



AUSTRALIAN
LAWYERS
FOR
HUMAN RIGHTS

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5 September 2017

The Hon Peter Dutton MP
Minister for Immigration and Border Protection
PO Box 6022
Parliament House
Canberra ACT 2600
Via email: minister@border.gov.au

cc: The Hon Malcolm Turnbull MP
Prime Minister
Parliament House
CANBERRA ACT 2600
Via email: malcolm.turnbull.mp@aph.gov.au

Dear Minister Dutton,

Disparaging Remarks about Lawyers and the Constitution

We write on behalf of Australian Lawyers for Human Rights (**ALHR**) to you to express concern about your remarks agreeing with 2GB Radio broadcaster Alan Jones on 28 August 2017 that lawyers who represent people seeking asylum on a pro-bono basis, or on any basis, are “un-Australian”. Further, your comment that “these lawyers have been playing the game with these people who are willing participants. We are a generous nation but we are not going to be taken for a ride” is inappropriate and offensive to the endless work lawyers do, often without being paid. It is a disgraceful slur on lawyers and their profession.

We are also concerned about your comments during the same interview that the Australian Constitution, our nation-defining document, was “frustrating” and creating “issues” and inconvenience for your Ministerial portfolio and to your Department.

In Australia, we have a deep sense of fairness and egalitarianism. In our legal institutions, this is reflected in the rights of all people to be heard by the courts and to have access to legal representation. The rule of law is an indispensable principle of every democratic and just society whose core nature and application is commonly understood as follows:

The Rule of Law, in its most basic form, is the principle that no one is above the law. The rule follows logically from the idea that truth, and therefore law, is based upon fundamental principles which can be discovered, but which cannot be created through an act of will. The most important application of the rule of law is the principle that governmental authority is legitimately exercised only in accordance with written, publicly disclosed laws adopted and enforced in accordance with established procedural steps that are referred to as due process. The principle is intended to be a safeguard against arbitrary governance, whether by a totalitarian leader or by mob rule. Thus, the rule of law is hostile both to dictatorship and to anarchy.

[Source: LexisNexis]

The rights of equality before the law and access to justice are key pillars of our legal system and, indeed, our democracy. Fundamental to our society, access to justice is about ensuring that members of our communities are on an equal playing field and are not prevented from finding out about and pursuing their legal rights by virtue of economic disadvantage. It is essential to our national sense of egalitarianism that we do not reinforce a legal system that favours the privileged over those who are poor, unpopular, vulnerable or marginalised. Respect for the rule of law necessitates respect for the principle that **all people** subject to the exercise of Australian government authority are entitled to due process and to legal representation in order to pursue their legal rights. Your statements to the effect that the pro bono provision of this representation is part of a “politically correct social justice agenda” represents an alarming attempt to deligitimise a commitment to principles that form part of the fundamental structure of our legal system.

Access to justice, egalitarianism and the rule of law have always been foundational pillars of this country. Indeed, the Australian Values Statement, which temporary and permanent visa holders are required to sign, describes our Australian values as including a “commitment to the rule of law” and “mutual respect, tolerance, fair play and compassion for those in need and pursuit of the public good”. If it is to be taken seriously, this Government must abide by the very values it espouses.

Access to justice is vital for all, including those who are marginalised politically, economically and socially. This ensures the courts are able to uphold the rights of all, not just the powerful, and to hold the Government to account. Furthermore, as the Prime Minister and the Attorney General would be keenly aware, in Australia barristers are bound by the “cab-rank rule” which obliges them to accept legal work in the areas in which the barrister practises. It is therefore unethical for a barrister to refuse to fulfill their duty to represent someone in need of legal representation.

Please remember that Australia was at the forefront of the development of the modern international system post-World War Two, which included designing and implementing the architecture of international human rights law. Australia has signed and ratified the core international human rights law instruments. Access to justice and equality before the law are an indispensable part of this architecture and the fabric of our democracy. As citizens of a robust democracy, we do not merely trade off fundamental rights and freedoms because they become an inconvenience to Government, otherwise we would rapidly cease being such a proud and robust democracy.

All Australians should be tremendously proud of the generous contribution of the Australian legal profession which provides pro-bono legal representation to Australians who fall upon hard-times including the poor, the vulnerable, the unpopular, and the marginalised.

In October 2016, the Australian Pro Bono Centre’s Ninth Annual Performance Report on the National Pro Bono Aspirational Target confirmed that in the 2016 financial year, target signatories reported over 400,000 hours of pro-bono legal services equating to an average of 36 hours per lawyer.

This contribution also lifts a significant burden from the courts, the taxpayer and the Government’s budget.

Your colleague, the Attorney-General, recently made the following remarks at the National Association of Community Legal Centres Conference 2017, Canberra on 11 August 2017:

[T]he community service you perform for distressed people, the most vulnerable people in our community, is of particular importance. It is of unique social importance. The Government, governments of both persuasions and at all levels, support you where we can. We will continue to support you and in supporting you, we pay tribute to and respect to the work that you do.

Many members of the legal profession were appalled by your adverse comments which have reasonably been viewed as an attack on their integrity and professionalism, and indeed as an extraordinary attack on our legal system.

Australian politicians have a long and admirable record of conducting themselves in a manner that reflects an understanding of the importance of showing respect for the independence of our legal system.

In these circumstances, we request that you please further explain and justify your comments or otherwise retract and publish an apology to the Australian legal profession and the many hard-working and dedicated lawyers throughout Australia contributing their time freely to assist those less fortunate in our society and thereby striving to maintain the "fair go" that Australians hold dear.

We await your prompt response.

Yours faithfully,



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ALHR was established in 1993 and is a national association of Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory committees and specialist thematic committees. Through advocacy, media engagement, education, networking, research and training, ALHR promotes, practices and protects universally accepted standards of human rights throughout Australia and overseas.