

BALANCE

LAW SOCIETY NORTHERN TERRITORY

AN INDEPENDENT, ACCOUNTABLE JUDICIARY

“Judicial independence is a precious jewel of democracy, to be guarded and cherished for the benefit of the people it serves. It is a jewel of the state” the Honourable Mrs Justice Susan Denham from the Supreme Court of Ireland told the 18th annual AIJA conference recently held in Darwin

In her keynote address “*The diamond in a democracy: an independent, accountable judiciary*”, Her Honour argued that modern systems of accountability are not incompatible and should not be considered in isolation from judicial independence.

“The judiciary should absorb the light from the society it serves. The judiciary should be strong, transparent, crystal clear, in its operation. This is done in many ways already. An additional modern system of accountability will strengthen the confidence of the people in the judiciary. In these elements, strength, clarity, transparency, we see an independent, accountable, modern judiciary, the diamond in democracy,” she said.

Judicial accountability was the theme of the two day Australian

Institute for Judicial Administration (AIJA) conference that was attended by judges, magistrates and staff from courts throughout Australia and overseas, including East Timor, New Zealand and Ireland.



The Hon Justice Catherine Branson, Federal Court of Australia and President of the AIJA, welcomed conference delegates to the 18th Annual AIJA Conference at a reception at Parliament House hosted by Chief Minister Denis Burke.

Justice Denham travelled to Australia for the conference with financial assistance from the Law Society Public Purposes Trust. Her Honour was appointed a judge of the High Court in Ireland in April 1991 and to the Supreme Court of Ireland in December 1992. She chaired the Working Group on a Courts Commission from October 1995 which was set up to transform a court system that “had an air of the 19th Century” about it into a court system appropriate to the 21st Century.

“It is fundamental to democracy and the rule of law that the judiciary be strong, to withstand pressure

from any quarter. Yet the judiciary should be of their times and take account of the changing society within which judges hold office, while retaining the core principle of independence,” said the judge.

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"In taking steps to modernise the judiciary it is important that this be done without undermining the fundamental concept of the independence of the judiciary", Justice Denham told her audience. "The independence of the judiciary is for the benefit of the community, not the judges. It is a duty not a privilege for a judge.

"The independence of the judiciary is not a curtain behind which the judiciary should hide. It is a fundamental principle for the benefit of the community. It is a principle for the advantage of the people. It is a principle to ensure that when a litigant seeks a remedy the judge is independent to make the decision," she said.

Her Honour acknowledged that preserving the independence of a judge

whilst striving for accountability and transparency is a complex matter. Accountability of the judiciary takes a different form from people holding office in other organs of the state.

Judge Denham looked to what she called "a modern method of accountability" — a complaints procedure — as a mode of judicial accountability. She examined debate and proposals to tackle judicial accountability in England, New Zealand, Canada and South Africa and looked to recent developments on the Australian judicial landscape.

"I understand there is an ongoing debate in Australia as to accountability of federal judicial officers. It appears to me that it is very similar to the debate which is proceeding in Ireland. At issue is whether there should be a body which

could consider complaints about judges' conduct and if so what form it should take.

"It is entirely right and proper that the judiciary should have a body within which a process may be established to consider ethical principles and to hear complaints of judicial conduct. This would protect the independence of the judiciary and the separation of powers, for the benefit of society as a whole," she said.

The AIJA conference featured seminars and workshops in related aspects under the general theme of judicial accountability, including sessions on judicial education, judicial benchmarking and productivity, courts and the community and courts governance.

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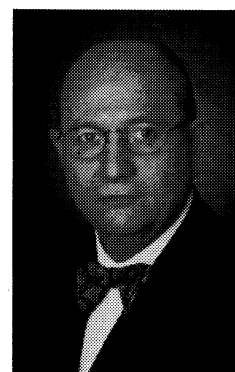
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