**THE ORDER OF AUSTRALIA ASSOCIATION ORATION 2009**
**23RD NATIONAL CONFERENCE, SOFITEL HOTEL, BRISBANE, 11.30AM, SATURDAY 21 FEBRUARY**

# *OPTIMISM IS LEGAL IN AUSTRALIA*

**What an honour to give the 2009 Order of Australia Association Oration, which I have called *Optimism is Legal in Australia*. On this showery, humid, typical Brisbane February morning, I am delighted to be here with distinguished Australians, as you all are, in this grand and, thankfully, dry and air conditioned room.**

**Consistent with this Association's aims of encouraging awareness in the Australian community of our history, traditions and culture, I acknowledge that we are meeting on the traditional lands of the Turrbal people, who for tens of thousands of years before British settlement, lived here on the northern side of the Brisbane River. We remember that respected Turrbal elders held meetings to discuss matters of interest and importance for the future of their people, while reflecting on lessons learnt from the past, in essence not so very different from this conference.**

**During the January court vacation, I took time out from court hearings and judgment writing to brush up on popular culture and world events. This can be a sobering exercise. Media predictions of economic doom and gloom are bad enough. Much worse are the stomach-churning examples of humanity's inhumanity, beamed into our living rooms on cable television 24/7. No wonder some Australians feel swamped by this negativity. They try to shut out the wider world which they perceive as threatening and evil. Unlike the**

**people in this room, they retreat to a cosseted environment of work, home and hearth. Understandable, but regrettable. In reality, behind the bad news story there is very often a positive and reaffirming human response, although the media does not always report it.**

**Let me give some examples I discovered through my holiday reading. Sally Sara, the ABC's former African correspondent, in her book *Gogo Mama* tells the stories of 12 African women. I will mention two. The first is of Ugandan mutilation survivor, Hellen Lanyom Onguti. Rebels hacked off her lips with a harvest knife. Despite her horrifically disfiguring and disabling injuries, she now lives a productive life of quiet dignity, helping her nieces and grandchildren who were orphaned by the rebels. The second is of Rwandan genocide survivor, Eugenie Muhayimana. Her entire family (immediate and extended) was slaughtered and she was continually raped by her captors. Despite bearing two children to her rapists and contracting HIV, she now raises these children as a single mother with unconditional love and dedication.**

**Closer to home, Walkley Award-winning ABC journalist, Margot O'Neill in *Blind Conscience* documents the history of Australia's recent mistreatment in detention of those coming here seeking asylum. The book is an indictment on the legislators, bureaucrats, journalists and ordinary Australians who allowed this to happen. Despite this savage criticism, O'Neill also documents the resilience of the refugees and the courage and determination of those Australians – legislators, advocates, health professionals, housewives, lawyers and nuns – who ultimately secured fairer and more compassionate**

**treatment of them. I was proud to see the recognition given to some of these fine people, like Julian Burnside QC and Marion Le, in this year's Australia Day honours list.**

**The abuse of power and infliction of violence on others is not unique to the 20th or 21st Centuries. The Sydney Festival's eight-hour production of Shakespeare's *War of the Roses*, magnificently performed by Cate Blanchett's Sydney Theatre Company, made that clear in its account of English history from Richard II to Henry VI. Shakespeare wrote these plays in the reign of the Tudor Queen, Elizabeth I. His admittedly pragmatic theme was that despite the excesses, injustices and inadequacies of past monarchs, the new reign of the Tudor dynasty offered hope and prosperity.**

**In the midst of forecasts of the worst economic downturn since the Great Depression, we joyfully witnessed the swearing-in of the first African-American President of the United States of America. His mother was an intelligent and compassionate white, middle-class American post-war baby boomer. He spent his formative infant years as a village boy in Indonesia. His father was a highly educated Kenyan from the Luo ethnic group. His father's father was an African Muslim with three wives. Who would have thought, even eight years ago, that someone with this background, no matter how capable, would become the US President in 2009?**

**After this month's horrific bushfires in Victoria and the devastating floods in North Queensland, came stories of courage, community and compassion. Amongst my favourites were those of the flood victims in financial difficulty who considered themselves fortunate when**

**compared to the bushfire victims and who generously donated to the bushfire appeal. And so it has always been: the cycle continues. The world presents challenges and tragedies which are surmounted by men and women with good hearts, minds and souls and what President Obama famously calls "the audacity of hope". This room is full of such people. I thank you all for your contribution to Australian life.**

**As the law has been my chosen profession for the last 33 years, I will speak today about some of the positive contributions made by the law, lawyers and the judiciary to Australian society. Some cynics would have you believe that lawyers making a positive social contribution is an oxymoron. Not so. President Obama, like his iconic Illinois role model, Abraham Lincoln, is a lawyer. Indeed, Lincoln was a celebrated lawyer, known affectionately and without irony, as "Honest Abe". He vehemently disliked unnecessary litigation. One day a client stormed into his office and demanded that he sue a defendant for a $2.50 debt. Even then, that was not a lot of money. Lincoln solemnly requested a $10 retainer fee. He then gave half his fee to the impecunious debtor, who immediately admitted his liability and paid Lincoln's client the $2.50 debt. Everyone was happy.[1] These days we call it a win-win!**

**And now a little legal history. The origins of Australian law, lawyers and judges begins in 13th Century England when King Henry II amalgamated Norman and Anglo-Saxon laws with some Roman influences into the first recognisable body of English national law. This came to be known as "the common law". Henry II also**

[1] Gallanter M, *Lowering the Bar*, University of Wisconsin Press, 2005.

**established a centralised court system to interpret the common law, and lawyers soon emerged as an organised group of pleaders and advocates.**

**With the arrival of the First Fleet in 1788, New South Wales adopted and adapted the English legal system to the needs of the fledgling prison colony, although we now recognise that the local Indigenous community, the Eora people, had their own lore and system of dispute resolution.[2] Australia's legal profession did not have the most impressive of beginnings: out of necessity, convict attorneys had the right to practise until the establishment of the Supreme Court of New South Wales in 1814. The first Supreme Court judge bore the name – unfortunate for a judge – of Mr Justice Bent. I hastily add that history does not suggest he lived up to his surname. By 1850, Brisbane, still part of New South Wales, was visited twice a year by a circuit court from Sydney. As you are probably aware, 150 years ago Queensland separated from New South Wales. By 1861 when the Supreme Court of Queensland was established, out of a population of 25,000 settlers, Queensland had one judge, two barristers and either six or seven solicitors,[3] all white men, of course. Women were ineligible to be lawyers. All-male courts throughout the common law world interpreted the term "person" in statutes providing for the admissions of legal practitioners as not encompassing "women". It was not until the early 20th Century, with the passing of enabling statutes like the *Legal Practitioners Act* 1905 (Qld), that women were permitted to become lawyers.**

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2 Purdon S and Rahemtula A, *A Woman's Place: One Hundred Years of Queensland Women Lawyers*, Supreme Court of Queensland Library, 2005 at p 3.

3 McPherson B, *Supreme Court of Queensland*, Butterworths, 1989 at p 79.

**In Britain, the law and the role of lawyers and courts generally changed and developed over the centuries. In the Courts of Chancery, the sometimes harsh decisions of the common law were tempered by a separate body of law based on ethical concepts known as equity. Britain's governance also changed and developed from an absolute monarchy to a constitutional monarchy with an elected parliament as the major source of law-making. Over centuries, the right of British citizens to vote for members of parliament was finally extended to all male citizens and in the early 20th Century to all female citizens.**

**Australian colonies, and, after Federation, Australian states and the Commonwealth of Australia, adopted and adapted the British form of governance known as the Westminster system. But universal suffrage in Australia is a surprisingly recent development. In the colony of Queensland, Indigenous men were specifically excluded from voting.[4] In January 1905, non-Indigenous women obtained the right to vote in Queensland elections. A few years earlier in 1902, franchise was extended to many women in federal elections but "aboriginal native[s] of Australia Asia Africa or the Islands of the Pacific except New Zealand" were not entitled to have their names placed on a Commonwealth electoral roll.[5] It was not until 1949, in recognition of the war service of many Indigenous Australians, that the Commonwealth government gave Indigenous people who had completed military service, as well as those who had the right to vote at state level, the right to vote in federal elections.[6] In 1962, all Indigenous Australians were at last given the right to vote in federal**

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4 Australian Electoral Commission "History of the Indigenous Vote" (2002) 4 at p 13.

5 *Commonwealth Franchise Act* 1902 (Cth), s 4.

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

**elections. The suffrage granted to them, however, remained different. Whilst for other Australians enrolment was compulsory, for Indigenous citizens it was optional. It was actually an offence to encourage Indigenous people to enrol to vote.[7] Compulsory voting in federal elections for Indigenous Australians came into effect only in 1984.[8] Indigenous Queenslanders were not given the right to vote until 1965, with enrolment becoming compulsory only in 1971.[9]**

**The widening of membership of the legal profession from its English gentlemen-only origins to the 21st Century Australian profession, which comprises men and women from diverse cultural and ethnic backgrounds, including Indigenous Australians, was a natural democratic development from the granting of universal suffrage in the 20th Century. Why was it a democratic development? The legal profession has an institutional role in a democracy and, like all institutions, the community is more likely to have confidence in the profession if its membership broadly reflects the society in which it operates.**

**Let me briefly explain the institutional role of the legal profession and the judiciary. The government of each of the Australian states, and of the Commonwealth of Australia, comprises three arms: the legislature, the executive and the judiciary. Effective democratic government is reliant on the concept of the separation of those powers, of checks and balances, so that no one arm of government can exercise or abuse total power. The government, through the democratically elected legislature, is the ultimate law-making body.**

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7 *Commonwealth Electoral Act* 1962 (Cth).
8 *Commonwealth Electoral Legislation Amendment Act* 1983 (Cth), s 28.
9 *Elections Act Amendment Act* 1971 (Qld), s 6.

**An independent judiciary in hearings, usually in open court, interprets the laws made by parliament, develops the common law, and ensures claimants' rights against others, including the state, are recognised. Judicial decisions can be overturned by acts of parliament. An independent executive ensures that court orders are enforced and that legislative policy is implemented.**

**When delivering the recent majority opinion in a case arising from the imprisonment of a suspected terrorist in the infamous Guantanamo Bay, *Hamdan v Rumsfeld*, US Supreme Court Associate Justice Stevens affirmed that: "[t]he accumulation of all powers legislative, executive and judiciary in the same hands ... may justly be pronounced the very definition of tyranny".[10]**

**In a democracy like Australia, an independent legal profession has the duty of ensuring that every citizen has access to the rule of law. That is a term with which I am sure you are all familiar. But what does it mean? The rule of law provides equal justice for all, regardless of gender, race, skin colour, religion, power or wealth. The High Court of Australia recognised in the *Australian Communist Party* case[11] that the essence of a modern democracy is the observance of the rule of law.[12] Reassuringly, the *Hamdan v Rumsfeld* decision was similarly based on adherence to the rule of law.**

**Lawyers must be independent because they have a special duty to protect and pursue their clients' rights, unswayed by the power, privilege or wealth of others and subject only to their duty as officers**

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10 No 05-184, June 29, 2006 at p 12citing J. Madison in The Federalist No. 47 at p 324.

11 *Australian Communist Party v Commonwealth* (1951) 83 CLR 1 at 193.

12 *Australian Communist Party v Commonwealth* (1951) 83 CLR 1 at 23.

**of the court, essentially to not mislead the court. Justice Michael Kirby explained the importance of an independent legal profession in this way:**

> **"If *all* people are entitled to equal protection under law, without exception, lawyers must be able to represent unpopular clients fearlessly and to advocate on behalf of unpopular causes, so as to uphold legal rights. To ensure the supremacy of the law over the arbitrary exercise of power a strong and independent legal profession is therefore essential.**
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> **In this way, an independent legal profession is an essential guardian of human and other rights. By ensuring that no person is beyond the reach of the law, the legal profession can operate as a check upon the arbitrary or excessive exercise of power by the government and its agents or by other powerful parties. By basing advocacy and judgments upon the rule of law, as opposed to the wealth or power of relevant interests or the transient popularity of the decision or of the interests affected, both lawyers and judges are indispensable instruments for the protection of minority and individual rights."[13]**

**Another essential aspect of democratic governance is judicial independence, a concept strongly and repeatedly affirmed by the High Court of Australia.[14] The concept requires that judges exercising judicial functions be free from any interference or external**

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13 Kirby J, "Independence of the Legal Profession: Global and Regional Challenges" (2005) 26 Aust Bar Rev, 133 at pp 133 - 137.

14 *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 5 as per McHugh J; *Wilson v Minister for Aboriginal & Torres Strait Islander Affairs* ("Hindmarsh Island Bridge case") (1996) 189 CLR 1 as per Gaudron J and the majority judgment.

**influence that may seek to reduce their objectivity and impartiality. It follows from the doctrine of the separation of powers that the judiciary in its decision-making is completely uninfluenced by the legislature and the executive.**

**The institutional role of an independent legal profession and judiciary and the need for public confidence in them are why it is desirable in a democracy that the legal profession and the judiciary chosen from it (both necessarily an elite in terms of education, training and professional experience) are broadly reflective of the community to which they belong. They should include appropriately qualified men and women from diverse backgrounds.**
**The increased diversity in the legal profession and the judiciary is amongst the most significant changes to the justice system in Queensland and throughout Australia since I was admitted as a barrister 33 years ago. Until 1990, there were no Queensland women judicial officers – not even a magistrate. Now eight of the 24 justices of the Supreme Court of Queensland are women. Even more significantly, three of the seven justices of the High Court of Australia are women, Justices Susan Crennan, Susan Kiefel and Virginia Bell. The Chief Justice of the Family Court of Australia is Chief Justice Diana Bryant, and the Chief Justice of Victoria is Chief Justice Marilyn Warren.**

**Since 1990, the substantive and procedural criminal law relating to women and children as victims of crime has also changed significantly. Offenders can now be convicted of sexual offences solely on the testimony of the complainant. A man can be convicted of raping his wife. Complainants in sexual cases give their evidence**

**in courts which are closed to the media and the general public and their names are not published. The original statements of complaint to police from child witnesses are now tendered as the child's evidence, and any cross-examination is video-recorded before the trial to minimise the trauma of court appearances. Although the legislature enacted these changes to the law, many lawyers played an active role in effecting the reforms.**

**By way of a topical example of the positive contribution of lawyers and the judiciary, I was buoyed to read in last week's Australian Financial Review that the Supreme Court of Victoria is prioritising cases arising from the bushfires, such as wills and probate matters to alleviate the suffering of victims. The Victorian legal profession has announced a cooperative scheme to provide legal information, advice, referrals and casework for those affected by the bushfire crisis. It is providing much-needed advice for those who have lost their homes and documents and have problems with contracts, loans, mortgages, employment, wills, insurance claims, rental assistance and social security payments.[15]**

**I turn now to discuss how judges make law without trampling on the legislative role of government. They do so, consistent with the separation of powers, in two ways. The first is in their role as interpreters of laws passed by the democratically elected parliament. A judge's decision between two or more possible interpretations of a statute will effectively make law. Of course, if parliament does not consider the judge's decision reflects its intention in the statute, it can**

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15 The Australian Financial Review, Thursday, 12 February 2009 at p 6, "Court Pledges Speedy Justice" by Patrick Durkin.

**amend the legislation. Many acts of parliament give judges a discretion in decision-making, the exercise of which makes law.**

**The most common, and perhaps most closely scrutinised of these judicial discretions, is the sentencing of offenders. The bulk of media reports of judges' sentencing is accurate. But too often some elements of the media, like talk-back radio programs, report only selected aspects of the matter and whip some members of the public into a frenzied rage against judges.**

**Richard Ackland, in *The Sydney Morning Herald*, recently discussed this issue with perspicacity following the release of the Bureau of Crime Statistics and Research's report on public confidence in the criminal justice system. The report concluded that when it came to sentencing criminals, public confidence in the system was low because of the distorted and sensationalist mis-message delivered by the media, especially TV and radio news and tabloid newspapers. Ackland rightly noted that this was a serious social concern: the legitimacy of judges to issue orders, including sending offenders to jail, is dependent on public trust. Ackland considered, again rightly, that there should not be a disconnect between public perception and what is really happening in the criminal justice system. Observing that the Bureau's report received almost no publicity in the media, he added:**

> **"Crime is a form of public entertainment, hence the findings that large sections of the public believe property crime is going up, when it has been going down since 2000. They overestimate the proportion of crime that involves violence, and**

**underestimate the percentage of arrested offenders who are convicted and imprisoned."**

**Ackland concluded by musing:**

> **"The Bureau released data to the effect that the number of eight and nine year old coming to the attention of the police had fallen from 130 a month to 94 a month over two years. The headline in the *Tele*: 'Kid crime rampage'."[16]**

**Sentencing decisions comprise about a third of the workload of the court over which I preside, the Court of Appeal, Supreme Court of Queensland. Our work is done in public. You are welcome to visit the courts. Our decisions are published and easily accessible on the courts website. If you are concerned about a sentence imposed in the Queensland Court of Appeal, I urge you to read the judgment for yourselves. Preliminary results from academic surveys show that, when ordinary people are given all the relevant facts and law and are asked to impose hypothetical sentences, their sentences are the same, or lighter than, those imposed by judges in the real case.[17]**

**I turn now to the second way in which judges make law. It is in developing the common law and the law of equity through their application to novel factual circumstances in individual cases.**

**The modern law relating to contracts, upon which the Australian business community relies, has been developed by judges in this way.**

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16 Sydney Morning Herald, Friday 24 October 2008, "Media are tough on crime and rough on justice" by Richard Ackland at p 15.

17 Warner K, *Sentencing Review 2006-2007*, (2007) 31 Crim LJ 359 at pp 360 - 361.

**The law of civil wrongs, known as torts, the largest aspect of which is the law of negligence, arises from judge-made law. Lord Atkin, one of the most famous common law judges, developed the law of negligence in the seminal 1932 House of Lords case about a snail in a bottle of soft drink.[18] It is not well known that he was born in Brisbane not far from here in Tank Street in 1867. He returned to England with his mother three years later. Mrs Atkin described Brisbane as**

> **"[A] very odd town, unlike anything you could see in England. There are about three miles of houses which might easily be comprised in three-quarters of a mile, the interval between the houses being filled with cactus, oleander, hibiscus and exquisite orange creepers."[19]**

**The oleander, hibiscus and orange creepers still abound, but I am afraid the space between the houses is fast disappearing.**

**The law of negligence, initiated by Lord Atkin, despite some alleged excesses colourfully but not always accurately reported by the media, has provided fair compensation in Australia and throughout the common law world to millions of claimants, seriously injured through the fault of others, who would otherwise have led lives of poverty, dependence and misery.**

**The judges with the greatest opportunity to make positive changes to the law in Australia are those on our final appellate court and our court of constitutional interpretation, the High Court of Australia, established after federation in 1903.**

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18 *Donoghue v Stevenson* [1932] AC 562.

19 "Lord Atkin: his Queensland origins and legacy", Gerard Carney, Supreme Court History Program Yearbook 2005, 33 at p 37.

**The High Court has shown leadership in Indigenous issues. In 1935, in a unanimous decision, it quashed the murder conviction and the death sentence imposed upon a traditional Yolngu man by the name of Tuckiar.[20] He had allegedly killed a police officer. Although Tuckiar was from Arnhem Land, spoke no English and had little or no contact with the mainstream community, his barrister did not use an interpreter. The barrister wrongly disclosed in open court confidential communications with Tuckiar. The High Court was critical of the conduct of the case by both the trial judge and defence counsel. Tragically, Tuckiar's High Court victory was pyrrhic. Shortly after his release from custody, he disappeared. Historian Henry Reynolds notes that "it was widely believed in Darwin that he was shot by police and his body dumped in the harbour".[21] But Tuckiar's case resulted in a significant improvement to our criminal justice system and especially as to its treatment of Indigenous Australians.**

**The High Court first recognised that Indigenous Australians have native title to Australian land in *Mabo v The State of Queensland (No 2)*.[22] The court found that the Meriam people from the Torres Strait were entitled by way of common law native title to the possession, occupation and use and enjoyment of the Murray Islands. The *Mabo* decision was a major turning point in Australian history. It is seen by Indigenous and non-Indigenous Australians alike as a keystone in the stairway to reconciliation.**

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20 *Tuckiar v R* (1934) 52 CLR 335.

21 The Oxford Companion to the High Court of Australia, Blackshield, Coper, Williams, Oxford, 2001 at p 688.

22 ("Mabo case") (1991) 175 CLR 1.

**A critical role of the High Court is to interpret Australia's Constitution. In 1951, the Cold War was at its peak and McCarthyism rampant in the US. I am proud to say that the High Court rejected Prime Minister Menzies' attempt to legislate against the Communist Party by holding invalid under the Constitution the *Communist Party Dissolution Act* 1950 (Cth).[23] I am also proud that the Australian people rejected the subsequent referendum to amend the Constitution to prohibit the Communist Party.**

**Our Constitution does not contain a bill of rights but the High Court has interpreted it as implying certain rights. When the New Zealand Prime Minister, David Lange, brought an action for defamation against the ABC,[24] the court held that our Constitution protects the freedom of communication between people concerning political or government matters, which enables Australian voters to exercise a free and informed choice, a freedom not confined to election periods. The court has extended that constitutionally implied freedom of political communication to non-verbal conduct intended to be politically expressive.[25]**

**The High Court has refashioned the law of equity and its concept of "unconscionability" to meet modern conditions,[26] extending the boundaries of long-established doctrines to assist the vulnerable. These developments include requiring fair dealing in pre-contractual negotiations;[27] requiring greater disclosure of relevant commercial**

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23 *Australian Communist Party v Commonwealth* (1951) 83 CLR 1.
24 *Lange v The Australian Broadcasting Corporation* (1997) 189 CLR 520.
25 *Levy v Victoria* ("Duck Shooting case") (1997) 189 CLR 579.
26 *Muschinski v Dodds* (1985) 160 CLR 583.
27 *Waltons Stores (Interstate) Ltd v Maher* (1988) 164 CLR 387.

**information and independent and impartial advice;[28] and refusing to permit the unconscionable exploitation of strict contractual rights.[29]**

**The High Court has also developed the common law concept of "undue influence" as a doctrine related to the wider framework of equitable unconscionability to assist weaker litigants who have suffered through a relationship of trust and confidence.[30]**
**The theme of that classic Australian movie, *The Castle*, is not without some basis! These areas of equity and the common law may well be developed to assist weak and vulnerable litigants in the future.**

**Although most of the ground-breaking changes to the law are made in the High Court, every judge and magistrate has the onerous responsibility of deciding cases of great significance to the litigants. Every judicial officer's work presents opportunities to make decisions which develop the law. As I mentioned earlier, I have the great privilege and pleasure of presiding over the Queensland Court of Appeal. I work with talented, clever, hard-working and good men and women. Every case is interesting, especially to the litigants. Last financial year, the Court of Appeal disposed of 665 cases and, although five applications for special leave to the High Court were granted, none of these appeals was successful. That was unusual. Typically a few are successful, and when this happens, it is not a reflection on the quality of the work of the Court of Appeal. It is the system working as it should to mould and develop the law. It does, however, mean that for most purposes, my court is the final avenue**

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28 *Commercial Bank of Australia v Amadio* (1983) 151 CLR 447; *Garcia v National Australia Bank Ltd* (1988) 194 CLR 395.

29 *Legione v Hateley* (1983) 152 CLR 406; *Stern v McArthur* (1988) 165 CLR 489.

30 *Yerkey v Jones* (1939) 63 CLR 649; *Garcia v National Australia Bank Ltd* (1988) 194 CLR 395; *Australian Competition and Consumer Commission v Berbatis* (2003) 197 ALR 153.

**of dispute resolution for Queensland litigants. The same can be said about all state courts of appeal. Judges of intermediate appellate courts like mine have a great opportunity to help develop state and national jurisprudence. I look forward over the next decade or so to continuing in this important role: expeditiously working with my judicial colleagues to fairly decide the cases before us according to law. When the opportunity arises, we may be able to develop the law and ensure it remains relevant to the community to which it applies. I like to think, rightly I hope, that, together with my fellow judicial officers throughout Australia, I am making a worthwhile contribution to Australian society and to the litigants whose cases we determine, as part of an independent judiciary enforcing the rule of law.**

**I know that all you members of the Association, as recipients of awards in the Order of Australia, have made a real contribution to the community in your diverse fields and professions. Phil and I look forward to meeting with you and your equally important partners, who have supported you in your work, over lunch and at dinner tonight. On behalf of the Australian community, thank you again for your contributions. Thank you also for joining this Association and attending this conference. It demonstrates a commitment to continuing to contribute. In providing a meeting place and forum through conferences like this, the Association nurtures its members and harnesses their collective and individual wisdom and vision for the benefit of all Australians. Your Foundation commendably offers a tangible fiscal way of contributing to Australia's future by assisting in the education of young potential Australian leaders.**

**How apt that during this conference you visited Queensland's stunning Gallery of Modern Art and its uplifting *Optimism* exhibition. One of my favourite exhibitors is Torres Strait Island artist, George Nona. His dhoeris are modern Islander head pieces made with traditional materials. He has contemporarily re-interpreted the dhoeri, a significant part of Australia's cultural heritage, as an object of power, beauty and resilience. Could there be a better expression of modern Australian optimism? Despite the harsh treatment of past generations, Nona's traditional culture has survived; his peoples' land rights have been recognised; he has been buoyed by the federal parliament's apology to the Indigenous; and as a contemporary Australian artist, he has created imaginative works by drawing on his traditions for the enrichment of all Australians. I urge you to share George Nona's optimism; to have President Obama's "audacity of hope"; and to continue your work, individually and through the Association and the Foundation, to build an even better Australia. I end where I began, reminding you of the title to this Oration: *Optimism is Legal in Australia*.**