

AFFINITY INTERCULTURAL FOUNDATION
GALA DINNER & AWARDS CEREMONY
“THE IMPORTANCE OF PUBLIC SERVICE”
ADDRESS BY THE HONOURABLE T F BATHURST
CHIEF JUSTICE OF NEW SOUTH WALES
13 March 2013

1. Distinguished guests, ladies and gentlemen, good evening. It is a privilege to have been invited to address you tonight. This inaugural Affinity Gala Dinner and Awards Ceremony provides an important opportunity to publicly acknowledge the people who dedicate themselves to improving community welfare and social harmony.*

2. I would like to start today by acknowledging the Cadigal people of the Eora nation, and paying my respects to their Elders past and present. The Aboriginal people have been custodians of this land for thousands of years. They are central to any discussion of social harmony.

3. Celebrating the contribution of others is something we do not do enough. Too often, we focus on bad news stories: on the few people who seek to undermine tolerance and diversity in our society. The vastly larger number of people who make positive contributions, above and beyond the call of duty, can be pushed into the background. I am very pleased to be taking

* I would also like to acknowledge the assistance of my Research Director Sienna Merope in preparing these remarks.

part in an event that aims to change that narrative and I congratulate Affinity Intercultural Foundation for organising this dinner.

4. It has been said that the secret to good speechmaking is simple: flatter the audience and deprecate yourself. I was lucky enough to receive an advance copy of tonight's award recipients – and don't worry Ahmet, my lips are sealed. Having read a little about the presenters and recipients, I feel my task tonight will be very easy. Each of you is extremely impressive. I, on the other hand, am the pre dinner entertainment. That means that my primary responsibility is to say nothing controversial and to finish speaking before dinner is served. I will do my best on both counts but I can't make any promises.
5. I have chosen to speak to you tonight about the importance of public service. By that I don't mean the work done by those employed within State and Federal Government bureaucracies. Rest easy, I won't be spending the next twenty minutes telling you about the important contributions of the Department of Transport. Nor I am referring to social policies developed by governments or service providers. I also do not mean the undoubtedly important contribution to society made by philanthropy. You may be starting to think this will be a particularly short keynote address.
6. What I would like to focus on tonight are the measures that can be taken by individuals, in their professional and personal capacities, to improve the

overall wellbeing of the community. In particular I would like to highlight the ongoing contribution of the legal system and legal professionals to creating a more inclusive society – one based on tolerance, respect for diversity and equality before the law – and the public service duty that underlies that work. Too often, the legal profession fails to explain the important social contribution that it makes. Instead there is a tendency to assume that its value is self evident. However, as anyone who has heard a lawyer joke recently can tell you, that is far from the case.

7. I would also like to highlight what can and should be done by lawyers, and the judicial system more broadly, to dismantle the misinformation and alienation that so often acts as a barrier to justice for minority communities.

8. However this is not a night only, or even predominantly, about the law (thank goodness I hear you say). Individuals from many different walks of life perform important public services and promote community welfare by, for example, publicising particular social issues, or donating their valuable time. Tonight's award categories are diverse, ranging from "Champion of Harmony", to Media Integrity, Youth Leadership, Inspirational Educator and Dialogue & Service. Past award recipients have hailed from a wide range of sectors, including the media, police, religion and academia. This diversity is evidence enough, if any was needed, of the ways in which individuals in every occupation can promote social harmony.

9. At the heart of public service is a commitment to helping the community in whatever way one is able to. At a personal level, individuals perform an important public service through the simple act of not only accepting the fact that we live in a diverse community, but embracing that diversity and seeking to enhance and promote it. It is in this way that a stronger and more accepting society is built.
10. Amongst the most enjoyable experiences since my appointment as Chief Justice have been my two visits to Auburn Gallipoli Mosque, to mark the Opening of Law Term. What made these visits so enjoyable and enriching was not only the warmth and hospitality with which I was received, but the evident pleasure of those who welcomed me and my fellow judges that we had visited *them* and made the effort to better understand and appreciate Muslim culture.
11. Sydney is a diverse city, both ethnically and geographically. Because of this, there is a tendency for people to remain closeted in their particular area and to view parts of the city with which they are unfamiliar not with hostility, but perhaps with suspicion borne from lack of understanding. Indeed, I know of some people who think there is something inherently dangerous in crossing the harbour bridge. Believe me, they live on both sides of the harbour.
12. Those who make an effort to become acquainted with other parts of the community not only greatly enrich their own lives, but contribute to the

public good. A willingness to see beyond one's own frame of reference and self interest, to embrace the perspectives and needs of others and to work with them to improve the wellbeing of the community has long been at the heart of social progress. It is central to Australia's continued existence as a tolerant, multicultural community.

13. This is what makes Affinity's work so important. Not only does Affinity promote the integration of the Muslim community into all aspects of civic life, but equally importantly, it gives the broader Australian public an opportunity to learn more about Islamic culture and religion, and to meet members of the Muslim community. It allows different sections of the community to ask questions of one another and discuss issues directly, rather than relying on media reports or the received wisdom of others. In this way, stereotypes are dismantled and social inclusion fostered, to the public good.

14. One of the great historical successes of this country has been its ability to integrate immigrant communities without it being a pre-condition that these new Australians lose their cultural identity. We do not seek unity through assimilation. Just as Sydney is a city of neighbourhoods, so too is Australia a nation of multicultural communities. This approach means that adaptation is not a one-way street. Rather, existing Australian society learns from and is enriched by each new wave of immigration.

15. This multicultural tradition is to be cherished, not feared or lightly sacrificed to political expediency. The attempted imposition of some form of uniform “national identity” through mechanisms like the Australian Citizenship Test is not only slightly ridiculous, but sadly ignores the great social, cultural and economic benefits that Australia has reaped from our diversity. I would also add that if knowledge of Don Bradman’s batting average had ever been a pre-condition to membership of the judiciary, court delays would be immeasurably longer than they are at present.
16. In part because of our strong multicultural tradition, the legal system and legal profession have an essential role in promoting social harmony. Yes, I’m afraid I’ve come to the legal portion of my address.
17. In a society that embraces diversity, the law is the means by which we affirm a set of shared values as a national community, and regulate the behaviour that we, as a community, deem to be unacceptable. It provides the mechanism by which individuals can peacefully mediate their differences and resolve their disputes. Importantly the legal system allows minority communities and vulnerable individuals to assert their interests and defend their rights, thereby protecting and validating their position within the Australian social and political community. These functions are essential to the protection and promotion of social harmony and inclusiveness.

18. The legal profession thus performs an essential public service in ensuring that the legal system is available, accessible and responsive to the needs and interests of all people, no matter their ethnic or cultural background, political persuasion, or socio-economic position. A commitment to this public service has long been central to Australian lawyers, many of whom have made significant professional contributions to building a fairer, more tolerant and diverse society.
19. Allow me to share a few examples. In 1838, some 130 years before Aboriginal people were counted in the census or given the vote, then Attorney General John Plunkett braved intense public condemnation to successfully prosecute seven white settlers accused of murdering a Weraerai tribe in rural NSW. The case unambiguously established that all inhabitants of the colony of NSW, whether black or white, were entitled to the full protection of the law.
20. In 1965, inspired by the American civil rights movement, a small group of university students set out on a “freedom ride” bus tour of NSW, to protest and call attention to discrimination against the Aboriginal community. Amongst their leaders was a young Jim Spigelman, who as most of you will know, went on to become Chief Justice of NSW. That same year, Gordon Samuels, later to be a Judge of the Supreme Court and Governor of NSW, provided representation to young Indigenous people who were protesting against segregation by asserting their right to go upstairs in a

cinema.¹ Some twenty-five years later, the dedicated work of a team of solicitors and barristers on the *Mabo* case contributed to finally abolishing the fiction of terra nullius in this country, righting a deep wrong against the Aboriginal people.

21. In 1950, the then deputy leader of the opposition, Dr Bert Evatt agreed to represent the Waterside Workers Federation of Australia in a High Court challenge to the constitutionality of legislation dissolving the Communist Party of Australia. Dr Evatt took the brief in the face of intense opposition by the Federal Government, the community, and his own political party. Remember this was at the height of Reds under the Beds paranoia. In doing so, Bert Evatt performed an important public service, by ensuring that even unpopular litigants have access to justice. In what is considered one of the most significant constitutional cases in Australia's history, the legislation was declared invalid by the High Court, establishing that the Federal Parliament cannot take "preventative" measures against an unpopular minority group that it unilaterally deems to be a threat to national security.

22. In 1967, the first organised pro bono initiative was set up in NSW, when the firm then known as Dawson Waldron established a roster of solicitors to attend local court and represent individuals who had been arrested for

1 See Michael Kirby AC CMG, "Honouring pro bono lawyering" (Address to Victorian Bar Pro Bono Committee http://www.vicbar.com.au/GetFile.ashx?file=VicBarNewsFiles/147_Pro%20Bono.pdf) 10

protesting against the apartheid regime.² Since that time, pro bono work has been a central component of the legal profession's contribution to promoting social inclusion and has ensured that vulnerable groups in the community are given a voice and obtain protection under the law.

23. Over the last 16 years for example, many members of the legal profession have worked tirelessly to defend the rights of refugees. This work ranges from high profile pro bono advocacy such as in the *Tampa* case, to the work done every day by volunteers at organisations such as the Refugee Advocacy and Casework Service. It is underpinned by an enduring commitment to the rule of law and to upholding the values of tolerance, due process and respect for diversity, which are sometimes sidelined in the maelstrom that is political life.

24. My aim in highlighting some of the important work done by lawyers to protect the rights of minority groups is not to blow the legal profession's proverbial horn. That's just an added bonus. In all seriousness though, I do not think that the public service contribution made by lawyers is proof of some abiding altruism. Many lawyers, just like many people in other professions, are altruistic, and there is no doubt that altruism plays an essential role in an individual's decision to donate their time and energy to benefit the community. However, in the case of the legal profession, contribution to public service is also reflective of the *duty* that lawyers have to promote access to justice and to protect the rights of all persons.

² Maria Twomey and John Corker, "Pro Bono at Work: Report on the Pro Bono Legal Work of 25 Large Australian Law Firms" (2008) 11(2) *Legal Ethics* 255.

25. I emphasise the word duty. American scholar Roscoe Pound once defined a profession as “*a group pursuing a learned art as a common calling in the spirit of public service – no less a public service because it may incidentally be a means of livelihood.*”³ Now, it is probably uncontroversial to admit that making a livelihood is more than merely incidental to most people in the legal profession – or any profession for that matter. However, that does not take away from the duty attaching to all lawyers, by virtue of their membership of the profession, to contribute to the public good.

26. Study in the law brings with it an understanding of the fundamental values that guide Australian society. It also places legal graduates in a privileged position, by equipping them with the knowledge and skills to play a positive role in the lives of others. On joining the legal profession, lawyers pledge to uphold the central tenets of the legal system: equality, justice, due process, and the rule of law. This brings with it a duty to perform work that will promote and protect these very values. As former Chief Justice of Australia Murray Gleeson has said, the obligation on lawyers to undertake pro bono work is one of the things that distinguishes the profession of law from simply being a business.⁴

27. The examples I gave earlier demonstrate that this duty is generally taken seriously. It is also worth emphasising that pro bono work is not the

3 Roscoe Pound, *The Lawyer from Antiquity to Modern Times* (1953) p 5 cited by Justice Allsop in “Professionalism and commercialism – conflict or harmony in modern legal practice?” (5 May 2009).

4 The Hon Murray Gleeson, “National Access to Justice and Pro Bono Conference” (11 August 2006).

preserve of a few. Over ninety-five percent of large law firms have a formal pro bono policy for example,⁵ and in rural and suburban areas, voluntary services are often provided par de course. Last financial year, 32 firms provided more than 343,000 hours of pro bono work.⁶ Of course these figures mask the small percentage of billable hours that pro bono work makes up for many firms.⁷ Nonetheless the public service performed through such programs is not mere tokenism, and makes an important contribution to community welfare.

28. The role of the legal profession in serving the community and promoting tolerance and diversity should be celebrated. However, lawyers also can and should do more to promote social inclusion and access to justice. Individual pro bono work today generally focuses on providing free legal services to those who cannot afford representation, and on strategic litigation that can have a significant impact on a particular group's substantive rights. However, there are many other systemic issues impeding access to justice that receive far less attention.

29. I would like to focus on one such issue in the time I have remaining, namely the impact that misunderstandings about, and alienation from, the legal system can have on access to justice, particularly for minority groups. It is an area in which the legal profession can, and should, perform

5 Maria Twomey and John Corker, "Pro Bono at Work: Report on the Pro Bono Legal Work of 25 Large Australian Law Firms" supra at 257.

6 National Pro Bono Resource Centre, "National Law Firm Pro Bono Survey" (Final Report, January 2003) p. 11.

7 The median percentage of total practice income represented by pro bono hours in large firms is between 1.1% to 1.5%. See Maria Twomey and John Corker, "Pro Bono at Work: Report on the Pro Bono Legal Work of 25 Large Australian Law Firms" supra at 258

an important public service, by better explaining the operation of the legal system and the protections offered by the law. This public service duty stems from lawyers' commitment to uphold and protect the rule of law.

30. Ultimately, the rule of law depends on the legal system being accessible in a practical way, and having legitimacy and relevance, in the eyes of all members of the community. This means that for the law to fulfil its role in promoting social harmony – that is, promoting peaceful relations between individuals and communities based on tolerance, protection of individual rights and the rule of law – all Australian citizens should both understand and feel that they have a stake in the legal system.

31. Unfortunately, the reality is that for many people, the law is seen as a remote and vaguely oppressive instrument to be used by the powerful, rather than as a system that can assist to protect their own rights and interests. Often this is because individuals lack the understanding that is necessary to make the law accessible. By this I don't mean that the community needs a detailed understanding of each provision of the *Crimes Act* or of how to bring an action under the *Trees (Disputes between Neighbours) Act* – and yes that really is a stand-alone piece of legislation.

32. Rather, I am referring to a lack of understanding by individuals of fundamental issues such as their civil rights if they are arrested; how laws are enforced; the existence of legal remedies if they are discriminated

against; the mechanisms available to challenge the actions of agencies such as Centrelink or state housing; or how to make a complaint against the police. Without appropriate information from community legal centres, or other outreach services – many of which perform essential work in this respect - the very notion that recourse to the law is available may seem unfamiliar.

33. In addition, some minority groups in the community may have an understandable distrust of authority, stemming from historical experiences. Most Australian citizens expect the law to be applied fairly and impartially. We expect our rights to be protected, even if the person making a decision in our case is of a different cultural background, religion, or political persuasion. We have this expectation even if we have never had anything to do with the legal system, because we have a deeply ingrained understanding that we live in a country that respects the rule of law.

34. Some minority groups, for example newly arrived migrants and refugees, may have entirely different expectations. The experiences of their families, friends and communities may have taught them to fear representatives of legal authority, to expect that the law will be applied corruptly, or to think that the law preferences certain ethnic, religious or political groups. Members of the indigenous community may harbour a similar distrust, due to past history of dispossession and discrimination.

35. This unfamiliarity and suspicion can fuel a sense of disenfranchisement amongst certain groups: a view that the law is something made and administered far away, and irrelevant to their lives except as a potential source of coercion. In those circumstances, while pro bono programs may make access to legal advice and the courts economically possible, they may not be sufficient to ensure access to justice in a practical sense.
36. As I mentioned a moment ago, community legal centres and other public interest law programs do extremely important work in ensuring that disadvantaged or minority groups understand the legal system and their rights within it. However, more can be done. Promoting this essential knowledge in the community is a public service that all lawyers should perform, as part of their professional duty to uphold and protect the rule of law.
37. This may involve addressing misinformation and disenfranchisement when planning and undertaking pro bono work. More generally, it also in my view, requires the legal profession to play an active public role in explaining the operation of the legal system, so that people from different cultural backgrounds are more aware that we are there to serve them, and that they will be treated impartially and justly before the law. Willingness to become familiar with the culture, perspectives and needs of other groups within the community is a necessary first step in performing this service.

38. The duty that attaches to the legal profession in this respect applies equally to the institutions of justice, including the courts. Community participation in the judicial system is essential in this respect. Evidence shows that the more individuals know about the operation of the judicial system, for example through having served on a jury, the more they trust in it.⁸ Programs that familiarise the community with the courts are therefore extremely valuable. In 2012 the Judicial Commission ran a seven week “Community Awareness of the Judiciary Program”, in which community leaders took part in a range of lectures, discussions and hypothetical exercises, aimed at providing them with a better understanding of the work done by judges. Not all members of the community can access such programs, but those that do in turn act as ambassadors, spreading the information they have gained about the legal system to their friends, families and extended networks.

39. Judges also can and should speak out more, to explain the operation of the legal system to the community and the work that they do. Far from the popular stereotype of life in an ivory tower, judges have direct exposure to a wide range of social issues and to people from every cultural and socio-economic background. Overwhelmingly, the judiciary is highly aware of the difficulties that certain minority groups may face in accessing justice, and takes cross-cultural understanding extremely seriously. For example, judges regularly use bench books to provide them with practical

⁸ Jones and Weatherburn and McFarlane, ‘Public Confidence in the NSW criminal justice system’ (Crime and Justice Bulletin No 118, NSW Bureau of Crime Statistics and Research, August 2008) 9, 14; O’Brien et al, ‘Factors Affecting Juror Satisfaction and Confidence in NSW, Victoria and South Australia’ (Trends and Issues in Crime and Criminal Justice No 354, Australian Institute of Criminology, April 2008) 1, 4-5.

information on issues facing litigants from culturally diverse backgrounds, or with particular religious affiliations. Initiatives such as the long running Ngara Yura Aboriginal Cultural Awareness Program, which involves judicial officers visiting Aboriginal communities in NSW to learn directly about current social and cultural issues, is another example of this commitment.

40. The increasing diversity of the legal profession is cause for great celebration. One of the most satisfying features of current admissions ceremonies for lawyers, over which I preside, is the huge diversity both ethnically and culturally of new admittees. I only wish I could speak an extra thirty odd languages, in order to do justice to the pronunciation of their names.

41. In due course, the judiciary will inevitably reflect this diversity. But even now, when it does not, these newly admitted lawyers play a significant role in ensuring that cases involving members of their communities will be dealt with not only fairly and impartially, but also with ever increasing cultural sensitivity. Making the community more aware of that fact, and of the underlying truth that the legal system is there to serve *them*, is an important aspect of improving access to justice in a practical sense. In turn, this will promote social harmony, to the benefit of us all.

42. Finally, I would simply add that it is not only lawyers who can promote community awareness of the legal system, just as it is not only teachers

who can advocate for the role of education in social inclusion, or the police force who can explain the role community policing programs play in promoting social harmony. Each of us, whatever our occupation, can play a role in promoting activities that enhance tolerance and diversity in our community, and in explaining their benefits. Events like tonight's are therefore valuable not only as a celebration of social inclusion, but as an opportunity to learn from one another about the contributions being made across a diverse range of fields.

43. Equally importantly, each of us can perform an important public service by not only respecting diversity, but reaching out to others with different ethnic, linguistic, or religious backgrounds and learning from them. It may seem a small action, but it enriches us personally and it is through many such small actions that social harmony is promoted and the rich multicultural fabric of our society maintained.

44. It remains only for me to offer my sincerest congratulations to Affinity for organising this event and my pre-emptive congratulations to the award recipients. Thank you to each of you for being here tonight, and thank you for the important work that you do.