

SPEECH ON THE OPENING OF LAW WEEK

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I would like to begin by acknowledging the traditional and original owners of the land, the palawa people. I acknowledge the contemporary Tasmanian Aboriginal community and recognise their enduring culture and their continued connection to the land and the sea.

It is an honour to be asked to address you on the opening of Law Week. Law Week fulfils a very important role in building bridges between the legal profession and the community. It provides an opportunity for members of the profession to improve the public's awareness in relation to their legal rights, and in relation to the role of lawyers and the legal system in our community.

I would like to say a little about the importance about the rule of law and the independence of the judiciary. In recent years we have seen right-wing governments in a number of countries take steps to reduce the independence of courts. I refer in particular to Hungary, Poland, Turkey, and more recently Israel.

Earlier this year, the government of Israel announced a series of proposals for legislation that would reduce the powers of that country's Supreme Court:

- Under the new proposal, the Supreme Court would be able to strike down legislation as unconstitutional only if 12 of the court's 15 judges agreed with the decision.

- Even then, the Israeli legislature, the Knesset, would have the power to reverse a court's decision by a simple majority vote – first for a period of 4 years, and then indefinitely subject to another majority vote.
- Also, the power of the Supreme Court to invalidate administrative decisions on the ground of extreme unreasonableness would be abolished.

It appears that Israel's Supreme Court has held a number of controversial political decisions. Two have been invalid because of unreasonableness. For example, it has struck down decisions exempting religious students from military service, appointing people to public office when they have criminal convictions, and enforcing gender separation on public buses.

The Knesset has the power to legislate to make these and other changes calculated to increase the power of the national government and reduce the power of the courts. All this is possible because Israel, like the UK, has no written constitution and, like Queensland, has only one House of Parliament.

There was and is widespread opposition to the proposed changes. The people who spoke out against the proposals included the President of Israel, the country's Chief Justice, its Attorney-General, former prime ministers and even retired generals. Tens of thousands of people have been demonstrating in the streets. These demonstrations are continuing, even though the government decided several weeks ago to put the proposed legislation on hold. The government seems to be waiting for its opponents to run out of steam.

This crisis illustrates the importance of the rule of law and the independence of the judiciary, and it also illustrates how a government can interfere with democracy by exploiting weaknesses in constitutional arrangements. For example, in Queensland in 1921, the government got rid of three of the State's six

servicing Supreme Court Judges by legislating to impose a retirement age of 70 years and making that provision applicable to serving judges.¹

For various reasons, interference with judicial independence on the scale proposed in Israel would not be possible in Australia or Tasmania. The Australian Constitution protects the independence of the High Court. Most States have upper houses where the governing political parties do not have majorities. The High Court will invalidate State legislation that is incompatible with a State Supreme Court's status as one exercising federal jurisdiction.² However I venture to suggest that, on the other side of the ledger, Israel has something that Australia does not have – a widespread understanding of the importance of the independence of the courts, and people willing to turn out in their thousands to speak out when that independence is threatened.

A lot needs to be done to inform the community about the legal system, people's legal rights, and the role of the legal profession. I saw an interesting example of the level of ignorance in relation to legal rights about sixteen years ago when the Tasmanian Law Reform Institute consulted community groups in relation to a proposal for a Tasmanian Charter of Rights. An academic from this university went to speak to every community group in Tasmania that was willing to listen to her, and came back with some interesting information. For example, a lot of people believed that Tasmanians already had constitutional rights. Some believed that, if anyone was going to ask them questions, they had a right to "plead the fifth".

¹ *Judges' Retirement Act 1921 (Qld)*.

² *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51. See also *Austin v Commonwealth* [2003] HCA 3, 215 CLR 185.

There is a need to raise the public's level of awareness as to legal matters. The teaching of civics and Legal Studies in schools is very important in reducing the level of ignorance.

As all of us here realise, our society would not function without the laws that govern it and the independent courts that enforce those laws. It would not function without the lawyers who provide advice to members of the public and represent them in important transactions and in the resolution of disputes, preferably through negotiated settlements but if necessary by representing them in the courts.

Many people have little understanding of the culture of honesty and integrity in the legal profession or the strength of its system of professional discipline. For example, few outside the profession would have much understanding of the significance of a breach of a legal practitioner's undertaking.

The activities of Law Week educate and inform the public in relation to legal matters, and they also serve to promote the public image of the legal profession. It is very pleasing to see a wide range of legal topics being covered in events that are open to the public this week. The topics include workers compensation, estate planning, sentencing, on-line scams, legal costs, what to do if one is not happy with one's lawyer, discrimination and employment rights.

There is also a selection of podcasts covering a wide range of topics including sexual abuse, family violence, stalking, bankruptcy, and the rights of temporary visa holders. Those are not exhaustive lists.

Law Week operates on a national basis. It was revived in Tasmania last year after years in hibernation. Its revival has been largely due to the efforts of Gayle

Johnston from the Legal Profession Board. I would like to congratulate all the organisers and volunteers who have been responsible for putting together this year's Law Week program. I am sure that it has taken a great deal of preparation. I would like to wish all involved a very successful Law Week. It gives me great pleasure to declare Law Week open.