

FUNDS IN COURT – INAUGURAL INSPIRE AWARDS®

Remarks of the Honourable Marilyn Warren AC, Chief Justice of the Supreme Court of Victoria - Thursday 21 April 2016

I would like to congratulate everyone here today on their remarkable achievements. The recipients of today's awards have shown a great vitality. We have to acknowledge that the life of the award-recipients may be harder than it is for many others. By thriving in these circumstances, they have shown qualities of great richness, joy, and generosity. I say again how remarkable everyone here is. And how greatly those around them, in their workplaces, their communities and their families must appreciate this vitality.

We acknowledge also that the award recipients have reposed trust in Funds in Court, a responsibility that the Supreme Court does not take lightly. This responsibility is governed by a legal principle known as *parens patriae*, which effectively means 'the parent of the country'. Under this principle, as is only just, the Court is obliged to repay that trust by taking on significant protective responsibilities.¹ I would like to give you a brief outline of what these protective responsibilities entail.

In one of its earliest articulations, the protective obligations was said to come about because "The King by Law, of Right, is... to defend his Subjects... and therefore in the Law every loyal Subject is taken into the King's Protection".² It is a responsibility that in these days is inherent to the Court, in place of a King or Queen. The responsibility of the Court is one geared towards "protection and education".³ The responsibility is, in short, to act exclusively "for the benefit"⁴ of those with disabilities.

This responsibility is exercised with great care and caution.⁵ The Supreme Court works to ensure that its efforts under this doctrine of *parens patriae* are compatible with the importance of individual autonomy and independence. I note the comments of Justice John Dixon in one of his judgments where he commented that the Court must balance "the need to protect persons under disability while giving proper recognition to their basic human rights"⁶, drawing attention especially to the United Nations' *Convention on the Rights of Persons with Disabilities* and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).⁷ His Honour went on to stress the importance of flexibility and of finding "outcomes ... that recognise [the] distinct

¹ LexisNexis, *Encyclopaedic Australian Legal Dictionary*, 'parens patriae'.

² Anthony Fitzherbert, *Natura Brevium* (1553) [232b], quoted in Lawrence B Custer, 'The Origins of the Doctrine of *Parens Patriae*' (1978) 27 *Emory Law Journal* 195, 200.

³ *Wellesley v Wellesley* (1828) 2 Bli. N.S. 124, 131, quoted in *Secretary, Department of Health and community Services v JWB & SMB (Marion's Case)* (1992) 175 CLR 218, 258. See also the comment that "the *parens patriae* jurisdiction has become essentially protective in nature" at 280 of *Secretary, Department of Health and community Services v JWB & SMB (Marion's Case)* (1992) 175 CLR 218.

⁴ *Secretary, Department of Health and community Services v JWB & SMB (Marion's Case)* (1992) 175 CLR 218, 258.

⁵ *Secretary, Department of Health and community Services v JWB & SMB (Marion's Case)* (1992) 175 CLR 218, 280.

⁶ *Re Erdogan's Application: Erdogan v Ekici* [2012] VSC 256, [55].

⁷ *Re Erdogan's Application: Erdogan v Ekici* [2012] VSC 256, [52].

circumstances and the wide range of abilities” pertaining to each individual when the Court exercised its responsibilities under the *parens patriae* principle.⁸

The *parens patriae* protection provided by the Court is fundamental to its work; the Court is ultimately a body working for the benefit of the people. I hope that everyone here believes this responsibility to protect is being discharged with the care, caution and humanity that Justice Dixon referred to. That is the very least that the award-recipients here today are owed. My warmest congratulations again on everyone’s achievements being recognised today.

Finally, I take the opportunity to acknowledge the significant work of the Senior Maser, Associate Justice Efthim and the staff of Funds in Court. Their commitment to service and protection of beneficiaries is an exemplar of which the Supreme Court is extremely proud. I also congratulate the creative and visionary organisers of today, especially Miranda Bain of the Funds in Court office.

⁸ “The Victorian Law Reform Commission recommends that the contemporary approach to balancing the need to protect persons under disability while giving proper recognition to their basic human rights now requires greater emphasis on tailored outcomes beyond substitute decision making arrangements, which may extend to concurrent responsibility by supported decision making and co-decision making arrangements with regular reviews. Outcomes for individuals that recognise their distinct circumstances and the wide range of abilities or deficits that may remain following recovery from an acquired brain injury can be more compatible with human rights considerations. The *parens patriae* jurisdiction, exercised solely in the best interests of the beneficiary being protected, need not be inflexible,” at [55] of *Re Erdogan’s Application: Erdogan v Ekici* [2012] VSC 256.