Uniform Civil Procedure Rules Seminar
Sunday 20 June 1999 - 9.00am
Mercure Hotel

Opening And Overview

Chief Justice Paul de Jersey

When the Governor in Council approved the Uniform Civil Procedure Rules on Thursday 10 June 1999, it authorised a quite dramatic change in the way the Queensland courts will, as from 1 July 1999, regulate their litigation. This marked the exciting culmination of about sixteen months dedicated work by the Rules Committee which had been established early in 1998 by the Civil Justice Reform Act. I immediately pay tribute to the work done by the other members of that committee, Justices Williams, Muir and Wilson from the Supreme Court, Judges Robin and McGill from the District Court, and Magistrates Gribben and Krosch, together with the departmental officers who have so valuably assisted us, Mr Joe Siracusa, Mr Walter Vitali, and Mr Terry Ryan.

Let me give a little of the history of the project. It began in October 1997 when the then Attorney General, the Honourable Denver Beanland MLA, published a consultation draft of rules to be uniform, so far as practicable, for all three courts in the State stream. With the change in Government, the new Attorney General continued support for the project, which has become the initiative of the Rules Committee. These Rules should be regarded, not as a product of the Executive, but as an initiative of the courts.

The power to make Rules of Court for all three courts statutorily rests now with the Governor in Council subject to the consent of the Rules Committee. The Rules Committee has power, of its own motion, to approve related forms. As you know, the Committee has consulted widely with stakeholders. Various drafts, of the rules and forms, have been on the Internet since March. The Committee has carefully considered all of the submissions made to it, and there have been many. As you probably know, the rules and the forms in their final format appear on the court website (www.courts.qld.gov.au) in PDF and Word 97.

Of course we hope the result proves worthwhile. How will we gauge whether the project has been a success? First, one should identify the objectives. The large objective was to remove unnecessary differentiation between the procedures of the three courts. Of course some difference is inevitable: we have sought to remove the unnecessary differences. The hope is that this will enhance access to the courts, through reduction in complexity, inconvenience and expense. In pursuing the quest for uniformity, we also used the opportunity to reform other aspects: to

simplify procedures where possible; to express concepts and mechanisms in terms more easily understood, especially by lay litigants; to produce up-to-date forms appropriate to the courts of the third millennium; to facilitate the increasingly technological character of our approaches.

Only time will tell whether we have succeeded. The Committee is certainly optimistic that it has. To the extent that it has, those members of the profession and the public who have lent their wisdom to the project also deserve congratulations.

You may be interested to know that since March, the page on the Queensland courts site on the Internet which includes the draft Uniform Civil Procedure Rules and Forms has received more than 20,000 hits. Interest in the project has been quite intense. Insofar as that has led to contribution to the Committee from elsewhere, I now confirm the gratitude previously expressed.

It is a matter of particular satisfaction to me that we have now finalised these rules, following this process of full consultation, and being able to present them in a form which I am confident represents a substantial progressive advance. Let me explain why. Shortly after my being sworn in as Chief Justice the question arose whether the rule-making power should be transferred entirely from the courts to the Governor in Council. There was concern whether the courts would pursue this exercise with reasonable expedition. We have succeeded in retaining our full rule-making power. We have indeed effectively transferred the rule-making power for the Magistrates Courts from the Executive into judicial control. Partly to ensure that, I gave assurance as to our determination to proceed expeditiously, and that assurance was relayed to the Legislative Assembly. And so we have, as courts, with the valuable co-operation of departmental officers, produced, ourselves, new uniform rules and forms which I am sure will prove most worthwhile; and we have done so in the exercise of the rule-making power which is firmly, statutorily, confirmed in the courts, as it should be.

By way of brief introduction to the more detailed presentations which will follow, let me illustrate now what I see as some of the more interesting aspects of what we have produced. For the first time, and of great significance, our rules express a philosophy, obliging the courts to apply themselves to avoid delay, expense and technicality; and obliging the parties to proceed expeditiously. The rules are designed, as affirmed in rule 5, "to facilitate the just and expeditious resolution of the real issues in civil proceedings at a minimum of expense."

Perhaps most dramatically, we replace a myriad of originating documents - the writ, the plaint, the plaint and summons, the motion, the petition, the application, the originating summons, the summons ... I believe there are more, with just two: the claim and the application. And that is sensible. We removed anomalies between jurisdictions, for example as in the Supreme Court Rules requirements for delivery of a statement of claim separately from a writ. Rules are constructed

around the recognition that courts now want to manage cases. Consistently, for example, the power to enter judgment summarily is widened; and the courts power to issue directions, covering a myriad of practical matters extending even to the conduct of legal representatives at trials, is made much more explicit. So are procedures designed to secure, in advance of a hearing, appropriate limitation of issues. There is a heavy focus on alternative dispute resolution. There are novel provisions allowing for determination on the papers, without there being any oral hearing. There is clearer power to exclude trial by jury where inappropriate. Litigants are helped by more comprehensive covering of requirements in particular cases, as for example for Mareva and Anton Piller orders. There is a greatly simplified procedure for the trial of minor debt claims in the magistrates court. There is accommodationof the use of fax and e-mail.

The forms have been completely redrawn: now they are simple, short, and free from clutter. Their presentation is up-to-date: for example, in the Supreme Court, the writ expressed to be issued as the Sovereign s command per the Chief Justice has been replaced by a signed and sealed claim expressed to be "issued with the authority of the Supreme Court of Queensland".

And while we have modernised the language, we have not inflexibly excluded all foreign language, lest that of itself produce inconvenience. We have, for example, retained the term "affidavit", by contrast with our cousins in the United Kingdom who recently replaced it with the expression, "statement of truth". On the other hand, although lawyers are familiar with the writ of fi fa, we felt it likely to be obscurantist for the lay litigant, and so we adopted the regrettably lengthier, but more "user-friendly", expression "enforcement warrant for the seizure and sale of property".

This is one of a series of workshops on the new rules, and I expect the process of instruction will continue for quite some time. The T.C. Beirne School of Law and the Queensland Law Society conducted a workshop on 5 June 1999 which was attended by as many as 640 people. The Law Society s CLE Department has arranged a series of telephone conferences across the State for practitioners on 16th, 21st and 28th June. The highlights of this seminar will be repeated at following Bar seminars at Rockhampton, Townsville and Cairns. The Supreme Court registry staff are involved in State-wide programs of training. Butterworths and the Law Book Company are anxious to release their new loose leaf services by 1st July. The Registrar has established telephone help lines which will operate from Monday 28th June from 1-4pm Monday to Friday. Deputy Registrars will answer queries, with calls being limited to 10 minutes.

I have been speaking a lot in recent times of our need to initiate and progressively embrace desirable change in various areas. What was appropriate 100 years ago, 50 years ago, even 10 years ago, may be quite inefficiently inappropriate now, or next year, or as we progress further into the third millennium. We lawyers speak

with pride of the common law s capacity to adapt, to meet or anticipate change. But it may be that we have been a little slow on the non-substantive side, in the way we do things as opposed to what we do. There has been enormous change in the courts and the profession over even the last decade, and the public has probably appreciated too little of that. But we are I believe doing better in presenting the work of the legal system as it should be seen, for what it truly is; and that is inevitably dispelling some quite undue perceptions.

These new rules exemplify what can be achieved through a co-operative endeavour. As I have stressed, they are not simply the pronouncement of the Rules Committee: the profession and the public have contributed enormously to this production. Additionally, and symbolically - and importantly so, they exemplify a judiciary and profession well poised to anticipate and meet the challenges of the third millennium, and particularly of course in our context, the overwhelming need to enhance access to justice. What should also be said is that with this initiative, the courts of Queensland have been national leaders. Other jurisdictions are just beginning to show interest in this important possibility, as are the Law Council of Australia and the Australian Institute of Judicial Administration. Again, I suggest with justifiable pride, Queensland has shown the way.

In opening this seminar, I commend the Bar Association of Queensland, I commend the Uniform Civil Procedure Rules and Forms, and I commend you for your interest in what is a critically important instructional process.