

**Speech Given at the Ceremonial Sitting on the Occasion of  
the Opening of the Legal Year 2020,  
the Opening of the Supreme Court Heritage Building, and  
the Commencement of the Drug and Alcohol Sentencing List**

28 January 2020

Supreme Court of the Australian Capital Territory

*Chief Justice Murrell*

Aunty Violet, thank you for your Welcome to Country.

Attorney-General, fellow judicial officers of the ACT Magistrates Court and other courts, retired judicial officers, members of the legal profession, distinguished guests and other friends of the Court,

The Court acknowledges the traditional and continuing custodians of this land, and we pay our respects to their Elders – past, present and emerging. We are delighted that Elders of the ACT community are present today. The Court acknowledges that sovereignty over this land was never ceded.

Today, we gather to mark three events. First, the opening of the new Legal Year. Second, the opening of the Supreme Court Heritage Building. Finally, the commencement of the Supreme Court Drug and Alcohol Sentencing List (DASL).

It is a sombre opening of the new Legal Year. The start of the new year—indeed, of the new decade—has seen horrific bushfires affecting much of Australia, including this Territory. Many have lost family, friends or property. We have experienced irreparable damage to our wildlife and natural environment. The ACT is in a state of alert. The NSW South Coast, the summer destination for many Canberrans, has been ravaged. At least 80 per cent of the Blue Mountains world heritage area and more than 50 per cent of the Gondwana world heritage rainforests have been impacted.<sup>1</sup>

I am sure that I speak for all Canberrans—indeed, all Australians—in praising those who have displayed immense bravery and leadership through this crisis, despite the personal cost.

The direct and indirect impacts of this dystopian season weigh heavily on our collective conscience.

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<sup>1</sup> Lisa Cox and Nick Evershed, “It’s Heart-Wrenching”: 80% of Blue Mountains and 50% of Gondwana Rainforests Burn in Bushfires’, *Guardian* (online, 17 January 2020) <<https://www.theguardian.com/environment/2020/jan/17/its-heart-wrenching-80-of-blue-mountains-and-50-of-gondwana-rainforests-burn-in-bushfires>>.

Traditionally, at the commencement of the Law Year, we reflect on our role as legal practitioners and how we can best apply our skills to promote the rule of law and advance justice more broadly. This year, we must do so in the context of the “new normal”.

No doubt, as a member of the general community, each of you has in some way contributed to redressing the damage that has been done. Beyond that, what can the legal profession offer?

I believe that we have a lot to offer. We live in an age where analysis and planning are increasingly devalued and polluted by self-promotion, populism and election cycle thinking. It’s all about thinking fast and short-term.<sup>2</sup> As lawyers, we are trained to think differently, to think slowly; to carefully sift and analyse the evidence and to rationally resolve complex issues.

At every level of decision-making, the legal profession advises the decision-makers. This means that each of you has the capacity to promote evidence-based and consequential thinking by decision-makers.

Further, every lawyer understands the value of independent thought and action. We understand that ethics is not about self-promotion – it’s not about currying favour by telling clients (or litigants) what they want to hear.

Whether you work in the private legal sphere, in a corporation or for government, it is your duty to advise your clients fearlessly and independently. If recent events—including recent Royal Commissions—have taught us anything, they have taught us that the ethical lawyer should advise their client not only about matters that will advance the client’s short-term self-interest, but also about how, in the long-term, the client’s decision may adversely impact upon the community and the environment, ultimately bringing the client into disrepute.

More than any other calling or profession, it is the legal profession that is equipped to fearlessly deploy evidence-based reasoning and to promote such thinking by others.

So in this age of self-promotion, populism and election cycle thinking, at the beginning of this Legal Year, as lawyers you may wish to resolve that you will enable your clients to turn a deaf ear to “fake news” and to act on the evidence, and that you will assist your clients to appreciate the long-term consequences of their conduct on the community, the environment and, ultimately, themselves and their successors.

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<sup>2</sup> Daniel Kahneman, *Thinking Fast and Slow* (Farrar, Straus and Giroux, 2011).

## The Griffin Plan and The Supreme Court Heritage Building

In 1912, Walter Burley Griffin won the international competition to design the new Australian capital city. Over nine weeks, during their honeymoon, Walter Burley Griffin and Marion Mahoney Griffin, a world-renowned architect in her own right, had completed their entry in the international competition.

The Griffins' design was intended "for a country of 'bold democrats' ... a city not like any other city in the world ... an ideal city ... of the future".<sup>3</sup> The city's main market streets were to run along Constitution Avenue, leading to a "market centre" at the current site of the Russell offices. The city was to stretch to the lake, with museums, an opera house, public baths, not to mention zoological gardens lining the foreshore now occupied by Parkes Way.<sup>4</sup> At the foot of Mount Ainslie there was to be a "casino" precinct, including theatres, small restaurants with al fresco dining, children's parks and a beer garden,<sup>5</sup> with a stadium on the lake shore at the end of today's Anzac Parade. Anzac Parade itself was to be a long and wide "midway pleasance" park – the "playground" of the city.<sup>6</sup>

From 1913 to 1920, the Griffins laid out the Triangle that was to define Canberra, with the civic centre, market centre and the Capitol at each apex.

Given the breadth of their vision, it is no surprise that the Griffins encountered funding obstacles and were stymied by the bureaucracy. In 1920, Walter Burley Griffin was removed from the project. The Griffins' vision of "medium density communal life with outdoor eating and ... oddities such as beer gardens"<sup>7</sup> lining the city streets clashed with the parochial aspirations of Australian politicians and bureaucrats who dreamed only of "bungalows on vast, private, suburban blocks". What a difference a century makes!

And then there was World War I. For the first time since Federation, Australian soldiers fought for their country (not to mention the distant Motherland). The Great War altered the national consciousness forever. The War, including the Gallipoli story, became central to Canberra's expression of a national character. In 1941, the War Memorial was established. The Griffins' lively city playground park was replaced by Anzac Parade.

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<sup>3</sup> Paul Daley, 'Story of Cities #17: Canberra's Vision of the Ideal City Gets Mired in "Mediocrity"', *Guardian* (online, 7 April 2016) <<https://www.theguardian.com/cities/2016/apr/07/story-cities-17-canberra-capital-australia-walter-griffin-ideal-city>>.

<sup>4</sup> Tom Greenwell, 'A City in Search of Its Centre', *Inside Story* (31 July 2019) <<https://insidestory.org.au/a-city-in-search-of-its-centre/>>.

<sup>5</sup> Daley (n 3).

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

One of the few developments that did accord with the Griffins' original plan for Canberra was the ACT Law Courts building, which was belatedly constructed on the site proposed by the Griffin Plan for the "municipal courts".<sup>8</sup>

The part of the building in which we sit was opened in 1963 by Sir Robert Menzies, who was then Prime Minister of Australia. It became emblematic of Canberra, acquiring significant heritage value.

Initially, the building housed the Supreme Court, the Magistrates Court, the Registry Office, a Law Library and a Companies and Land Titles Registry. However, as it had been designed for a population of 100,000, it was soon inadequate to fulfil all functions. Even after the Magistrates Court Building was opened in 1996, the Heritage Building struggled to meet the needs of the Supreme Court, with only two courtrooms that were sufficiently large to be of any real use to the Court. Today, as we sit cheek by jowl in SC1, based on our experience of our fabulous new courtrooms, we can appreciate the limitations of the SC1 and SC2 courtrooms, beautifully reimaged as they may be.

It is a testament to the architects of the new Supreme Court building that the old building has been seamlessly integrated into the new part of the Court and that its most iconic features have been preserved – the marble façade, the oriental atrium and the golden Commonwealth coat of arms that faces University Avenue.

The Court acknowledges the hard work of the many people who have laboured to realise this project. There are too many to name. However, I would be remiss if I did not mention Lyons Architects and Lloyd Esau, who led the project team. Other key people are present today – including Skye Roland, Sam Macri, Pana Tsironis and Briar Champness.

## **The Future**

Our building – which integrates the old with the new - reminds us that "the court environment is not just a set of rooms, corridors and entrances: it is a cultural, intellectual and emotional world".<sup>9</sup> Any court "embod[ies] social values and [has] psychological implications for what happens within [it] and for the wellbeing of those who work, visit or engage in other activities within".<sup>10</sup>

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<sup>8</sup> Chief Justice Jeffrey Miles, *A History of the Supreme Court of the Australian Capital Territory – The First 75 Years* (Thomson Reuters, 2009) 45.

<sup>9</sup> Michael King et al, *Non-Adversarial Justice* (Federation Press, 2<sup>nd</sup> ed, 2014) 246, quoting Louise St John Kennedy and David Tate, *Court Perspectives: Architecture, Psychology and Law Reform in Western Australia* (Report, Western Australia Law Reform Commission, May 1999) 1017.

<sup>10</sup> King et al (n 9) 246.

The courthouse environment and other seemingly peripheral aspects of the way in which justice is delivered are themselves capable of healing or harming. As judges, we deliver therapeutic – or antitherapeutic – jurisprudence, whether we like it or not. At our best, we consciously leverage on our capacity to heal rather than harm.

Therapeutic courts such as drug courts harness the healing capacity of the justice system and apply evidenced-based reasoning to its processes.

The Supreme Court has long advocated for a drug and alcohol sentencing list that partners justice with health. The 80/20 rule would say that 20% of drug users use 80% of the drugs, commit 80% of the drug-related crime and do 80% of the time. Our new drug and alcohol sentencing list (DASL) is directed at this group. The DASL aims to treat the underlying psychological and social problems that have caused this group to self-medicate and commit serious crimes to finance their drug problem, or to exhibit antisocial behaviour under the influence of drugs or alcohol. It is an approach to sentencing that eschews populist calls for harsher penalties despite the evidence that, for most serious offenders, heavier prison sentences achieve neither personal nor general deterrence.

We thank Justice Burns for leading the project in its development phase. We are fortunate to have Acting Justice Lorraine Walker presiding over DASL, sitting her, in SC1. In a few moments, Acting Justice Walker will say more about DASL.

In other respects too, as reimagined, this distinguished building will facilitate the delivery of contemporary justice through cooperative resolution rather than traditional adversarial methods. It houses modern mediation facilities that will be used in civil proceedings. We will utilise Hearing Room 3 for criminal case conferencing, a 2018 Supreme Court initiative led by Acting Justice Robinson. Criminal case conferencing is designed to promote the sensible resolution of criminal proceedings.

It is to the credit of the local profession that it has supported all these innovations.

Paradoxically, it is the old part of the Supreme Court building that will house our newest processes – those that are less adversarial.

I doubt that, when Prime Minister Menzies originally opened this building, he foresaw these uses, particularly the possibility that the building would one day house a urinalysis suite!

None of us can predict the future. What you as lawyers can do is apply evidence-based thinking, embrace therapeutic jurisprudence and fearlessly advise your clients about the long-term consequences of self-interested decision-making. By doing so, you may help to nudge the future in the right direction.

We will now hear from Acting Justice Walker.