

Judicial Council on Cultural Diversity
National Roundtable — Access to Justice for
Culturally and Linguistically Diverse Women
Opening Remarks

Chief Justice Robert French AC

24 June 2015, Canberra

Equality before the law is a fine-sounding ideal which rolls easily off the tongue. It does not necessarily deliver equal justice. In 1972, as an articled law clerk in Perth, on the Justice Committee of the New Era Aboriginal Fellowship, I wrote letters to the Minister for Police and the Minister for Justice suggesting special training for police and for Justices of the Peace whose work brought them frequently into contact with indigenous people. The negative responses I received then both invoked the proposition that everybody is equal before the law. It would have been pointless to quote to them Anatole France's scathing observation that:

The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread.¹

The over-arching objective of today's national roundtable might be thought of as 'equal justice'. Relevantly to your discussion, equal justice requires that the legal system be engaged with people in such a way that they are not disadvantaged by reason of cultural and linguistic factors. Importantly, it is not necessary in this context to grapple with difficult questions about cultural exemptions from the application of particular laws or the related question of cultural factors as mandatory relevant considerations informing the exercise of judicial discretion such as sentencing for criminal offences. Those issues which undoubtedly raise questions about equal justice are contested and contestable areas of public policy debate. Our concern today is with equal access to the justice system which is an essential element of equal justice.

¹ Anatole France, *The Red Lily (Le Lys Rouge)* (1894) ch 7.

The topic of equal justice for culturally and linguistically diverse people is concerned with the administration of justice by judges, court officials, lawyers, prosecuting authorities, law enforcement agencies and referral and advisory agencies. That does not involve a narrow concept. Access begins with the lifting of barriers of ignorance and fear through facilitating informed participation in the justice system by parties invoking it, parties responding to it, and others involved in it as witnesses or as supporting persons.

Australians today come from 180 different countries and some 45 per cent of Australians were either born overseas or have at least one parent who was born overseas. The 2011 census revealed that about 4 million people in the Australian population spoke a language other than English at home. The problem of access to justice for culturally and linguistically diverse people is general and not gender specific. It has been recognised for many years in relation to indigenous people. That recognition has been reflected in long established indigenous cultural awareness programs for judges and magistrates which have been coordinated by the National Judicial College of Australia and before that by the Australian Institute of Judicial Administration.

Today's roundtable, however, is addressing a specific subset of the wider problem: that faced by culturally and linguistically diverse women, in particular, in the context of family violence and family breakdown. The existence of a suite of access problems for such women was recognised by the Federal Government's allocation in March this year of a grant of \$120,000 to support the development, by the Judicial Council on Cultural Diversity, of a national framework, guidelines, protocols and training to ensure more effective and consistent administration of justice for those women and their families. The problems of diversity include the diversity of the problems. In the media release issued by the Prime Minister and the Minister assisting the Prime Minister for Women, it was recognised that a 'one-size-fits- all' approach to dealing with family and sexual violence would not address the unique challenges faced by different groups of women in Australia. That is an important observation. The objective of equal justice through enhanced access may require approaches which can respond to diversity within the group of migrant and indigenous women to whom the development of the national framework is directed.

No framework can be devised which is not informed by an understanding that barriers to access to justice for migrant and indigenous women, particularly in relation to family

violence and breakdown, are multi-dimensional and complex with their roots deep in familial and communal histories and the pressures of interaction between migrant and indigenous communities and wider Australian society and its expectations. When violence or a family breakdown occurs cultural, religious and familial factors may pressure victims or other affected people against disclosure and resort to outsiders for assistance. Courts cannot deal directly with those factors which may have to be addressed by social work professionals and others long before the door of the court is reached. Nevertheless, they are matters which must inform the development of any judicial institutional response to diversity. In that context, however, it is important to remember that the courts have a distinctive constitutional function which is necessarily a limited one. They are not, and cannot be, holistic service providers. They deal with and decide the cases brought before them as the law requires. They can nevertheless aspire to shape the ways in which they do that so as to maximise access to justice, notwithstanding diversity. As appears from the discussion paper circulated today, there are already in place a number of measures taken by courts reflecting their awareness of the problem of access to justice for culturally and linguistically diverse people.

The Judicial Council on Diversity with a focus on culturally and linguistically diverse women has brought together today at Parliament House a group with high expertise relevant to its project. Plainly, a one day roundtable is not going to produce all-encompassing answers. Hopefully it will provide some direction for the work of the Judicial Council, perhaps identifying the important issues affecting access, the ways in which those issues present themselves and the kinds of responses which, consistently with their constitutional function, the courts can make. Those responses might include such matters as:

- awareness education for those involved officially or professionally with the working of the justice system, including, in particular, those who have responsibility for devising responses to diversity issues;
- outreach by court officials to referral and advisory groups and community organisations to ensure that they are informed about the working of the judicial system and measures available to assist culturally and linguistically diverse women;
- judicial and agency means for effective communication, including the development and use of audio visual and written aids;

- the education of relevant community leaders in the operation of the court system and the facilities available for people of culturally and linguistically diverse backgrounds;
- consideration of whether all measures must be gender specific or whether some measures are better presented as gender neutral;
- identification of particular aspects of court processes which impede effective access to justice and measures to remove those barriers.

The bringing together of this roundtable is a very good beginning to the project. On behalf of the Council of Chief Justices, I look forward to seeing the product of today's meeting and eventually to receiving advice from the Judicial Council to the Council of Chief Justices with a view to the development and implementation of useful programs.