered at a court or tribunal, or in the community, or over the phone, or through a myriad of possible service-delivery channels.
84. We all share a commitment to making sure that justice, and our justice system, truly **serve the people** for whom they exist. Everyone. Without exception.
85. **And you are all at the pointy end of access to justice** – of service delivery, of technology and innovation. You are the thinkers, the do-ers, the people who are providing the evidence and the data that helps us set our priorities. You are the people who are helping us understand what works, and what matters.
86. You are the ones who can make an **authentic, lasting contribution to reshaping justice**. Thank you.
87. May I say thank you to the Law and Justice Foundation for continually challenging every single one of us to incorporate quality data, and quality evidence in our work.

RESEARCH SYMPOSIUM DECLARED OPEN

88. Now, it is my great pleasure to **declare the Law and Justice Foundation Research Symposium 2017 open**.

89. I wish you an **inspiring, thought-provoking** conference. I'm certainly sorry I can't spend the entire day with you all. But alas, the state budget waits for no Attorney!
90. I do hope to see some of you again at the **Foundation's Justice Awards** in October. The Department of Justice has proudly sponsored the Aboriginal Justice Award for more than a decade²³ and I'm very much looking forward to presenting this important award for 2017.

ENDS

²³ Programs from previous years' Justice Awards, dating from 2006, are available on the Law and Justice Foundation website at http://www.lawfoundation.net.au/justice_awards/pastawardsprograms (accessed 5 June 2017). The Secretary of the Department of Justice has written to the Director of the Law and Justice Foundation confirming sponsorship of the Aboriginal Justice Award 2017. The 2017 awards ceremony is on Thursday, 19 October 2017.