



Central Queensland Law Association Conference 2008 **Ryldges Capricorn Resort, Yeppoon** **Saturday, 8 November 2008, 9am**

The Hon P de Jersey AC **Chief Justice**

One of the unique features of the role of Chief Justice in Queensland is the opportunity to interact with a substantial regional profession. Kaye and I greatly appreciate, in particular, the opportunity to attend annually this important conference, and its sister conference in North Queensland.

Necessary decentralization is a feature of government in Queensland which is distinctive of this part of the federation. That extends beyond executive government to the judicial branch as well. For example, the Supreme Court of Queensland sits in 11 centres outside Brisbane; the District Court sits at 44 regional centres, and the Magistrates Courts in 106. Of a state-wide profession exceeding some 8,000 practitioners, there are local professions operating in five centres: 67 in Rockhampton, 107 in Mackay, 239 in Townsville, 242 in Cairns, 67 in Rockhampton, 727 at the Gold Coast and 137 in Toowoomba. There are 2 resident judges of the Supreme and District Courts in Rockhampton, 3 in Townsville, 3 in Cairns, and 3 District Court Judges at Southport.

While there must inevitably be a metropolitan courthouse, and a metropolitan profession, we must be vigilant to avoid the development of any unduly metropolitan “mindset”. All Queensland citizens are entitled to the optimal delivery of legal services. That involves reasonable access, throughout the State, to quality practitioners and judicial officers. Reassuringly, governments have been astute to this stipulation.

Throughout my last 10 years as Chief Justice, I have considered it very important that I visit regional centres on a regular basis, that I keep abreast of regional court and professional developments, and that I draw the attention of executive government to areas warranting further attention. I also continue to encourage regional practitioners to alert me to aspects on which I may be able to assist in streamlining the service.



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I remain particularly grateful for the good and productive relationship we enjoy. It is important to the health of the system. It is in the end a reflection of your professional commitment, for which I respectfully commend you.

This is my third visit to the Capricorn Coast this year. The first was as an Australia Day Ambassador. Kaye and I were here at Yeppoon for 26 January, and greatly enjoyed the Great Australia Day Beach Party at Main Beach, including the sand sculpture competitions, the ice-cream licking championships and the bare bottom boat regatta. Then on 21 July there was the Opening of the Law Year Church Service at St Joseph's Cathedral, where I was greatly impressed by the magnificent turnout of so many Rockhampton practitioners. The night before, I attended a very pleasant dinner with the Judges and the Bar, and was most moved at the generous presentation of a framed painting of...the nude female form. It now hangs in my Chambers, and I daily note the inscription: "On the occasion of ten years as Chief Justice, with affection from the Central Queensland judiciary and bar". I can assure you the affection is reciprocated.

We are delighted to be with you again.

I use this occasion to touch on some developments this year in the workings of the courts.

This has been another momentous year in that regard, inevitably distinguished by two particular decisions of the Court of Appeal, in the Aurukun rape appeals, and later as to whether Dennis Ferguson can be assured a fair trial. Those proceedings furnished further examples of the healthy operation of the rule of law in this jurisdiction, with controversial and questionable decisions at first instance promptly reviewed and rectified through an expedited appeal process.

The criminal courts continue to account for the majority of the public profile of the courts, for obvious reasons, although our constituents should not overlook the massive work daily accomplished in the civil courts. For example, last year the Supreme Court disposed of



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5,411 civil matters, most of those of course in the applications jurisdiction. Special mention may also be made of the highly significant determinations of the Planning and Environment Court, determinations in multimillion dollar contexts often important to the State economy, and more importantly, determinations highly relevant to issues of public amenity.

But reverting to the criminal jurisdiction, it has been a memorable year in terms of reform, with the introduction of a judicial discretion to take an 11/1 majority verdict, the possibility of trials by judges without juries, and the according of a discretion to allow jurors to separate overnight after the commencement of their deliberations. The last of those was a most desirable reform which brought Queensland into line with most other jurisdictions: it was essentially a matter of treating jurors with due consideration.

The other two reforms, judge only trials and majority verdicts, provoked substantial expressions of concern from the profession, especially from those who practise in the criminal courts. I am on public record as regarding those developments as desirably progressive. I thought it was interesting that the first majority verdict taken in the State, and it was taken on 30 September by the Northern Judge in Townsville, was, on a charge of attempted murder, an acquittal.

I continue to be struck by the considerable extent of public interest in the work of the criminal courts. While that is starkly evident with periodic criticism of courts for perceived leniency in sentencing, there is an underlying genuine wish to comprehend the workings of the courts in that jurisdiction. That was starkly evidence in early October this year, when ABC radio hosted a mock trial in the Banco Court in Brisbane, a direct broadcast live on morning radio.

The 612 morning presenter, Madonna King, compered the event, with Judge Julie Dick on the bench, the Director of Public Prosecutions Tony Moynihan SC as prosecutor, and Rob East from Legal Aid Queensland as defence counsel. There were other participants: from



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Corrective Services, Legal Aid, the University of Southern Queensland and the media. That it occupied the whole of Madonna King's morning radio session illustrated the ABC's assessment of that level of public interest, noting that 612 morning radio has a listener catchment comprising 120,000 persons (it presents as the number one news and current affairs radio program in Brisbane)s.

The "jury" comprised 140 members of the public, all of whom had applied in advance for a berth. I was later told that the "feedback" to the ABC was substantial and positive. Many people have since told me they listened to the programme, and found it informative and interesting. I personally consider this was one of the best instances of worthwhile community engagement by the courts in this State for some years.

Another illustration this year of acute public interest, not so much with the criminal courts but the criminal law, concerned the accident and provocation defences. Public expression of concern at well-publicized acquittals apparently based on those defences led the Attorney-General to refer the issues to the Queensland Law Reform Commission, which delivered an expedited report on 30 September. The recommendations in that report are now being mulled over by executive government.

Yet another area of current review concerns committals. Whether the existing model should be changed is the subject of an enquiry led by former Justice Martin Moynihan. He has consulted widely with interested parties. The review was principally inspired by concern that resources are being wasted on committals, where the vast majority are "hand ups". I am confident that if committals as we know them are abolished, an alternative mechanism to test evidence in advance of trial in appropriate cases will be established. But the fate of any recommendation emanating from that review will of course rest with executive government and later parliament.

Likewise with the other major aspect of retired Justice Moynihan's review, the split of civil jurisdiction among the three State courts. The monetary levels of the jurisdictions of the



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Magistrates and District Courts have not been moved for many years. There is a compelling case for some increase. How substantial remains to be seen. There is however one point I have asserted with emphasis, and that is that the Supreme Court's civil jurisdiction must remain substantial and comprehensive, as our public would expect. I mention particularly the Commercial List, and the Supervised Case List presently under rejuvenation. The Commercial List especially provides an avenue for prompt and efficient determination, at first instance and on appeal, of significant commercial disputes. That List is very highly regarded by the commercial community. In response to a suggestion occasionally floated, I would strongly oppose any notion that the commencement of civil proceedings in the Supreme Court be subject to any grant of leave.

It is worthwhile recalling section 58 of the *Constitution of Queensland 2001* which describes the Supreme Court as "the superior court of record in Queensland and the supreme court of general jurisdiction in and for the State", adding that "subject to the Commonwealth Constitution, (it has) unlimited jurisdiction at law, in equity and otherwise".

Another major piece of work in progress is the establishment of a Queensland Consumer and Administrative Tribunal. That should not substantially affect the jurisdiction of the Supreme and District Courts. It will likely be headed by a Supreme Court Judge, with District Court Judges as Deputy Presidents, but its objective is to bring the existing array of administrative tribunals under the one umbrella, and hopefully housed in the one building, if in due course. I understand the timetable has QCAT commencing operations at the end of next year.

At a more utilitarian level, I mention two operational issues. The first is the use of the old court buildings in Rockhampton. A couple of years ago, I distinguished myself when visiting your regional capital by publicly announcing a wish to reclaim those buildings from Central Queensland University, so that they could be used by the courts. The University graciously ceded the former District Court building, and that is intended for occupancy by the officers of the Director of Public Prosecutions, which will free up substantial space in



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the already overloaded Supreme Courthouse. The delay in occupancy by the DPP relates to the discovery of asbestos in floor tiles during the renovation. But I am told that that should soon be rectified, with the move likely late this year. This will be a most desirable development. I am hoping that the former Supreme Court building will revert to substantial use by or for the people of Rockhampton: it is a great shame to see that historically important building, beautiful inside and out, languishing virtually unoccupied and unused. Otherwise, I would expect that building, together with the former Magistrates Court building, to revert to court or court-related usage. They are fine buildings, and must not be left vacant or under-utilized.

The second operational issue I mention concerns the digital recording system in the courts. The digital recording system rolled out State-wide during 2006 has persistently malfunctioned. Notwithstanding the best endeavours of technically qualified court and departmental staff, there is as yet no assurance that when courts convene, the recording system will be operating.

In consequence, court sittings have not infrequently been disrupted, in that the court has had to adjourn while the system has been stabilized. This has been the case in both the criminal and civil courts. On occasions, the court has sat with no indication the system has not been operating, so that the proceedings have not been recorded at all.

Serious attempts to resolve the difficulties within the system, by departmental officers in conjunction with the supplier of the equipment, over a protracted period, have to this point failed to deliver a system which will assuredly operate as it should. Those attempts are continuing.

As we know, it is essential to the integrity of the judicial system that proceedings be recorded, and that there be no doubt about that. That bears on the transparency and accountability of the process, and is necessary properly to inform the Court of Appeal in the event of a challenge to a primary judgment. It is also essential that a transcript may be



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produced as required. The fulfilment of those guarantees is critical to maintenance of public confidence in the judicial process.

The persistence of these problems has placed the staff of the State Reporting Bureau and the Courts Technology Group under undue pressure. There is need for further resources in those areas, especially in terms of appropriately skilled staff.

But there is a more fundamental question, and that is whether persisting with the current recording system can be justified, and whether the substantial expense of installing a reliable substitute will simply have to be borne.

The current position is that a major and important “patch” is to be applied to the system later this year. There is substantial hope that will render the system stable. My communicated position is that if it does not work, executive government will have to look at an alternative system, possibly with the reintroduction of CAT reporting in Brisbane, which would free up personnel to give greater attention to the maintenance of the stability of the digital system in regional centres. But none of this is easy.

Commercially run training courses for CAT reporting were abandoned some years ago, with the technological revolution, and the State Reporting Bureau has had to re-establish them in-house. The SRB experience has been, unfortunately, that trained up CAT reporters are internationally attractive, and tend to be lured to places like Singapore. Also, to train a CAT reporter takes years.

The Attorney-General is fully aware of the problems we are having with the system, and acknowledges the importance of rectifying it or replacing it.

I addressed the North Queensland Law Association Conference in Mackay in May this year. I drew together some observations on the profession’s commendable commitment to pro bono work, the related establishment in the Supreme Court in Brisbane of a



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Citizens' Advice Bureau, which I hope will become a pilot for similar operations in regional centres, I covered developments in technology, the cost assessment regime, and the Supreme Court History Programme run under the auspices of the Supreme Court Library.

I will not repeat today what I then said about those subjects, but if you wish to read what I said, my address is on the courts' webpage. You may be interested to learn, by the way, that the court webpage last year registered as many as 14,957,025 hits. Yes, the figures amazed me too, and I am told they are not the work of the so-called 'robots' which prowl around automatically updating the databases of Google and its ilk. I hope that no too many of the hits were from Central Queensland practitioners searching court files in the early hours of the morning. Last year, there were more than 500,000 searches conducted using the e-Search service, which is available free-of-charge, 24 hours a day and throughout the State.

I do wish to touch on one of the matters I covered in Mackay, and that is the matter of cost assessment. As you know, late last year, the Uniform Civil Procedure Rules were amended to insert a new chapter dealing with costs. That established a new mechanism for assessment, by legal practitioners approved by the Director of Courts. The new regime covers both party and party and solicitor and client assessments. It has been operating now for almost six months, and no problem has been referred to me. At last count, 24 practitioners have been approved as costs assessors, and the significant point I make here in regional Queensland, is that they include 1 in Mackay, 1 in Townsville, 1 in Cairns, 1 at Maryborough, 6 at the Gold Coast in addition to 14 in Brisbane. There is as yet no approved costs assessor practitioner in Rockhampton – maybe you are so inherently reasonable there is no need.

I am gratified the new system is operating satisfactorily. I have spoken previously about the reasoning behind the changes. Suffice for today, that I repeat my view that this is a progressive development which is benefiting litigants and the public.



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I particularly use this opportunity to urge Central Queensland practitioners who are interested in this field to consider applying for appointment as costs assessors.

I conclude with mention of the development of your new metropolitan courthouse for the Supreme and District Courts in Brisbane, and I raise this advisedly notwithstanding I am out of Brisbane. That is because this will be a metropolitan courthouse for all Queenslanders, not just the residents of South-East Queensland or Brisbane. It will be an ultimate State-wide reflection of public perceptions of the significance of the judicial branch of government.

In its May budget, the government committed \$600 million to this project, with an initial \$236 million being applied this year and next. The 19 storey building will feature approximately 47 courtrooms and the latest technology. The external construction is substantially of glass, symbolically reflecting the transparency of the process within. Maximum exposure to natural light in all courtrooms is a rigid stipulation. The building's forecourt will be a large grassed plaza, linked by pedestrian bridge across the Brisbane River to the Gallery of Modern Art, which was designed by the same architectural firm, Architectus. I joined the Premier on-site for a 'turning of the sod' ceremony on 6 October. The project is on-track for completion in the year 2011, which will mark the 150th anniversary of the Supreme Court.

One of my very early commitments as Chief Justice was to attend the opening by the then Premier of the new Rockhampton Courthouse on 6 April 1998. It was a most memorable occasion. Another of the pictures in my Brisbane Chambers is a photograph of the Premier handing me the keys of the building consistently with the doctrines of the separation of powers and the independence of the judiciary. I am very pleased that Rockhampton boasts one of the very best courthouses in Queensland.

May I conclude, ladies and gentlemen, with this observation? We are a united profession, of which the elements are mutually supportive. The courts, in particular, are ever



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appreciative of the support of the profession. As Chief Justice, I am privileged to express that gratitude on behalf of all judicial officers in this State, and in particular, noting your support of Justice McMeekin and Judge Britton, and the courts' staff so ably led by the Registrar Ben Cooke – who, I am pleased to note, is attending this conference.

I warmly commend you all for your commitment to the maintenance of high professional standards, and for your support of the courts, in this important part of our great State.