OCCASIONAL ADDRESS ON THE OCCASION OF THE GRADUATION CEREMONY FOR THE GRIFFITH BUSINESS SCHOOL AND THE GRIFFITH LAW SCHOOL, TUESDAY, 19 APRIL 2005, 2PM, QUEENSLAND PERFORMING ARTS CENTRE

Acting Chancellor, Mr Smerdon; Vice-Chancellor and President, Professor Ian O'Connor; members of the official party, most important of all, the star attractions, the graduates; ladies and gentlemen.

When delivering a graduation address, I like to know as much as possible about my audience. This afternoon 186 women (129 in business and 57 in law) and 127 men (105 in business and 22 in law) have received their degrees. I am delighted to note that about 20 per cent of those eligible to graduate are overseas students, and, I am told, six are indigenous. Congratulations to each of you and to your family and supporters who have encouraged you along the way. From the applause and cheers that attended the conferring of degrees, I think some of them might just be here today!

I greatly enjoy attending these occasions: the atmosphere of joyful energy is palpable. 2005 is a celebratory year you will always remember. It is also an important year of celebration for the entire Queensland community – and not just because you have all graduated! Although in your busy lives, balancing study, work, relationships, and fun, your thoughts seldom turn to such concepts, may I remind you of your good fortune in living in a liberal western democracy where every citizen, regardless of gender, race, ethnic origin or religion, has access to the rule of law through an independent legal profession and an independent judiciary.

It has not always been so in Queensland. With the majority of graduates this afternoon being female, it is hard to believe that before 1905 Queensland women could neither vote nor become lawyers.

In January 2005, the Queensland community celebrated the centenary of non-indigenous women obtaining the right to vote in Queensland elections. Indigenous men were specifically excluded from voting in Queensland in 1885 when Queensland was still a small colony. Similar discriminatory legislation was also adopted in Western Australia in 1893 and the Northern Territory in 1922.[1] In the colonies of South Australia, Victoria, New South Wales and Tasmania, all adult male British subjects, including indigenous men, had the right to vote, although indigenous men were not encouraged to enrol.[2] South Australia was the first Australian colony to enact laws allowing women to vote in 1894,[3] a right which was exercisable by indigenous women – a right not fully granted in Queensland for another 75 years![4]

In 1902, the year after federation, the right to vote was extended to many women in federal elections, but "aboriginal natives of Australia, Asia, Africa or the islands of the Pacific other than New Zealand" were not entitled to have their names placed on a Commonwealth electoral roll.[5] Section 41 of the *Constitution* provided that at least those indigenous people entitled to enrol to vote at state level prior to federation could vote federally, but this section was strictly construed by the Commonwealth Solicitor-General, Sir Robert Garran, to mean that indigenous people

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1 Australian Electoral Commission, *History of the Indigenous Vote* (2002), p 4, p 13.
2 Ibid.
3 *Constitution Amendment Act* 1894 (SA), s 1.
4 See *Elections Act Amendment Act* 1971 (Qld), s 6.
5 *Commonwealth Franchise Act* (1902) (Cth), s 4.

turning 21 and eligible to vote in a state election after federation were not entitled to enrol to vote federally.

In 1923, Mr Justice Higgins of the High Court of Australia rejected that narrow approach and gave a more liberal interpretation to s 41 of the *Constitution*. The High Court nevertheless found that Jiro Muramats, who was born in Japan, came to Australia in 1893, naturalised in Victoria in 1899 and resided in Western Australia since 1900, was not entitled to place his name on the Commonwealth electoral roll. This was because he was statutorily prohibited from voting in Western Australia as he was born in Japan and so was an "aboriginal native of … Asia or the islands of the Pacific".[6]

The following year in 1924, an Indian-born British subject, Mita Bullosh, who was enrolled to vote in Victoria, was refused enrolment by the Commonwealth electoral office. Fortunately, a Victorian magistrate upheld Bullosh's eligibility to vote in Commonwealth elections.[7] The Commonwealth government then passed legislation giving all *Indians* the right to vote in federal elections[8] but continued to deny that right to many indigenous Australians and other applicants of colour.

It was not until 1949, in recognition of the sterling war service given by indigenous Australians, that the Commonwealth government gave indigenous people who had completed military service, or who had the right to vote at state level, the right to vote in federal elections.[9] In 1962,

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6 *Muramats v Commonwealth Electoral Officer (WA)* (1923) 32 CLR 500.

7 Commonwealth of Australia, *The Parliament of the Commonwealth of Australia and Indigenous Peoples 1901-1967*, Department of the Parliamentary Library, Research Paper No 10 2000-01 (2000), p 14.

8 *Commonwealth Electoral Act* 1925 (Cth), s 2.

9 *Commonwealth Electoral Act* 1949 (Cth), s 3.

all indigenous people were at last given the right to vote in federal elections if they wished. But whilst for other Australians enrolment was compulsory, it remained an option for indigenous citizens; indeed, it was an offence to encourage indigenous people to enrol to vote.[10] Compulsory voting in federal elections for indigenous Australians did not come into effect until 1984.[11] Indigenous Queenslanders were not given the right to vote until 1965[12] with enrolment becoming compulsory only in 1971.[13]

Universal suffrage for Queenslanders then is a surprisingly recent development and, like your degree, all the more treasured for the long struggle for it. Whilst universal suffrage was not completely achieved in January 1905 with the extension of suffrage to non-indigenous women, it was, nevertheless, a giant step towards that goal and one worthy of celebration in 2005.

Queenslanders will also celebrate another important centenary in November 2005: the right of women to be admitted as lawyers. The event will be recognised by a ceremonial sitting of the judges of the Supreme Court which, I hope, many members of the profession and the public will attend; by an exhibition curated by the Supreme Court Library in the Supreme Court's Rare Books Room precinct and by the launch of a book celebrating the history of women in the law in Queensland.

At the risk of sounding like Mr Ripley, believe it or not, in the late 19th and early 20th centuries the term "person" in statutes throughout the

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10 See *Commonwealth Electoral Act* 1962.
11 *Commonwealth Electoral Legislation Amendment Act* 1983 (Cth), s 28.
12 *Elections Act Amendment Act* 1965 (Qld), s 4.
13 *Elections Act Amendment Act* 1971 (Qld), s 6.

western world authorising admission to the legal profession was widely understood not to include "women". If women were to be confident of their right to become lawyers, enabling legislation was needed. The right of women to be admitted as lawyers was an essential step in enabling women to exercise their full democratic rights. To fully appreciate why, it is helpful to reflect on our institutions of government.

The separation of the three arms of government, the legislature, the Executive and the judiciary to provide effective democratic government is based upon a concept of the separation of power, of checks and balances, so that no one area of government can exercise and abuse total power. The elected legislature makes the laws but it is an independent judiciary which interprets those laws and ensures citizens rights under them are recognised, doing justice according to law. An independent Executive ensures the court orders in respect of those rights are enforced. An independent legal profession plays a vital role in a democracy, ensuring that every citizen has access to the rule of law, which provides equal justice for all regardless of gender, race, skin colour, religion, power or wealth. Independent lawyers are duty bound to protect and pursue their clients' rights, unswayed by the power, privilege or wealth of others, in independent courts and subject only to their professional duty to the court. This will sometimes involve advocating on behalf of the least popular and least attractive members of society against governments, the rich and powerful or populist views. As New South Wales Chief Justice Spigelman explained at his swearing-in:

> "The independence and integrity of the legal profession, with professional standards and professional means of enforcement, is of institutional significance in our society. It is an essential adjunct to the independence of the judiciary. …

> … a bulwark of personal freedom, particularly against the hydra-headed executive arm of government, which history suggests is the most likely threat to that freedom. The profession, no less than the judiciary, operates as a check on Executive power. Indeed, if there should ever be an indication that a member of the judiciary was unduly favouring the Executive, the profession would play a primary role in preventing such conduct."[14]

The right of women as lawyers, to contribute to the independence of the legal profession and the jurisprudence upon which the profession and the courts act, is not only critical to the active participation of women in a democracy but also invariably enriches the institutions on which that democracy is based and the lives of the individuals, male and female, within the democracy.

It is appropriate, as you bask in the glory of your new degrees, whether in business or law, to reflect on your good fortune to live in a liberal democracy which, at least in 2005, recognises the rights of all its citizens to participate fully in its governance through the power of the democratic vote with the protection of the rule of law, independent lawyers and independent courts. The rule of law is not only of relevance to human rights issues. It also creates a society in which business can lawfully prosper and where investors, corporations and individuals know that disputes will be determined impartially, by judges independent of government or other influences, according to law.

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[14] (1998) 17 *Australian Bar Review* 105.

The progress that has been made in Australia over the last 100 years in ensuring access to these democratic rights for women and for citizens of non-Caucasian race has been significant and positive. But Queensland is not yet Utopia. You have an obligation to use your education and the advantage and privilege it brings to work for positive change in the community, locally, nationally and globally.

I like to think that, in April 2105, the Occasional Address at Griffith University's graduation ceremony will reflect on how the world and its institutions have improved through the efforts of Griffith alumni since Justice McMurdo addressed the graduates in business and law 100 years ago!