SUPREME COURT
OF QUEENSLAND

Central Queensland Law Association Annual Conference
Yeppoon
Saturday 22 October 2011, 10am

The Hon Paul de Jersey AC
Chief Justice

Kaye and I are very pleased as always to be present with you at this predictably vibrant conference. Having attended now 13 years in a row, I can confirm that our enthusiasm for the event continues to grow.

It was a great pleasure to attend the Opening of the Law Year Service at St Paul's Cathedral on 12 July, and a most memorable dinner the night before. The cohesion and collegiality evident on these occasions do credit to your judicial leaders, Justice McMeekin, Judge Britton and the Magistrates, and to the senior practitioners especially, Graeme Crow SC as the senior member of the Bar and a number of highly respected senior solicitors from whose stellar array I neither could nor should make any individual selection.

This year has seen substantial changes in the regions, with the appointment of new Northern and Far Northern Judges of the Supreme Court. Justice North is the 12th Northern Judge historically, and Justice Henry is the 2nd Far Northern Judge. Justice McMeekin you may recall was appointed as the 12th Central Judge in September 2007. The position of Central Judge has been in existence now for 116 years, and the position of Northern Judge for 137 years. The regional appointments to the Supreme Court, and the District Court, are an extremely important reflection of the necessary decentralization of Queensland.

These positions are in a sense idiosyncratic, in that the regional Judges operate without the direct collegial support characteristic of the court in Brisbane, and where the Judge daily presents as the sole face in the region of the significant institution which the Supreme Court is. That is of course not to suggest that a regional Judge is divorced in some way

from the rest of the court: far from it, the courts exhibit strong cohesion State-wide. But those features do nevertheless join to render regional appointments especially significant.

Throughout my judicial career, the regions and the State have been very well served by the regional Judges of both courts, who have additionally assumed with great impact high leadership roles in relation to the regional professions and the regional communities.

The Supreme Court's sesquicentenary has passed, with appropriate fanfare, and I trust those of you who may have been able to attend the ceremonial sitting on 5 August found it a memorable experience. It was significant not only for the anniversary, but also for the circumstance that for the first time in my living memory, every Judge of the court, all 26 of us, sat together on the bench in the Banco Court – the court truly sat en banc. Also, Her Excellency the Governor was present, adding lustre to the occasion, and Her Excellency also attended the sesquicentenary gala dinner held the following night at the Art Gallery, as did the Deputy Premier and Attorney-General, the Lord Mayor of Brisbane, and among 250 other guests, the Chief Justice of the High Court of Australia and five other Australian Chief Justices, from South Australia, the ACT, Victoria, the Federal Court and the Family Court. We were grateful for the acknowledgement accorded the court. If you wish to read them, my remarks on both those occasions have been published in the usual way on the courts' webpage.

The court actually missed its centenary in 1961: the anniversary passed unnoticed and unacknowledged. But we picked up in 1986 with the 125th, perhaps a rather odd anniversary to celebrate, but we did so in some style, possibly fed by a feeling of disappointment that the 100th had been missed.

In this sesquicentenary year, it is appropriate I say a little this morning about the history of the Supreme Court, and it is convenient to go back to its origins, then look at the court 75 years on, and now.

The court grew from humble beginnings, as did the State from the former colony, and the growth of the court reflects the growth of the State.

At the establishment of the court on 7 August 1861, there was only one judge, Mr Justice Lutwyche, and he sat in the Chapel of the Old Convict Barracks in Queen Street in Brisbane. The annual Opening of the Law Year Church Service is of rather more recent origin.

Let us move on to the point half-way along the timeline.

Seventy-five years later in 1936, there were but seven Supreme Court judges led by Sir James Blair, including by that stage a Northern Judge and a Central Judge, and the court in Brisbane occupied the grand Italianate-style courthouse which burned down, as the result of an act of arson, in 1968.

And now another 75 years on, our Supreme Court of 2011 comprises 26 Judges, including six permanent Judges of Appeal, and in addition to a Northern Judge and a Central Judge, a Far Northern Judge. The court in Brisbane occupies the building opened in 1981, and the court anticipates its move next year with the District Court to the new metropolitan premises at the western end of George Street. Of particular note is that the last two decades have seen the appointment of women to the court, now numbering nine of its complement of 26, a ratio lower only to that of the Family Court.

It is a substantially larger, and much different looking court from the court of 1861 or, for that matter, the somewhat more recent court of 1936. What of its jurisdiction?

The years have seen some erosion of the jurisdiction of the court, especially with the establishment in 1976 of the Federal Court and in 1975 the Family Court, and though to a lesser extent, the diversion of work to tribunals.

In other areas the court's jurisdiction has expanded, in 1991 for example when through the Judicial Review Act the court was accorded jurisdiction to pass upon the legality of administrative decisions unfettered by the complicated strictures which attended the prerogative writ regime. Some newly-acquired jurisdictions have exposed the court to controversy, as with the *Dangerous Prisoners (Sexual Offender)* legislation. For 37 of those 150 years the court's workload increased because of the absence between 1922 and 1959 of a District Court.

For all such changes, however, the court remains, alongside the Supreme Courts of the other Australian States, a court whose plenary jurisdiction assures our citizenry of appropriate remedies in both the civil and criminal domains. While some judgments have drawn criticism, that has generally been overtaken by supervening public confidence in the true commitment of those who comprise this resilient institution.

Unsurprisingly the years have seen many changes in the way the court exercises its jurisdiction. The year 1991 was momentous for reconstitution, with the establishment of the Court of Appeal Division and the Trial Division. Each Division this year reaches its 20 year milestone, indeed in two days time on 24 October. The Mental Health Court and its predecessor wrought substantial changes in our approach to offenders against the criminal law afflicted by unsoundness of mind. The court's embrace from the late 1980s of the mechanisms of alternative dispute resolution meant that judicial adjudication came to be reserved, largely speaking, for only those disputes actually needing it, thereby working substantial economies in the interests of disputants. Our procedures have over the years been streamlined in other ways, by the use of electronic trials and other electronic facilities, and the reform of the procedural law effected by the Uniform Civil Procedure Rules.

There have been many changes, in the composition of the court, its jurisdiction, and it procedures.

But those many changes aside, the mission of the court remains unchanged 150 years on, and it is a mission discharged in many centres throughout our vast State.

When I spoke at the Conference last year, I mentioned the prospective publication of a book on the history of the court. That publication has been delayed, and I hope it will eventuate before the end of the year: I am confident it will have been worth the wait.

And now we look forward to the opening of the new metropolitan courthouse next year, probably in early August, and an associated seminar for the public and the profession the following day. You will be kept informed about these events as their dates approach.

Speaking of major events brings me back to this conference. The organization falls substantially to the President for the time being of the Central Queensland Law Association and the President's Committee. I congratulate David Lipke on having convened an impressive conference this year. I was very pleased to have the opportunity in August to meet and speak with the Presidents of the District Law Associations, in Brisbane.

The Associations can play an important role in securing cohesion in the regional professions, including providing mentors and sounding boards for younger practitioners especially. While their operations are generally characterized by a relaxed informality, with a substantial social orientation, they have a great capacity to achieve good things for their members and the public, and I have always regarded the Central Queensland Association as a very good example of a district law association which works well.

The Central Queensland Law Association, by the way, has been in existence for 51 years now, the same age as that of the North Queensland Law Association. The Gold Coast District Law Association is 43 years old, and the senior association is the Downs and South West Queensland Law Association, which boasts a 74 year history, just short of the Queensland Law Society itself, which is 83 years old. The longevity of the Associations

bears testament to perceptions of their worth. I congratulate your long-standing Association for maintaining its vibrancy and dedication to purpose.

The conference programme includes many topical presentations, and I commend the organizers. There are two particular matters I wish to mention in this significant historical year for the Supreme Court, and they concern how we do things.

This year the Rules Committee completed the task committed to it legislatively as long ago as 1998, to reform the *Supreme Court Act 1995*, which is an omnibus hotchpot Act combining a host of procedural provisions on vastly disparate subjects, much of it archaic and unnecessary, but a lot of it bearing centrally on jurisdictional and other important issues. The draft *Civil Proceedings Bill 2011* was published for consultation, and I hope you had an opportunity to peruse it. The Attorney-General has introduced it into the House, and I am hoping it passes in the life of this Parliament. This will be the most noteworthy legislation bearing upon the constitution, jurisdiction and powers of all three State courts to have been enacted in at least two decades.

The second item of particular current interest is the work of the Senior Judge Administrator's "Better Outcomes" Committee, which is charged with exploring optimal approaches to matters like unmanageable document disclosure, and technologically based trials.

You may or may not know that Queensland leads the nation in the provision of an in-house e-trial facility. These trials will become the norm for large scale litigation, because of their capacity to preserve resources, and to foster more reliable and predictable outcomes.

The new courthouse in Brisbane will showcase modern technology to facilitate streamlined litigation. Of the 39 courtrooms in the new building, there will be 14 set up for e-trials, including seven civil courtrooms and seven criminal courtrooms. All 39 courtrooms will have in-built facilities for electronic evidence display with 18 of these capable of appearance by video link.

The Virgil Power Building is now 13 years old. Its life actually parallels the term of my Chief Justiceship. Attending and participating in the opening was one of my early official engagements as Chief Justice, and a photograph of the then Premier handing me the symbolic front door key to the building adorns the corridor in my Chambers in Brisbane. The courthouse is working well, I understand, and we now have the capacity to supplement its capacity by utilizing the old District and Magistrates Court buildings.

In terms of technology, the Virgil Power building includes three courtrooms fully equipped for video conferencing and the electronic display of evidence, being a Magistrates Court and Courts 3 and 4. Wi Fi is available, and there is a vulnerable witness room equipped for the remote taking of the evidence of children. There is no in-built e-trial capacity, although if necessary a portable unit could be brought from Brisbane. I understand that video conferencing is increasingly being used through links to the Capricornia Correctional Centre, especially by Magistrates.

I invite you to draw my attention to any perceived inadequacy in the available technology.

As to the matter of disclosure of documents, the “direct relevance” test, although critically important, has generally failed to engender a really disciplined approach to the disclosure of documents in mammoth litigation. There has to be a better way, and the cross court and profession committee led by the SJA is actively exploring this and a raft of other procedural issues: watch this space.

Our joint mission is timeless, but we must continually reassess the means we employ to discharge it. That we actively engage our attentions at this stage in the history of the Supreme Court should reassure both members of the profession, and those outside the profession who observe its initiatives.

Properly regarded as the third branch of government, the courts of law fulfil a very important role in ensuring peace, order and good government, and the courts are

substantially dependant upon and assisted by a legal profession driven by expertise and integrity. Conferences like this are important in providing the occasion for some reflection upon that significance, an opportunity which the busyness of day to day practice otherwise excludes. It is important to remember, in the end, that an apparently humble case will nevertheless be of great importance to your client. To serve all clients with integrity and efficiency is the essential privilege of our professional lives.

I wish you all well as you proceed through another year of practice, and as you reflect upon the particular historical events which occur in this year 2011. Your spirit, ladies and gentlemen, is enlivening and reassuring. I greatly admire your professional dedication, and treasure the opportunity to be able to say so. I wish you continuing professional and personal fulfilment.