

But since we have the ability to persuade one another and to make clear to ourselves what we want, not only do we avoid living like animals, but we have come together, built cities, made laws, and invented arts. Speech is responsible for nearly all our inventions. It legislated in matters of justice and injustice and beauty and baseness, and without these laws, we would not live with one another...We regard speaking well to be the clearest sign of a good mind, which it requires, and truthful, lawful, and just speech we consider the image of a good and faithful soul. With speech we fight over contentious matters and we investigate the unknown...If we must summarize the power of discourse, we will discover that nothing done prudently occurs without speech, that speech is the leader of all thoughts and actions, and that the most intelligent people use it most of all.

Isocrates, *Antidosis* 253-257

Naturam expellas furca, tamen usque recurret.

Horace

Acknowledgements

This book originated in a series of seven lectures given to the New South Wales Bar Association between May and October 2007. The genesis of that series was a conversation between the Honourable Michael H McHugh AO QC, then a Justice of the High Court of Australia, and Michael Slattery QC, then President of the New South Wales Bar Association. Michael Slattery indicated that he hoped, during his time as President, to hold a series of talks on the orphaned topic of rhetoric. Michael McHugh responded that, during his time practising as a barrister, he often consulted Aristotle's *Rhetoric* to refresh himself in the techniques available to the advocate. Galvanised, Michael Slattery asked the editors to organise the lectures that eventuated.

We would like to express our sincere gratitude to all who participated in that series: the Honourable Justice Michael Kirby AC CMG, the Honourable Michael McHugh AC QC, The Honourable Arthur R Emmett, the Honourable Justice James LB Allsop, the Honourable Justice Catherine M Branson, the Honourable Lucy McCallum, the Honourable TEF Hughes AO QC, the Honourable Antony Whitlam QC, Graham Freudenberg AM, Thomas F Bathurst QC, Michael Slattery QC, Bret M Walker SC, Sharron Norton SC, Alexander Street SC, and Dr Susan Thomas. We would like also to thank those who contributed to the written part of the project: the Honourable Justice JD Heydon AC and Douglas Hassall. It is not mere *diaphora* to stress that we are honoured to have organised and edited the works of such a remarkably distinguished group of contributors.

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JTG and RCAH
Sydney, September 2008

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The Honourable Justice Arthur R Emmett was appointed to the Federal Court of Australia in December 1996 with effect from 3 February 1997. He graduated from the University of Sydney as Bachelor of Arts (1964), Bachelor of Laws (1967) and Master of Laws (1976). In 1967 Justice Emmett was admitted as a solicitor in New South Wales. He was admitted to the Bar of New South Wales in 1978 and was subsequently admitted in ACT, Western Australia, Victoria and South Australia. Justice Emmett was appointed Queen's Counsel in New South Wales in 1985 and in other jurisdictions soon after. He appeared on many occasions in the High Court and also appeared in the last appeal from Australia to the Privy Council. Justice Emmet was a Deputy President of the Copyright Tribunal of Australia from April 2001 to October 2007, when he was appointed President of the Copyright Tribunal. He is a member of the corporations, patent, admiralty, taxation and competition panels of the Federal Court's NSW registry. He has taught Roman Law at the University of Sydney since 1978 and has been Challis Lecturer in Roman Law since 1990. His publications include, "Towards the Civil Law: The Loss of Orality in Civil Litigation in Australia" (2003) 26(2) *University of New South Wales Law Journal*.

Graham Freudenberg AM is one of Australia's best-known speech writers. He was appointed Arthur Calwell's Press Secretary in June 1961, aged 27. Following this, he was advisor and speechwriter with Gough Whitlam (1967-1977) and Bob Hawke (1983-1991) and, in New South Wales, Neville Wran (1976-1986), Barrie Unsworth (1986-1988) and Bob Carr. He has prepared the Australian Labor Party's 's policy speech for 14 federal campaigns and eight in New South Wales. His publications include *A Certain Grandeur – Gough Whitlam in Politics* (1977) and *Cause for Power – the Centenary History of the NSW Labor Party* (1991) and his autobiography, *A Figure of Speech* (Melbourne, Wiley, 2005).

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Law Meets the Regulatory Agencies – Tournament of the Incompatibles” (2005) 46 *Australian Institute of Administrative Law Forum* 28 and “Account of Profits, Contract and Equity” (2005) 79 *Australian Law Journal* 676 (co-authored with James Watson).

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