Opening of AAL Symposium
Government House, Brisbane
1.30pm, 17 July 2007

The basic theme of our Symposium today is: What do we need to do to maintain professional identity and a healthy legal culture in a period of dynamic change — and I will soon turn over to my colleague Prof Ros Croucher to lead this discussion.

Good reasons probably existed 30-40 years ago for the establishment of an Australian Academy of Law—but if that had happened, the profession itself would have looked very, very different.

When I arrived in Australia in July 1979, I was immediately thrown into teaching two groups of the course Law, Lawyers and Society at UNSW—presumably because, fresh off the plane after an American education and five years in the Pacific Islands, I knew little about Australian law, Australian lawyers or Australian society.

However, I soon did the rounds and was told emphatically by the leading lawyers and judges that:

(a) there was no single law firm that spanned the Sydney-Melbourne geographical divide and cultural rivalry—and that there *never* would be one; and

(b) the then recent expansion to 12 law schools would flood the legal profession and spell its ruination. ("We'll all be roon'd")

[Lawyers, it seems, often make poor clairvoyants.]

But whereas the profession and the organisation of legal work remained relatively static between 1788 and the late 1960s, we have since undergone a period of almost continuous, dynamic change—largely driven by external factors.

Let me explore briefly just a few of the major influences.

1. Globalisation

National. Not only did the Sydney-Melbourne Wall fall (a few years ahead of the one in Berlin), but we are now advanced towards a national legal profession, with mutual recognition of admission, truly national firms, and some increased harmonisation of laws and processes.

International. Contemporary Australian legal practice has an increasingly international orientation as well, both in terms of jurisprudence and service delivery.

There is a growing physical presence overseas, with many large Australian firms setting up offices (or affiliating with local firms) in Europe, Asia and North America. (And, of course, it is easier and easier to maintain a virtual presence.)

The export of Australian legal services has been a little reported success story, rising from gross billings of A$ 74M in 1988 to A$ 245M in 2001. In terms of professional services, this puts Law second only to engineering/architectural/surveying services in *gross* billings ($485M in 2001)—but a clear first in net profit ($164M to $142M).

2. **Competition**

The Australian legal profession is now formally subject to competition laws and policies — and the market for legal services (at both ends) is becoming much more competitive, with many of the softer areas of income generation (conveyancing, personal injury) wholly or substantially reduced.

The number of lawyers (and law schools) is steadily increasing (and at a faster rate than the population at large).

And there is far greater contestability of legal work— even a great deal of government work is no longer reserved for government lawyers, but subject to public tender.

Big clients are increasingly sophisticated and demanding about cost, quality and accountability. Major corporations and public authorities no longer remain 'loyal' clients of established firms, instead strategically utilising tendering, service-splitting and in-house counsel to customise and control legal services

3. **The organisation of legal work**

IT. The IT&C revolution has changed the way all of us work, including the facilitation of globalised practice. This is so well known and immediate that we sometimes forget how recently it was — before faxes, email and the internet — that:

- colleagues and co-authors were required to meet occasionally;
- documents, books and reports from overseas would take weeks or months— not nanoseconds—to reach Australia; and
- comparative research was, at best, a laborious task;
- a judgment, article or pleading that you were working on could be considered 'finished' — because it was far too much trouble to change them.

Megafirms. The last three decades have seen the advent of the 'mega-firm' of lawyers. While 95% of Australian law firms have 20 or fewer lawyers, the one percent of firms with over 100 lawyers account for 21% of the employment and 30% of the profit in the legal services industry. Of the world's 40 largest firms, six are Australian (only 3 from non-UK Europe, only 1 from Canada).

MDPs. Australia (unlike the US) now permits lawyers to be partners in, and be employed by, Multi-Disciplinary Practices (MDPs)—blurring the traditional distinction between law firms and other professional advisers (such as accountancy firms). PwC/Landwell is perhaps the best known of these, with over 1500 lawyers in 35 countries.

- PwC/Landwell Chairman Gerard Nicolaÿ said to me in 2000: "the challenge is to harness the traditional dominance of accountants with the traditional arrogance of lawyers"

Public companies. Law firms here and overseas have been able to incorporate for some time. However, it is only very recently that Australian firms have been floated as public companies on the stock exchange, with Slater & Gordon the first cab off the rank and others — including several in Queensland (Carter Newell, Gilshenan & Luton) — soon to follow.

How will the fiduciary duties of company directors be balanced with the professional responsibility of lawyers, especially duties to the court? What will this mean for the concept of 'being a partner' in a law firm? And for 'career paths'? And for the commitment to the 'service ideal' and to pro bono practice?

Perhaps all will survive, and thrive—but only if we think about these issues carefully and work at them assiduously.

So where does that leave us, in 2007?

In the face of all that change, how do we maintain a coherent professional identity, and a healthy legal culture?

Notwithstanding the terrible image of lawyers in the media, and in public perceptions (eg surveys about honesty of various professions), my experience is that lawyers are more reflective about their social role than most professionals, more thoughtful about ethics, and much more dedicated to providing services (public or private, at low or no cost) to the disadvantaged.

Nevertheless, there is a real danger that the pace of change and the intensity of the competitive pressures — the much lamented pre-occupation with 'billable hours' — easily could intensify the fragmentation of the legal profession.

I hope lawyers will never become the professional equivalent of Los Angeles, about which Gertrude Stein once famously said that "there is no 'there', there"—that is, it may be large, but it has no coherent identity or central core.

Again, the establishment of the Australian Academy of Law is intended to serve as a focus and a forum to bring together the various strands of the legal profession to reflect on these issues, and to drive reform.

Finally, although it has taken a great deal of work to get *this* point—and I hesitate to set out a bolder vision—I hope that sometime in the near future we can take the

harmonisation theme a step further, and broaden the Australian Academy of Law to Australasia, to include at least New Zealand and the Pacific Island states in our region.

Prof David Weisbrot AM
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