Judicial Council on Cultural Diversity

Cultural Diversity and the Law Conference

Access to Justice in Multicultural Australia

by

The Honourable Wayne Martin AC
Chief Justice of Western Australia

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Cultural Diversity and the Law Conference - Access to Justice in Multicultural Australia[1]

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Introduction

I am greatly honoured to have been invited to address this conference dealing with the important topic of cultural diversity and the law. This conference will address the ways in which we might improve access to justice for all members of a society which I believe has become much better at recognising and celebrating cultural diversity.

Acknowledgement

Given the theme of this conference, it is more than usually important that I commence by acknowledging the traditional owners of the lands on which we meet, the Gadigal people of the Eora nation and to pay my respects to their Elders past and present and acknowledge their continuing stewardship of these lands. I will touch upon the particular needs and interests of Aboriginal and Torres Strait Islander people in relation to our justice system later in this paper.

Disclaimer

It is typical of lawyers to preface any remarks with a disclaimer, and I propose to follow that practice with what might be seen as more of a confession than a disclaimer. As my friend Justice Stephen

[1] I am indebted to Dr Jeannine Purdy for her very considerable assistance in the preparation of this paper, although responsibility for the opinions expressed, and any errors, is mine.

Rothman AM recently pointed out with characteristic good humour, I am singularly ill qualified to address this topic. As he recently observed:

> with very few exceptions, in Australia, white Anglo-Saxon heterosexual males have no understanding of discrimination. Even the exceptions understand it from an observer's perspective; not from personal experience.[2]

A friend who is younger, dark skinned and female recently described me as a "pale, stale male", referring to characteristics of age, gender and ethnicity, which I share with a majority of Australia's judiciary. Although Australia's judiciary is a more diverse group than it once was, the age, gender and cultural characteristics of Australia's judiciary remain quite different to those of the community generally. An older age profile is understandable, but differences in gender and cultural background are more difficult to justify and explain, given that women have comprised a majority of graduates from our law schools for many decades now, and the cultural profile of our law graduates has moved closer to the cultural profile of our community.

The lack of personal experience of discrimination and cultural disadvantage which I exemplify and which is characteristic of the majority of Australia's judiciary makes it all the more important for us to listen to and learn from those who have first-hand experience of these issues, in order that we might broaden our attitudes and outlook,

[2] The Hon Justice S Rothman AM, "Equal Justice, Mandatory Sentencing and the Rule of Law" (Legal Aid Commission Conference, 2 July 2014) 2.

improve our processes and procedures to better serve the multicultural society in which we live, and put systems of education and training in place which will improve understanding of these issues across the judiciary as a whole. These are issues to which I will return.

Access to Justice and the Rule of Law

The rule of law has become more than usually topical this year because of the commemorations associated with the 800th anniversary of the execution of Magna Carta by a reluctant King attempting to quell a rebellion by Earls and Barons dissatisfied with his approach to the governance of the realm. Of course, in 1215 democracy had not made its way from ancient Greece and Rome to Western Europe, so the truculent nobles turned to the rule of law in order to moderate the omnipotence of the monarch. It seems fair to infer that they had confidence in the capacity of the rule of law to protect them from despotism and tyranny. It also seems fair to infer that they understood the extent to which the rule of law depended upon practical access to justice (although it seems unlikely that they would have put it in quite those terms), given the provisions in the charter relating to the frequency with which courts would be convened in every county, the qualities required of those appointed to discharge judicial office, and the provision which prohibited the monarch from selling, denying or delaying justice.[3] It is pertinent to note that at least some of the tension which gave rise to the Great Charter arose from what we would today describe as the multicultural character of medieval

[3] Magna Carta (1215) clauses (18), (40), (45).

England following the French invasion in 1066, and concerns that nobles of French origin or culture were having too great an influence on the King.

The rule of law and the importance of practical access to justice for all remain as important today as they were 800 years ago when the nobles forced King John to acknowledge them. They find contemporary reflection in many ways, including the oath taken by judicial officers around Australia at the time of their appointment, under which we promise to "do right to all manner of people … without fear or favour, affection or ill will". This conference provides us with an opportunity to consider the various ways in which we might improve the delivery of justice to "all manner of people".

The report card shows room for improvement

As I have already observed, Australia's judiciary are not well equipped to personally assess the extent to which we are adequately serving "all manner of people" within our community. One way of attempting to assess the way in which courts are seen by the community we serve is through social surveys of that community, and of particular groups within that community, such as those who have migrated to this country.[4] Those surveys have consistently shown that those who have migrated to Australia tend to have greater confidence in police than in the courts.[5] That conclusion appears to me (as a judge) to be

[4] Such as those conducted by Monash University on behalf of the Scanlon Foundation.
[5] For example the 2014 Scanlon Foundation survey found 83% were positive towards police and 71% were positive towards courts; the 2014 Australian National University (ANU) Poll reported

counter-intuitive. Surveys also show that migrants who arrived in Australia more than 10 years ago have less confidence in the courts of this country than those who arrived more recently. The data does not enable any meaningful conclusions to be drawn in relation to the reasons for these views. However, the surveys suggest that, at the very least, there is significant room for improvement in relation to the information provided to migrants, and perhaps the public generally, about the practical operation of our courts and the reasons which motivate our processes and procedures.

As far as I am aware, there is no equivalent survey data reporting the confidence which Australians of Aboriginal and Torres Strait Islander backgrounds have in our courts. However, for obvious reasons I think it would be naively optimistic in the extreme to believe that this cultural grouping has any greater confidence in the courts than migrants to Australia.[6]

The significance of multiculturalism

Changes in the cultural demography of Australian society have been addressed by the speakers who preceded me at this conference and will be evident to anybody who has lived in Australia over the last few

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79% and 50% respectively (Prof Andrew Markus, *Mapping Social Cohesion: The Scanlon Foundations Surveys 2014* (2014) 35.

[6] As noted in the Judicial Council on Cultural Diversity submission (29 November 2013) to the Productivity Commission's Access to Justice Arrangements inquiry:

> Aboriginal and Torres Strait Islanders have a complex relationship with the law, regrettably grounded in a history of violence and dispossession. The imposition of colonial law and the dismantling of Indigenous 'Lore' has resulted in significant mistrust of the legal system by many within Indigenous communities across the country.

The submission is available at: www.pc.gov.au/__data/assets/pdf_file/0018/130617/sub120-access-justice.pdf

decades. It is therefore unnecessary for me to dwell upon the statistics relating to demographic changes which have occurred over that period. However, as it is common for those changes to include reference to statistics showing the percentage of Australian residents who were born overseas,[7] I wish to express a few words of caution as to the conclusions which might be drawn from a view of those statistics in isolation.

First, the countries which provide the largest proportion of Australians born overseas are the United Kingdom and New Zealand, which together provide just under 30% of all such Australians.[8] When account is taken of migrants from other English speaking countries, it is likely that one-third or more Australians who were born overseas speak English as their first language and come from a culture which is not markedly different to the dominant culture of Australia.

Second, statistics based upon people born overseas obviously do not identify Aboriginal Australians, whose cultures are, almost certainly, the longest unbroken cultures on the planet and are markedly different from the culture brought by the colonists and which has become dominant. For those of us of non-Aboriginal descent, statistics drawn from those who were born overseas only serve to distinguish between those who were born overseas and those whose parents or earlier ancestors were born overseas.

[7] See, for example, Australian Bureau of Statistics, 2071.0 Reflecting a Nation: Stories from the 2011 Census, 2012-13, "Cultural Diversity in Australia".
[8] Ibid.

Third, statistics which identify the size of a group by comparison to the size of the community as a whole do not necessarily provide a reliable guide to the significance or magnitude of the issues pertaining to that group. So, for example, it is relevant to the topics addressed by this conference that in Western Australia, although Aboriginal people comprise only approximately 3.5% of the population, they make up 40% of the adult prison population and between 75% and 80% of those in juvenile detention.

The nature of equality

Understandably, discourse on the manner in which the law and the courts respond to a particular class or group within our society is often replete with reference to equality of treatment. Both the courts and community regard equality before the law as a principle of paramount importance. As French CJ, Crennan and Kiefel JJ observed:

> "Equal justice" embodies the norm expressed in the term "equality before the law". It is an aspect of the rule of law. It was characterised by Kelsen as "the principle of legality, or lawfulness, which is immanent in every legal order". It has been called "the starting point of all other liberties".[9]

However, equality can be an elusive notion. It can lie, like beauty, in the eye of the beholder. It can and often does mean different things to different people and it seems likely that lawyers and judges apply a

[9] ***Green v The Queen; Quinn v The Queen*** [2011] HCA 49; 244 CLR 462 [28].

meaning to the term which is rather different to that applied by sociologists.

Formal equality

When lawyers and judges refer to equality, they apply the notion of formal equality attributed to Aristotle - that "things that are alike should be treated alike, while things that are unalike should be treated unalike in proportion to their unalikeness".[10] In legal terms, this:

> requires, so far as the law permits, that like cases be treated alike. Equal justice according to law also requires, where the law permits, differential treatment of persons according to differences between them relevant to the scope, purpose and subject matter of the law. As Gaudron, Gummow and Hayne JJ said in ***Wong v The Queen***:
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> > Equal justice requires identity of outcome in cases that are ***relevantly*** identical. It requires ***different*** outcomes in cases that are different in some relevant respect. [emphasis in original][11]

So, application of the legal principle of equality depends critically and fundamentally upon the identification of all the characteristics that are relevant to the legal outcome. In ***Bugmy v The Queen***[12] the High Court confirmed that Aboriginality was irrelevant to the sentencing

[10] Aristotle, *Ethica Nichomacea* (Trans WD Ross) (1925) Book 3 at 1131a-1131b, as summarised by Prof Peter Weston, "The Empty Idea of Equality" (1982) 95(3) *Harvard Law Review* 537, 543.
[11] Per French CJ, Crennan and Kiefel JJ in ***Green v The Queen,*** n 8.
[12] [2013] HCA 37; 249 CLR 571.

process, although circumstances of social deprivation often associated with remote Aboriginal communities were relevant to that process. So, applying Aristotle's notion of formal equality does not require Aboriginal offenders to be sentenced differently to non-Aboriginal offenders, but it does require offenders who have suffered extreme social deprivation to be sentenced differently to those who have not experienced such circumstances, and it requires all those who have suffered such experiences to be treated alike, irrespective of whether or not they are Aboriginal.

Substantive equality

On the other hand, sociologists are more inclined to assess the outcomes of any process for the purpose of ascertaining whether the process provides substantive equality to all who are subjected to it. As Professor Catharine MacKinnon has pointed out in the field of gender equality, even though most western democracies have had laws prohibiting discrimination on the ground of gender (in the legal sense) for many decades now, women in those societies remain significantly under-represented in most areas of leadership. This suggests that the structures and processes which allocate leadership roles within those societies disadvantage women and to that extent do not provide substantive equality to women. A sociologist might take the same view of a justice system in which 40% of the prison population come from 3.5% of the general population. A lawyer and a sociologist might well arrive at different conclusions as to whether the justice system is treating that group equally.

When is culture legally relevant?

Because the legal notion of equality turns upon the identification of characteristics that are "relevant" to the legal outcome, there have been cases in which attention has been given to the question of whether a person's cultural background is "relevant" in this sense. One of those cases is ***Bugmy*** to which I have already referred. Another is ***Masciantonio v The Queen***,[13] where the High Court considered the principles applicable to the defence of provocation, which if not excluded by the prosecution, means that the accused is not guilty of murder but guilty of manslaughter. Provocation has two components - the first relating to the nature of the conduct which is said to have provoked the accused, and the second relating to the loss of self-control by the accused. It is well established in Australia that the second limb requires an objective test to be applied by reference to the likely reaction of an "ordinary person", and that the only personal characteristic which can be attributed to that hypothetical person is age. In that context, McHugh J considered that in addition to the characteristic of age, the characteristics of race, culture and background should be attributed to the hypothetical "ordinary person". In his view:

> Without incorporating those characteristics, the law of provocation is likely to result in discrimination and injustice. In a multicultural society such as Australia, the notion of an ordinary person is pure fiction. Worse still, its invocation in

[13] [1995] HCA 67; 183 CLR 58.

> cases heard by juries of predominantly Anglo-Saxon-Celtic origin almost certainly results in the accused being judged by the standard of self-control attributed to a middle class Australian of Anglo-Saxon-Celtic heritage, that being the stereotype of the ordinary person with which the jurors are most familiar.
>
> … unless the ethnic or cultural background of the accused is attributed to the ordinary person, the objective test of self-control results in inequality before the law. Real equality before the law cannot exist when ethnic or cultural minorities are convicted or acquitted of murder according to a standard that reflects the values of the dominant class but does not reflect the values of those minorities.
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> If it is objected that this will result in one law of provocation for one class of persons and another law for a different class, I would answer that that must be the natural consequence of true equality before the law in a multicultural society when the criterion of criminal liability is made to depend upon objective standards of personhood.[14]

This approach raises interesting and difficult questions. If cultural background is relevant to the legal outcomes, is the law condoning cultural characteristics which might be regarded as improper, such as the subordination of females? Do laws of that character discriminate

[14] Ibid, 73, 74.

against victims from that cultural background, by providing them with unequal protection against offences?

The difficulties inherent in these issues are neatly illustrated by differing views expressed with respect to the decision of the High Court in ***Moffa v The Queen***,[15] which was also a case concerning provocation, in which the High Court recognised that ethnic and cultural background could be taken into account in assessing the first limb of the defence - namely, the limb concerned with the character of the provoking conduct. Justice Michael Kirby commented favourably on the decision extracurially.[16] However, others were less laudatory:

> In Moffa's case, an Italian male was partly excused for the killing of his wife because of his ethnically linked hot bloodedness.[17]

Associate Professor Bird condemns the decision because it embeds "stereotypes in the law which are profoundly racist" and also because the "inclusion of male versions of ethnic characteristics and belief systems into a structure that is already male further disadvantages women".[18]

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[15] [1977] HCA 14; 138 CLR 601.
[16] The Hon Justice M D Kirby "The 'Reasonable Man' in Multicultural Australia" (Ethnic Communities Council of Tasmania, Cultural Awareness Seminar, Hobart, 28 July 1982) 7, 8.
[17] Associate Professor Greta Bird "Power politics and the location of 'the other' in multicultural Australia" (1995) 5.
[18] Ibid.

Is the legal system monocultural?

The interesting issue which we have just considered in the context of provocation raises a broader issue with respect to the extent to which the substantive law administered by a legal system must be monocultural, or whether the law can and should apply legal standards drawn from the culture of the participants in the legal process. Taking that issue one step further raises the question of whether more than one legal order can inhabit the same physical territory. In Australia that further question has been considered in the context of the recognition of Aboriginal customary law,[19] and on each such occasion the notion of pluralistic legal systems existing alongside each other has been rejected. However, there are other jurisdictions in which pluralistic legal systems are well established, such as those countries in which a system of religious courts operates alongside a system of secular courts, often with co-extensive or at least overlapping jurisdiction, and it is to be remembered that a system of ecclesiastical courts operating alongside secular courts was well established in medieval England.

Associate Professor Luke McNamara has suggested that Australia's embrace of multiculturalism as official government policy has not been associated with any significant impact upon Australia's laws or legal institutions. He refers to the gap between a polyethnic

[19] See, for example, Australian Law Reform Commission, *Recognition of Aboriginal Customary Law* (Report No 31, 1986); Law Reform Commission of Western Australia, *Aboriginal Customary Laws* (2006).

population and a monocultural legal system.[20] He cites Alastair Davidson, who observed:

> It is not flippant to say that a multicultural Australia incorporated souvlaki and dragon dances, but not the legal, political and ethical voices of its myriad NESB [non English speaking background] newcomers … [I]n the realm of legal and political arrangements … the monocultural Anglo-Celtic past did not disappear when multiculturalism became state policy in Australia.[21]

These are difficult questions. The point made by McHugh J in his *cri de couer* in ***Masciantonio*** and by those who propose that multiculturalism should bring about change in substance, not just in form, are well made. On the other hand, Associate Professor Bird's observations with respect to the risk of cultural stereotyping and the entrenchment of gender disadvantage, and the risk that a law which takes account of cultural background might discriminate against victims from that cultural background are also powerful considerations. These are important issue of public policy which I respectfully suggest might attract the attention of the legislature. However, unless and until there is legislative change, legal recognition of cultural diversity can only be accommodated through the common law. The common law of Australia has and will continue to change

[20] L McNamara, "'Equality before the law' in polyethnic societies: the construction of normative criminal law standards" (2004) 11(2) *Murdoch University Electronic Journal of Law* 18.
[21] Ibid, citing A Davidson, "Multiculturalism and citizenship: silencing the migrant voice" (1997) 18(2) *Journal of Intercultural Studies* 77, 77, 82.

over time, in response to changing social conditions including the impact on Australian society of different cultures and ethnic groups.[22] While the evolution of the common law is iterative, it is also limited: legal pluralism - the substantive recognition of other legal systems as law in Australia - is simply a "bridge too far" and must appropriately remain a matter for the legislatures and not the courts.

The Judicial Council on Cultural Diversity

No doubt the reason I have been asked to address this conference despite my monocultural background is that I have the honour to represent the Council of Chief Justices as the inaugural Chair of the Judicial Council on Cultural Diversity (the Council). The Council was formed under the auspices of the Council of Chief Justices at the suggestion of the Migration Council of Australia (MCA), which generously provides secretariat resources and support to the Council, although the Council remains independent of the MCA and reports to the Council of Chief Justices.

Essentially the Council is an independent body established to provide advice and recommendations for the assistance of Australian courts, judicial officers and administrators, and judicial educators to enable us to respond positively to evolving community needs arising from Australia's increasing cultural diversity.

The Council comprises judicial officers from all Australian geographical jurisdictions and all levels of court. Unlike me, many of

[22] See Australian Law Reform Commission, *Multiculturalism and the Law* (Report No 57, 1992) 187.

the judicial officers serving on the Council come from diverse cultural backgrounds. Those resources are augmented by additional members with particular expertise and experience in issues associated with cultural diversity. It is important to emphasise that the Council's area of interest is not restricted to cultural diversity arising from recent migration, but extends to and includes the issues associated with the cultural diversity of Aboriginal and Torres Strait Islander communities, being issues which have a profound effect upon the justice systems of this country. To that end, the Council also has a member of Aboriginal cultural background, and has amongst its membership a number of judicial officers who, like me, have a particular interest in this topic. The Council first met by teleconference in March 2014, and since then has met face to face on three occasions, the most recent being yesterday.

Access to Justice Arrangements Submission

The first major task undertaken by the Council was the preparation of a submission to the Productivity Commission's Inquiry into Access to Justice Arrangements. The recommendations made in that submission provide a convenient illustration of the issues which the Council considers and hopes to address. Those recommendations were:

- That a comprehensive survey of CALD[23] community attitudes, knowledge and barriers to the civil legal system be undertaken to identify priority areas for courts and other components of the system.

[23] Culturally and linguistically diverse (CALD).

- That linkages are built with Indigenous and migrant organisations to enable ongoing consultation.
- That a toolkit for community engagement be developed to help courts orient themselves outwards, to include all CALD communities, through outreach and consultation programmes.
- That a range of resources in languages other than English be developed and widely distributed within CALD communities, to explain the role and processes of the courts. Specific attention should be given to the development of language resources for Indigenous communities, including material reflective of Aboriginal English, and Aboriginal culture and practices.
- That an analysis be undertaken of the cost of interpreting services and its impact on access to justice.
- That training programmes be developed and delivered to court staff and legal service providers to assist them to recognise the particular needs of court users from CALD communities, and facilitate their referral to agencies with the skills and resources to assist in meeting those needs.
- That a series of round table events be conducted to consult with community leaders on the accessibility of the courts, covering barriers to access and the actions required to overcome them.
- That settlement services include programmes to introduce new migrants to the legal system and to provide an overview of how the rule of law operates in Australia.
- That consideration be given to ensuring all courts are adequately resourced to adopt case management approaches that can be tailored to the needs of CALD litigants.
- That national diversity protocols covering uniform interpreter practices, and referrals to support services, be developed for courts.
- That special legal interpreting qualifications be introduced.
- That court specific interpreter protocols be adopted for contracting, engaging, selecting, briefing and assisting interpreters to remove the disadvantage experienced by many CALD court users.

- That cultural awareness and competency programmes, particularly addressing attitudes and bias, be developed for courts and their staff.
- That a cultural diversity curriculum be developed for judicial officers in alignment with the National Judicial College of Australia's standards.
- That a national bench book on cultural diversity be developed as a readily accessible guide to the kinds of issues that may need consideration by judicial officers to ensure a fair trial for CALD litigants.

The Council's work plan

The Council has drawn its work plan from amongst these proposals, having regard to the priorities which it attaches to those proposals and its own limited resources. That work plan includes the following topics.

Scoping study of existing resources

A survey has been conducted of all Australian jurisdictions aimed at identifying the systems, resources and information available to assist court users from culturally diverse backgrounds. A draft of the study is under current review by the Council. When its terms are settled, which I hope will be over the new few months, it will be made publicly available through the website of the Council, and of course, any jurisdiction will be free to provide a link to that resource from its own website.

Survey of community attitudes to the courts

I have referred already to the disturbing results of previous surveys which suggest that levels of confidence within migrant communities in Australian courts are not as high as they might be. In order to provide further information with respect to these issues, it is hoped to gather data with respect to user satisfaction levels from surveys conducted by courts, and to conduct an external survey of attitudes to the court system (resources permitting).

National protocol for interpreters

The Council is pursuing a project aimed at the development of a national protocol relating to the use of interpreters in courts and, to that end, has secured the assistance of a retired judicial officer with extensive experience in this field, and an expert in the area of translation and interpretation. It has been noted that there are significant jurisdictional differences in relation to practices with respect to the use of interpreters in courts, and that greater national uniformity would be desirable. It is anticipated that the protocol will cover the steps which are taken in order to identify circumstances in which an interpreter will be required, the minimum standards which must be met by interpreters who are to be used by the courts, the development of guidelines relating to conflicts of interest, and the development of a best practice protocol in relation to the provision of support and assistance to the interpreters who are engaged to interpret in court. The project will also consider the feasibility of introducing a specialist qualification for court interpreters.

A national bench book

A number of jurisdictions already have bench books dealing with equality before the law.[24] Those bench books are jurisdiction specific, in the sense that they address the particular laws and practices in the relevant jurisdiction. It is neither feasible nor desirable to produce a national bench book dealing with the particular laws of each jurisdiction. However, the Council considers that there would be considerable benefit in the development of a national bench book providing information for judicial officers and others engaged in the justice system with respect to the many cultures and communities represented in contemporary Australia, providing links to sources of more detailed information on any particular culture or community.

Education

For the reasons I developed earlier, the Council considers it important to develop curricula for continuing professional development for judicial officers around Australia aimed at broadening their knowledge and appreciation of the issues associated with cultural diversity. The National Judicial College of Australia has already developed a curriculum relating to professional competency with respect to Aboriginal and Torres Strait Islander communities, and has promoted programmes in that field. This could also provide a useful model for programmes aimed at other cultures. The Council also considers it would be highly desirable to develop similar programmes for court

[24] New South Wales, Queensland and Western Australia.

staff, who often serve as the point of contact for court users and whose awareness and sensitivity can have a profound impact upon the court user's experience. We will be promoting the development of an online teaching programme developed by the Family Court for use by all Australian courts in two forms - one designed for court staff and the other designed for judicial officers.

A cultural diversity champion within each court

On behalf of the Council I have requested each head of jurisdiction in Australia to nominate a member of that court to serve, in effect, as the champion of cultural diversity issues within that court, and as the point of interface between the Council and that court. Once nominations have been received, we will have a network of judicial officers from each court around Australia through which the Council can receive and disseminate information relevant to its work.

The particular needs of CALD women

I am very pleased to report that the Council will work with the MCA in the delivery of a project focused at identifying the particular needs of women from CALD backgrounds in connection with the Australian court system, using funds recently provided through a grant from the Commonwealth government. In the course of the project we hope to consult closely with women from such communities, and to develop a national framework for use across Australian courts dealing with guidelines, protocols and training. The topics that will be addressed are not constrained and will be informed by our consultations, but will

certainly include family violence and the impact which cultural issues can have at a time of family breakdown.[25] I do not propose to enter upon the topic of whether family violence is more endemic to migrant and Aboriginal cultures than to the dominant culture. There is a credible view in relation to migrant communities, for example, that media reporting of family violence within those communities tends to emphasise the cultural background of the offender and victim, thereby creating a false impression of the nature of the problem and which might obscure any systemic failure to ensure the safety and wellbeing of migrant women.[26] What is I think clear beyond argument is that the victims of family violence from CALD backgrounds experience greater difficulty in accessing the courts and other systems available for their protection because of language difficulties and a lack of information with respect to our legal system and the assistance which might be available to them.

This is a very exciting project through which I hope we can make a difference to the practical assistance available to women from culturally diverse backgrounds when their lives intersect with our court systems.

[25] Building upon important work done by the Family Law Council in its report *Improving the family law system for clients from culturally and linguistically diverse backgrounds* (February 2012).

[26] See, for example, the article by Joumanah El Matrah, Executive Director, Australian Muslim Women's Centre for Human Rights, "Misrepresenting migrant violence", The Drum, ABC online (29 October 2012).

The particular needs of Aboriginal and Torres Strait Islanders

I have written and spoken at length about the issues associated with the gross over-representation of Aboriginal and Torres Strait Islander people within the criminal justice system of our country. Those issues are complex and multifaceted and cannot be addressed to any meaningful extent in the time available for this paper.

However, it may be pertinent to observe that the history of violence, dispossession and social exclusion which I believe has contributed to the over-representation of Aboriginal people amongst the most marginalised and disadvantaged group within our community may also be characteristic of the histories of some migrant groups coming to this country and might be expected to generate similar consequences.

I would also note that although, understandably, most attention is directed to the particular needs of Aboriginal people who intersect with the criminal justice system, it is important not to overlook the particular needs of Aboriginal people in relation to civil justice. Those needs have been well identified by the Indigenous Legal Needs Project, which has surveyed and reported upon the particular needs of Aboriginal people in relation to civil justice in a number of jurisdictions, including New South Wales, the Northern Territory, Victoria, Queensland and Western Australia.[27] The report of the Family Law Council to which I have referred has also drawn attention

[27] Indigenous Legal Needs Project (ILNP) (James Cook University), "ILNP Reports and Papers", at: http://www.jcu.edu.au/ilnp/resources/inlpreports/index.htm

to the particular needs of Aboriginal people in the family law sector. A number of authors have also commented upon the direct connection between the unmet needs of Aboriginal people in the civil justice system, and their over-representation in the criminal justice system - a topic which attracted the attention of the Productivity Commission in its recent recommendation for an immediate injection of $200 million per annum into the resources available to support the provision of legal aid.[28]

Conclusion

The issues associated with culture and the law are as diverse and complex as the many cultures which now make up Australian society. If we are serious about embracing multiculturalism as a guiding policy for the future, it is incumbent upon judicial officers, court administrators and others engaged in the Australian justice system to ensure that people from culturally diverse backgrounds are not disadvantaged within that system. There is undoubtedly much more that can be done in the pursuit and achievement of that important objective. It is vitally important for judges and court administrators to consult and listen carefully to members of the ever increasing range of cultures which together comprise contemporary Australia. Conferences like this, and the ongoing work of the Judicial Council on Cultural Diversity should enable us to step forward with some confidence that we are heading in the right direction.

[28] Productivity Commission, *Access to Justice Arrangements* (2014) Recommendation 21.4.