ATTORNEY-GENERAL
THE HON PHILIP RUDDOCK MP

Official Opening

Colloquium of the Judicial Conference of Australia

Regency Ballroom - Hyatt Regency Hotel, North Terrace Adelaide

2.30pm, Friday, 1 October 2004

The Hon Justice Murray Gleeson, AC, Chief Justice of Australia
The Hon Justice Dyson Heydon, AC, Justice of The High Court of Australia
The Hon Justice John Doyle, AC, Chief Justice of South Australia
The Hon Justice James Spigelman AC, Chief Justice of New South Wales
The Hon Justice Terrence Higgins, Chief Justice of The Act
The Hon Justice Marilyn Warren, Chief Justice of Victoria
The Hon Justice Diana Bryant, Chief Justice of The Family Court of Australia
The Rt Hon Dame Sian Elias, GNZM, Chief Justice of New Zealand
Your Honours, Ladies And Gentlemen

[Introduction]

1. It is a pleasure to be with you to officially open the Colloquium of the Judicial Conference of Australia.
2. A strong and independent judiciary is a vital component of the Australian legal system
3. The Judicial Conference of Australia (JCA) contributes to the Australian judiciary in a number of ways.
   - you educate the community about the role of the judiciary.
   - and you communicate with other arms of government to promote better mutual understanding and improve the quality and accessibility of the judicial system.
4. The JCA also supports research to fulfil these aims.
5. The middle of an election campaign is a difficult time to be addressing the non-political branch of government. I trust nothing I say today will be seen as inappropriate in the circumstances
6. Without wishing to be political, I would like to talk to you about the role government can play in interacting with the judiciary to maintain the rule of law. To that end there are three issues that I know are of a great deal of interest to members of the judiciary:

- Judicial appointments;
- Judicial pensions; and
- The Judicial College.

Judicial appointments

7. The rule of law is well served when the public has confidence in the legal system. Speaking in 2002 Gleeson CJ said that public confidence in the legal system requires:

8. *"a satisfaction that the justice system is based upon values of independence, impartiality, integrity, and professionalism, and that, within the limits of ordinary human frailty, the system pursues those values faithfully."*

9. In addition I would respectfully add the observation that the public can only have confidence in the justice system when the best lawyers of each generation are able to serve as members of the judiciary.

10. I do not need to tell anyone here that judicial life is not always a bed of roses. As the biography of Sir Owen Dixon, published last year, revealed he regularly discouraged colleagues from taking judicial appointments and seemed to strongly dislike judicial life.

11. While judicial life may be difficult, governments have a duty to encourage the best and brightest to accept appointment. The system of judicial appointments we have in Australia has served us well. It has provided with an internationally renowned and respected judiciary.

12. Good appointments have been made by both sides of politics.

13. The government believes that the essential criterion for appointment to the federal judiciary is merit. That means legal excellence, and an ability and temperament suited to the performance of the judicial function.

14. The government's appointment process involves consultation with the chief justice or chief magistrate of the relevant court.
    This may be followed by informal consultation with legal profession and informal discussions with serving and former judges.

15. Sometimes, as with the federal magistrates court, we have advertised the positions. And I know some of the state governments are pursuing this option more vigorously.

16. From time to time it is suggested that some alternative appointment process be adopted. Sir Owen Dixon and Sir Garfield Barwick, among others, favoured some form of judicial appointments commission.

17. I understand that the secretary of state for constitutional affairs in the UK has proposed a judicial appointments commission composed of 5 judges, 5 lawyers and 5 non-lawyers to make recommendations to government.

18. While a judicial appointments commission may be appropriate for the United Kingdom, it is not a precedent that I think we should follow in Australia.

19. There are some differences between Australia and the United Kingdom which mean that a judicial appointment commission would not be appropriate here.

20. Although there has been some level of devolution in the UK most judicial appointments are still made in London. In Australia the Commonwealth Government makes some appointments and the States make other appointments.

21. With centralised decision making in London, the Lord Chancellor was responsible for an enormous number of appointments – far more than a Commonwealth Attorney General would ever have to consider. For

example in 2001-2002 the Lord Chancellor made over 900 appointments. With that number of appointments a judicial commission may have some benefit.

22. However as a matter of principle I am not in favour of it as I think that it is an abrogation of what has traditionally been the responsibility of the executive.
23. Secondly the focus of the executive shifts from who is being appointed to the individual positions to who is being appointed to the commission.
24. Thirdly a lot of people of real talent, unassuming achievers would not allow their names to go forward because of concern on the commission process.
25. And of course we have seen the abuse that an extreme version of a judicial commission – senate confirmation hearings – can do in the USA. The campaign that was run against Judge Robert Bork is a good example of the sort of thing that I would not like to see here.
26. The point I am making is that leaving the appointments in the hands of the executive government ensures that you will continue to attract excellent candidates to the bench. Governments have a duty to the rule of law to make sure that this remains the case. Anything that interferes with this can only affect public confidence in the judiciary.

[judicial pensions]

27. This leads me to my next topic of judicial pensions. It has been suggested that the judicial pension arrangements should be reviewed. It is unclear what is being proposed, however any substantial changes to judicial pension entitlements must be viewed with some concern.
28. I should say that this government has no plans to change judicial pension arrangements. We recognise that changes to Commonwealth judicial pensions, which would leave Commonwealth judges worse off than their State colleagues, would have serious consequences for our ability to attract top people to accept federal judicial appointments.
29. I know that this body has responded to the judicial pension plan already.
30. Such a plan would need to consider the special constitutional position of judges.
31. Changes to the pension system could impact on the independence of the judiciary. And as your conference observed:
32. *"and if the independence of the judiciary is seen to be at risk, so too its reputation for impartiality may be at risk… that reputation is at the heart of public confidence in the judicial system."*
33. We appreciate that a strong judiciary is important for Australia's social and economic well-being.
34. I am pleased however to be able to say something positive to you today about judicial pensions. Because of the government's programme of budget surpluses and debt retirement we have been able to provide for the future funding of judicial pensions.
35. On 10 September this year the treasurer announced that the government would create a future fund. It is intended that this future fund will help to pay for the unfunded liability of judicial pensions. While federal judicial pensions are constitutionally protected this measure provides them with a sound economic footing as well.

[National Judicial College of Australia]

36. Another measure that the federal government is committed to continuing to support is the National Judicial College of Australia. Twelve months ago Gleeson CJ observed that:
37. "*the time has come for the matter of judicial training and continuing legal education to be taken up by all governments that appoint judges and magistrates as an issue of lively interest. It is up to judges to raise the level of public interest in that subject*."
38. The Chief Justice has been a forceful advocate for the College.
39. I am only sorry to say that Queensland, Victoria and Western Australia are still not part of the national judicial education system. I will continue to work to convince my colleagues in those States to support the College.
40. I believe that the College is meeting its aims of enhancing the professional development of Australian judges, and helping the judiciary perform at the highest standards, through the delivery of judicial education programs dealing with practical skills, and education in legal and other issues. That it is meeting these needs is demonstrated by the strong support the College has from the Council of Chief Justices.
41. In 2003-2004, the Commonwealth government contributed a total of $260,148 to the College's administration costs.
42. We also provided two grants to the College in June 2004, namely, $79,000 for a project to determine the viability of a national sentencing database for Commonwealth offences and $68,000 for the establishment of an online electronic library for use by judges and judicial officers.
43. The College is chaired by Doyle CJ who recently made a presentation to the standing committee of attorneys-general on the work of the College. I know that you will hear more from him shortly when he launches the media handbook. May I commend the work that he and the College are undertaking.

[Conclusion]

44. Welcome to the 2004 Colloquium.
45. I commend the work that the JCA is doing and I am sure that it will continue to serve the Australian judiciary well.
46. I wish you all the best with your deliberations.