SUPREME COURT OF QUEENSLAND

Launch of "Don't leave us with the Bill: the case against an Australian Bill of Rights" (Ed Julian Leeser and Ryan Haddrick, Menzies Research Centre)
Banco Court
Monday 27 July 2009, 6pm

The Hon Paul de Jersey AC
Chief Justice

I am very pleased to welcome you this evening, and to launch this important collection of essays on a very interesting subject.

This Banco Court has witnessed a great variety of events of general community interest, especially if I may say over the last decade or so, including a number of book launches: most recently, the Governor-General's launch on 19 June of Dr Denver Beanland's History of the District Court; and penultimately, in March, the Attorney-General's launch of the History of the Queensland Council of Civil Liberties. Four months on, the focus of the occasion is, shall I suggest, cognate.

I was also pleased to be invited to contribute to the book. In the year 2005, the Australian Lawyers Alliance asked me to deliver a keynote address at their annual conference, that year in Cairns. The Association had only recently broadened its charter, from plaintiff litigation to a wider attention to human rights. I was asked to speak at the conference on an Australian bill of rights. I had by then formed a personal view that a statutory bill of rights was undesirable, but I had not yet been prepared to enter into any public debate by declaring my position. And so I delivered at the conference a paper which canvassed the arguments for, and the arguments against, and then left the decision to the "jury". I recall the indignant dismay of one journalist I had thereby denied a story.

By the time Julian Leeser approached me last year, my reticence had evaporated. I readily agreed the public debate on the issue had become quite "one-sided", and the notion of a coordinated expression of the alternative view attracted me. Julian may have

been surprised by the speed which I provided my contribution: it was largely accomplished by resurrecting my Cairns paper and cutting it in two. But contrary to Fred Daly's oft repeated retort to Jim Killen, it did matter which half I published.

The oddity of this debate is that it should be happening at all. I sense no particular drive from the citizenry agitating for a statutory bill of rights, let alone one constitutionally enshrined. While the parliaments of Victoria and the ACT have chosen to speak for their people, any national agitation, so far as I discern it, is led by, and probably confined to, a group of academic lawyers. That the Brennan inquiry has received a lot of submissions is of course another matter. My feeling is that the people of Australia are satisfied with the level of identification and protection of rights presently prevailing. Yet the campaign of the proponents reached a point where contrary arguments needed presentation, and I congratulate the Menzies Research Centre, and the Editors Julian Leeser and Ryan Haddrick, on having assembled a varied selection of compelling essays from prominent and interesting contributors.

Of course one of the risks attending opposition to a bill of rights, is that you be condemned as antagonistic to human rights generally. That non-sequitur is a risk to be run. My own view is that so far as they should specifically be identified, our rights as Australian citizens are well-established and well-protected by an array of legislative pronouncements.

I was struck by what Sir Robert Menzies said in 1966, as Senator Brandis reminds us in his contribution:

> "I am glad that the draftsmen of the Australian Constitution, though they gave close and learned study to the American Constitution and its amendments made little or no attempt to define individual liberties. They knew that, with legal definition, words can become more important than ideas. They knew that to define human rights is either to limit them – for in the long run words must be given some meaning – or to express them so broadly that the discipline which is inherent in all government and ordered society becomes impossible."

My particular professional concern, as a judicial officer, rest in the consequences for the Australian judiciary, and public perceptions of it, and I have said something of this in my own contribution. Ian Callinan, in his paper, reminds us of a telling observation by the present Chief Justice of Canada, Beverley McLachlin, in 1997, when the Canadian Charter had been up and running for 15 years, that the Canadian Charter had thrust the Supreme Court of Canada into an "uncertain sea of value judgments".

The gavel on the cover of the book is being wielded by an exceptionally youthful looking hand. Maybe it belongs to a young American judge of the elected ilk: may we never follow that expedient here. But significantly I think, the hammer has not made contact: the resolution is unclear. Judges should not decide these issues.

With well-established exceptions, the most notable being the application and incremental development of the common law, the Australian judicial role, as well understood by the public, is to deliver justice according to law, that is, the law ordained by the people's elected representatives in the parliament. It is for parliaments, not judges, to prescribe relevant limitations on such issues as, and I deliberately select two which are graphically contentious, abortion and privacy.

Yet, it is said, we are internationally out of step. We should follow the lead of nations which have adopted bill of rights. Well, let us not overlook that those nations include, chillingly, Zimbabwe, North Korea, Iran, Nazi Germany, Fiji … On the other hand, as the former Prime Minister suggests in this volume, Australia is one of fewer than 10 nations to have remained continuously democratic for the last 100 years. We judges admonish juries to draw only inferences which are reasonably open. I suggest the inference in this case is clear: and that is, substantial public satisfaction with the persisting level of the identification and protection of basic rights.

Following supposed leaders is not necessarily the best way forward. Some years ago, Australian judges were urged to adopt a set of ethical guidelines which had attracted a

number of respected international adherents. Those guidelines included a provision telling judges they must not accept bribes. You may be reassured we Australians declined to adopt those guidelines, lest it thought Australian judges were inclined to accept bribes or needed to be reminded against doing so. Experiences are not uniform, and a need in one jurisdiction may not exist in another.

Ladies and gentlemen, we confront a monumentally significant issue. I say in conclusion that I agree with the Editors, when they submit that "such is the effect that a bill of rights would have on our institutions that … no bill of rights should be introduced without a vote of the Australian people".

It is with great pleasure that I launch "Don't leave us with the Bill: the case against an Australian Bill of Rights"; and in so doing, I thank and congratulate the Institute, the Editors, and all other contributors.