

## Foreword

*by James Spigelman AC, former Chief Justice of New South Wales*

This volume of speeches is a testament to judicial leadership. Over two decades as Chief Justice of New South Wales and Chief Justice of Australia, Murray Gleeson led the profession and the judiciary, and represented both to the Australian community, through these addresses. His judgments are, of course, his primary contribution to the law. However, explaining the role and the importance of the rule of law, and of the institutions which ensure the maintenance and flourishing of the law, is a critical aspect of judicial leadership. That is particularly so in an era, such as the period covered herein, when institutions are being attacked and, even, subverted.

The combination of his judgments and speeches led to the high level of confidence, respect and admiration in which Murray Gleeson was held by the legal profession and by the judiciary throughout Australia. For the profession, the judgments are readily available and in constant use. The publication of a collection of speeches allows them – with their broader range of content, unconfined by the accidental nature of the content of litigation – to retain the same level of influence in the future as they had when delivered.

The subjects covered extend to many enduring topics of debate about the law and about the judiciary. They reflect the omnipresence of continuity and change in the law.

The depth of the treatment of each subject served, for those who had the benefit of hearing the speeches, and for those who read them in legal periodicals, as a resource for their own engagement in debates within the judiciary or the profession and to the general public. I was such a beneficiary. I had frequent occasion to draw on the learning and insight of many of these speeches in my own professional and public communications.

Most of the speeches selected for inclusion in this volume are – appropriately – taken from his period as Chief Justice of Australia. However, the key themes were first developed in speeches during his decade as a State Chief Justice. Understandably, that period included more contributions concerning the detail of the administration of justice, which do not have the same enduring quality as those in this volume.

Throughout his professional career, Murray Gleeson displayed the four cardinal virtues: prudence, justice, temperance and fortitude. He could well adopt as his own, the personal motto of Lord Mansfield, the greatest English commercial judge: *Uni Aequus Virtuti*: Fidelity to Virtue Alone. These virtues are on full display in this collection.

There are two themes that occur frequently in these speeches, each of fundamental importance to our society and polity.

First: the centrality of the rule of law. This has never been better expressed than it was by Nelson Mandela when he welcomed a decision of the new Constitutional Court of South Africa overturning one of his government's

decisions. It showed, he said, that no-one was above the law. Few, if any, of the political decision-makers with which Murray Gleeson had to deal were as insightful as Mandela in this or, indeed, any other, respect.

Secondly: the importance of maintaining a spirit of liberty in our public discourse. That was best defined by one of the great American judges, Judge Learned Hand, who said: "The spirit of liberty is the spirit that is not too sure that it is right." This is a spirit that infuses the addresses in this volume and is the subject of some of them.

Learned Hand – like Gleeson an advocate of judicial restraint – once set out the fundamental nature of judicial development of the common law, an approach manifest in the speeches in this volume that touch on substantive law. He said in his review of Benjamin Cardozo's classic volume *The Nature of the Judicial Process* :

"The structure ... of the common law ... stands as a monument slowly raised, like a coral reef, from the minute accretions of past individuals, of whom each built on the relics which his predecessors left, and in his turn left a foundation upon which his successors might work." (Fn 35 *Harv Law Rev* 479,479 (1922))

This volume of speeches is a major part of the foundation that Murray Gleeson has bequeathed to his successors. It will be drawn on by lawyers and judges for generations to come.