



Presentation of Senior Counsel; recognition of newly-admitted
barristers; traditional exchange of Christmas Greetings
Banco Court
Wednesday 16 December 2009, 9:15am

**The Hon Paul de Jersey AC
Chief Justice**

I note with pleasure the presence of the Honourable the Attorney-General, the Presidents, the Chief Judge and Judges of the District Court, Judges of the Federal and Family Courts, the Chief Magistrate and Magistrates, retired Judges and Tribunal members and the Director-General and her departmental officers.

Announcements by Senior Counsel

I now invite the recently appointed Senior Counsel to make their announcements

...

Mr Rice

Mr Byrne

Mr Horneman-Wren

Would those Senior Counsel please come forward to sign the roll?

...

It should be appreciated that although I am the nominated appointer of Senior Counsel, the process is intensely collegial, and benefits from the results of the consultation conducted by the Senior Counsel Consultation Group established by the Bar Council.

The appointments are greatly significant to the appointees, in terms of recognition, career advancement and influence within the profession.



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You present as Counsel of singular probity, learning and accomplishment. We are confident you have the capacity to rise to the particular challenge which now confronts you. We wish you well...

Recently admitted barristers

Mr Douglas

...

The President says:

“May it please the court. I have the pleasure of announcing that the following practitioners present in court today have become barristers of the Supreme Court of Queensland since 1 July 2009:

(As each barrister’s name is announced, that barrister stands and bows to the court.)

Mr Christopher John Conley
Mr Michael John Holohan
Mr Brett Le Plastrier
Mr Michael Gerard Lyons
Ms Claudine Francoise Umashev
Mr Matthew Owen Jones
Ms Jane Elizabeth FitzGerald
Ms Diana Awad
Dr Angela Salzmann
Miss Anna Christina Black
Ms Susan Kaye McLeod
Ms Sue-Ellen Wright
Mr Craig Ian Newport
Ms Nanette June Noble
Ms Rosanna Felicity Doolan
Mr Toby Alexander Nielsen



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Mrs Deborah Jane Hubbard
Mr Simon Peter Taylor
Mr Philip Kenneth O'Higgins
Mr Joseph Paul Morris

I am pleased to commend each of these barristers to the court.”

Chief Justice

Queensland remains an Australian jurisdiction in which citizens, natural and corporate, still enjoy the benefit of an independent Bar.

All lawyers should present as specialist professionals. Members of the Bar profess a particular specialisation. It is one which allies them closely with the courts in the discharge of the charter of the delivery of justice according to law.

One of the best expressions of the relationship between the Bar and the courts came from Sir Frank Kitto in *Zeims' case* (1957) 97 CLR 279, 298, and it bears repetition:

“...The Bar is no ordinary profession or occupation. These are not empty words, nor is it their purpose to express or encourage professional pretensions. They should be understood as a reminder that a barrister is more than his client’s confidant, adviser and advocate, and must therefore possess more than honesty, learning and forensic ability. He is, by virtue of a long tradition, in a relationship of intimate collaboration with the Judges, as well as with his fellow members of the Bar, in the high task of endeavouring to make successful the service of the law to the community. This is a delicate relationship, and it carries exceptional privileges and exceptional obligations.”

As legal practitioners, you also assume a responsibility for the maintenance of the rule of law. The rule of law is a stipulation which must never be taken for granted, even in a highly developed and sophisticated society like ours. This truth is strikingly evident in parts of the world today, one of them very close to Australia.



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We welcome you to the ranks of the Queensland and thence the Australian Bar.

We urge you to discharge the high public duties of your role, as barristers, with independence and high competence, while exhibiting undoubted integrity. We also encourage you to develop a marked degree of expert speciality through your endeavours.

Christmas greetings

I pass now to the seasonal character of this morning's sittings, and begin by warmly thanking the Crown Law Choir, and its conductor Ms Lydia Daly, for again transporting us melodically and festively.

As well as lifting spirits, the Choir pursues a charitable goal. A CD of its work is available for a donation of \$6. The proceeds are this year destined for the Ecumenical Coffee Brigade, and so far they total more than \$2,300. I hope that total may increase today: CD's will be available outside. This is a really good initiative, especially at this time of year when the plight of the homeless, the disadvantaged and the vulnerable should particularly engage us all.

I do not intend on this occasion to traverse the court's performance over the last 12 months. A picture of that may be gleaned from the published Annual Report. My principal message this morning is one of gratitude, to my judicial colleagues, the profession and all who have facilitated the discharge of the mission of the courts.

The work of the courts is greatly eased by the support of officers of the Department of Justice and Attorney-General. We are very disappointed that our much respected Director-General, Ms Rachel Hunter, is retiring from that position. The Director-General has been an outstanding supporter of the courts, and an outstanding facilitator of the administrative initiatives of the courts. The courts, the people have been privileged beneficiaries of her enormous experience and distinction as a leading public servant in this



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State. We will greatly miss her, and wish her well as leaves for new ventures and commitments.

The past year has seen the sad demise of a serving Judge, a former Chief Justice and two former Judges long retired. It has seen the appointment of two new Judges of the Supreme Court, the recent inauguration of the Queensland Civil and Administrative Tribunal, and the imminent implementation of the jurisdictional changes recommended by our former colleague Martin Moynihan.

The State's sesquicentennial year has also witnessed the steady construction of the new metropolitan quarters for the Supreme Court and the District Court. That afforded considerable cause for optimism this year, while the global financial crisis otherwise warranted concern. We saw not just the survival but the rapid progress of the project, and I thank the Premier and the Attorney for their significant support. I urge you to look at the computer generated display about the project located in the foyer of this building if you do not have time to walk 5 minutes down George Street to peer through the apertures in the hoarding at the site itself. My experiences throughout Australia and overseas leave me in no doubt: all Queenslanders will be enormously proud of this new metropolitan courthouse for their Supreme and District Courts, destined for completion late 2011/early 2012. I particularly thank the Building Committee Judges for their enthusiastic application to the project, and the architects, Mr John Grealy, Dr John Hockings, Mr Ralph Bailey, and from Bovis Lend Lease, Mr Tony Orazio, general manager, and Mr Lucas Stewart, senior project manager and Mr Allan Robertson, project manager, all of whom are present here this morning.

I wish this morning to say something briefly, in addition, about two particular matters. The first is the Moynihan reforms. The second is national legal profession reform.

My own view is that the Moynihan reforms are most appropriate, if not overdue. It will be important to monitor the consequences of the jurisdictional changes. The implementation



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is being carefully managed by a taskforce of which I am a member. One obvious point to be made with the substantial increase in the District Court's civil jurisdiction is the prime need to maintain the quality of appointments to that court, especially on the commercial side. A related consideration, with the increasing Queensland population, is the need to at least maintain the present ratio of judicial officers to population – in fact the lowest in the nation, which may bear testimony to the working commitment of Queensland judges and magistrates.

I turn to the second matter, national legal profession reform, an initiative of the Council of Australian Governments. The major objectives are commendable – simplified uniform legislation and regulation, national standards policies and practices where practicable, freedom of movement between jurisdictions to foster a truly national profession, and clear and accessible consumer protection – though it is not clear to me that they are not presently being secured.

I have been assured the courts will remain the admitting authorities and that current mechanisms for the treatment of disciplinary complaints will be respected: that is, disciplinary applications will be determined as at present. They must be. A complaint against a practitioner in regional Queensland should be determined by a State-based tribunal familiar with any relevant nuances of practice in that part of the State. The uniquely decentralized nature of practice in Queensland gives rise to some considerations quite different from those of practice in other, largely metropolitan, jurisdictions.

I am concerned about one important aspect of the direction of the taskforce charged with the development of the model.

The presently preferred model, I understand, involves a National Legal Services Board responsible for determining national standards on a number of important matters, including admission, suitability for admission, practising entitlements, professional conduct and business practice.



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These matters, especially the setting of ethical standards, go to the heart of the profession. My concern stems from the posited composition of the Board. The discussion paper of the Consultative Group proposes that the Board would comprise “a small body of around five members appointed on the advice of the Standing Committee of Attorneys-General”: a small, powerful body, and because small, one may at once query whether all relevant interests could be represented.

The alternative regulatory framework developed by the Law Council of Australia proposed that the Commonwealth Attorney-General appoint the Board, after consultation with other Attorneys and professional bodies. Yet the primary position of the Law Council is that “there must remain an independent legal profession”.

I cannot presently see how the legal profession will remain “independent” if effectively governed by a body appointed by the executive government. The substantial constraint to which the profession has to date been subject, and which warrants its being characterized as the legal profession, is the supervisory jurisdiction of the court over its individual members. This would substantially change, were a governmental body in place to determine the sorts of fundamental issues just mentioned. That position may be ameliorated were such a body to be a joint creature of the courts and the profession.

I understand the concerns which fired this initiative were experienced primarily in large national firms understandably – from their aspect – frustrated by expense, delay and inconvenience in having to master and operate within varying regulatory regimes from State to State. I have not heard concerns from our 1,200 strong Queensland Bar, nor from the majority of Queensland solicitors, nor from those members of the Queensland public who utilize legal services.

The Law Society informs me that the nationally based firms account for about 12% of Queensland solicitors. It would be unfortunate were the influence of those national and



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multi-nationally based firms to bring about a refashioning of the profession to the point where it lost its independence and would be regarded as controlled by executive government.

It is in truth the practitioner's relationship with the court – the court admits and as necessary disciplines, the court delineates ethical and professional standards – which distinguishes the legal profession from other professions. Legal practitioners are officers of the court. It is to the court they owe their predominant ethical duty. Implementing the model presently envisaged would transfer that dependence from the court to the executive, and that would be unacceptable in these Australian jurisdictions where the relative independence of the legal profession is an adjunct of the independence of the judiciary and thereby effectively seen as part of the rule of law.

My other, concededly more pedestrian though nevertheless still important concern, relates to the cost of the bureaucracies which the proposed new instrumentalities will inevitably spawn. The proposed National Legal Services Board, the Standards Advisory Committees, and the National Legal Ombudsman will not come inexpensively. Who will be called upon to bear the cost? The existing legitimate demands in this State on the interest on trust accounts fund are substantial. Our present system in Queensland works well. It would be regrettable were Queensland taxpayers, or Queensland practitioners, required to subsidize the cost of a new national system introduced to appease the misgivings of a small and high earning group of the nation's solicitors. Interacting regularly with practitioners from regional Queensland, I am struck by their utter dedication. I would be very concerned were the viability of practice in centres like Blackall, Longreach, Mt Isa, Weipa, Cunnamulla, Dalby...jeopardized by any new financial impost.

In reality, any present "problem", so far as it exists, is no more than a degree of untidiness.



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Practitioners may readily practise from one Australian jurisdiction to another. Uniform admission standards are well articulated and carefully implemented. Ethical standards are comparatively uniform and rigorously monitored.

At least 88% of Queensland solicitors would not relate to this suggested “problem”, or a problem to be addressed in this way. Neither would more than 1,200 Queensland barristers. Neither, I venture, would those Queenslanders who utilize legal services.

The only relevant objective is not making life easier for the big end of town, but maximizing the availability of good quality legal services.

There are particular needs in Queensland which should make us chary about the proposed reforms.

The momentum may be unstoppable. It is a pity those behind it will not be paying for it. It will be particularly appalling if it leads to a reduction in on the spot legal services in regional and remote Queensland.

There is real need for a prolonged pause in this presently galloping process, and a serious rethink.

Please pardon my entering to that extent on such an earnest topic on this particular occasion, but I felt it important that at this stage my view be known.

It remains for me to repeat my sincere thanks to my colleagues, the profession, the court’s dedicated administrative and Registry staff, our efficient and loyal associates and secretaries, the ever attentive corps of bailiffs, our patient court reporters, the assiduous security staff, our reliable correctional officers, our invaluable Library staff, and that much appreciated band of volunteers who so willingly and effectively assist litigants and others within the courthouse, the Court Network and the Self-representation Civil Law Service.



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I add only this: we wish that you, your families and friends – and our families – may enjoy a safe, peaceful and refreshing festive season, and a happy and fulfilling year 2010.

Mr Attorney...

Mr Solicitor...

Director-General, Ms Rachel Hunter...

President of the Bar Association of Queensland, Mr Richard Douglas SC...

President of the Queensland Law Society, Mr Ian Berry