Symposium—launch of the Australian Academy of Law
Government House, Brisbane
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MR BRET WALKER:

More or less as we speak here this afternoon, there are representatives of a number of different groups and subgroups within the legal profession working on what a number of people I know present here today would love to think are the closing phases of moving—towards a national common basis—the regulation and organisation of the profession. I refer to the disciplinary rules, the rules of conduct; in particular, from my personal experience, the advocacy rules, which are in the course of being rendered as common as a federal nation with federal vociferous tendencies can ever bring about.

The Commonwealth Attorney, I know, has been very concerned and very active, and may I say very effective in occasionally gesturing towards the whip in the wardrobe as an incentive to voluntary cooperation. It has proved, I think, very effective. However, there are lessons from that process, which is very close to the heart of the practising profession, not just private, but within government and corporations as well. There are lessons for the AAL in that process.

A little bit of history includes going back to the early 90s, where there began the current phase of rewriting ethical codes. Partly, that was brought about because of parliamentary requirements in respect both of competition principles and of what I call 'transparency' issues.

I'm not quite sure what 'transparency' means. I don't know whether it means you can see through people or see into them, but certainly the exposure of the legal profession by dint of public thrashing about of its ethical codes as published, has proved to be a major challenge of the last 20 years. It was not an easy process.

I distinctly recall taking the New South Wales model—which itself had been produced amidst what can only be described as some brawling—to national forums, in order to suggest that our modest attempt might be used by those who had not yet embarked upon their own redraft, which was nonetheless politically inevitable.

I can leave you all to imagine, because I couldn't possibly pronounce in halls as hallowed as these, the kind of reactions that we got, particularly from Sydney—us coming from Sydney—to the suggestions that anything drafted in Sydney could be taken up, for example, by a large city to the south of the Murray.

But although sweet concord has never been achieved, it is so much closer a mere 20 years later that there is, I suspect, some strategic value in the time that it has taken for the ALRC proposers to find fruition in the AAL today. Experience rather suggests that the passing of generations or half-generations in professional leadership can be extremely useful time as its own solver of problems.

I suspect that from the microcosm of rules governing the ethics of advocates gradually turning into a common form, as they virtually are in this country over 20 years, there is room for optimism that the rather more difficult and much more important aspect of binding the profession to a concern for the discipline of law and its advancement across all fronts—academic, judicial, professional and governmental—is no pipe dream.

In the 80s, as I distinctly recall, there were what might be called 'special leave days'—in the nature of jamborees—in Canberra. For a time, mercifully short—from the point of view of those who had to pay for the sometimes fogbound airport—a requirement

that for special leave days all practitioners be in the night before (the hotels of Canberra must have thought all their Christmases had come at once), which somehow juggled impossibly long calendars, dockets of cases without time limits on counsel, did have some rather curious, but I suggest, long-term results which were entirely beneficial.

After the smoke had settled about the inordinate expense of the court requiring all special leave applications to be argued orally, without time limits, from whatever court in the country, in Canberra, on one day; after that had settled, I think the experience a lot of us had included the realisation that there was something particularly silly about continued conceptualising of the bars—in the plural—of Australia.

A lot of the colleagues were colleagues only in name and form. They had read about each other; that is, if they had bothered to read the law reports of other Supreme Courts apart from their own home jurisdiction, but now they actually met each other—and it was not just the elite of the appellate bar who would actually appear against each other more than once. Special leave applications, of course, don't require the permission of the court to be brought, and hence, a greater mix of counsel clash in special leave applications and in appeals.

It brought about—again returning to the generational issue—it brought about an understanding that there was so much that we could learn from each other, about each other, for the improvement in a particularly straightforward way; no complications, no recriminations—being away from home always seemed to help in that regard—about how advocacy could be done better or, if not better, at least *differently* in a way which was not worse.

This was important experience, I suggest, for a small part of the overall profession, namely the bar, because of all parts or splinters of the profession, the bar or bars, if there still are plural bars, have to be seen as those which were—and are probably still most proudly—separatist. Thank goodness the pretension of self-describing ourselves as the upper branch has, I think, been entirely eliminated, but there is no question that the tendencies which produced that pretension are still reflected in the correct self-praise involved in the independence which we value.

There is obviously a dark side in that aspect of professionalism at the bar which enables me to, I hope, answer Ros's request that I confess. The confession, by this barrister at least, is that the nature of barristerial practice—and certainly the nature of barristerial organisation—does necessarily produce a sense of separation from other aspects of the profession which, taken as a whole, has been a very bad thing. The independence is good; the feeling of separation is extremely bad.

It is for those reasons that it seems to me that the name of this new body has real significance apart from the obvious and straightforward choice of the first two words. The first word really does have significance for an Australian barrister, not least because not long ago being an Australian barrister, merely meant you were a barrister who practised in one of the several jurisdictions in Australia. That is still true, I suspect, for most barristers.

Being an Australian academy, I think, has great importance and I would like to utter some caution about hastening to make it Oceanic or Australasian. It will be hard enough to make it truly Australian rather than East Coast Metropolitan. The second word is the one that is most attractive to me as a practitioner—an academy.

Another confession is that barristers have culturally, in a very strong measure, Philistine tendencies. This is partly because of those people for whom we appeal or those whom we advise. If the Attorney will forgive me, government, like business, is not exactly a touchy-feely business. Criminal clients are, I can assure you, a class who

display absolutely no interest in broader social questions.

Those who have been injured personally—that is physically—and require compensation, equally have far more pressing concerns than considering the overall fairness of compensation and insurance premiums. So there is a natural tendency to cultivate, sometimes perhaps simply to effect a hard-bitten or hard-boiled approach which has as its concomitant, I fear, a refusal to be seen opening law books. This has been an ongoing problem for leaders of the bar.

In New South Wales, I'm delighted to report, the compulsory continuing legal education which was imposed universally on all of us, by us, has reached such a state that in the last couple of months a number of different courses have commenced, entirely voluntary as to the choice of attendance, which have seen hundreds of people—literally hundreds of people—attend, to listen to explorations of implications for modern advocacy from such up-to-date persons such as Cicero and Plato. And I do mean that literally, up-to-date.

That's an extraordinary change, which I think it's fair to say would surprise the leaders of the bar who may have had ambitions about continuing legal education a mere ten years ago. Again, it suggests to me that the passage of time is something which gives rise for real optimism about the future of the Australian Academy, but as a practising barrister, I would strongly ask that it be an academy, and it is for those reasons, it seems to me, that the bridge to the academic profession, by which I mean not just law teachers, I mean scholars of law in particular, is something which I, as a practising barrister, would like to see very strongly highlighted.

It ought to be the *discipline* of the law; it ought not to be too much the practice of the law. The professional bodies are very much engaged with the business of the law and the practice of the law. The Law Council of Australia is very much engaged in trying to make that an Australian project of constant improvement.

The Australian Academy of Law, I do hope, will enable us to be more involved in that as a doctrine and less involved in matters of business and practice. Its independence from the practising profession in that regard is just as important as its independence from government when it comes to consider questions of law reform.

Finally, what can the Australian Academy do which is not being done by other bodies? I hope I've supplied already in my comments some suggestions as to the particular emphasis which I think that it can bring; in particular, the fact that the Australian Academy will be able to set its own agenda. Unlike the Law Reform Commission, it will not be task oriented. The professional bodies will not be bound by representative obligations.

Those, it seems to me, are the aspects of its constitution and I hope its continuing membership, as to promise a capacity to be reflective about the law, about the law and its place in Australia, and the law by comparison with its practice in other countries.

Thank you.