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AUSTRALIAN BAR ASSOCIATION

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I acknowledge the Wurundjeri people of the Kulin nation on whose ancestral lands we are gathered tonight, and I pay my respects to their elders past, present and emerging.

Thanks and acknowledgments

With so many senior members of the profession here this morning I will not try to acknowledge each of you individually, and will simply thank you all for coming today. Though I do take this opportunity to thank Matt Collins AM QC in particular for making this conference happen, and for his outstanding leadership as President of the Australian Bar Association

Introduction

I am sorry that Senator Cash has declined the ABA's invitation to join a pre-election debate regarding the Attorney-General's portfolio.

The speech I want to give today is very different to the campaign speeches I have been giving around Australia over the last month. In this gathering of colleagues, I wanted to offer some broader reflections about some matters of principle, in particular, the rule of law.

I hope that by the end of my remarks you will appreciate why I often say that the Liberal Party of Scott Morrison has jettisoned many of the principles of the party founded by that eminent Australian barrister, Sir Robert Menzies.

The Government's record

All federal elections are critically important. Because, as Paul Keating famously said, when you change the government you change the country.

There is so much I could say about why we need to change the government of this country but nothing makes the case better than the recorded speech we have just sat through from the Attorney-General, congratulating herself for the supposed achievements of the Morrison Government in the Attorney-General's portfolio.

That being said, I *do* have a few things say about why we need to change this government on 21 May, covering a number of matters that the Attorney-General did not appear to think worthy of mention in her speech, but which I think are central to the Attorney-General's portfolio.

First and foremost is the need to repair and strengthen what is in fact the keystone of our democratic system – and that is the rule of law. As the First Law Officer of the Commonwealth, the Attorney-General should fulfill a vital role in defending and uphold the rule of law. I do not believe that any of the Liberal Attorneys-General over the last nine years have fulfilled that vital function. To the contrary, a number of their actions have harmed the rule of law.

The rot set in early when Tony Abbott's Attorney-General, former Senator George Brandis, now curiously remembered as a 'moderate', led the attack on Professor Gillian Triggs and the Australian Human Rights Commission, sending his departmental secretary to try to induce her to resign for daring to publish a report that embarrassed the Abbott Government. The threat to the rule of law in this action was clear – if an independent statutory agency carrying out its statutory function of engaging in public debate dared to criticise the Government, it could expect its leaders to come under personal attack and its budget to be slashed. And so it was. But at least that threat was recognised by the Senate, which took the extraordinary step of censuring the Attorney-General of the Commonwealth for his role in the attacks on Professor Triggs.

However, not content with attacking Professor Triggs and cutting the Commission's funding, Senator Brandis also appointed to the role of Human Rights Commissioner, without even a pretence of transparency or merit based assessment, his Liberal Party mate Tim Wilson from the secretly funded right wing think tank, the Institute of Public Affairs. That action led to a warning from the international body responsible for accrediting national human rights institutions that this threatened the independence of the Human Rights Commission, and that its capacity to engage in international forums would be significantly diminished if it was downgraded to B-status. Senator Brandis wrote a letter promising it wouldn't happen again. A promise that was broken by both Mr Porter and by Senator Cash, with the consequence the Human Rights Commission has now been formally placed on a kind of probation due to the repeated attacks on its independence. The Commission's status is to be reassessed in 18 months, and if it isn't clear that it will be protected from the appointment of government mates and cronies, its status will be downgraded. This is an international embarrassment to a nation that once championed the international rule of law and the rules based order.

Senator Brandis also managed to embarrass Australia on the international stage with his spectacularly ill-considered and inept handling of the ASIO raid that he authorised on East Timor's Australian based lawyer, former ACT Attorney-General Bernard Collaery. Senator Brandis proudly announced the search of Collaery's home and office by press release, only to discover that he had touched off an international incident that landed Australia in the International Court of Justice – this time as a defendant accused of breaching due process and the sovereignty of our new neighbour. The statements made against Australia in the unfolding proceedings were excoriating regarding the attack on the rule of law those raids represented, and we lost that case comprehensively.

It might sound a little churlish to revisit such ugly events from 2013. But those events are not historical. As I'm sure everyone here is aware, Mr Collaery and the intelligence officer he was acting for, Witness K, were later charged with a number of criminal offences under the Intelligence Services Act. Those prosecutions were only allowed to proceed because Mr Porter authorized them. While Witness K pleaded guilty and received a non-custodial sentence, Mr Collaery is still defending himself against the criminal charges.

While I will not comment on the substance of the charges, the very manner in which the Government has sought to conduct the prosecution appears to me to be an affront to the rule of law. There have been some fifty preliminary hearings to date, with well over four million dollars spent by the Commonwealth alone, and still there is no trial date for Mr Collaery. The Morrison Government has also sought to have the trial conducted in secrecy, but was rebuffed last year by the ACT Court of Appeal which held that the trial should be held predominantly in open court to avoid damaging public confidence in the administration of justice. The Commonwealth has now appealed that decision to the High Court.

Despite repeated questions in multiple hearings of Senate Estimates, I have yet to hear a cogent explanation of how the public interest is served by the ongoing attempts to prosecute Mr Collaery, a former Attorney-General of the ACT who is now well over seventy, in relation to an allegation of disclosure of events alleged to have occurred almost twenty years ago. The contrast between the energy and resources the Morrison Government has been willing to spend on pursuing Mr Collaery, as opposed to its ignoring of the multiple scandals that have unfolded in the Government itself over recent years, demonstrates a stark double standard that is inimical to the rule of law.

Senator Brandis also did little to promote the rule of law by slashing funding to legal assistance services, and he was forced to reverse the cuts by a concerted campaign from many in the legal community, greatly assisted by complaints from principled members of the Government itself, like former Speaker Tony Smith, who is retiring this year. Senator Brandis also entirely terminated all Commonwealth funding to Environmental Defenders Offices, and that funding has never been restored.

Yet another attack on the rule of law that some here will remember occurred with Senator Brandis sought to hobble the independence of the Commonwealth Solicitor General, in an appalling subterfuge and attack against Justin Gleeson SC.

I have spent some time on events in the early years of this Liberal-National Coalition Government because it set the pattern for what was to follow.

The scandals around Christian Porter's term as Attorney-General are well-known, and I will not revisit the matters relating to the historical rape allegations made against him now. People have a right to sue for defamation, but if they are sitting politicians, let alone the Attorney-General of the Commonwealth, the rule of law is undermined if they have their legal bills paid from a blind trust funded by persons unknown for their benefit.

It was on Mr Porter's watch the the stacking of the AAT with Liberal Party mates, failed candidates and staffers became truly shameless. These are appointments made without any kind of transparency or merits based assessment. At last count, it appears that around 90 such appointments of Liberal Party insiders have been made to the AAT. Clearly this behaviour does not serve the interests of justice, and undermines trust in an institution that was established to provide a measure of justice for those seeking review of government decisions affecting them.

Another attack on the rule of law under Mr Porter's watch occurred with the fiasco of Robodebt. This program was not solely the responsibility of Mr Porter, as Scott Morrison as Treasurer and Stuart Robert as Human Services Minister were also closely involved. But Mr Porter was Attorney-General during the period in which it was abundantly clear that the program was not only cruel and unethical, but also unlawful. Multiple decisions were made by members of the AAT highlighting the unlawfulness of the program. Yet the Government continued with Robodebt, only abandoned its unlawful program when faced with a class action, at which point the Government settled for \$1.2 billion rather than risk the truth of the program and what they knew about it being aired in open court.

Mr Porter was also responsible for the delivery – or should I say non-delivery – of the national anti-corruption commission that he and the Prime Minister promised Australians in December 2018. Needless to say, nothing was delivered over the years that followed but a cynical proposal for a cynical cover-up commission, and an increasingly desperate series of excuses for failing to introduce legislation to the parliament for debate.

I could say much more about Mr Porter's tenure at Attorney-General, but I will stop there, to reflect briefly on the current Attorney-General has brought to the role.

And in fairness to Senator Cash, I think it's more a case of what she hasn't done as Attorney-General than what she has done. I don't believe she has done as much damage to the rule of law as her predecessors.

Senator Cash certainly came to the role with some baggage, having declined to cooperate with an AFP investigation into unlawful leaks of information from her own office about a police raid on a union office. This was a Minister who had to be concealed behind a white board lest she be filmed or asked questions about those raids by media, which does not exactly build public confidence in a future Attorney-General.

As Attorney-General, Senator Cash has certainly continued the same shameless appointments of Liberal Party insiders to the AAT, which included making new appointments in the days before the election was called and extending the terms of Liberal mates whose terms had not yet expired for up to seven years.

In terms of failure to deliver, Senator Cash has truly delivered. She took over responsibility for delivery of the National Anti-Corruption Commission from Mr Porter, and achieved precisely nothing but a new excuse for inaction. She said the Government had a bill, but for reasons unexplained, and indeed, inexplicable, the Morrison Government could not introduce that bill unless the Labor Opposition would first agree to pass it without amendment.

Senator Cash also promised to fully implement the Respect@Work Report, but only managed six of the fifty-five recommendations, dissembling about the failure to implement key recommendations, in particular, the positive duty on employers to prevent sexual harassment in their workplaces. Senator Cash assured everyone there was no need for such a duty because it already exists, implying that unlike the Morrison Government, Commissioner Jenkins and the hundreds of experts who made submissions to her inquiry just don't understand what's needed to deal with the scourge of workplace sexual harassment.

Over the last six months Senator Cash also spearheaded the Government's supposed Social Media (Anti-Trolling) bill. That bill was in fact a defamation reform bill, as its original title, that they forgot to remove from the Explanatory Memorandum, made clear. It takes a certain perverse skill to draft a piece of legislation that everyone hates, even those who will benefit from it, but Senator Cash managed it with this bill. A bill so utterly unfit for both in its stated and unstated purposes that it was described by Sue Chrystanthou SC as a 'trolls' charter' and by another leading defamation law expert as the worst conceived and drafted piece of defamation law reform he had ever seen. As it happens, the Prime Minister, who deeply hates the accountability that Parliament exposes him to, scheduled only a handful of sitting days for both Houses of the Parliament prior to the election this year and did not leave enough time for Senator Cash's bill to pass either House.

Now I hope I have not been unduly unkind to the recently past and current Attorneys-General of the Commonwealth. And I know that what matters to many of you is what Labor would do in office that would change things.

My vision for the future

It is clear there is a great deal of work to do in the Attorney-General's portfolio, If we win, and if I once again have the honour of serving this nation as Attorney-General I will be very busy indeed.

I will briefly outline three key matters that I would be working on from week one. The first could be described, with some regret by me, as repair work. Just a few of the matters that I would be looking to commence repair work on include:

- Restoring integrity to the process of appointments in the portfolio by returning to the transparent, merit-based system for appointments we practiced when last in government, including for position on the AAT and for commissioners of the Australian Human Rights Commission;
- Getting on the with the work of implementing the recommendations of Sex Discrimination Commission Kate Jenkins' Respect@Work Report, including a positive duty on employers to prevent sexual harassment in their workplaces;
- Working to strengthen the legal assistance sector, in part with respect to its resourcing, but also in seeking to reduce the administrative and bureaucratic burdens the sector appears to have been increasingly mired in over recent years. It's good that Senator Cash has been able to make some small increases in legal assistance funding, but I can't help but comment that a small proportion of the more than \$20 billion the Morrison Government wasted on giving wage subsidies to companies that were making a profit during the Covid lockdowns could have fixed the funding shortfall in the legal assistance sector for the next decade.
- Returning to the process of law reform in other areas which have been neglected, including native title, copyright, privacy, whistleblower protection, defamation and freedom of information.

The second major matter I will immediately be turning my attention to is constitutional reform. The Uluru Statement from the Heart, delivered almost five years ago now, was a generous offer for partnership and a real chance for us to pursue meaningful reconciliation as a nation. That Statement calls for Voice, Treaty and Truth and we in Labor support that statement in full.

We have made clear that if elected, Labor will be progressing a referendum to put a Voice to Parliament in the Constitution as a matter of priority. I have been involved in work to pursue indigenous justice for my entire working life, from my first job as a 23-year old field officer for the Northern Land Council, to representing the Stolen Generations against the Commonwealth as a barrister. As a federal politician I have retained my passion for working with our first Australians toward reconciliation and justice, and if elected, I am committed to continuing that work by establishing the Voice to Parliament.

I also note that Labor is also committed to establishing a Makarrata Commission to work with the Voice to Parliament on a national process for Treaty and Truth-telling, although in keeping with he wishes of the communities that gave us the Uluru Statement from the Heart, those are tasks that will follow the establishment of the Voice to Parliament.

The National Anti-Corruption Commission

The third matter to which I would immediately turn my attention if Labor is returned to office is a matter that illustrates the gulf between the two parties of government and that is a National Anti-Corruption Commission.

It is now well over three years since the Morrison Government first promised what they called a “Commonwealth Integrity Commission”. The fact is, Mr Morrison and Mr Porter were dragged kicking and screaming to make the announcement in December 2018, with Mr Morrison having jettisoned Mr Turnbull’s work on the proposal that was well underway when he took over the Prime Ministership, and which Mr Morrison had described as a ‘fringe issue’.

That election promise has now been comprehensively broken by Mr Morrison. The Prime Minister and the members of his government are so terrified of what a National Anti-Corruption Commission would uncover that they didn’t even have the courage to introduce legislation into the Parliament to commence debate on such a body.

One point I want to be very clear about in this context is that we in Labor are not saying that one side of politics is dirty and the other is pure. Of course we do have some very strong views about the stench of corruption now surrounding the Morrison Government. But the point I am making now is that the purpose of national anti-corruption commission is to stamp out corruption in government wherever that corruption arises, and to hold all members of the government, including *all* politicians, to account.

That’s why a national anti-corruption commission worthy of its name must be powerful. That’s why it must be well-resourced. And that’s it must be independent of government.

Which is precisely what I and my party are proposing to legislate for by the end of this year, should we win government at the coming election.

Because we in Labor believe that tackling corruption and promoting integrity in government go to the heart of the rule of law in our nation, and so are essential to restoring public trust in the federal government.

Every government in Australia except the federal government is subject to the jurisdiction of an independent anti-corruption commission, designed to keep it accountable and ensure that it acts in the best interests of its people. Only the Commonwealth Government, the Government of Mr Morrison, claims there’s no need for it to be held accountable.

I regret to say that just as the ever-growing list of scandals surrounding the Morrison Government shows why Australia needs a powerful and independent anti-corruption commission, that very same list is why Mr Morrison and his colleagues have spent the last three years doing everything they can to stop such a body from being established.

Many of you would be aware that the Government did belatedly put forward a draft bill setting out its proposed model for a ‘Commonwealth Integrity Commission’. However, the “integrity” commission they proposed was very clearly a sham. A sham commission that has been universally derided by legal experts as a weak, ineffective and secretive body that has clearly been designed to cover up corruption, rather than to expose it.

It is my strong hope that I will soon have the opportunity to help to arrest the slide of the Australian government toward corruption and to strengthen the rule of law at the federal level by establishing a powerful, transparent and independent National Anti-Corruption Commission.

There is so much more that I could say to you about why we need a change of government, but I think I’ve said enough for this morning, and I hope that you have a sense of what I hope we can achieve if Labor is elected three weeks from today.

Thank you

ENDS