



# Speech at the Bench-bar Dinner

Papua New Guinea  
Wednesday 25 March 2015

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**The Hon Tim Carmody  
Chief Justice**

## **PAPUA NEW GUINEA'S RELATIONS WITH AUSTRALIA**

### **Introduction**

Good evening. My respects to Chief Justice Injia, your Honours, distinguished members of the profession and other special guests. It is both a pleasure and a privilege to be back in your country again to attend the very first bench-bar dinner. May there be many more. I learned a lot about your court system on my last visit and was honoured to meet many prominent legal figures. Tonight I will touch a little on the past and the present before looking forward to the future. The more time we spend together the stronger the links that unite us will be. I believe that there is much we are yet to learn from and do for one another.

I would also like to note what is, I am sure, a date that rightly ignites in each and every member of the Papua New Guinean community strong feelings of patriotism and pride – the 40<sup>th</sup> anniversary of independence on the 16<sup>th</sup> of September.

Hosting the 15<sup>th</sup> Pacific games later this year will only add to the sense of achievement, satisfaction, anticipation and celebration that must be mounting in Port Moresby and elsewhere.

### **Female Role Models in PNG**

I would like to begin my prepared remarks by acknowledging the inspirational women your country is fortunate enough to have.

Miriam Potopi, for example, who despite many challenges and personal misfortune is one of the first female village magistrates in the country.



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Speaking about the mixed feelings surrounding her appointment, with a face and voice bursting with feeling, she says:

A lot of people were upset. They tried to mess with me, but I'm still here. How did an unimportant woman win a position of authority? Many times in court they were angry with me. But I'm the magistrate.

She and the many other lawyers in private practice and public service are living proof of the fruit produced by the tree of knowledge, determination and courage.

Another woman meriting specific mention this evening is Sr. Lorraine Garasu from Bougainville which was embroiled in a decade long civil war. In her demanding role as a mediator, Lorraine is fully committed to restoring peace and healing the wounds of that conflict. Her selfless devotion to the cause is clear when she says:

Inside my heart, I feel that I need to give. I need to make a difference. I need to help someone change their life.

It is not hard to see why she has been described as a "special woman leader". Her goodness of character and strength of spirit is something that each of us, male or female, can aspire to, both personally and professionally.

### **Shared Values**

Australia, especially Queensland, has an iron bond with Papua New Guinea forged by history, geography and shared values.

At the 2015 Legal Year Opening, Sir Salamo said that "the rule of law must operate in all conditions".<sup>1</sup> This universal principle which has rightly been called one of humanity's

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<sup>1</sup> Supreme and National Courts of Papua New Guinea, *Legal Year Opening 2015*, The Supreme and National Courts of Papua New Guinea <<http://www.pngjudiciary.gov.pg/home/index.php/news/239-legal-year-opening-2014>>.



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greatest achievements and the cornerstone of a society that enjoys freedom and democracy<sup>2</sup> is a prime example.

The Magna Carta in 1215 which saw limits placed upon the previously unbounded power of King John of England is recognised as having a profound influence upon the rule of law as we know and understand it today.<sup>3</sup> It is timely to recall this to mind in the lead-up to the 800<sup>th</sup> anniversary of the Magna Carta this year.

Our countries both strive to ensure that the rule of law remains a centrepiece of our legal and political systems. The trademarks of this principle such as a separation of powers and judicial independence are grounded in our Constitutions and our oaths of office.

Speaking from firsthand experience of the PNG judiciary, Justice John Logan of the Australian Federal Court has described them as “collegiate and robustly independent.”<sup>4</sup>

### **Historical Relationship between Australia and Papua New Guinea**

Our strongest tie undoubtedly has its origins in our common heritage. Its intangible but lingering touch on our hearts and minds is captured in Lord Acton’s famous reflection that “history is not a burden on the memory but an illumination of the soul”.

The intimate and symbiotic relationship between our two countries can in fact be traced back thousands of years to a time when a land bridge joined us.<sup>5</sup> And as you are all aware, throughout the 20<sup>th</sup> century for over 50 years before independence in 1975, Papua New Guinea was an Australian territory.<sup>6</sup>

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<sup>2</sup> Hon Marilyn Warren AC, ‘Does Judicial Independence Matter?’ (2011) 85 *Australian Law Journal* 481, 481.

<sup>3</sup> Kate Galloway and Allan Ardill, ‘Queensland: A Return to the Moonlight State?’ (2014) 39(1) *Alternative Law Journal* 3, 3.

<sup>4</sup> Justice John Logan, ‘A Year in the Life of an Australian Member of the PNG Judiciary’ (Speech delivered at the 18<sup>th</sup> Commonwealth Law Conference, Cape Town South Africa, 15 April 2013) 4.

<sup>5</sup> Carmel Reilly, *Papua New Guinea* (Pearson, 2010) 4.

<sup>6</sup> *Ibid.*



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In the face of the extreme challenges arising during WWI and WWII, the destinies of Australia and Papua New Guinea converged. In WWI Australia invaded what was then known as German New Guinea, bringing the northeast under Australian control.<sup>7</sup>

Then in WWII, we fought alongside one another to repel the Japanese forces which had bombed Papua as well as northern Australia.<sup>8</sup> The significance of the events during WWII is underscored in Prime Minister John Curtin's warning that if the attacks on Port Moresby and Darwin were successful, it would eventuate in "a bloody struggle on our own soil, a struggle in which we would be forced to fight grimly, city by city, village by village, until our fair land might become a blackened ruin".<sup>9</sup>

A "key part of the history of both Australia and Papua New Guinea"<sup>10</sup> and of ongoing importance to both is the famous battle on the Kokoda Track in which many Australian troops and locals fought valiantly and sacrificed their lives for a joint cause.

The events of WWII marked a turning point in the relationship between Australia and Papua New Guinea. What was previously described as "cold realpolitik" thought on the part of Australians was transformed into genuine admiration and appreciation.<sup>11</sup> It is often observed that working together through adversity creates an enduring connection. The post-WWII sentiments attest to that belief. Australia's change of heart was remarked on by Stuart Doran who said that:

Experiences and images of Australian forces fighting and suffering alongside indigenes bred an emotional attachment symbolised by the legend of [Kokoda] and given a practical dimension by the thought that Australians owed Papua New Guineans a debt of gratitude."<sup>12</sup>

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<sup>7</sup> Stuart Doran, *Full Circle: Australia and Papua New Guinea 1883-1970* (Commonwealth of Australia, 2007)

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<sup>8</sup> Ibid 2.

<sup>9</sup> Ibid 2-3.

<sup>10</sup> Reilly, above n 5, 11.

<sup>11</sup> Doran, above n 7, 4.

<sup>12</sup> Ibid.



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**Queensland's longstanding relationship with Papua New Guinea**

Our links run deeper still to include a longstanding political and judicial relationship.

For many years, Papua New Guinea was a protectorate administered by Queensland.

The great grandfather of Justice Douglas currently of the Supreme Court was a first Papua New Guinea administrator.

And, of course, we share a Criminal Code and substantially the same laws of evidence.

Australia (and particularly Queensland) contributed at various other levels to the strengthening of Papua New Guinea's economic development, democratic structures and judicial capacity.

An integral point in the recent past was the signing of the Memorandum of Understanding in 2012 providing for judicial cooperation between courts of Papua New Guinea and the Queensland Supreme Court. Key objectives set out in the Memorandum include developing a firm foundation for future relations, promoting further understanding of each other's legal systems and judicial culture and enhancing the capacity of the Supreme and National Courts to fulfil their mandates in exercising their criminal jurisdiction.

There has also been significant interaction between Queensland Court Services and the judiciary and staff from Papua New Guinea. On many occasions Queensland staff have travelled to Papua New Guinea and vice versa. The visits primarily involved workshops covering a broad range of topics including archiving, electronic civil and criminal file and case management, courtroom technology and video conferencing facilities, staff training and registry operations.

Queensland also assists with the education of intending lawyers. Two years ago the Queensland Bar Association set up the South Pacific Legal Education Committee.



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In 2013 the PLE conducted the Inaugural Criminal Law Advocacy Workshop in Port Moresby<sup>13</sup> involving over 100 participants from the Public Solicitor's office and the Public Prosecutor's office in intensive practical course work.<sup>14</sup> Presenters at this workshop included former Queensland Supreme Court Judges.

The Papua New Guinea Legal Training Institute launched a pre-admission programme for law graduates in the same year. LTI presenters included Justice Logan, John Bond QC (our most recent appointment to the Supreme Court), Judge Michael Burnett (now a judge of the Queensland District Court) and Mal Varitimos QC who is well known to you.<sup>15</sup> Those involved in the commercial litigation course also included Justice Douglas of the Supreme Court and John Griffin QC.<sup>16</sup>

In that same year Chief Justice Injia initiated and formally opened the Legal Training Institute workshop and Justice Davani gave a closing address.

A successful two day workshop with an advocacy focus was also run in 2012 in Lae.

Since 2014 members of the Bar Association have been contributors at Continuing Professional Development (CPD) events in various areas of practice including appellant advocacy, ex-parte applications, court ethics and etiquette.

Queensland remains ready, willing and able to assist local practitioners with continuing legal education and mentoring just as they do with young practitioners from our own state through the master reader arrangements.

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<sup>13</sup> Bar Association of Queensland, 'Annual Report 2013-2014' (110<sup>th</sup> Report, Bar Association of Queensland) 7.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Justice James Douglas, *Perfectionists! Teaching advocacy abroad*, Purelydicta <<http://purelydicta.com/2013/03/perfectionists-teaching-advocacy-abroad/>>.



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Twenty-three Queensland barristers are currently listed as being admitted in Papua New Guinea. The Queensland Bar is eager to continue and deepen its longstanding presence. Its goal is to compliment, not compete with the local bar. Overseas counsel can add value in cases of legal complexity and assist the local profession by sharing the benefit of their experience. Ideally it will gradually do itself out of a job by enriching the local profession to the point of its own redundancy.

I should mention and thank notable barristers who have enjoyed close connections with Papua New Guinea for many years. They include John Griffin QC who has practiced here since the 1960s and Rob O'Regan QC, now retired, who taught and practiced criminal law at the PNG University, the incomparable Des Sturgess QC, Judge Eric Pratt and Des Draydon are only a few of many.

### **Future links**

My vision for the future administration of our courts is that together we move towards strengthening and expanding our already strong relationship.

During a speech at Cape Town in 2013 Justice Logan commented on the limited capacity of Australia's Federal Court judges to undertake additional commissions in Papua New Guinea.<sup>17</sup> In view of those constraints, Sir Salamo and I have had preliminary discussions about how Queensland could help in the most meaningful and appropriate way and are exploring how sitting state judges might be able to play a more hands on role as adjuncts without impeding the move to expand the local judiciary and supplement it with resident permanent appointments on standard conditions rather than fly in fly outs.

I am personally interested in circuiting for criminal sittings if that was doable and appropriate from everyone's standpoint.

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<sup>17</sup> Justice Logan, above n 4, 3.



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I should also note that any ideas I may have will of course need to be raised with the Council of Australasian Judicial Administration, the Department of Foreign Affairs and Trade and the Chief Judge of the Queensland District Court.

If this plan is developed and implemented, I believe that it will prove to be a very mutually beneficial arrangement for both of our countries.

**Concluding Remarks**

In closing, I would like once more to reinforce and repeat my commitment to doing what I can to help build on our historical and existing ties into the future to our mutual advantage and enrichment.