Law Council of Australia Superannuation Conference Hyatt Coolum Resort Thursday 22 March 2001 2.00pm

Chief Justice Paul de Jersey AC
Opening remarks

I at once congratulate the Law Council and the Leo Cussen Institute, and especially the members of the Superannuation Committee, upon their commendable initiative in convening this conference. I understand the conference has been held annually now since 1987. You will be relieved to hear that in these short opening remarks, I will not presume to speak in detail about superannuation: that is your specialty, and as a specialty, it is refined. The intricacies of that field I leave to you. You will be considering them in particularly pleasant surroundings. I expect those among you who are visitors to the State of Queensland will have been pleased to note that our attraction is not confined to our being a neighbour of the State of the City which hosted the Olympic Games!

I should say this much about your theme. Because nearly all Australian employees now have superannuation entitlements, an appreciation of at least the parameters of superannuation law is necessary for all lawyers. These entitlements can of course be substantial: for some beneficiaries their major asset. Lawyers must accordingly be able to come to grips, quickly and precisely, with the relevant issues. Symposia like this are therefore to be encouraged.

In welcoming you today, I applaud your cooperative focus. While I acknowledge, for many of you, an obvious personal interest in successful practice, you all share a wish to render the most effective service to your clients. The legal profession does in this country recognise public service as at the root of its professionalism; and that despite what sometimes seem the best endeavours of the popular press to persuade the people otherwise. I acknowledge those of you who are engaged as in-house lawyers for corporations, and for regulatory and advisory bodies.

The nature of your own special interest in superannuation would perhaps more than many focus attention on the interface between the legal profession of which most of you are members, and the business and commercial interests with which it increasingly frequently interacts. I wish to address some brief remarks this afternoon to professional issues: and those are relevant wherever you may be engaged. What distinguishes a profession, as opposed to equally reputable callings, is of course the commitment to public service. What distinguishes the legal profession, by contrast with others, is as you know the duty predominantly owed by its members to the court and the administration of law, a duty surpassing that owed to the client. This is a situation which no doubt surprises many involved in commerce and business. The widespread move towards multidisciplinary practices and the corporatisation of legal practice has inspired concern in some as to whether the predominance of that duty can survive.

In its discussion paper on this important subject, the Law Council recently expressed these views:

> "The perceived dichotomy between business and the professions is regarded by many as being outdated, and the legal profession is recognising that ethical and commercial issues can and must be dealt with simultaneously.
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> As commercial transactions become increasingly complex, the need to establish multidisciplinary teams is growing. Clients are increasingly demanding more integrated professional services to meet their financial and legal needs. Big firms (and governments) are streamlining their staffing down to "core business" functions and outsourcing entire programs."

The American Bar Association's Commission on multidisciplinary practices expressed its position similarly:

> "The forces of change are bearing down on society and the legal profession with an unprecedented intensity. They include: continued client interest in more efficient and less costly legal services; client dissatisfaction with the delays and outcomes in the legal system as they affect both dispute resolution and transactions; advances in technology and telecommunications; globilisation; new competition through services such as computerised self-help legal software, legal advice sites on the internet, and the wide reaching, stepped up activities of banks, investment companies, and financial planners providing products that embody a significant amount of legal engineering; and the strategy of Big Five professional services firms and their smaller size counterparts that has resulted in thousands of lawyers providing services to the public while denying their accountability to the lawyer regulatory system."

The Law Council's model rules respect the lawyer's traditional ethical responsibilities, for they would say:

> "1. A lawyer practising within an MDP, whether as a partner, director, employee or in any other capacity, shall ensure that any legal services provided by the lawyer are delivered in accordance with his or her obligations under the applicable legal practice legislation and professional conduct rules.

> 2. No commercial or other dealing relating to the sharing of profits shall diminish in any respect the ethical and professional responsibilities of a lawyer."

Pressure on lawyers within multidisciplinary practices to desert a duty which does not regard the client's interest as exclusively paramount could, though subtly exerted, prove immense. That said, these developments are probably commercially irresistible. If not embraced by the profession, subject to reasonable safeguards, the public risks losing invaluable support from true professionals whose assistance is rendered the more valuable through its being geared to an objective, external standard.

In an address to the New South Wales Bar Association on 30 November last year, former Chief Justice of Australia Sir Gerard Brennan recognised these tensions. He said that:

> "… ethical obligations and professional responsibilities can be maintained, just as religious convictions can be maintained by an individual even in a hostile environment. The Colosseum was witness to thousands who did so, though the number of those who survived the lions was small indeed. The structures of a profession may differ from the structure of a business precisely in order to facilitate the maintenance of ethical and professional responsibilities."

I sincerely hope we may be able to work through these issues effectively on a national level, such that a similar approach may be taken around the nation.

I began with an acknowledgement of the refined character of your own area of special interest and application. That does not of course mean that your outlook is blinkered. Indeed, such initiatives as the multidisciplinary practice could facilitate the broadening of the lawyer's exposure to beneficial influences – beneficial, that

is, in that the public may be better served. Price Waterhouse Coopers is said to have as many as 1,600 lawyers employed in 42 different countries. My law student son recently spent a month hosted by a major Australian firm of solicitors at its office in Singapore. The profession is taking an increasingly international view.

The thrust towards so-called "globilisation" took on after World War 11, gaining impetus with the establishment of the United Nations, and has certainly intensified markedly over the last ten years or so. The reasons include, plainly enough, the information technology revolution and the lowering of international trade barriers.

Lawyers have an obvious role in relation to these developments. For reasons so obvious they may remain unexpressed, no-one would sensibly advocate universal uniformity in the law. Yet, I believe beneficially, legal systems are becoming more interdependent, and more susceptible to influences inter se. Witness the role of European law, especially by its injecting, into national legal systems, particular standards of human rights. Consider similarly, in relation to the Australian State and Territory systems, the impact of international human rights directives and drug control imperatives, as two examples.

Just as there cannot reasonably be a universally applicable system of law, so in a comparable way, there cannot be a universal lawyer trained to operate effectively in all jurisdictions. Lawyers are these days nevertheless recognising the usefulness of a broadened international outlook: a capacity to understand foreign systems and to adapt to them, which necessitates also a sensitive appreciation of the cultural nuances of other societies.

There is no doubt that lawyers are, increasingly, important agents for national and international development. To illustrate, Australian lawyers are currently working to help establish a worthwhile new legal system in liberated East Timor. Lawyers from the United States in particular, one reads, have been instrumental in

facilitating the production of constitutions and legal codes in areas of the now fragmented former Union of Soviet Socialist Republics. Simply, the complexity of modern society demands the finely honed, sophisticated talent of lawyers for the resolution of some of its most complex problems. The raw talent must, though, be accompanied by an appropriately international attitude, rising above the rather more parochial approach generally tolerable on the domestic national scene.

It has been interesting to note recent mergers of large UK and US law firms, and the way Australian firms are establishing sibling centres in other parts of the world. Lawyers in this country are increasingly interested in providing effective legal services to foreign nationals stationed in Australia, and as well, in acting, from Australia, for foreign nationals in relation to their problems at home. By way of response, law schools are encouraging international student exchange programs, and their curricula are being re-examined with a view to the development of a more precise focus on comparative law: but not the generalised subject taught in my student days. Current interests, I understand, rest on more particular subjects, such as comparative corporations law, comparative torts law and the like.

While practising at the bar, I developed a particular interest in commercial law, and the majority of my work was in that field. Wiser heads admonished me to cast my net more widely. That was probably good advice then, but the intricacy of modern day fields of legal expertise is such as to preclude a lawyer's being a master of all. That does not mean, however, that the interest of specialised lawyers is parochial.

I have endeavoured in my remarks this afternoon to persuade you to a broad outlook. Global trends support the desirability of such a view. Just as jurisdictions which cannot find a way of safely embracing multidisciplinary practices may miss the boat, so practitioners who bury themselves in the detail of the issue and fail to appreciate a wider picture may prejudice, rather than advance, their clients' interests. You will retain and enhance that beneficial capacity if, while refining your considerable expertise, you are conscious of national and international trends

which bear upon the essence of the lawyer's particular profession: service of the public, tempered by a duty to the court and the administration of the law.

I wish you well in your significant work together in the course of this conference, which I am now very pleased to open.