Anglican History Seminar 2003
Saturday, 20 September 2003
Anglican Church Grammar School, Brisbane

"Personal reflections from the Chancellor of the Diocese of Brisbane"

I am very pleased to have the opportunity to be here, and to deliver these brief remarks. They are luncheon, not dinner remarks. And my not being here for the duration is explained by the circumstance that for all of last week I was away in North Queensland. That included, incidentally, my visiting Palm Island, where the indigenous community is of central significance to the State Government's strategies in dealing with, at least, the aimlessness borne of alcohol and substance dependency, and unemployment; but more realistically, dealing with the violence and moral dereliction which have come to characterize some such communities.

As a Queenslander, I was directly introduced to Palm Island culture in the mid-1980's, when I was first appointed to the Supreme Court and conducted a criminal sittings at Townsville. What then emerged of Palm Island from the cases before me was gravely disheartening: alcohol dependency of major proportion, dramatically low life expectancy, major violence and abuse. Probably because of substantial alcohol restrictions, the position I observed there last week seemed much more encouraging.

From what I had been told of Palm Island, expecting a hell hole, I found a stunningly beautiful island populated by well-motivated people yearning for productive lives. I was warmly welcomed as the first Chief Justice of the State to visit that significant community.

Palm Island covers about 7,100 hectares, and is situated 65 kilometres north-east of Townsville. It was gazetted as a reserve for Aboriginal people in 1914. A settlement was established in 1918 to accommodate Hull River residents faced with hardship because of cyclonic devastation. *The Aboriginal Protection and Restriction of the Sale of Opium Act* 1897 which regulated the settlement, effectively made the traditional owners wards of the State. The authorities used Palm Island as a penal colony, and until the 1980's, its residents were subjected to very comprehensive regulation. That plight was relieved in 1986, with the making of a Deed of Grant in trust and the establishment of an elected Aboriginal council. In recent years the churches have played a worthwhile part. There is no doubt governmental and social welfare agencies are instrumental to the stability of the community.

But so are particular Aboriginal persons of extraordinary dedication to the welfare of their people. I instance the members of the Community Justice Group. This is the longest-serving such group in the State, established following recommendations of the Aboriginal Deaths in Custody report. Members of this group work voluntarily, day and night, in close connection with the police, Magistrates, Community Corrections and Corrective Services, Youth Justice Service, the Department of Families and other agencies to intervene to forestall or resolve conflict. They also play a really good role in the criminal justice system, by assisting the court to mould any penalty to the needs of the community. Community service orders appear to work well on Palm Island.

But the members of the Community Justice Group, led by Peena Geia, pay a price for their courageous intervention: the response is not universal approbation.

Last year I spent some days at Thursday Island. Such on the ground experiences are vital to any reasonable appreciation of the challenges faced

by these communities, and by those who try to help them meet those challenges.

I sat in court, criminal and civil, in Townsville and Cairns last week: I dealt with major cases. In social justice terms, however, my visit to Palm Island was undoubtedly the critical venture. But that had little to do with my being Diocesan Chancellor.

I am afraid to have to say that what follows will probably be of considerably less interest than what I have just said.

I was appointed Chancellor of the Diocese of Brisbane in 1991. Following that appointment, the Annual Law Church Service, which marks the formal commencement of the law year, was next held in St John's Anglican Cathedral in July 1995. On the following day, the "Courier-Mail" published an interesting photograph, taken from the west end of the nave looking through the chancel to the altar. It showed, in rather misty tones, the wigged and gowned backs of the barristers, the similarly adorned judiciary, the officiating clergy, and then, if rather indistinctly to the rear, the Diocesan Chancellor in his stall.

I confess I wondered whether on that occasion it had been right to sit apart from my fellow Judges of the Supreme Court, and felt admonished by the line from Psalm 15, read during the service, that he who "shall dwell in thy tabernacle" is "he that setteth not by himself".

In his occasional sermon, the then Archbishop of Brisbane, Archbishop Hollingworth, urged closer cooperation between church and State. He referred to the circumstance of the separate entry processions – one for the judiciary and the rest of the legal profession, the other for the clergy (from all major churches) – as illustrating the prima facie separation.

I mused that the office of Chancellor facilitated one particular, and historically interesting, link between those two streams. My motivation in processing with the clergy and occupying my stall on that occasion was indeed to make plain, publicly, that the Archbishop of Brisbane could still draw the Diocesan Chancellor from the ranks of the State's highest court, the Supreme Court – as had occurred over many years. Now as Chief Justice, however, I would see it as my predominant obligation to sit with the Judges.

The appropriateness of these arrangements came into question more recently. It followed the appointment of our former Archbishop as Governor General and his statement that he relied for certain approaches and decisions on legal advice. I was subjected to substantial inquiry from within the Supreme Court, the legal profession and our circle of friends and acquaintances, and direct questioning from the local media, as to whether I was the source of that advice. I responded that I was not, and this was published. The "Courier-Mail" then not unreasonably questioned me about the appropriateness of the State's Chief Justice filling this role in the church, referring to the desirability of separation between church and State. I justified this historically established role for a Supreme Court Judge in this Diocese by making, among other responses, the counter query (which admittedly takes the issue to its limit) whether a Judge was because of this position, to be precluded from worshipping in a Christian church. I also made the obvious point that I could not adjudicate judicially on any case involving the Anglican Church in this Diocese. That has indeed produced no practical difficulty in the administration of the Court or the administration of the law in this State, and that is the position to which I presently hold.

I was as I have said appointed to the position in 1991, on 4th August. My immediate predecessor, Mr Justice Matthews, enormously respected as a Judge of utter probity, courage and dedication, was Chancellor from 9th June

1985. (He incidentally occupied the Chancellor's stall during an Opening of the Law Year service at St John's). His predecessor, Sir Charles Wanstall, likewise widely respected, had occupied the position for as many as 24 years, appointed to the office three years after appointment as a Supreme Court Judge in 1958. Sir Charles was Chancellor throughout his term as Chief Justice of Queensland. Earlier in time, another Supreme Court Judge, Mr Justice Chubb, was Chancellor for 12 years from 1910. I did not know him! Other Chancellors have included distinguished barristers, Mr Percy Hart from 1922 for 23 years – also an acting Supreme Court Judge for a time in the thirties, and Mr F T Cross for 16 years from 1945. Mr Cross was for many years the "Cross" of the firm of solicitors, Morris, Fletcher and Cross which merged into the current Minter Ellison.

What, then, has been the role of the Chancellor in this Diocese? The position is sometimes regarded rather curiously, as if, perhaps, anachronistic. Yet it involves a practical commitment to matters of real, current concern.

The Annual Synod Handbook describes the Chancellor as "the Archbishop's legal adviser, appointed by him", and the Chancellor occupies the senior lay position in the Synod. The Chancellor is an ex officio member of the Diocesan Council and the Cathedral Chapter, and tenders advice to those bodies, especially the former, on a wide range of legal issues – relevant to both civil and canon law. In addition, the Chancellor will often be asked to provide advice directly to the Archbishop. The demands of my role in the Court prevent my attending Cathedral Chapter meetings, although I find I can be present at Diocesan Council meetings.

At the Synod, the Chancellor has generally played an active role, providing advice from the floor of the Synod on the legal issues which arise inevitably in that "parliamentary" context, and helping steer the Synod through situations of procedural complexity.

The Chancellor of this Diocese is now greatly assisted by the appointment of a Deputy Chancellor, and I have been deeply grateful to Mr Bill Anderssen for relieving me of much work which would otherwise fall to me, especially important now as I occupy the demanding position of State Chief Justice.

The disposition of legal work within the Diocese is also greatly facilitated by what we call the Legal Committee, comprising the General Manager, a residentiary canon with legal expertise, two practising solicitors, together with the Chancellor and Deputy Chancellor, and chaired by the Deputy Chancellor. Our Legal Committee meets every few weeks at lunchtime, and deals with a wide range of matters, sometimes by direct reference from the Diocesan Council, and often directly from the General Manager. Of course nevertheless a lot of work must be briefed to private solicitors. It must however be said that the voluntary work done by the legal committee undoubtedly saves the Diocese an immense amount of money which would otherwise have to be paid to privately briefed practitioners. The Legal Committee is conscious of the limits of this, as are the Diocesan Council, the General Manager and the Archbishop

Opinions provided by Chancellors over the years have been retained, and they show advice given on quite a wide range of topics, from the construction of wills to the proper interpretation of the Church Constitution and canons. Some opinions have concerned matters of considerable sensitivity: prudence now constrains me.

In England of course, the Chancellor constitutes the so-called Consistory Court: the Chancellor is the "ecclesiastical Judge", involved for the most part in granting "faculties" relating to church land, permission to build, alter buildings, furnish etc. That is no part of the role of the Chancellor in this Diocese. The English Chancellor also exercises a disciplinary jurisdiction in

that court, dealing with charges against members of the clergy. In our comparable Diocesan Tribunal, the Archbishop as president may in his discretion appoint the Chancellor as his deputy and leave the practical conduct of the proceedings to the Chancellor.

The office of Chancellor in this Diocese is interesting to the historian, practically important to the church, and in public terms, a visible manifestation of an important linkage between church and State in an increasingly secular society.

When I say “important”, all I mean is to acknowledge that we are as a society still in a position – on my assessment for what it is worth – where both the law, and the philosophies of the churches, are underpinned by basically the same moral tenets. It is not surprising that institutions similarly based should draw together.

A linkage of that character, through the role of Diocesan Chancellor, has not proved practically troublesome, while one must immediately acknowledge the desirability of a general separation between church and State.