AUSTRALASIAN STUDY OF PARLIAMENT GROUP (Queensland Chapter)

PARLIAMENT AND THE JUDICIARY; SEPARATION DOES NOT MEAN DIVORCE

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Ms Nonie Malone: Good evening, everybody. The honourable Chief Justice, Mr Paul de Jersey; members of parliament; Australasian Study of Parliament Group members; ladies and gentlemen. It is my great pleasure to welcome you this evening on behalf of the Australasian Study of Parliament Group and Legislative Assembly briefings. For the first time we have brought these two organisations together.

The purpose of Legislative Assembly briefings is to provide forums for members to gain an education. They are usually closed and forums that are between just the members and the speaker. The Australasian Study of Parliament Group is a body that is chartered to bring together parliamentarians, parliamentary staff, members of the public, academics and senior members of the media to foster debate and to foster a further understanding of the underpinnings of our Westminster style democracy and our political systems. It is quite fitting to bring these together to discuss the topic 'Parliament and the judiciary: separation does not mean divorce'.

I am delighted that the Chief Justice has accepted our invitation to speak tonight. I cannot think of anyone better to address the topic, and I so look forward to hearing his view on the topic. The Chief Justice will speak for about 20 minutes and then we have allowed at least half an hour for questions following that. I do hope that you do feel sufficiently stimulated to ask whatever questions you like and to generate further debate.

I would now like to ask Siwan Davies, the new Deputy Clerk of the Parliament, to introduce the Chief Justice.

Ms Siwan Davies: Chief Justice, members of parliament, ladies and gentlemen. It is my great pleasure to introduce the Chief Justice of Queensland, the Honourable Paul de Jersey AC. The Chief Justice was appointed in February 1998 having served as a Justice of the Supreme Court of Queensland since 1985. He was made Companion of the Order of Australia in 2000. The Chief Justice was chair of the Queensland Constitutional Convention and, prior to his appointment, chaired the Queensland Law Reform Commission. I very much look forward to hearing his views on the relationship between parliament and the judiciary. Chief Justice, welcome.

Chief Justice Paul de Jersey: Thank you, members, ladies and gentlemen. I would first like to congratulate the Queensland chapter for its pursuit of its worthy goal. Our system of parliamentary democracy is not generally well understood, I think, although I do not presume, in assuming that, it is at least fairly well understood by this audience here tonight.

I am told that my remarks are being recorded by Hansard. That is a little disconcerting. I suspect the last time a judge's remarks in the parliament were recorded by Hansard was in his response to a motion for removal. It may be a bad omen; I hope not. It also brings to mind a position I recently took in relation to court transcript and subsequent revision by a judge. I took a very strong line that that should not occur. Maybe I shall have to revise my attitude to that in relation to parliamentary transcript tomorrow morning.

I am very pleased to have the opportunity to speak about the relation between the legislature and the judiciary. I have spoken on a number of occasions about relations between the judiciary and the executive, most recently in March this year at a conference of chief justices of Asia and the Pacific, but I have not in recent times been asked to address the relationship between the judiciary and the legislature. Those two of the three pillars of government throw up some interesting parallels and some interesting contrasts.

The most obvious parallel concerns core business. Both are concerned, although in different ways, with the law. Another similarity, and one which starkly distinguishes those arms of government from the executive, is the openness of their processes. Each almost invariably operates in public under the potential glare of publicity. The process is transparent and, being known, is vulnerable to criticism should things go wrong.

Consistently, each of those arms of government is subject to mechanisms which ensure ultimate accountability. In the case of the legislature the safeguard is the ballot box. In the case of the judiciary there are various mechanisms—the obligation to publish reasons for judgment, the susceptibility of any judgment to appeal, indeed multiple possible appeals, through the court hierarchy, and other mechanisms like the publication of data on case loads as to their extent and the timeliness of disposition.

There are some parallels. As to contrasts between the parliament and the judiciary, the most obvious concerns tenure. Members of our Legislative Assembly are elected for fixed terms whereas judges are appointed until the age of 70, removable only on proof of incapacity or misbehaviour.

The missions contrast. The constitutional mission of the parliament is to make laws for the peace, welfare and good government of the state. The mission of the courts of law is not to make law but to deliver justice according to the law primarily at least made by the parliament.

Another contrast concerns how the work of the institutions is reviewed. While each of these arms of government is subject to assessment in the public arena, formally the parliament's performance is

reviewable only via the ballot box unless, in extraordinary circumstances, the Governor were to exercise the reserve powers. By contrast, the work of the courts is, as necessary, reviewed in-house, as it were, through the appeal process to which I earlier referred.

There is one feature which supervenes that landscape of similarity and contrast. It is that, in a practical sense, both parliament and the court system depend on the confidence of the constituency: the people. Journalistic commentators continually monitor and comment on the level of public support of the parliament, though probably more markedly, I think, the performance of executive government. So do letter writers to newspapers and the online bloggers. Most of the commentary on our state courts focuses on the judicial approach to the sentencing of criminal offenders, although I have to acknowledge that two comparatively recent appeal decisions have provoked more broadly based analysis. But the end position is that the practical legitimacy of these two arms of government rests on public confidence.

The people respect and uphold the laws made by the parliament because they acknowledge the right of the parliament to ordain the law, and they respect the basic conscientiousness with which parliament discharges that obligation. In similar vein, the peace and welfare of the community are ensured and anarchy avoided because the people accept the legitimacy of the judicial process. In rare instances where that does not occur, courts are backed by the coercive powers of the state. Those who act in defiance of court orders render their property vulnerable to execution and possibly their liberty subject to curtailment by police and prison services. Those expedients aside, our court system functions in a streamlined way largely because the people voluntarily acknowledge and respect the rule of law.

In a report published for the Australian Institute of Judicial Administration in 1998, Professor Stephen Parker of Griffith University relates a story about Sir John Latham and Mussolini. Latham was telling Mussolini about the Australian Constitution and the power of the High Court to declare legislation and executive actions invalid. Mussolini listened and at the end he said, 'Yes, Mr Latham, but how does the court get its order with such far-reaching effect obeyed? Does the court have an army or an enforcing agency?' Latham responded, 'No, it doesn't work that way. The court simply pronounces its decision and it will be obeyed. That is how the system works.' This drew Mussolini's reply, 'Truly, Mr Latham, your answer is remarkable. You have anarchy in your system.' Professor Parker observed—

> Inexplicable though it may be to a dictator, courts work primarily through voluntary acceptance of their authority and, in a sense, it is remarkable how well they do work in that context.

We judges, like parliamentarians, are, however, acutely conscious there is inherent fragility about that public confidence. One way of enhancing it for courts is to communicate with our public, explaining our processes. How can people be confident about a process of which they are ignorant? Contemporary courts, I assure you, are vibrantly alive to that. Can you imagine 10 or 15 years ago, for example, a chief justice deigning to respond to a letter from a disappointed litigant explaining why things from that person's point of view went wrong in the courtroom? It regularly happens. It happened to me today. It happened to the Chief Magistrate yesterday. Today he sent me a copy of his response. We are alive to the need to reassure people and, more fundamentally, to inform them of the nature of our process so they at least begin to develop some basic understanding of what goes on in the court process.

Those things said, my topic this evening focuses on separation between the legislature and the judiciary. A separation of the three arms of government each from the others has long been recognised as one of the major, indeed critical, strengths of our Westminster system. Why? As to judicial power, Montesquieu said—

> If it were joined to legislative power, the power of the life and liberty of the citizens would be arbitrary for the judge would be the legislature.

That is a grand-sounding notion and a grand-sounding admonition. What, practically, does that entail? The correct assumption is that the entity which applies parliament's laws must be in a position fearlessly to do so even if the course objectively supportable would cause embarrassment or discomfort either to the legislature or to the governing party. Bear in mind also that the government is often a litigant in the courts, either in right of the state of Queensland or through government instrumentalities like WorkCover Queensland.

That laws must be applied by an entity or institution absolutely independent of the legislature and the executive is fundamental to maintenance of the rule of law. Judges deliver judgments according to law, at no-one's behest, completely independently. Of course, in a democracy the creating of the law must be subject to the will of the people. But to ensure the impartial application of law we accept judges must be completely immune from external pressure, and that includes the political pressure which underlines the operation of the parliament under our system.

What does judicial independence involve? Essentially, impartiality and freedom from any external influence which may corrupt. It is a critically worthwhile feature of our judiciary that the judges are not elected, by contrast with the judges in some American states. We have all heard of those judges. They tend to impose outlandishly long terms of imprisonment for some reason or other—up to hundreds of years—when seeking re-election. In this country, and reflecting the English Act of Settlement 1701, judges of most courts are appointed for life, meaning, in this state, until the age of 70 subject to removal for proven misbehaviour or incapacity. Security of tenure thereby achieved means there is no incentive to please the body which would reappoint.

But, of course, in practical terms there is difficulty maintaining a completely independent judiciary. That is because there is necessary material dependence on the other arms of government. The executive provides the necessary resources. For true judicial independence, judges should enjoy security in three respects: security of tenure, meaning a guaranteed term of appointment, necessary so that judges are not concerned about making decisions to please the body responsible for their possible reappointment; financial security, necessary, it is said, to ensure judges are not tempted to accept bribes—no need for that justification, I assure you, in contemporary Australia; and institutional security or control over administration of the courts, preventing, among other things, the other branches of government from influencing the allocation of judges to hear particular cases. The judiciary depends on the other arms of government to respect that independence, and that respect is forthcoming.

My topic is 'Separation does not mean divorce'. Of course, the separation of the judiciary and the legislature does not exclude interaction. That occurs in a very public way from time to time. For example, the judges traditionally and ceremonially attend the opening of any new parliament and then present themselves here in a highly visible way. We attend to be recognised as an arm of government but also as a mark of courteous respect for the legislative arm of government. As another example, the Chief Judge of the District Court and I were very pleased last year to have the opportunity to address new members at Parliament House as part of the induction process. But interaction is not limited to matters of formality, courtesy and ordinary friendliness. It constitutionally falls to the parliament, for example, to determine any motion for removal of a judge from office. Unfortunately, in this state we have had an experience of that.

Additionally, in Queensland we follow the practice of Westminster in relation to criticism of judges within the House. That is, for judges of superior courts debate about a judge is not permitted except upon a direct and substantive motion for which, under standing rule 63, notice is required. That means that criticism of a judge cannot be raised by way of amendment or on a motion for adjournment or in a reply to a question. The process is thus designed to avoid damage to the courts through unwarranted adverse reflections on those comprising them. The safeguard, I must concede, has not necessarily guaranteed an absence of such criticism. In his history of the Supreme Court, Mr Justice McPherson refers to the decline in relations between the judiciary and the parliament in the latter part of the 19th century. As he relates—

> In 1880 parliament was being warned by one member that 'no class of man required closer watching than the Supreme Court judges' and in 1889 another was heard to complain, 'They got their offices by begging, cringing, crawling and skulking,' adding that as soon as a man became a judge 'he acted as if he didn't belong to the ordinary run of the human race at all'. In the same year, a minister of the Crown thought it 'time the wings of their honours were clipped'—they flew too high—and hinted that perhaps judicial officers should be elected as in the United States.

Fortunately, that is all well in the past. From the other side, judges have not infrequently over the years pointed up in their reasons for judgment legislation which is unclear or ambiguous or otherwise warrants revision. Sometimes this has led to desirable improvement. Sometimes courts are asked to determine the constitutional validity of legislation which, of course, starkly distinguishes our regimes from those of the United Kingdom and the United States. The court's capacity to intervene in the parliamentary process is very doubtful because of the basic principle that the House has exclusive dominion over the control of its own proceedings. The recent Supreme Court proceedings in the Wendy Erglis matter raised some issues in that regard.

Sometimes questions are raised, particularly by me in recent times, whether the legislature is justified in burdening courts with particular jurisdictions. Courts of law exist primarily to determine cases in the courtroom, in the open and with both parties present. It is important to maintain public confidence in our process that that crucial and fundamental position not be distorted or blurred. A number of cases have emphasised the primacy of that strictly judicial core function in the context of legislative attempts to embellish it, for example by requiring a judge to perform a strictly administrative role.

The High Court has affirmed that no non-judicial function can be conferred which is incompatible with the performance of the basic judicial function. The High Court has spoken of maintaining the integrity and legitimacy of the judicial arm. In a case in the mid-1990s, two of the High Court Justices adopted the United States Supreme Court's reference to courts' reputation for impartiality and nonpartisanship, warning that that reputation may not be borrowed by the political branches to cloak their work in the neutral colours of judicial action.

State parliaments remain alive to the utility of invoking the reputations of their Supreme Courts to lend authority to what could be described broadly as administrative decisions in controversial areas. In recent decades, as an example, legislation has broadened the jurisdiction of state judges to authorise covert police operations. Politically, it is obviously attractive to have those potentially controversial decisions made by Supreme Court judges, but as antiterrorism legislation especially may increase the frequency of such interventions one may query whether there is the risk of eroding the public confidence in the judicial process, rightly proclaimed as central to the legitimacy of the courts of law. One sees in recent cases reference to the need for the courts to be acting openly, impartially and in accordance with fair and proper procedures. In issuing warrants to authorise covert police activity, judges invariably must act behind closed doors and ex parte, not hearing from both sides. That is a process most judges do not relish.

My point this evening is not to criticise governments for casting those potentially controversial jurisdictions on to courts. Governments have power to do so and courts have an undoubted reputation for the independent discharge of all their jurisdictions. It is unsurprising that governments see courts as attractive decision makers in those areas, as would the public. My point is simply to urge the need for

circumspection. Governments must be astute to the inherent fragility of public confidence and also to the pivotal importance to society of a judiciary considered legitimate. They must be careful not to embellish our core judicial function in such a way as to blur it and thereby erode the confidence on which its authority depends.

Looking the other way again—from the court to the parliament—there is considerable scope for tension should courts be seen to be trespassing into parliament's sovereign law-making territory. While the parliament is the sole source of the statute law, the courts, as you know, are the custodians of the non-statutory or common law. The law of negligence is the best example of the common law.

Courts have been criticised from time to time for usurping the power of the parliament where they are perceived to have pushed the boundaries of the common law too far. The High Court in particular has been criticised on that account—fairly or unfairly is a matter for individual judgment. But courts have, in developing the common law as necessary to meet contemporary conditions, generally taken a gradual, steady or, as it is put, incremental approach, careful not to be legislating. The process was described in a High Court case in 1996 in this way—

> Advances in the common law must begin from a base line of accepted principle and proceed by conventional methods of legal reasoning. Judges have no authority to invent legal doctrine that distorts or does not extend or modify accepted legal rules and principles. Any changes in legal doctrine brought about by judicial creativity must fit within the body of accepted rules and principles. The judges of Australia cannot, so to speak, make it up as they go along.
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> It is a serious constitutional mistake to think that the common law courts have authority to provide a solvent for every social, political or economic problem. The role of the common law courts is a far more modest one.
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> In a democratic society, changes in the law that cannot, logically or analogically, be related to existing common rules and principles are the province of the legislature. From time to time it is necessary for the common law courts to reformulate existing legal rules and principles to take account of changing social conditions. Less frequently the courts may even reject the continuing operation of an established rule or principle. But such steps can be taken only when it can be seen that the new rule or principle that has been created has been derived logically or analogically from other legal principles, rules and institutions.

The recent tort law reform legislation may be seen as an example of legislative intrusion to wind back a judicial approach considered as unduly generous to injured claimants. My own view, which I have expressed publicly, is that time has shown that reform to have been unwarranted and unreasonably limiting of the rights of those injured through no fault of their own.

That aside, as put by Justice Hayne of the High Court some years ago—

> subject to applicable constitutional restraints it will be the legislatures of Australia which ultimately determine the course that is to be taken in restricting litigiousness. It will be for the parliaments to say what kinds of litigation are to be restricted and how that restriction is to be effected. That is not to deny the importance of the roles of the courts in promoting efficient and predictable disposition of litigation. But if those legislatures choose to modify or even abolish legal rights of a kind which those legislatures consider give rise to too much litigation or litigation which is costing too much, that, subject to applicable constitutional restraints, will be a matter for them.

And, I would add, a matter for which those legislatures would ultimately be answerable, properly, at the ballot box were they perceived in their own way to have gone too far.

Those tort law reforms were ultimately an example of the rule of law—the courts acting independently, subject nevertheless to the public safeguard in the end of parliamentary intervention to support any perceived public interest. It is the parliament's perception of that public interest which is, and in my view must be, the ultimate determinant.

Ladies and gentlemen, I have endeavoured this evening, while emphasising the fundamental importance of the separation of the legislative and judicial arms of government, to provide some examples and brief analysis of the interaction between them—interaction which does not blur that essential separation and, I believe, in fact promotes the public interest, hence the thesis reflected in the title of this presentation to you. Thank you.

Ms Nonie Malone: Thank you, Chief Justice, for that highly thought-provoking foundation for each of us to understand so much more about the interaction between the parliament and the courts and the relative roles within the system. I now invite people to ask questions.

Mr Geoff Wilson: Your Honour, you described the role of parliament in making statute law and the courts in making the common law. As well, you spoke of the parliament at times 'intruding' into the common law through statutory modifications of the common law. Do judges have a somewhat jealously protective attitude to the common law vis-a-vis the role of parliament?

Chief Justice Paul de Jersey: Yes. Before answering, I should apologise for my voice. It has been like this for the last three weeks. I would not like you to think that your Chief Justice generally spoke like Neville Wran, I suppose.

Mr Geoff Wilson: Or Terry Mackenroth.

Chief Justice Paul de Jersey: Two persons for whom I have great respect, I should make clear.

I used the word 'intrusion', you are right, because the courts would believe that they had developed the common law responsibly and that there was no need for legislative intervention. In some things I have said and published I have drawn attention to the fact that, well before the legislative winding back of the right to claim damages, the courts were themselves tending to wind back the right of recovery or the extent at which damages were set. Professor Luntz, who is an authority in the area of damages, has published some material on that to similar effect.

That said, you are right: the courts would regard the common law as their particular province. I think I referred earlier in my remarks to the courts' role as the custodians of the common law. But for all that, in the end they are subject to the supremacy of parliament—parliament's sovereign law-making power—and the common law is vulnerable to legislative intervention. Whether you call it 'intervention' or 'intrusion' does not really matter. It does not really matter what the courts think of that. The parliament has the right, in the end, to intervene in any area of the law applied by the courts. It is important if the parliament, as the people's representatives, considers that it should do that that it do so. That is what the people expect. If the parliament, as I have said, is thought then to have got it wrong or to have gone too far, then the people have their remedy at the ballot box—a remedy which is not available in relation to the judiciary and of course, I emphasise, must not be available in relation to the judiciary. We must have a judiciary that is fearlessly implementing the law as developed by itself, subject to parliamentary definition in the end as necessary.

Some of my colleagues—and I am not talking about my Queensland colleagues but some members of the judiciary elsewhere—may not agree with that rather black-and-white assessment of the separation between the roles. Some would more jealously, I suspect, promote the importance of the courts' development of the common law and be rather grudging of parliamentary interference. From my own point of view, I have absolutely no concern about that. The judiciary is a very powerful arm of government, but it must not become too powerful. The ultimate curtailment on its power rests with the parliament.

Mr Geoff Wilson: Sometimes the common law does not reflect community expectations or those of parliament, for example, the original common law position on contributory negligence, particularly in the area of workers' rights. Contributory negligence used to be a defence to a cause of action; now it mitigates the amount of damages awarded. Would you like to comment?

Chief Justice Paul de Jersey: We would now see that as a very good example of beneficial legislative intrusion. The position previously obtaining was probably a result of judicial conservatism and the wish not to develop a recovery of damages in negligence too quickly too far. But the legislature saw the vice of the situation which had developed and then took the dramatic step of excluding contributory negligence as a complete defence. It is a very good example.

Dr Lesley Clark: Your Honour, there has been some media commentary earlier this year about the method of selection and appointment of the judiciary. I just wonder whether you would be prepared to share your thoughts on that issue with us.

Chief Justice Paul de Jersey: My basic position is that it must remain within the province of executive government to make the appointments. In other words, it harks back to the question of accountability upon which I have been dwelling. If executive government is seen to have got the appointments wrong, then disapproval can be registered at the ballot box. I have difficulty with the notion, for example, of a commission of persons not accountable in that way making such important appointments in public office.

The position I have taken in recent times, however, is that there could be some greater accountability built into the process through utilising a commission which could make recommendations to executive government, in particular to the Attorney-General for example, in relation to judicial appointments. Such a commission could be stocked by heads of jurisdiction but also appropriately qualified and experienced members of the community—non-lawyers. Of course you would be inclined to include persons of eminence within the professional practitioner associations—the Bar Association and the Law Society—but it would be important in terms of legitimacy for such a commission to include non-lawyers and a goodly number of them. You would not want a commission of too many members, but I have raised the model of such a commission making recommendations to an Attorney. There could be the gloss that if an appointment were made beyond those recommendations perhaps that circumstance could be published.

Now, that is revolutionary. I raised it I think earlier this year in conjunction with my former colleague Justice Davies of the Court of Appeal, in the interests only of sparking debate and consideration as to whether there might not be a better way of doing these things. There was no practical consideration relating to the courts of law which impelled me to enter into that debate. I raised it on a purely theoretical basis, and that is the basis upon which I raise it again tonight in response to your question.

When I say that it is a rather radical possibility, maybe that is going too far. Such a commission is about to be established in the United Kingdom. It may already have happened through legislation. I think the system that has been introduced in England, or is about to be, involves the commission making the appointments itself. I think that is the case. So times are moving on in these areas. I think Ireland at the moment is considering a similar system. We will wait and see. I do not see any practical constraint in this jurisdiction which would give priority to any reconsideration here of the way these things are done, but I think it is something worth having on the agenda generally so that we can reassess our practice, particularly in light of experiences elsewhere as society becomes increasingly sophisticated.

Ms Nonie Malone: We really only have time for one more question, Terry, so it is yours.

Mr Terry Sullivan: The legislature and the courts, each in their own way, try to serve the public. My question revolves around the availability of information. In the legislature what is said in the parliament, after Hansard has translated it into English, becomes available generally within a couple of hours and it is

on the internet. Every word, every argument, every justification and particularly how one votes is there for anyone to see. The media on a daily basis, through television, radio and the print, question individuals about their decisions and about what the government has done or what an individual has done. Through freedom of information, if the material is about the person there is no cost and for others there is some cost, but generally even all the written material that occurs with members of parliament is available—the vast majority of it, anyway.

With the courts, I am wondering about the access to court proceedings—the availability of the information, both the daily proceedings of cases and the printed judgments. My understanding would be that if a competent shorthand journalist was in a court that person could record as much of the hearing as was available—what that person was capable of doing—and could publicise fairly what he or she had taken down. However, for most of the proceedings of most of our courts that information—the proceedings—is not available.

What is the situation with the importance in electronic recordings of court proceedings being more readily available at low cost—if not, as with parliament, no cost—through the improvements in technology? What would be the disadvantages or what would be any barrier to that occurring?

Chief Justice Paul de Jersey: The proceedings are almost invariably completely open so that any member of the public wanting to hear what is said and see what is done has the capacity to do that if interested. They can go into the courtroom. Very unusually courts are closed, notably for applications such as I was mentioning earlier—for ex parte secret applications, for covert police authorisations, for surveillance operations and the like. We do not like doing those but we accept the jurisdiction, which we discharge responsibly. However, it is highly unusual for proceedings to be conducted in closed court.

Can I tell you that recently we were asked by various media outlets to indicate our policy on suppression orders. I was very surprised to be approached on this, because it is virtually unknown for a court in Queensland to make what is called a suppression order. But it emerges that they are not necessarily infrequent, for example, in the Supreme Court of Victoria. I hope that reassures you. It would be highly unusual here for us to direct a media outlet that it could not publish anything that occurred in the courtroom.

As to the availability of transcript, everything is transcribed by the court reporting bureau and a copy of the transcript is available upon payment of their charges. You would say they are probably too high; I do not know what they are offhand. I do not get complaints from people saying they are too high, and I think they have a means test which means that if persons cannot pay for the transcript they are given it gratis. Unfortunately, the State Reporting Bureau is not financially resourced to appoint where transcript can be provided free of charge. As to putting it on the internet, that would be desirable but that would mean that the State Reporting Bureau would not get that part of its revenue, which it needs to keep going. I suspect that is probably the only reason why transcript is not put on the internet.

There is a related concern I should mention about putting everything from the courts on the internet. People have been known to use it for nefarious purposes. Prisoners, for example, seek access from time to time to transcripts in salacious criminal proceedings, we suspect for self-gratification or to ascertain the names of persons whom they could target for nefarious purposes. So we have to be careful about that. It is a sad reality of contemporary life.

We are doing our best to enhance accessibility through use of electronics. The State Reporting Bureau is in the process of digitising all of its processes, and it may be that that will assist in the availability or reduce the cost of the transcript when provided.

Interestingly, when we sit in some country centres now we do not have a court reporter in court. The proceedings are recorded by recording equipment and then the transcript—for example, I sat last year in Bundaberg to conduct a homicide trial. The transcript was in fact contemporaneously being typed up in Caboolture. This is part of the economy of the State Reporting Bureau. It is less expensive, apparently, to have it done there than to have to send court reporters and stenographers to the circuit centres when the judge goes there.

I am assured that our service through the State Reporting Bureau is conducted on the best economical basis. I would like to have transcript available free of charge, subject to those problem areas I mentioned earlier, but at the moment the resourcing of that part of our mechanism does not allow for that. Hopefully one day it might.

You have my absolute assurance that we regard as of the absolute essence of our legitimacy and public acceptance of our legitimacy that everything be seen to be done in public—or almost everything, with the rare exceptions of things like the covert police authorisations and authorities issued in the context of antiterrorism legislation and so on.

Ms Nonie Malone: Thank you very much for the broad discussion. I now call on the Hon. Kev Lingard, the member for Beaudesert, who I think is the longest standing member of parliament present, to propose a vote of thanks.

Mr Kev Lingard: Thank you, Nonie. I am starting to get a phobia about being the longest serving member of parliament, seeing I got the job the other day of officiating when the Speaker was being elected.

Being the longest serving member allows me to tell a story about the Chief Justice, to be quite honest. This is the first night I have actually met him formally, but a very long time ago, when I was 21-years-old and I had one monstrous black eye from a game of football at the weekend, I turned up at my first new school to take my first new class at Milton State School. There were three classes of year 6 and next to me was this most delightful lady, an absolute gem. That lady was Paul's mother, the most delightful lady you could ever meet. She really did look after me. I do not think Paul realised that until tonight, when I mentioned it again. Just around the corner, over at Ithaca State School, was his father, who was the principal of Ithaca State School at that time. I did not know Paul at that time, but I heard about this young kid who had won the Lilley Medal. Is that right?

Chief Justice Paul de Jersey: It was my brothers.

Mr Kev Lingard: It was your brothers. I remember the story about them because in those days you used to get a prize for scholarship and a prize for junior. I always remember that it was the Lilley brothers—that is right—who had received these particular awards.

Chief Justice, thank you for tonight. It was excellent. I came to parliament in 1983 and, as you can imagine, the separation of powers was never mentioned by the Premier in those days. The first mention I ever heard of the separation of powers was in 1989, when Russ Cooper, at a very special press conference, was asked what he thought about the separation of powers and he did not know anything about the separation of powers. Of course, it was awful trouble. I was also here when a judge came to the gold bars. I was here in that particular period. It is interesting to go back and hear you talking about it. I am a bit concerned that you talk about the security of tenure for judges but not for the legislature. Seeing as we appoint you, I reckon you should give us security of tenure back a little bit!

It was a most delightful talk and extremely informative, and I thank you on behalf of everybody here. Thank you.

Ms Nonie Malone: I add my gratitude to the Chief Justice for coming and for shedding so much light on the topic for us this evening. Ladies and gentlemen, I now invite you to join us for refreshments in the Belle Vue Room. Good evening.