

ADDRESS BY  
HIS EXCELLENCY MAJOR GENERAL MICHAEL JEFFERY AC CVO MC  
GOVERNOR-GENERAL OF THE COMMONWEALTH OF AUSTRALIA  
ON THE OCCASION OF  
THE OPENING OF THE JUDICIAL CONFERENCE OF AUSTRALIA COLLOQUIUM  
HYATT HOTEL, CANBERRA  
6 OCTOBER 2006

- The Honourable Justice Ronald Sackville, Chairman, Judicial Conference of Australia, and Mrs Sackville
- The Honourable Justice Murray Gleeson, Chief Justice of the High Court
- Distinguished guests all

It was a great pleasure to attend a lunch earlier with members of the conference organising committee, and now to be with you to officially open the Colloquium of the Judicial Conference of Australia.

I remember many stories from childhood, and amongst the yarns of 'Boys Own Adventures' which were a feature of my generation, the marvellous stories of myth and legend. For example, I recall the "mythic Greek god Zeus, supreme ruler of Mount Olympus and of the Pantheon of gods who resided there. He upheld law, justice and morals. Zeus held a banquet in celebration of the marriage of Peleus and Thetis."

"Left off the guest list was Eris (goddess of discord), and upon turning up uninvited she threw a golden apple into the ceremony, with the inscription which said: "for the fairest one". Three goddesses claimed the apple: Hera, Athena and Aphrodite."

"Zeus decided that Paris of Troy would judge their cases. Each of the goddesses offered Paris a gift. Hera would give him power, Athena would make him wise, and Aphrodite offered him the love of the world's most beautiful woman, Helen. Paris chose Aphrodite (afro.dye.tee), and Helen's leaving of her previous husband precipitated the Trojan War."

I don't want to offer any speculation about Paris's judgement, except to say that the law and judicial decisions have shaped society since time immemorial - and undoubtedly will continue until what many people consider will be the most significant of judgements - that of mankind by God at the end of the world. Once again I don't want to offer any advance speculation on that.

Ladies and gentlemen.

What is it that makes Australia such a respected nation - one that members of the global community want to do business with and to partner cooperatively in all forms of human endeavour?

It seems to me that Australia's reputation and high standing is in part built upon its economic stability and prosperity, and its innovation and commonsense approach to finding new solutions to old problems.

But at least as equally as importantly, ours is a nation that cherishes its democracy, respects its institutions (though I hope doesn't take them for granted) and respects the rule of law. I said as much last week in an address at a state lunch hosted by the Prime Minister of The Netherlands in The Hague.

In an address to the Australian Bar Association in July 2000, Chief Justice Gleeson noted that "*judicial power, which involves the capacity to administer criminal justice, and to make binding decisions in civil*

*disputes between citizens, or between a citizen and a government, is held on trust. It is an express trust, the conditions of which are stated in the commission of a judge or magistrate, and the terms of the judicial oath."*

### **Judicial Independence**

The independence of the judiciary is one of the fundamental pillars of stable democracy including our own. It requires that the judiciary be able to exercise its functions without improper interference from the Executive or the legislature.

Indeed, public confidence in the administration of justice depends upon members of the community being able to approach the courts, even when they bring legal proceedings against the government or vice versa, and to do so with complete certainty that the government cannot interfere in their case.

Indeed, as noted elsewhere by Chief Justice Gleeson: *"The most important measure of the performance of courts is the extent of public confidence in their independence, integrity and impartiality."*

In Australia, there are a number of ways in which the independence of the judiciary is preserved. These include, most significantly, the provisions in the Australian Constitution guaranteeing security of tenure and fixed remuneration for federal judges and magistrates.

Under Chapter III of the Constitution, once appointed, federal judges and magistrates are subject to removal only by the Governor-General in Council on an address from both Houses of Parliament on grounds of proved misbehaviour or incapacity. I am pleased to say neither I, nor any of my predecessors, have ever been involved in such a process. Judges are also immune from suit in respect of judicial acts.

These protections are designed to ensure members of the judiciary may carry out their functions without fear or favour, in accordance with their oath of office.

### **Judicial accountability**

According to various reports, Richard Atkins was the most controversial judge in the most controversial period of New South Wales history. He first took office as Acting Judge Advocate in 1796 and served in that capacity at various times up until 1809.

It seems that the controversy surrounding Atkins was based on three facts: his drunkenness, his lack of money, and his attachment to the governors. He was described as a man who *"lies, cheats, drinks, forbears no lewd delights, a hateful fiend by day - a monster thro' the night"*. Governor Bligh described him as a *"disgrace to human jurisprudence."*

It is noted that some historians *"see him as a hopeless drunk, while others see a humane, sensitive, though weak, gentleman of his aristocratic background."*

Regardless of such views, one of his diary entries from 1792 makes a telling account of the challenge of being judge - of disavowing emotion when making judgements: *"This day at 6 o'clock set off for Parramatta in the Governor's gig with the Judge Advocate. The feelings of humanity are sorely wounded to see the number of poor wretches, whose emaciated looks denote poverty and misery in the extreme, brought as prisoners, for stealing a few cobs of Indian corn. Hunger is the general plea, but unfortunately in this country it cannot be admitted, for was it admitted, no private property could be secure. Indeed, to act as a magistrate here with efficacy, you must in a great degree lay aside that philanthropy and goodwill towards men that adorns human nature."*

Ladies and gentlemen. In a paper prepared in 1998 for the New South Wales Parliament on Judicial Accountability, the author noted that Australia has important informal mechanisms operating to make the judiciary accountable to the community; notably judges are obliged to hear argument on both sides; judges are obliged to conduct hearings in public; judges must give reasons for their decisions; and their judgements are subject to appeal.

Judges and courts are accountable for their performance. Judges perform their duties in public. They are

also at times subject to intense public and media scrutiny as are all our public institutions and holders of high public office.

In the case of courts which have separate financial administrations, including all the federal courts, they are responsible for the proper expenditure of significant amounts of public moneys. The public is entitled to expect that money is spent appropriately.

Court governance and the core work of courts, which are on the agenda for this colloquium, are of enormous public importance.

### **Judicial Appointments**

Ladies and gentlemen. The executive and judicial branches of government cross paths in the making of judicial appointments. The process for making appointments to the federal judiciary is enshrined in the Australian Constitution. Chapter III of the Constitution vests the appointment-making functions in the Executive Government. And it is the role of the Governor-General in Council to formally make appointments and I take great personal interest in that process.

The appointment is generally based on a decision by cabinet, acting on the recommendation of the Attorney-General.

The present system of federal judicial appointments has provided Australia with an internationally renowned and respected judiciary. It is an area in which the Executive Government has tremendous responsibility with political accountability.

Again I quote the present Chief Justice of the High Court who recently observed:

*"The responsibility for making decisions about judicial appointments, including numbers and circumstances of appointments, rests with those who have the responsibility of paying the salaries and providing the necessary resources of the appointees, and who have political accountability for bad or unpopular decisions about appointments."*

This is an important point in a democracy. While the Constitution guarantees federal judicial officers' independence, the political accountability of the Executive for judicial appointments forms the nexus between the judiciary and the fundamental principle of government by popular consent.

Ladies and gentlemen. Education is an important means of communicating with the citizens of the future, and I am particularly supportive of the Francis Burt Law Education Centre in Western Australia which offers structured programs for schools, tertiary and community groups.

Perhaps this is a model that could be adopted elsewhere in the country to ensure wider understanding of civic responsibilities and rights, and to give insight into the structures and processes that underpin our legal system.

Dialogue, including programs that help educate the wider community about our great institutions - including the judiciary - plays a fundamental role in promoting our open, democratic society and indeed in fostering social cohesion, if they show that they function with independence, accountability and competence.

Against this background, the Judicial Conference of Australia makes a very important contribution to dialogue on how best to maintain Australia's democratic principles and its tradition of a highly respected, industrious and independent judiciary. I wish you every success with your deliberations.

Thank you.