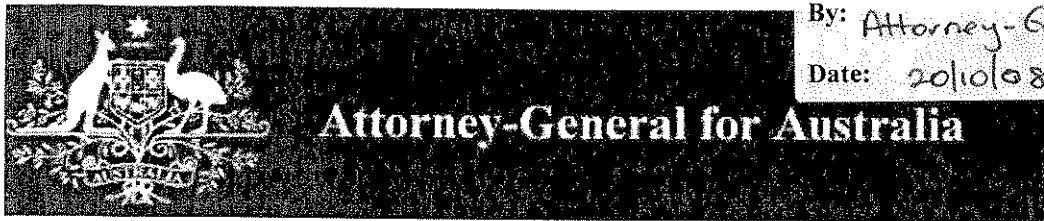


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# Judicial Conference of Australia Colloquium Dinner

Marriott Hotel, Gold Coast

Saturday 11 October 2008 at 9:15pm

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## Acknowledgements

- First, may I acknowledge the traditional owners of the land we meet on – and pay my respects to their elders, both past and present.

## Other Acknowledgements

- The Honourable Justice Ruth McColl AO, Chair
- Distinguished members of the judiciary
- Ladies and gentlemen

## Introduction

16. The former Government tended to argue to the contrary – that the Attorney-General was ‘all politician’.
17. Much of the controversy surrounding the former Government’s view concerned the role of the Attorney-General in defending the judiciary.
18. On this issue the view of the first Attorney-General in the former Government is well known:  
*“An Attorney-General cannot be a wholly independent counsel who rushes to the defence of the judiciary when under attack. This is particularly the case when the attack comes from the executive arm of government.”*
19. And this view was not an isolated one in the former Government.

## Public scrutiny and political attacks

20. But it is important not to miss the point – it is the nature and motivation of criticism that is relevant.
21. Courts have long acknowledged the need for public scrutiny. For example, while deploring the sustained political attacks on the High Court after the *Wik* case, Justice Michael Kirby observed:  
*“The principle of public justice and open courts is designed to constantly submit the judges themselves to public scrutiny.”*  
 And:  
*“Much criticism of courts and of the legal profession itself is perfectly healthy. Judges are citizens too. They live in their communities. It is right that they should be alert to community feelings.”*
22. No one would reasonably expect an Attorney-General to defend all decisions, reasons or comments of a judge from any criticism whatsoever.
23. Our legal system and culture is robust enough to withstand debate, by politicians and others, about legal or political questions raised by judicial officers.
24. As former Chief Justice of Australia Sir Gerard Brennan noted:  
*“The Courts do not need an Attorney-General to attempt to justify their reasons for decision. That is not the function of an Attorney-General.”*
25. But there is a significant difference between criticising legal reasoning, and impugning the motives, character or capacity of members of a court for political ends.
26. Such politically-motivated attacks have the potential – and may even be calculated – to place pressure on the independence of the judiciary. Ultimately such actions have the potential to shake public confidence in the administration of justice.
27. In this context, the Attorney-General does have a responsibility to guard against such politically-motivated attacks.
28. This does not simply arise from what some may argue are historical conventions or the traditional duties of the office. Rather, it arises from the Attorney-General’s continuing role in ensuring the effective operation of our system of justice.

## Broader picture

29. But it would be unfortunate if these particular controversies were allowed to eclipse the broader ways in which the Attorney-General can contribute to public confidence in the administration of justice.
30. In my ten months as Attorney-General, I have sought to advance this objective in a range of areas. I will briefly mention some of them.

## Judicial appointments

31. One of my earliest priorities was to establish a more transparent and consultative processes for appointments to the federal courts.
32. When we came to office, the appointment process was shrouded in a degree of mystery. This, in turn, had the potential to undermine public confidence in the appointments themselves – a travesty considering the high calibre of judicial officers we have in Australia.
33. We have taken steps to broaden consultation and introduce greater transparency in the selection process.
34. The processes are aimed at giving the public confidence that judicial appointments are made on the basis of merit not political patronage or personal friendship.

## Litigation reforms

for sharing their insights gained from considerable years of experience in the law.

56. I look forward to further exchanges to promote mutual understanding between our respective branches of government, and wish you well in your deliberations.

NDS

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