

THE HON T F BATHURST
CHIEF JUSTICE OF NEW SOUTH WALES
REMARKS
OPENING OF LAW TERM JEWISH DINNER
GREAT SYNAGOGUE
WEDNESDAY 10 FEBRUARY 2016*

1. I would like to begin by respectfully acknowledging the traditional owners of the land on which we meet, the Gadigal people of the Eora nation, and pay my respects to their elders, past and present and the Elders from other communities who may be here today.
2. It is a great pleasure to have been invited to give a few remarks at this dinner. I extend my thanks to Rabbi Dr Benjamin Elton for inviting me to speak this evening. Tonight's dinner is an important opportunity for members of the legal profession and the judiciary, both Jewish and non-Jewish, to come together and share a meal; to talk and to learn more about the Jewish faith. Because of this, I will be very brief. I don't want to distract from the company, the conversation and especially the catering.
3. For the last 5 years I have attended a service at the Great Synagogue to mark the opening of the new law term. The service is an occasion to celebrate the breadth of the legal profession and, more broadly, the multicultural diversity that sits at the heart of our society. I know that many of the judges and their staff look forward to the service as an important annual event in the Court's calendar. There is always great excitement about meeting members of the community and hearing the recital of traditional prayers in such a beautiful synagogue as this.
4. The Jewish community in Australia has a long and proud history. Originally, most Jewish migrants to Australia came from Britain. But increasingly, in the 20th century, prejudice, discrimination and persecution throughout

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

mainland Europe led to many Polish, Russian and German Jews migrating to Australia. Following the horrors of the Holocaust, many persecuted Jews arrived on Australia's shores to find a new home.

5. Jewish people have made strong contributions to the Australian community. We have had a Jewish head of state, Chief Justice and head of the military. One of the most important contributions made by the Jewish community to Australian society, and what I will focus on in my remarks tonight, is in promoting multiculturalism, which I take to include mutual understanding, tolerance and respect between people from different cultures and religions.
6. Most, if not all, minority Australian communities have faced discrimination and social exclusion at some point, and many have suffered terribly. Racism, anti-Semitism and xenophobia have been persistent themes over the course of our history. Jewish people have not been immune to such discrimination and exclusion.
7. In June 1938, with the intensification of anti-semitism in Europe, Australia's representative at the Evian Conference stated that Australia would not increase its immigration quotas as "Australia does not have a racial problem and is not desirous of importing one."¹ Even after the devastation of Kristallnacht in November 1938, the Lyons government rejected a proposal to increase the immigration quota to 30,000. During the Second World War, refugees from Germany, Austria and later Hungary were labelled 'enemy aliens' and were required to report to local police, many were also interned.
8. Jews fleeing persecution during and in the aftermath of the second world war faced anti-Semitism when they arrived in Australia, with many newspapers, members of parliament and resolutions passed by pressure groups such as the Returned Services League and the Australian Natives Association encouraging the Immigration Minister, Arthur A Calwell, a

¹ Quoted in J Jupp, *The Australian People: An Encyclopedia of the Nation, Its People and Their Origins* (Cambridge University Press, 2001) at 534.

proponent of the White Australia Policy, to stem the flow of Jewish migrants.²

9. Today, while the Australian Jewish community still experiences anti-Semitism, for the most part, the community no longer faces the institutionalised racism that it has in the past. However, this acceptance has not led the Jewish community to become complacent and stand by when other groups experience discrimination. Rather, the Jewish community has used its experiences of persecution and discrimination, both abroad and in Australia, to advocate for equal and non-discriminatory treatment of disadvantaged and disenfranchised members of the Australian community. Indeed, the Jewish community in Australia has been at the forefront of many anti-racism efforts promoting multiculturalism and acceptance.
10. Even at a time when it faced intense discrimination, the Australian Jewish community played a leading role in fighting against the White Australia Policy, a series of laws and policies from 1901 to 1973 which restricted non-White immigration to Australia.
11. The Australian Jewish community has been a strong advocate for Indigenous rights and reconciliation. Notable Jewish individuals include the Jewish QC, Ron Castan, who represented Aboriginal leader, Eddie Mabo, in the celebrated High Court Mabo case. In the 1960s, my predecessor, former Chief Justice Jim Spigelman, joined Aboriginal leaders, including Charles Perkins, on freedom rides throughout Australia.
12. In a reconfirmed statement on reconciliation in 2008, the NSW Jewish Board of Deputies stated, "In Australia's multicultural society it is incumbent on us, and we willingly commit, to the creation, development and maintenance of partnerships with Australia's indigenous population based on mutual respect. ... We believe that through this sharing of knowledge and the creation of partnerships, the Jewish community can also itself learn

² See SD Rutland, 'Jewish Immigration After the Second World War "The Transformation of a Community"' (2006) available at <<http://www.ijs.org.au/Jewish-Immigration-after-the-Second-World-War/default.aspx>>.

from the laws, beliefs, traditions and teachings of Australia's indigenous population.”³

13. In addition to activism on Indigenous issues, the NSW Jewish Board of deputies has initiated, developed and run numerous interfaith and intercultural programs for high school students focusing on anti-racism and cultural exchange. The Youth Encounters program and the Respect, Understanding and Acceptance Project has brought together Jewish, Muslim, Catholic, Armenian, Greek Orthodox and state school students for interfaith exchanges with a focus on anti-racism.
14. The NSW Jewish Board of Deputies has also been at the forefront of many interfaith and intercultural projects such as the Women’s Interfaith Network and Passover Dinners for various sectors of the wider NSW community.
15. Last year, the Jewish Board of Deputies and the Australia/Israel & Jewish Affairs Council joined in 150 organisations who, in response to racism directed at Aboriginal AFL player and former Australian of the Year, Adam Goodes, called for renewed efforts to stamp out racism in sport and everyday life.
16. For my part, I have a deep respect for the Jewish community’s resilience and its consistent civic contribution that is demonstrated through this advocacy. The promotion of diversity, multiculturalism and respect for other cultures and beliefs is clearly beneficial to enhancing the wellbeing and protecting the human rights of both minority groups and all Australian citizens. Our society has been undoubtedly enriched by the unique experiences that people from other countries and cultures bring to our shores. The promotion of multiculturalism has as its core a respect for the human rights and individual liberties of citizens.
17. As a judge, one of my primary responsibilities is to promote equal treatment before the law. Principles of equal justice are fundamental to the rule of law and

³ New South Wales Jewish Board of Deputies, ‘Statement on Reconciliation, reconfirmed May 2008’ (2009) available at <<https://www.nswjbd.org/Statement-on-Reconciliation--reconfirmed-May--08/default.aspx>>.

to our democratic society. Judges must work hard to avoid capriciousness, arbitrariness and discrimination in their reasoning.

18. In his keynote address at the Legal Aid Commission Conference in 2014, Justice Stephen Rothman of the Supreme Court of New South Wales, who kindly introduced me this evening, stated, “the principle of equal justice ... must be understood as a fundamental norm of the rule of law and of democracy. Laws that are inconsistent with the norm, to the extent that they are valid, threaten the very fabric of the democracy under which we live. ... The legislature is entitled to regulate the relations between the members of society. However, in doing so, lawmakers are not entitled to treat equals unequally or persons who are relevantly unequal as equals. Judicial officers who do so are committing an error of law. Lawmakers who promulgate such inequality are acting illegitimately.”⁴

19. In its submission to the House of Representatives Inquiry into Multiculturalism in Australia in 2011, the Executive Council of Australian Jewry stated its support for a form of multiculturalism which “respects the right of all Australians to express their individual cultural identity, and to maintain and share their cultural heritage”.⁵

20. I add my support for the right of all Australians to express their individual cultural identity free from discrimination and persecution. Tonight provides an occasion to celebrate the diversity and multiculturalism that enriches our community. In many cases, antagonism and discrimination is based on a lack of understanding. Events such as tonight’s are an important element of the cross-cultural dialogue that is so essential to breaking down barriers and building a stronger multicultural society.

21. Thank you again for the invitation to speak tonight and for the opportunity it has afforded me to become better acquainted with the remarkable contributions the Jewish community has made to Australian society.

⁴ Justice Stephen Rothman, ‘Equal Justice, Mandatory Sentencing and the Rule of Law’ (Legal Aid Conference, 2 July 2014) available at http://www.supremecourt.justice.nsw.gov.au/Documents/rothman_20140702.pdf.

⁵ Executive Council of Australian Jewry, ‘Submission to Australian Parliament Joint Standing Committee on Migration, Submission No. 46’ (6 April 2011) available at [file://sydscwfp01/users\\$/sschwa0/My%20Documents/Downloads/http---www.aphref.aph.gov.au-house-committee-mig-multiculturalism-subs-sub46.pdf](file://sydscwfp01/users$/sschwa0/My%20Documents/Downloads/http---www.aphref.aph.gov.au-house-committee-mig-multiculturalism-subs-sub46.pdf).