

# Acceptance of Commission as Chief Justice of Tasmania

HON MR JUSTICE COX\*

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Ours is a world of rapid change. Many of the certainties in respect of the law, the administration of our legal system, and indeed, of our own governance as a nation, all of which seemed so immutable when I was admitted to practice in 1960, have been challenged. Some have withstood the test, others have been radically altered, and rightly so, and many are still the subject of vigorous debate.

With the abolition of the right of appeal to the Privy Council, the High Court is now unequivocally the final arbiter of the common law of Australia, a system which, though deriving from the common law of England, nonetheless is adapted to our society and will continue to be adapted as our society changes, as inevitably it will. In this respect subtle changes in the substantive law have come about. There is also now a high degree of comity between the different jurisdictions in Australia as courts more readily seek guidance from each other in the application of the common law of Australia to the particular circumstances before them. This is in part due to the introduction of uniform legislation in a number of fields, to the success of the cross-vesting legislation and, in large measure, to the fact that through annual conferences the Supreme Court and Federal Court judges of this country have been able to meet, exchange experiences and ideas for the improvement of the law and its administration, and to put human personalities to the hitherto often faceless writers of judgments in the law reports. Happily we are beginning to see an Australian judiciary rather than a series of State benches isolated from each other and suspicious of the perceived inroads of courts exercising Federal jurisdiction.

The courts remain the subject of critical scrutiny. It would be obtuse to suggest that the system of administering justice according to law cannot be improved upon. The members of this Court are acutely conscious of the need to keep under constant review its procedures for the expeditious and just dispatch of its business and to actively seek solutions to identified problems. In that endeavour the court looks confidently to the ready cooperation of the profession. One constant which I take from the words of the judicial oath is 'to do right to all manner of people after the laws and usages of this State'. We cannot do right if our quest for efficiency jeopardises the just

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\* Extract of a speech delivered on 1 September 1995 by Mr Justice Cox on his acceptance of the position of Chief Justice of the Supreme Court of Tasmania.

disposition of the issues before the Court, be they in the criminal or civil area. As Sir Stanley Burbury said on leaving office as Chief Justice, 'there is in respect of the simplification of court procedures a point beyond which reform cannot go without sacrificing justice to efficiency.'

In the obligation to do right to all manner of people, I believe the Court has a duty which embraces not only the adjustment according to law of the conflicting interests which can arise between one citizen and another or between one citizen and the state in any particular proceeding before the Court. The persons immediately affected by the Court's actions in resolving that kind of conflict are of course the parties themselves, but in that process many others may be affected. The Court's duty then, embraces recognition of the equal dignity of every person involved in or affected by the proceedings and of their rights. I include the duty to ensure that jurors are not unnecessarily inconvenienced, that so far as is commensurate with the accused's right to a fair presentation of his case and a fair testing of that against him, witnesses are treated fairly, courteously and without oppression and that, with a similar qualification, the sensibilities of the alleged victim are respected.

The impact of crime upon its victims is a matter the Court rightly takes into account. In this respect the relatively new initiative of permitting the Crown to adduce material relevant to victims' impact is to be applauded. However, it must never be forgotten that sentencing involves a balancing of many factors and that it is often as much in the interests of the community at large that the rehabilitation of a particular offender whose circumstances warrant it be encouraged as it is of the offender himself. Hence the necessity for an unfettered, though judicially exercised, discretion to determine a sentence appropriate to the particular circumstances of the case in hand.

There are many issues the Court will face in the years ahead. No one can pretend to know them all in advance, still less to know the answers to them. I do not propose today to anticipate them or preempt their proper debate. We should not change for change's sake alone. Any significant alteration in the way that justice is administered must first be the subject of rigorous and disciplined study combined with wide consultation. I would wish to keep an open mind on all aspects of the Court's role in the administration of justice but be prepared after proper consideration to effect such changes, though they depart from time-honoured tradition, as will achieve right to all manner of people according to law.