

Good evening,

I would like to start tonight by acknowledging the Turrbal and Yuggera peoples, the traditional Custodians of the land where we meet. I would also like to pay my respects to Elders past and present and emerging.

I also acknowledge those Indigenous people present tonight and all of you tonight who have come to this 8th Pride in Law Annual Address. Pride in Law is Australia's first and only national non-political legal association, aimed at connecting lesbian, gay, bisexual, transgender, intersex, queer, and other sexual and gender diverse people of the legal community and their allies. They work to increase visibility, education and advocacy on LGBTIQ+ issues in the law and legal profession.

I am proud to identify as an ally to the LGBTIQ+ community and truly honoured to be asked by Pride in Law to speak tonight. To understand that identification I want to tell you about the start of my career. One of the many wonderful experiences I have had sitting in Murri Court is learning from the Elders how important it is to know about the Country and history of someone to really be able to understand them. So, when sitting in Murri Court one of the very big differences is that the Magistrate tells the participants about themselves and where they come from, where they have been and how they got to be here. That is obviously very different to a morning in Court One Arrest Court.

I was born in Charleville in 1963. Both my parents come from Western Queensland families. My father was born in Augathella and my mother in Charleville. I grew up in Mount Isa and after High School I commenced training as a nurse at the Royal Brisbane Hospital. This was when nursing training was delivered in the hospital.

That was forty- four years ago which seems astonishing. It was a very different world where we still wore white starched caps with stripes signifying seniority and registered nurses (sisters then because there were almost no men) in incredibly impractical white starched winged veils that were pinned perilously to the top of the head. You had laundry done and uniforms were returned so starched they creaked.

Like many seventeen-year-olds, the romantic aspects of tripping around being an angel of mercy did not quite match the reality of incredibly hard work, mentally and physically that is nursing. I did graduate and decided immediately that there had to be a better fit for me and started my law degree.

That was the mid- eighties and during the law student years, I worked part time as a Registered Nurse at Royal Brisbane Hospital's Wattlebrae Ward which housed the Infectious Diseases Ward in those days. It was a building out the back of the hospital, all one storey and about a kilometre long lined with separate rooms. It reflected 80 years of different diseases that were mostly successfully conquered by science or vaccinations. There were still rooms where iron lungs were

used for the last survivors of the polio epidemic who preferred them at night. There was a sealed room with special air circulation and other equipment to deal with Ebola. This was at the beginning and middle of the HIV/AIDS epidemic. The first AIDS diagnosis in Australia was in 1982, and following the introduction of HIV testing in 1985, cases of newly diagnosed HIV infection peaked at 2,773 in 1987 with a rapid decline in the latter part of the decade.¹

Wattlebrae housed nearly all cases in Queensland. It was a dreadful time because then there was no effective treatment. The death rate was appalling and the worse was you came to know the patients well over the time as they would come in for multiple treatments. So many talented young men, and women, died in that decade. The work of the Doctors' and Scientists, including the trialling of AZT, has meant that today a HIV diagnosis is not a death sentence.

I sat up many nights over the four years I worked in Wattlebrae talking about life and indeed learning how laws and attitudes made the lives and deaths of too many young and talented gay men so much harder and were so very unfair. Life partners feared being excluded by families from contact with their dying partner when they became too sick to make their wishes known. Homes and lives that were built up together were lost as there was no legal recognition of their partnership. The fear that being sick might lead to criminal charges

¹ [History of HIV infection in Australia - HIV Management Guidelines](#) (Accessed 1 November 2024)

as even accessing appropriate care and information caused stress and worry about possible consequences of disclosure of sexual activity. Queensland legalised consensual adult homosexual activity in 1991 with the *Criminal Code and Another Act Amendment Act 1990*. This was prompted by a recommendation in the Fitzgerald Report, and subsequent consideration by the Criminal Justice Commission and the Parliamentary Criminal Justice Committee.

Since 1991, there has been substantial legislative reform to address discrimination against LGBTIQ+ people. Section 15 of the *Human Rights Act 2019* enshrines the recognition of the enjoyment of human rights without discrimination:

1. Every person has the right to recognition as a person before the law.
2. Every person has the right to enjoy the person's human rights without discrimination.
3. Every person is equal before the law and is entitled to the equal protection of the law without discrimination.
4. Every person has the right to equal and effective protection against discrimination.
5. Measures taken for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination do not constitute discrimination.

I learned in 1987 the consequence and impact of not allowing human beings equal protection of the law without discrimination. The rule of law and human rights of all people are core tenets of our democracy. However, it is access to justice that makes the rule of law and human rights a reality. The Queensland Law Society Access to Justice Policy Position puts it well:²

..In the absence of access to justice, people are unable to exercise their rights, hold decision-makers accountable, challenge discrimination and have their voice heard.

This is the main theme of what I want to speak of tonight. What are the barriers to accessing justice particularly focusing on the domestic and family violence jurisdiction and what the Magistrates Court is doing to address barriers to accessing justice. I will take the opportunity to thank Anna Ellis, a lawyer in the Chief Magistrates Office who helped with the research in this paper.

I suspect I do not have to tell you that the justice system doesn't always work well for everyone, and people sometimes struggle to get access to justice. Some sections of the community are much more vulnerable than others. People experiencing disadvantage are more vulnerable to legal problems and can have more complex needs. They will be disproportionately represented in the justice system both as victims

² [Queensland Law Society Access to Justice Policy Position](#) (Accessed 1 November 2024).

and perpetrators of crime.³ Disadvantage can stem from systemic barriers and personal barriers. The Law Council of Australia in its Final Report of its Justice Project considered those barriers and brought a nuanced analysis to the issue describing how different types of disadvantage can be cumulative.⁴

Are there unique barriers still faced by LGBTIQ+ people from accessing justice after 40 years of reform and progress? The Law Council of Australia says yes. The Final Report of the Justice Project identified the barriers uniquely faced by LGBTIQ + people and found they were linked to homophobia, transphobia and heterosexism. The latter is in essence beliefs that sideline or marginalise based on what are believed to be normal heterosexual relationships. Flowing from these issues the barriers identified were:

- Distrust of the justice system
- Fears of being outed and concerns about privacy and security
- Public attitudes
- Internalised attitudes
- Lack of informed and inclusive services
- Compounded barriers for LGBTIQ+ people who experience intersectional disadvantage.⁵

³ [Law Council of Australia, Justice Project: Final Report](#) (August 2018) p. 6

⁴ [Law Council of Australia, Justice Project: Final Report \(August 2018\)](#) *ibid.*, p. 54

⁵ [Law Council of Australia, Justice Project: Final Report](#) (August 2018) p. 22 - 30

The Law Council Report cites a case study⁶ from submissions that illustrates better than anything I can say about the effect of those barriers and I quote it in full:

'I was in a family law matter and whilst I had been the victim of, at that stage almost 2 years of domestic violence, I was also fighting an [Apprehended Domestic Violence Order] attempt against me, and this is the extraordinary thing, based on the premise, that I was transgender and a threat to our children (this still amazes me). Fortunately, after \$5,000 in legal fees, the matter was withdrawn by a female prosecutor who in my opinion could see what was going on and a professional standards review was undertaken, which whilst finding the Police had been misled, no further action was taken against the officer, who despite me looking completely female and the fact I had changed my legal name and gender almost a year before the application, the officer lodged the application in my old male name, which as I am sure you can appreciate, both humiliated me in court and put my own safety at risk in a regional town.

... in Federal Circuit Court, a barrister, who will remain nameless, said, "how would we know the mental state of a man who has cut their genitals off"... I was amazed that no one in the courtroom said a peep, my barrister, the Magistrate ... and that was when I realised, for a transgender person in the judicial system, very little, if anything

⁶ Ibid, p. 27

was off limit when it came to ridiculing, humiliating or denigrating an individual.

For me, there are and will be many hurdles I know I will face that a cisgender (an individual who identifies with their birth gender) person will not, despite being a qualified accountant, tax agent, distinction grade law student, 1st grade soccer player, cellist, to name just a few things, in the eyes of the judiciary, I am seen as a potential parental risk, an individual [who] despite having no signs of it, nor even diagnosed with it, is deemed to be a mental health risk and worse still, a class of person who is potentially 'judged' even prior to walking into a courtroom by judicial system.'

I found that account a confronting summary of the barriers that woman faced in the legal system to try and access justice. And that is a significant issue for the justice system because, as Sir Gerard Brennan stated in 1998, to maintain the rule of law in a free and confident nation the judiciary must, as well as being impartial, independent, competent and knowledgeable, have *the confidence of the people* and be *reasonably accessible to those who have a genuine need of its remedies.*⁷ After the experience of justice outlined in the account I have read there was to me a real question as to whether they would seek aid or protection from the police or the Courts in future or regard the justice system as reasonably accessible to get

⁷ G Brennan, "The state of the judiciary" (1998) 72 ALJ 33 at 34–45.

help and protection from violence. This is an issue that is particularly important as it goes directly to the safety of the person.

The Women's Safety and Justice Taskforce (WSJT) chaired by the Honourable Margaret McMurdo AC published data that referenced a survey of over 6,000 LGBTIQ+ people in Australia that found more than two-fifths (41.7%) reported having been in an intimate relationship where they felt abused in some way by their partner. Almost two-fifths (38.5%) reported abuse from a family member.⁸

Those numbers demonstrate that, as a submission to the Taskforce said:

*"Domestic violence isn't just a heterosexual issue; it's a human issue."*⁹

Given that the Magistrates Court has the primary jurisdiction for the determination of domestic and family violence protection orders and most contraventions of domestic violence orders, it is also a significant issue for the Magistrates Court that we identify and address what barriers are stopping access to justice in our Court.

In the last ten years there has been a growing understanding that domestic and family violence harms not just victim survivors but the whole community. The truly horrendous murders that have occurred in a domestic context have spurred the rapid accumulation of knowledge about the complexity of these issues. It remains the case

⁸ [WSJT Report One, Hear Her Voice, Volume Two](#), p. 112

⁹ [Ibid](#), p. 51

that most literature and studies are defined by cisgender heterosexual women's experiences. Less is known about how LGBTIQ+ victim-survivors experience the court system.¹⁰ But to the credit of the WSJT and the Commission of Inquiry into Queensland Police Service Response to Domestic and Family Violence, chaired by Judge Richards, a more inclusive and nuanced consideration of the issue is underway particularly the reconciliation of the knowledge that while domestic violence is a gendered issue the experiences of LGBTIQ+ victim survivors must be recognised even though their experiences may not reflect the generally accepted narrative.

The Commission of Inquiry made this plain:

There is no doubt that domestic and family violence is a gendered issue which disproportionately affects women. It is a core principle within the Domestic and Family Violence Protection Act 2012, which acknowledges that while domestic and family violence can happen to anyone, it is most often perpetrated by men against women with whom they are, or were, in an intimate partner relationship, and their children.¹¹

The Commission however made the point that *accepting that there are distinct gendered patterns in the perpetration and impact of this type of*

¹⁰ [LGBTIQ+ domestic and family violence victim-survivors' experiences of remote court hearings during the COVID-19 pandemic: The gendered dimensions of safety, independence and visibility](#) (p. 4)

¹¹ [A Call For Change: Independent Commission of Inquiry into QPS responses to DFV](#), p.182

*violence does not negate those whose experiences are not reflective of this pattern.*¹²

That point to me is so important in every consideration of this issue. A person's life experience is not a zero-sum game. Because a lot of women are victims of domestic violence perpetrated by their male partner does not mean a man cannot be a victim nor that women in same sex relationships may not be abused by their wife or partner. Recognising this will not take away anything from others who also affected by domestic violence. It does mean that all of us have a role in ensuring that the safety and justice for all is available.

For researchers and policy advisers, it may mean ensuring that knowledge is available that specifically addresses the experience of LGBTIQ+ victim-survivors experiences in the Court system. As already noted most literature and studies are defined by cisgender heterosexual women's experiences.¹³ While there are many similarities in that experience there are differences.

Common to many people seeking justice will be the economic barriers to accessing law including engaging lawyers, taking time off work to come to Court, sometimes multiple times, and the lack of childcare arrangements available. Many victim survivors will find courts can be physically and mentally challenging. There is the risk of coming into

¹² Ibid, p. 170

¹³ Reeves, E., Iliadis, M., & Pfitzner, N. (2023). LGBTIQ+ domestic and family violence victim-survivors' experiences of remote court hearings during the COVID-19 pandemic: The gendered dimensions of safety, independence, and visibility. *Criminology & Criminal Justice*, <https://doi.org/10.1177/17488958231216561>, p. 4

contact the alleged perpetrator. Economic barriers can extend to and cause lack of legal representation and consequent disadvantage and a real risk of unfairness often to the most vulnerable in the community.

The experience of LGBTIQ+ people in the domestic and family violence context was examined by the Women's Safety and Justice Taskforce. Barriers to seeking help identified included: -

- an inability by support services/practitioners to view intimate partner violence outside of a heterosexual framework;
- an assumption that intimate partner violence is mutual in LGBTIQ+ relationships;
- insensitivity to or lack of awareness of the specific needs/issues of the LGBTIQ+ population;
- discrimination, or fear of discrimination, particularly from the police and the criminal justice system; and
- stigma.¹⁴

A 2023 study examined legal help seeking behaviours amongst LGBTIQ+ domestic and family violence victim survivors who had experienced coercive control.¹⁵ The researchers conducted a survey of survivors experiences reported the rather depressing result that the study found that *many of the concerns about the impact of reporting*

¹⁴ [WSJT Report One, Hear Her Voice, Volume Two](#), p. 56

¹⁵ Reeves, E., McGowan, J. & Scott, B. 'It was Dangerous, Corrosive and Cruel but not Illegal': Legal help-seeking Behaviours Amongst LGBTQA+ Domestic and Family Violence Victim-survivors Experiencing Coercive Control in Australia. *J Fam Viol* (2023). <https://doi.org/10.1007/s10896-023-00569-9>

held by those who did not report to the police, were actualized in the experiences of those who did. Further, the study found that LGBTIQ+ persons experience similar barriers to help-seeking compared to heterosexual and cisgender women, in addition to barriers that speak specifically to LGBTIQ+ communities.¹⁶

What is the Magistrates Court doing to address these barriers?

Firstly - realizing our Courts need to be safer for everyone. The WSJT recommended a Statewide plan to improve safety for victims of domestic and family violence attending Court.¹⁷ The Law Council recognised that safety of our Court was an access to justice issue because lack of private spaces could not only retraumatise a victim but *lack of safety and privacy for victims and other vulnerable witnesses may also affect their capacity to give evidence in court and provide instructions to a lawyer.*¹⁸

Many of our Courts are beautiful, heritage listed buildings. Some are not so beautiful, but they are old, 60's type boxes. The trouble is they are designed for entirely different types of Court matters. Even our modern Court houses struggle. For example, Brisbane Magistrates Court – built in the 2000s- has really one entrance for everyone. Trying to provide safe and separate access is a challenge. So too is finding the space to ensure that safe waiting areas are available to everyone

¹⁶ Ibid, p. 1

¹⁷ [Recommendation 49 of WSJT Report One](#) and [Recommendation 52 of WSJT Report Two.](#)

¹⁸ [Law Council of Australia, Final Report – Part 2 Courts and Tribunals](#), p. 49

as opposed to two waiting areas – female aggrieved and male respondents.

Consequent on the recommendations of the WSJT and the provision of funding, Court Services Queensland developed the Domestic and Family Violence and Sexual Violence Safety Framework which is essentially a 10-year plan to deliver inclusive, safe, supportive, and accessible service for people impacted by domestic and family violence and sexual violence. I know lawyers in particular groan at plans and anything that sounds like '*management speak*' but I am going to actually defend the idea of plans and priorities. A significant time ago before I was appointed a magistrate in 2005, I took part in a review of a law office. Everyone agreed what needed to happen to ensure that it was working at its best: things like early briefing, continuity of people dealing with the matter and careful selection of suitable staff. What was jarring though was the actual processes of the office achieved pretty much the opposite: files were briefed at the last minute; staff were temporary and on contract and hired from an employment agency. Saying what you want and how you want to do it is the only way to make that jump from what you know to what you do. It also ensures that the bigger picture is not lost in the day-to-day dramas that inevitably result in any large organisation.

Priority three of the plan is that the design of Queensland Courts promotes safety, and positive health and wellbeing, for all staff and people attending courts with consideration of First Nations, LGBTIQ+,

and culturally and linguistically diverse people, and people with disability. Consequently, we are doing significant infrastructure upgrades in Brisbane, Cairns, Mackay, Toowoomba, Caboolture, Ipswich and Rockhampton courthouses progressively to improve the Court environment.

Safety can be assisted by allowing a choice of how parties attend Court including by remote audiovisual link. There is flexibility for an aggrieved to be allowed to participate in proceedings under Practice Direction 4 of 2022 subject of course to the interests of justice. LGBTIQ+ people surveyed in a Victorian study reported feeling a greater sense of safety when participating in remote DFV hearings and felt they had regained a sense of control which had been lost because of victimisation. They were able to have a support person of their choice sitting with them, the choice whether to turn their camera on or whether to see the other party. It also alleviated the financial burden of travelling to court, arranging childcare and taking a full day off work.

However, other LGBTQI+ participants in the Victorian study felt that remote court participation caused them to feel invisible and that they lacked a voice in the process. This was largely the experience of male participants.

Safety in the Courts also means ensuring that a person can expect to be treated with respect without fear of being humiliated or

stigmatised. Hence the Magistrates Court has replicated the Practice Direction of the Chief Justice in Magistrates Court Practice Direction No. 2 of 2023 encouraging practitioners and self-represented litigants to provide information to the Court as to the appropriate gender pronouns and titles of the parties and/or witnesses.

Secondly, recognising that there is not one solution for every person.

Having offenders address the cause of their offending is the best result for the community and the individual. Real change is the best protection for the community and in many cases partners. As the WSJT reported, many victims told them they did not want perpetrators to go to jail they wanted to the violence to stop.¹⁹

The Specialist Domestic and Family Violence Courts developed partly because it was realised that the court process is a touchpoint for service delivery to try and enhance the safety of victim-survivors, including children, focusing on increasing accountability for persons using violence and providing them with support to stop using violence by providing wraparound supports at the Court.

We recognise, as the WSJT did, that perpetrator programs need to better meet the needs of people with who identify as LGBTIQ+. Again, this is a challenge for service providers and will require research to

¹⁹ [WSJT Report One, Volume One](#), Page ix

develop the spectrum of interventions that are required to keep victims safe.

The Magistrates Court Link program is a good example of trying to fashion interventions focused on the individual. Court Link is a bail-based referral and support program for adults, which aims to address the underlying factors contributing to offending by assisting defendants with their health and social needs that may contribute to the risk of re-offending.

Defendants assessed with moderate to high-risk needs may be admitted to Court Link, where they receive support over 12 weeks from professionally qualified Court Link case managers and their progress is monitored by the court.

The Court Link program takes an individualised approach to providing support that is responsive to the particular needs of participants. For people who identify as LGBTIQ+, Court Link provides options to engage with treatment, support services and referral pathways that are respectful, inclusive, and responsive to diverse needs and are known to be LGBTIQ+ friendly.

Third- education for both the court staff, stakeholders and Magistrates in the lived experiences of people coming to our Courts. The key to removing barriers to accessing justice is knowledge, education and empathy. Sometimes it as little as knowing

what you don't know and making the commitment to understanding and gaining knowledge and to do right to all manner of people.

The Specialist Domestic and Family Violence Court program has released a practice guide to Specialist Domestic and Family Violence court registries in September 2024. The reality is that our Registry staff may be the first people victims of domestic and family violence will confide in. The guide contains a chapter focused on accessibility, including a dedicated section containing information and resource links in relation to the LGBTIQ+ community that contains evidence-based information regarding the specific types of violence that may be experienced by those within the LGBTIQ+ community and practical tips for providing a safe and inclusive service for individuals. The guide also includes links to resources and information including the LGBTI Legal Service language guide for inclusive language.

This resource is supplemented by the delivery of a series of webinar sessions focused on improving accessibility for clients in the DFV courts. The first session delivered this year was titled *"Improving the court experience of LGBTIQ+ community members experiencing domestic and family violence"*. The session was presented by Jason Garrick, A/Principal Lawyer in the Violence Prevention and Women's Advocacy Team with Legal Aid Queensland and attended by over 130 DFV court stakeholders including registry staff, courts policy staff, DFV magistrates, police prosecutors, Queensland Corrective Services staff, duty lawyers and specialist DFV services. Jason also spoke to the 108

magistrates at our 2023 conference speaking about Gender Diversity and Inclusion focusing on adults while in a separate session Dallas Pitt from the Queensland Children's Gender Services spoke to issues of Gender Diversity and Inclusion for Children.

Both sessions were very well reviewed. We have evaluations of all our sessions of the conference. The plus of being on the Conference Committee is sometimes reading them. One of favourites, not I hasten to add in respect to Jason or Dallas's session was "*bread was bad. No one over fifty should be eating it*". Which is probably true, but I am not brave enough to take the bread away.

Magistrates were very impressed with these sessions, saying it was fantastic to get informative, interesting, and research-based material that made them think. Many said they need to know more and need to make changes to how they address people in Court.

I thought they were great responses. The diversity of people coming to our Courts is vast and we need this knowledge to discharge our duty. The Supreme Court Equal Treatment Bench Book sums up the importance of this knowledge:

Every judge aims to do justice and to treat every person who comes before the court fairly and equally with others. No judge would consciously prefer or prejudice a litigant or a party because of that person's ethnic origin, race, religion, sex or disability, for example. Judges are conscious that their duty is to do justice according to law,

and not according to their own beliefs as to whether any group is deserving of some particular social or economic advancement.

The equal treatment of all persons, regardless of any particular characteristics, is assisted by an understanding of the differences between different groups. Unless judges have this understanding, there is the possibility that in some cases, the equal treatment of different persons before the court will not be achieved.

Judges need to be alert to racial and cultural diversity, and to the particular problems affecting some groups as they encounter the justice system, in order to reduce the risk of unequal treatment of litigants or witnesses. Knowledge of these factors also reduces the risk of perceived inequality, which in itself is damaging to the administration of justice.

I have an understanding, while probably still not fully appreciating the full trauma of what it must have been like for many of those young men I met in 1987. As I said previously, I learned in 1987 the consequence and impact of not allowing human beings equal protection of the law without discrimination.

I also have had the real honour and privilege of swearing the judicial oath that *I will at all times and in all things do equal justice to all persons and discharge the duties and responsibilities of the office according to law to the best of my knowledge and ability without fear, favour or affection.*

Access to justice is fundamental to doing equal justice. I have spoken of some of the practical steps that are being taken to transform the promise of fairness in the idea of equal justice into a reality of for all. It is a journey worth taking.