KEYNOTE ADDRESS, QUEENSLAND LAW SOCIETY, GOLD COAST SYMPOSIUM, FRIDAY, 18 MAY 2012, QT GOLD COAST, STAGHORN AVENUE, 9.00 AM

QUEENSLAND SOLICITORS: SOME FUTURE CHALLENGES

The Hon Justice Margaret McMurdo AC[▽]

Thank you, Brian, for that warm and generous introduction. It is always important to remember that we are on the traditional lands of the Kumbumerri people. For tens of thousands of years before European contact they lived and prospered in this temperate, plentiful area. No doubt they held regular meetings to share new ideas and learn from each other's experiences, in essence, not so very different to this symposium. I acknowledge the Kumbumerri Elders, past and present.

It is a pleasure to speak with so many intelligent, good-hearted people at the Queensland Law Society's 2012 Gold Coast symposium on this perfect autumn morning. Like many Brisbanites, the Gold Coast has long held a special place in my heart. As a child long ago, I spent many carefree summer holidays with my family at North Kirra – well, carefree apart from shark alarms, bindi eyes and blue bottles! I was delighted when I passed through there a few years ago to see the house we always rented on Pacific Parade, "Silver Sands", was still there! More recently, as a member of Griffith University (GU) Council, I have observed with awe the massive development on GU's Gold Coast campus, including the progress of the ambitious infrastructure projects of the Gold Coast University Hospital and the exciting Light Rail project. Most recently, I holidayed with my family at Main Beach last Easter. As Phil and I made the most of the perfect weather and the enormous rising full moon with a twilight beach walk, we encountered the like-minded QLS president, John de Groot, and his solicitor wife, Margot. These old and new Gold Coast connections make me very happy to be here today.

I read the symposium program with interest. Over the next two days you will be discussing a broad cross-section of present and

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[▽] President, Court of Appeal, Supreme Court of Queensland. I gratefully acknowledge the research and editing assistance of my associate, Q Michael Noakhtar, and the secretarial and editing assistance of my executive assistant, Andrea Suthers.

future challenges for Queensland solicitors, especially sole practitioners and those in small and medium firms. I am pleased that in the session following morning tea, you will consider the Australian Solicitors' Conduct Rules, the first set of uniform legal professional conduct rules in Australia, which will come into operation at the beginning of next month.

Tomorrow, you will hear from my distinguished colleague, Justice Peter Lyons, about the Supreme Court's ever-growing supervised trial list for longer, more complex cases. No doubt his Honour will discuss the new practice direction concerning the supervised list. During the symposium, you will also hear about the jurisdiction of the Queensland Land Court and of recent developments in land law, personal injuries law and property law, including retail shop leasing disputes before QCAT. Useful practical sessions will cover aspects of employment law, family law property settlements, and the assessment of damages in personal injuries cases. You will receive an update on recent developments under the Uniform Civil Procedure Rules and learn how to make the most of social media as an e-marketing tool for your practices. The present challenging nature of our economy, not least in this region, makes insolvency a hot topic which you will also explore, together with the Australian Competition and Consumer Commission's use of infringement notices, and the issue of pecuniary penalties for false or misleading representations.

No Gold Coast legal symposium could be complete without a dose of crime! This symposium does not disappoint. I suspect that local high-profile criminal lawyer, fiction writer and script writer, Chris Nyst, with whom I was at university longer ago than either of us cares to remember, might be *Gettin' Square* in his review of the so-called "Moynihan reforms".

But in the hearts and minds of Gold Coast legal practitioners, neither I nor any of the other eminent and entertaining speakers at this symposium can compete with economist and author, Peter Pontikis. In this time slot tomorrow, he will discuss the critically relevant issue of concern to you all: interest rates, funding markets and contemporary investment behaviour impacting on the Gold Coast property market. I am afraid I cannot match that! I think we all know who the real keynote speaker is at this conference!

In my address, I do not intend to venture into the many important issues which are to be discussed by others during the course of this symposium. I will commence with a discussion of the controversial aspects of the National Legal Profession Reform Project of which the Australian Solicitors' Conduct Rules are, I apprehend, an uncontroversial part. I will then discuss aspects of the current Australian human rights discourse with an emphasis on 17 year old Queenslanders; the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld); and legal aid funding. I will conclude by sharing my recent experiences at the 12th biennial conference of the International Association of Women Judges (IAWJ) in London, highlighting issues of relevance and interest to Queensland solicitors.

The National Legal Profession Reform Project

Few would doubt that the broad concept of a unified Australian national legal profession has much to commend it. It is a concept light years away from the 1970s when Chris Nyst and I were admitted as legal practitioners. In those days, it was impossible to practise law outside the jurisdiction in which you were admitted. That began to change after Sydney barrister and resident, Sandy Street (now a prominent Sydney silk) unsuccessfully applied on 22 May 1987 for admission to practise as a barrister of the Supreme Court of Queensland. The Queensland Barristers' Rules relating to Mr Street's application required those who applied for admission based on their admission to practise in another State to be a resident of Queensland and to cease to practise in the other State. In November 1989, the High Court[1] unanimously held that those Rules were unconstitutional. They offended s 117 of the Commonwealth Constitution which provides:

> "A subject of the Queen, resident in any State, shall not be subject in any other State to any disability or discrimination which would not be equally applicable to him if he were a subject of the Queen resident in such other State."

After *Street's case*, the momentum to create a unified Australian national legal profession steadily increased. In July 1991, a meeting of the Standing Committee of Attorneys-General (SCAG) determined to work towards reciprocal admission of lawyers throughout Australia and the harmonisation of education and

[1] *Street v Queensland Bar Association* (1989) 168 CLR 461; [1989] HCA 53.

practical training requirements.[2] The goal of mutual recognition of lawyers' entitlement to practise throughout Australia was realised with the *Mutual Recognition Act* 1992 (Cth).

From 2001, SCAG, through the States and Territories and with the in-principle support of the Law Council of Australia (LCA), developed and refined template legislation (the "Model Bill") "aimed at facilitating national legal practice and developing the national legal services market."[3] The rationale behind this initiative was originally driven by principles of economic rationalism and, it seems to me, without enough consideration for legal professional ethical concerns.

By the end of 2008, uncontroversial legislation based on parts of the Model Bill was enacted in all Australian jurisdictions other than South Australia. This legislation contained:

- mutual recognition principles,
- uniform provisions allowing for alternative business structures for legal practices, including incorporation and multi-disciplinary partners,
- uniform provisions to enable foreign lawyers to practise foreign law in Australia, either on their own account, or in partnership with Australian legal practitioners; and
- provisions addressing consumer needs, including costs and a complaints procedure.

In February 2009, the Rudd government announced that legal profession reform was to be part of its micro-economic reform agenda "to strengthen the Australian economy in the face of the global financial crisis".[4] The Council of Attorneys-General (COAG) agreed that a nationalised legal profession was desirable.[5] With this end in mind and at COAG's request, the Commonwealth Attorney-General established a National Legal Profession Reform

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2 See Kelli Longworth, *National Legal Profession Reform*, Queensland Parliamentary Library e-Research Brief No 2011/10 (2011) 1.

3 Glenn Ferguson, 'National Legal Profession Reform in Australia: An Overview' (Speech delivered at the American Bar Association Annual Meeting International Bar Leader Roundtable Panel, 6 August 2010) 3.

4 Lindsay Tanner, Minister for Finance and Deregulation and Robert McClelland, Attorney General, 'Legal Profession Reform to Strengthen Australian Economy' (Joint Press Release, 3 February 2009).

5 Council of Australian Governments, Communiqué (5 February 2009).

Taskforce and a Consultative Group. The Taskforce determined that to achieve substantive and ongoing uniformity there must be a "single national standard-setter to produce uniform regulatory standards" with national application.[6] The national law should be implemented as an "applied law" scheme.[7] A host jurisdiction would enact the model legislation to establish the institutions necessary to regulate all jurisdictions uniformly. Under the Model Bill, these institutions were a National Legal Services Board (NLSB) to regulate the legal profession with the majority of its members appointed by the executive, and a National Legal Services Commission (NLSC) to oversee compliance and handle complaints. The Taskforce proposed that each State and Territory would then apply as a law of that State or Territory the model legislation enacted by the host jurisdiction.

Despite considerable in-principle support for the project, the first version of the Model Bill was rightly dogged by controversy. On 6 November 2009, Chief Justice French expressed reservations on behalf of the Council of Chief Justices.[8] Three days later, so did the Australian Bar Association (ABA).[9] The following month, Queensland Chief Justice de Jersey expressed similar concerns.[10] These legitimate misgivings turned on the Model Bill's failure to meet the requirement that legal practitioners are officers of the court with ethical responsibilities to the court. Under the first version of the Model Bill, the executive was to give directions on policy matters relevant to the legal profession and to appoint the majority of the members of the NLSB. As Lord Hunt explained in his 2009 review of similar proposed reforms in the United Kingdom, such a model would undermine the independence of the legal profession and its critical role in a democracy in ensuring equal access to the rule of law. Regulation of the legal profession cannot be based solely on economic market factors without undermining the unique ethical standards of the legal profession

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6 National Legal Profession Reform Taskforce, *Discussion Paper: The Regulatory Framework: A National Legal Profession* (16 September 2009) 2.

7 National Legal Profession Reform Taskforce, *National Legal Profession Reform Project: Consultation Report* (14 May 2010) 4.

8 Letter from Chief Justice French on behalf of the Council of Chief Justices to Mr Roger Wilkins, Chair of the National Legal Profession Reform Taskforce, 6 November 2009.

9 Letter from Tom Bathurst QC (as his Honour then was) to the Hon Robert McClelland MP, Re: National Legal Services Board, 9 December 2009.

10 Presentation of Senior Counsel; recognition of newly admitted barristers; traditional exchange of Christmas Greetings (Banco Court, Brisbane, 16 December 2009).

and the associated wider interests of society in maintaining an independent legal profession providing access to the rule of law.[11]

On 4 August 2010, the then President of the Judicial Conference of Australia (JCA), Justice Ruth McColl, endorsed the view of Chief Justice French that any proposed model for national legal professional reform must maintain the independence of the legal profession from the executive government. To reflect that independence, the majority of the members of the NLSB should be from the legal profession appointed independently of governments and of SCAG. The JCA also adopted Chief Justice de Jersey's view that an NLSB substantially appointed by the executive government "would signal a seismic shift in the dynamics of the legal profession in this nation, a shift which would … be inimical to the maintenance of public confidence in the independent administration of justice".[12]

The second major criticism of the Model Bill was that the cost of regulation under it may be too high, particularly for sole practitioners, small and medium sized firms. It is true that Australia's nine largest national law firms had long pushed for national standards, arguing that the cost to them of duplicating procedures in jurisdictions was nearly $15 million a year.[13] And according to a cost benefit analysis (albeit one not universally accepted as accurate), all law firms were predicted to save an additional $4.425 million per year in compliance costs under the Model Bill.[14] Nevertheless, Queensland's Chief Justice de Jersey[15] and the QLS[16] questioned how the proposed centralisation of admission of legal practitioners would be funded under the Model Bill. They queried whether the proposed regulation would be cost effective for the Queensland profession where 76.7 per cent of all law practices (including incorporated legal practices operating with a sole legal practitioner director) were sole practitioners.[17] The

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11 Lord Hunt of Wirral, *Hunt Review of the Regulation of Law Services* (2009) 25–30.

12 Letter from Justice RS McColl on behalf of the Judicial Conference of Australia, Re: Draft Legal Profession National Law, to National Legal Profession Taskforce, 4 August 2010, [29].

13 National Legal Profession Reform Consultative Group, *Response to Taskforce Discussion Paper on Legal Costs* (6 January 2010) 4–5 [19]; National Legal Profession Reform Taskforce, *National Legal Profession Reform Project: Consultation Report* (14 May 2010) 12–13.

14 ACIL Tasman, *Cost Benefit Analysis of Proposed Reforms to National Legal Profession Regulation* (March 2010) vii

15 See Chief Justice de Jersey, 'Presentation of Senior Counsel', above fn 11, 8–9.

16 Letter from Peter Eardley, President, Queensland Law Society to Roger Wilkins Chair of the National Legal Profession Reform Taskforce, Re: National Legal Profession Reform Draft Bill and Rules – Submission by the Queensland Law Society Inc, 10 August 2010, 1–3.

17 Above, 2.

QLS emphasised that the vast majority of Queensland solicitors firms are small businesses with 57 per cent of them grossing less than $500,000 per year and 77 per cent grossing less than $1 million per year.[18] Queensland is the most decentralised jurisdiction in Australia. The costs of regulation of lawyers under the Model Bill may endanger small legal firms servicing remote communities. If these firms become economically unviable, this would cause great detriment to the functionality of regional Queensland communities.[19]

As a result of these valid criticisms, the Model Bill was significantly revised. Under the present Model Bill, the NLSB will not receive directions on policy matters from the executive and its seven members will include only three appointed by the executives of participating jurisdictions, with the LCA and the ABA also nominating three. The remaining member, the Chair, will be appointed only with the concurrence of the LCA and ABA.[20]

The present Model Bill seems to have met the concerns of many initial critics, including the LCA.[21] Most accept that it no longer threatens the independence of the legal profession. Nonetheless, four jurisdictions (South Australia, Western Australia, Tasmania and the ACT) have indicated they will not adopt the Model Bill. But according to the current President of the LCA, Ms Catherine Gale, the project will proceed.[22] As the proposed NLSC replicates Queensland's well regarded Legal Services Commission,[23] the QLS remains concerned about the costs implications and worth of the national scheme for its members, especially those in regional and remote areas.

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18 Above, 3.

19 Chief Justice de Jersey, 'Presentation of Senior Counsel', above fn 11, 9; John de Groot, *Proctor* February 2012, 19; Rachel Nickless 'AG is no chicken on big reforms', *Australian Financial Review*, 13 April 2012.

20 National Legal Profession Reform Taskforce, *Report on key issues and amendments made to the National Law since December 2010*, 1.

21 See, eg, Glenn Ferguson, President, Law Council of Australia, 'Law Council response to COAG Interim Report' (Media Statement, 30 November 2010).

22 Catherine Gale, 'The future of the legal profession – Insights on the implementation of the National Legal Profession Reforms' (Speech delivered at Third annual Public Sector Legal Officers Forum, 6 March 2012) 6.

23 James Eyers, 'Lawyers fret about independence', *Australian Financial Review*, 17 April 2010.

Much to Queensland's disappointment,[24] Victoria (not Queensland) was recently appointed as the host jurisdiction to enact the Model Bill which New South Wales has said it will adopt. And the NLSB and the NLSC to be established under the Model Bill are to be based in New South Wales. It remains unclear whether Queensland will participate[25] in the Model Bill's regulatory scheme in light of the concerns of the QLS and Chief Justice de Jersey.

It seems to me that a decision by Queensland not to participate may have potentially negative consequences. New South Wales remains Australia's most populous State with 7.3 million people. Victoria has 5.64 million people. Queensland is the third most populous Australian State with 4.6 million people, well ahead of Western Australia with 2.366 million people. If, as seems certain, New South Wales and Victoria adopt the Model Bill but Queensland does not, this could impact on Brisbane's chances of successfully competing with Melbourne and Sydney as a major commercial legal centre. This may harm the Queensland economy, including sole legal practitioners and those in small and medium sized firms. A fall in commercial legal work in Brisbane could also impact upon regional commercial legal centres like Toowoomba, Gladstone, Rockhampton, Mackay, Townsville, Cairns and the Gold Coast.

It also occurs to me that the benefits of a truly national legal profession are by no means limited to the big interstate or global firms. Legal practitioners and their firms in areas such as the Gold Coast which border another jurisdiction are also likely to benefit.

Before Queensland does join with New South Wales and Victoria in professional regulation under the Model Bill, your challenge, with the assistance of the QLS, is to ensure that the provisions of the Model Bill are in the interests of Queensland's legal profession and the public it serves.

The Queensland human rights discourse

At the 2020 Summit held in Parliament House, Canberra, in April 2008 following Prime Minister Rudd's election, one of the five big ideas of the section on the future of Australian governance was that Australia adopt a federal bill of rights.[26] In response, the

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24 Rachel Nickless 'AG is no chicken on big reforms', *Australian Financial Review*, 13 April 2012.

25 Above.

26 Department of Prime Minister and Cabinet, *Australia 2020 Summit Final Report* (May 2008).

federal government set up the National Human Rights Consultation (NHRC). After a comprehensive nationwide consultation, the NHRC in its 2009 report recommended that there should be a federal Human Rights Act of the kind adopted in recent years in New Zealand,[27] the United Kingdom,[28] Victoria,[29] and the ACT,[30] that is, a "dialogue" model of human rights protection.[31] The federal government did not accept that recommendation so that Australia remains the only functional nation in the world without a bill of rights. And unlike Victoria and the ACT, Queensland does not have any discrete human rights legislation.

In April 2010, the federal government did, however, respond to the NHRC Report with its "Australia's Human Rights Framework" which:

- re-affirmed a commitment to promoting awareness and understanding of human rights in Australia, with respect for seven of the nine core United Nations human rights treaties to which Australia is a party, namely:
  *****The International Covenant on Civil and Political Rights (ICCPR);
  *****The International Convention on Economic, Social and Cultural Rights;
  *****The Convention on the Elimination of All Forms of Racial Discrimination;
  *****The Convention on the Elimination of All Forms of Discrimination Against Women;
  *****The Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment;

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27 *New Zealand Bill of Rights Act* 1990.

28 *Human Rights Act* 1998 (UK).

29 *Charter of Human Rights and Responsibilities Act* 2006 (Vic).

30 *Human Rights Act* 2004 (ACT).

31 See NHRC, *National Human Rights Consultation Report* (30 September 2009) 303. A dialogue model is based on the three arms of democratic government (the executive, the parliament and the judiciary) prompting responses (dialogues) from each other when a proposed law or policy may be inconsistent with human rights (NHRC, *Report*, 242). It works on the understanding that the executive will operate in a manner consistent with human rights by reporting to a democratically elected parliament. Both the executive and parliament will be held accountable by the courts. The parliament, elected by the people, has the final power to pass laws, even laws overriding human rights. Together with the executive, parliament scrutinises bills for human rights compliance before they become law. The judiciary interprets legislation in the manner consistent with human rights, provides remedies if the executive has acted inconsistently with human rights, and has power to declare parliament's legislation incompatible with human rights. But a central aspect of the dialogue model is that courts do not have power to declare legislation invalid or inoperable. That power remains with parliament which is answerable only to the people.

*****The Convention on the Rights of the Child; and
*****The Convention on the Rights of Persons with Disabilities.

- undertook to deliver, through non-government organisations (NGOs) and the Australian Human Rights Commission, a human rights educative role in schools.
- recognised the need for Commonwealth public servants to respect human rights in policy making.
- undertook to establish an advisory group to develop a comprehensive blueprint for public service reform and the Australian public service code of conduct.
- undertook to engage with the international community to improve the protection and promotion of human rights within Australia, our region and the world.
- undertook to develop a new national action plan and bring together and host NGO forums to provide a comprehensive consultation mechanism for discussion about domestic and international human rights issues.
- undertook to establish a parliamentary joint committee on human rights to provide greater scrutiny of legislation for compliance with Australia's international human rights obligations under the seven UN human rights treaties.
- undertook to introduce legislation requiring that every Bill and delegated legislation subject to disallowance be accompanied by a statement which assesses its compatibility with the seven UN human rights treaties. Unfortunately, however, the *Human Rights (Parliamentary Scrutiny) Bill* 2010 lapsed following the last federal election and has not been re-introduced.
- undertook to review legislative policies and practices for compliance with the seven UN human rights treaties and to develop exposure draft legislation harmonising and consolidating Commonwealth anti-discrimination laws to remove unnecessary regulatory overlap, address inconsistencies, and make the human rights system more user-friendly.
- determined to include the President of the Australian Human Rights Commission as a permanent member of the Administrative Review Council.
- established the National Anti-Discrimination Information Gateway to assist individuals and businesses find information on anti-discrimination laws providing an overview of all Commonwealth, State and Territory anti-

discrimination systems, with links to other useful information.

- emphasised that, since 2008, it has ratified the Convention on the Rights of Persons with Disabilities; acceded to the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women; announced support for the UN Declaration on the Rights of Indigenous Peoples; and passed legislation consistent with its obligations under the Convention Against Torture.

All this means that, despite the absence of any specific federal or Queensland human rights legislation, human rights are becoming increasingly relevant to Queensland legal practitioners and their clients. Certainly questions of human rights are now often raised in the Court of Appeal. Examples include the challenges to aspects of the *Liquor Act* 1992 (Qld) and the *Liquor Regulation* 2002 (Qld) in light of the *Racial Discrimination Act* 1975 (Cth) and s 109 of the Commonwealth Constitution in *Aurukun Shire Council v CEO Office of Liquor, Gaming and Racing*,[32] *Morton v Queensland Police Service*[33] and *R v Maloney*.[34]

Despite a growing awareness of human rights in Australia, it is regrettable that Queensland's *Youth Justice Act* 1992 is in breach of the United Nations Convention on the Rights of the Child which Australia signed[35] and ratified[36] in 1990.[37] Uniquely amongst Australian jurisdictions and contrary to the Convention,[38] 17 year old Queensland youth offenders are dealt with in the adult criminal justice system.[39] This non-compliance with the Convention has been criticised by the Queensland Court of Appeal in *R v Loveridge*[40] and *R v HBG*;[41] the President of the Children's Court of Queensland, Judge Michael Shanahan;[42] the Queensland Commission for Children and Young People and Child Guardian[43] and by other commentators[44] including UN agencies.[45]

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32 (2010) 265 ALR 536; [2010] QCA 37.
33 (2010) 240 FLR 269; [2010] QCA 160.
34 [2012] QCA 105.
35 22 August 1990.
36 17 December 1990.
37 *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1557 UNTS 3 (in force 2 September 1990); [1991] ATS 4.
38 Above, art 1, art 3, art 37(c).
39 *Youth Justice Act* 1992 (Qld), Sch 4 – dictionary "child".
40 [2011] QCA 32, [5]–[7].
41 [2012] QCA 83, [1].
42 Children's Court of Queensland Annual Report 2010-2011, 5–6.
43 'Removing 17 year olds from Queensland prisons and including them in the youth justice

The QLS has proactively lobbied the Queensland government on this issue in recent years and stressed that in its view "it is unacceptable for Queensland to continue to violate Australia's international law obligations"[46] by placing 17 year olds in the adult criminal justice system. As recently as February this year, the LCA added its concerns about this issue, noting that the QLS had been highlighting it for many years.[47]

Despite these persistent criticisms, the Queensland legislature has so far determined neither to comply with the Convention nor to align Queensland with all other Australian jurisdictions by amending the definition of "child" in the *Youth Justice Act* to include 17 year olds. This is so even though this change could be simply effected by regulation without enabling legislation.[48]
The federal government has recently announced the establishment of a National Children's Commissioner within the Australian Human Rights Commission. The government apprehends that the National Children's Commissioner will complement the functions of the States' and Territories' Children's Commissions and enable Australia to better comply with its obligations under the Convention. It remains to be seen whether this initiative assists in extending the protection of the Convention to Queensland's 17 year olds, a result which I urge you and the QLS to strive to achieve.

Another piece of Queensland legislation which infringes international human rights law is the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld). Under the Act, those convicted of designated offences can be detained in prison long after they have completed their sentences for offences of which they were

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system', Policy Position Paper, 15 November 2010.

44 See, eg, T Hutchinson, 'Being 17 in Queensland: A Human Rights Perspective on Sentencing in Queensland' (2007) 32 *Alternative Law Journal* 81; Seymour Lamb 'Justice for All … unless you are a 17 year old Queenslander' (2007) 61 *Legal Aid Queensland*, headnote 20.

45 Committee on the Rights of the Child, Consideration of Reports Submitted by State Parties under Article 44 of the Convention – Concluding Observations: Australia, 20 October 2005, UN Doc CRC/C/15/Add.268, [74].

46 Letter from Annette Bradfield, Deputy President, Queensland Law Society to Research Director, Legal Affairs, Police, Corrective Services and Emergency Services Committee, Re: Law Reform Amendment Bill 2011, 20 January 2011. See also Queensland Law Society's submissions to the Sentencing Advisory Council of Queensland (22 July 2011) 8.

47 Law Council of Australia, Submissions to the Attorney-General's Department on Australia's Draft National Human Rights Action Plan (29 February 2012) 17 [67].

48 *Youth Justice Act* 1992 (Qld), s 6.

convicted. On 10 May 2010, in *Fardon v Australia*, the United Nations Human Rights Committee found that this Act breached Article 9(1) of the ICCPR.[49] The Committee requested Australia to provide "information about the measures taken to give effect to the Committee's views" within 180 days.[50] Australia has not responded. It is true that in 2004 the High Court in *Fardon v Attorney-General (Queensland)*[51] held that the Act was constitutional in that it was not incompatible with the Supreme Court of Queensland's constitutional role as a potential repository of federal judicial power. But Queensland's *Dangerous Prisoners* legislation has been significantly amended since 2004 and the United Nation Human Rights Committee's decision which found it to be in breach of the ICCPR post-dated the High Court's decision. Queensland practitioners may well be involved in future challenges to the validity of the *Dangerous Prisoners* legislation.

As the LCA has noted,[52] the Commonwealth government's budget earlier this month has done nothing to improve access to legal services for disadvantaged Australians. Commonwealth funding for legal aid commissions remains well below what now seem the halcyon pre-1997 days when the Commonwealth provided 55 per cent and the States 45 per cent. Currently, Commonwealth funding is at a disappointingly low 37 per cent.

This has the result that practitioners like you must continue to take on an unfairly onerous burden of pro bono work to ensure access to justice.

I have no doubt that, consistent with your obligations to your profession and your community, you will continue to shoulder this burden whilst working with the QLS for more equitable government funding.

The 12th Biennial Conference of the IAWJ

Two weeks ago I was attending the 12th biennial conference of the IAWJ in London. After the arduous long haul flights from Brisbane, Phil and I finally reached the end of the Heathrow queue and handed our passports to a courteous immigration officer. In the

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49 Communication 1629/2007. See also *Tillman v Australia* Communication 1635/2007.

50 *Fardon v Australia*, Communication 1629/2007, [10].

51 (2004) 223 CLR 575.

52 Law Council of Australia, 'Commonwealth Budget Ignores Legal Assistance Sector' (Media Release, 9 May 2012).

normal way he cross-examined me about my purpose for entering the UK. I explained that I was attending a conference. I must not have been convincing because he questioned me about the conference. I explained it was a conference of women judges from all over the world. He laughed, observed that it must be a very small conference, and asked rhetorically how many women judges were there? At this point, Phil, after explaining that he was a judge but not a woman, responded "Not nearly enough!"

In fact, there were 600 women judges at the conference from nations as diverse as Afghanistan, Bangladesh, Bosnia, Botswana, Ghana, Haiti, Iceland, Jordan, Kenya, Nigeria, Norway, Tanzania, Turkey and Zimbabwe, not to mention the UK, North America and Western Europe. From our region, in addition to the predictably well-travelled Australian and New Zealand women judges, there were delegates from Papua New Guinea, Timor L'Este, Indonesia, The Philippines, India, Sri Lanka, China, Taipei, Korea and Nepal. There were also women judges from many international courts and tribunals.

The delegates were privileged to be addressed by the United Nations High Commissioner for Human Rights, Navanethem Pillay, a former member of IAWJ and the first woman of colour to be appointed to the High Court of South Africa. Ms Pillay recounted her conversation with a London cabbie en route to the conference.
"Where are you off to, love?"
"To address a conference of women judges."
"I can tell you're not one of them."
"Why do you say that?"
"You're smiling."
Her response: "Oh, you must be thinking of the men judges!"

In her address, Ms Pillay lamented the fact that, although 193 of the world's 196 countries had ratified the Convention on the Rights of the Child, not all treated their young people aged under 18 as children. It brought me no joy to know that Queensland was amongst the defaulters.

And also of relevance to Australia's human rights dialogue, this time on asylum seekers, Ms Pillay foreshadowed an international law decision which would clarify the illegality of policies and actions of nations that push back vessels containing asylum

seekers sailing to those nations whilst the asylum seekers are in international waters. No doubt we will hear more.
I thought you would be interested to know that major sponsors of the IAWJ conference included the Law Society of England and Wales and the international solicitors firms, Hogan Lovells and White and Case.

I was privileged to attend a conference function in the lavish and historic Hall of the Law Society at 113 Chancery Lane completed in 1832. It seems the Law Society makes a tidy income renting out its handsome Hall for weddings and the like. Perhaps there could be some entrepreneurial opportunities here for the QLS. But impressive as are the facilities in QLS's Law Society House in Ann Street, I'm afraid it does not equal the original in Chancery Lane!
The Law Society of England and Wales distributed a pamphlet to the IAWJ delegates in which it promoted a diverse judiciary and explained that it actively supported its members who wished to attain judicial appointment in courts and tribunals, with a particular emphasis on women and ethnic minority candidates. UK judicial appointments are made on the recommendation of the Judicial Appointments Commission (JAC) whose membership includes a Solicitor Commissioner. The Law Society runs seminars and provides booklets and videos for members interested in applying for judicial appointment. It also hosts "Meet the Judges" events. The Law Society has recently launched a Solicitor Judges Division specifically for those 6,000 solicitors who now form 38 per cent of the judiciary in England and Wales. It is true that the system in England and Wales, where judicial officers routinely serve in part-time positions and the appointment of judges is on the recommendation of the JAC, differs markedly from that in Queensland. But there are analogies. Many judicial positions here are now advertised and applications invited. Queensland solicitors already form a critical mass of the judicial officers on QCAT and in the magistracy. Some solicitors have become excellent Queensland District Court judges. And my colleague, former solicitor Justice Ann Lyons, also a university contemporary of Chris Nyst, is an esteemed member of Queensland's Supreme Court.

Conclusion

There will be many challenges for you as solicitors in sole practices or in small to medium sized Queensland law firms. The most important is to remain financially viable in unpredictable

economic times so that you, your staff, your families and the broader community can continue to prosper. I may not have been much help on that one. Perhaps Mr Pontikis will offer more tomorrow! But I hope I have made you think about some other challenges, including:

- whether Queensland should join in what has been coined *national* legal profession regulation but which presently seems more like *New South Wales and Victorian* legal profession regulation;
- if Queensland does participate, further improving the form of the regulation to benefit Queensland practitioners and the Queensland community;
- developing expertise in human rights law with a particular emphasis on the rights of 17 year old Queenslanders and those defined as dangerous prisoners under the *Dangerous Prisoners Act*;
- developing yet more innovative ways to provide access to justice for needy clients, despite the ever-shrinking legal aid budget; and
- encouraging the QLS to develop training and mentoring programs to assist solicitors who wish to become judicial officers.

These challenges remind us that law is not a mere business, but a profession relevant to all aspects of human endeavour – from supporting commercial activity (whether small businesses or multinational corporations) to protecting the fundamental dignity and basic human rights of the most vulnerable members of society. Unlike entrepreneurs, lawyers have ethical responsibilities to their clients and to the Court. I look forward to sharing these challenges with you – from 23 July in Brisbane's new Supreme and District Court building, designed to be a beautiful, functional and symbolic prism of light where lawyers and judges will together ensure the community has access to the rule of law through an enlightened, independent justice system.