Gold Coast Law Association
Friday, 25 May 2007, 1pm
Restaurant L'esprit, Southport

The Hon Paul de Jersey AC
Chief Justice of Queensland

It is good to be here with you. I especially thank Ted Skuse and the Association for the continuing invitation.

I put it that way, in the sense of a special thanks, because I have on a couple of previous occasions presumed to admonish you somewhat about the perils of commercialism and the imperative of maintaining a strictly ethical professional balance. There is of course a degree of presumption on my part in that, even for a Chief Justice. Thank you so graciously for bearing with me and heeding my message. I stand by and repeat those comments. But even for a Chief Justice, the limits of admonition are rather confined, at least extra-judicially, and I will not today assume the role of headmaster. My constituents are mature, respected, accomplished lawyers, those in whom I may confidently repose my trust as the person ultimately publicly accountable for the profession. You won't let me down and you haven't. It is the people who are your beneficiaries, not only of your professional competence but also your professional ethics. Thank you.

On 27 April this year, I participated for the first time in talk-back radio, with the presenter Madonna King on 612 ABC from Brisbane. It was a very interesting experience, if demanding not to mention daunting. There were many calls, and many which could not even be reached. The callers displayed considerable interest in the work of the courts, and not just the work of the criminal courts, although there were many questions relating to the jury system in particular. What struck me especially was the apparent depth of public interest in the work of this branch of government.

If that experience was a reliable general indicator, then what I drew from it is reassuring. It would be a sadly nihilistic community which did not show intelligent interest in the workings of such a significant branch of government.

I mention this today to emphasize that significance, and that it is a significance which is recognized and monitored by the people, who are our "constituents".

Having your ears for another few moments, I want to mention three matters of current interest.

The first is the prospect of a new Supreme and District Courthouse in Brisbane, on one view an unusual thing to be talking about at the Gold Coast. But there is a twist – wait for it. I am optimistic this will happen, the hope being to open the court in 2011, which will mark the 150th anniversary of the establishment of the Supreme Court. A design competition has been held, and the Premier will in due course, I expect, publish the winning design. I was a member of the judging panel. This will be a building not just for the people of Brisbane, or South East Queensland, but a metropolitan courthouse for all Queenslanders. I have striven for years for this: in the interests of jurors, court registry and administrative staff, the profession, prisoners, the public, and many others. Here's hoping. And can I say, your large Southport courtroom has been advanced as a model of design.

I have dwelt on Brisbane for those few moments in part to instil a focus on Southport. You, ladies and gentlemen, boast what is the best courthouse in the State. Two or three years ago, I signalled the Supreme Court's preparedness to sit here. The uptake has been sadly sporadic. We know why. What is the timeframe now, about 55 minutes to Brisbane? But my own perspective has tended to dwell on the symbolic aspect of the Supreme Court's sitting on the Gold Coast, and I previously explained my reasons for that. I confidently suggest the people of the Gold Coast would be enlivened, in their civic approach, to realize the Supreme Court took the trouble to sit directly within the region.

I was in this year's court calendar to sit at Mt Isa for a week commencing 6 August. Other court demands in that centre have rendered my sitting there impracticable. I am now prepared to sit at Southport for that week. I would be grateful if you would seek to arrange Supreme Court work for me, but absent that, to do your best to have some District Court

work available for me, which I will despatch with the Chief Judge's agreement. Please, can we make an effort, in conjunction with the Registrar to keep me busy.

The second matter I raise is of relevance State-wide. For a long time we have been concerned about the assessment of party and party costs in the Supreme and District Courts, especially because of the protracted and expensive nature of the process. There are considerable delays and backlogs within the Brisbane Registry. Any backlog is intolerable. It is not unknown for a costs assessment to extend over a period longer than the duration of the trial, and even to cost more than the trial itself: those features are utterly unacceptable if not worse. The Rules Committee is exploring, in an active, and proactive, way, establishing a regime under which accredited costs assessors will be available to assess costs. We envisage the accreditation of appropriately experienced members of the legal profession and others. I imagine assessors from outside the profession would need to have accrued some years' experience before justifying their accreditation. Also, any applicant for accreditation would need to demonstrate an acceptable ethical commitment. They will be statutorily accorded, we hope, appropriate immunity and protection. The Uniform Civil Procedure Rules would apply to such an assessment. There is also a current proposal that where an assessment involves issues of significant legal interest, and the determination of those issues may have relevance to other assessments, the assessor furnish, with the determination, reasons in form for publication on the court webpage. I am also proposing the Probate Registrar develop a practice of publishing reasons in interesting probate applications which come before him.

This is the area of professional practice about which I hear the most criticism and adverse reflection. That has been the case for some time, and we have for some time been considering, within the court, ways of dealing with it. We have now reached a point of obligation to address it. I look forward to our unveiling in the near future a new model which will render assessments in this area more predictable, less expensive, and more timely.

It goes without saying that the most desirable position, if it can be achieved, is that no comprehensive party and party costs assessment be necessary. Where both sides are

represented by experienced practitioners, they should be able to agree on a reasonable figure for costs, whether on the standard or indemnity basis. In that case, either the costs may be dealt with by agreement, or the Judge may be asked to fix costs. In the interests of efficiency, I recently published a practice direction headed "Agreed or fixed costs". It is intended to encourage parties to agree on the amount of costs otherwise to be assessed, and to signal the authority of the court, in an appropriate case, to fix costs, and to ensure parties are in a position to inform that process. Where the court is confident it can reliably fix costs, it will do so with a view to avoiding undue delay and expense. To that end, parties are asked, at all relevant times during the hearing of a matter, to be in a position to inform the court of the realistic assessment of the amount of the recoverable costs on either basis. There is an important caveat. As the practice direction says, "preferably parties should not, for this purpose, be put to the expense, and suffer the delay, of preparing a costs statement complying with the UCPR". Nevertheless, the court's expectation is that any estimate will be carefully formulated and realistic. The practice direction includes related provision for an exchange of estimates, which may lead to agreement, but in the event that an assessment nevertheless becomes necessary, the level of the estimates exchanged may be taken into account by the assessor in the final determination of who should pay the costs of the assessment. That is set up as an abbreviated form of the costs statement and response contemplated by the UCPR, abbreviated with a view to avoiding delay and expense.

As you may gather from this two-pronged approach to the costs assessment issue, we are determined to modernize this area of registry and court administration, so that it better serves the interests of litigating parties.

The third matter I would mention is an initiative of QPILCH, of which I am patron. The Queensland Public Interest Law Clearing House coordinates the provision of pro bono services in fields of public significance. One of its very successful initiatives is the establishment of homeless persons' legal clinics, through which practitioners can advance the interests of these vulnerable members of our community. It is topical we reflect on this, with the release of former Justice Carter's report into the treatment of the intellectually disabled, and the publication this week by Queensland Advocacy Incorporated of Phillip

French's report on people with disability in the criminal justice system, and a "vulnerable persons' policy" released by the Department of Justice and Attorney-General. Tony Woodyatt, the QPILCH Coordinator, is here with us today. He would be very interested to talk to you about the proposal to establish a Gold Coast Homeless Persons' Legal Clinic. He would be even more interested to receive your commitment to assist. Can I say, this is a really worthwhile initiative. It will follow models effectively operating elsewhere. It will provide practitioners with a most worthy opportunity to demonstrate their essential altruism, in a highly commendable way. Please consider supporting this proposal.

Thank you for your extremely valuable contribution to the delivery of legal services in South East Queensland. On the Gold Coast, that contribution is distinctly valuable – for the clients, and also I suspect for you. But that demands commensurate ethical and other professional discipline, which means, in candid terms, serve but don't overreach, and always remember the public orientation of the profession.

I pay tribute to the Law Association in moulding a collegial approach which is responsible, and in addition, which delivers most pleasant social events. It has been a great pleasure to be with you all here today.