



Induction for new members of the Legislative Assembly
Thursday 10 May 2012, 9am
Undumbi Room, Parliamentary Annexe

The Hon Paul de Jersey AC
Chief Justice

I am grateful for the opportunity to speak with you, ladies and gentlemen, and I thank the Speaker and The Clerk of the Parliament for their invitation. I appreciate the acknowledgement of the importance that you hear from the third branch of government, the judiciary, because the work of the courts regularly engages your constituents. That is not, I suggest, because we are thought to do that work less than well, but because of the significance of the work.

The power to deny personal liberty is the ultimate expression of that, with its recent development, the detention of dangerous sexual offenders beyond the expiration of their terms of imprisonment, even indefinitely. The punishment of youthful offenders is particularly challenging, where there is need to balance the need for denunciation, deterrence and community protection, against the desirability of fully exploiting the prospects of rehabilitation where they are optimal.

On the civil side, courts regularly make decisions about people's property and finances which carry great significance for the individual people involved. The decisions of the Supreme Court in the commercial area – and we maintain a nationally applauded commercial list – can affect State and regional economies. Contemporary conditions and expectations throw up novel problems, orders for the separation of conjoint twins for example, where one will likely die; authorizing the extraction of sperm from the corpse of a dead partner. Should a CD recording be admitted to probate as a will? And then there is the work of the Family Court, which is a Federal not a State court, especially in determinations as to the custody of children.



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I expect the issue about which your constituents will most frequently grumble concerns sentencing in the Criminal Court, and a perception that Judges are unduly lenient. Three points should be made about this.

First, the judicial charter is not to deliver justice: that could lead to all sorts of subjective and idiosyncratic results. No, it is to deliver justice according to law. That law resides in the *Penalties and Sentences Act*, a statute enacted by the Parliament. It is that and other legislation which, for example, mandates tender treatment for juvenile offenders, and mandates with a lot of crime that prison is the penalty of last resort.

The second point I want to make is that we have a healthy and reliable appeal system. The Court of Appeal can both increase and decrease sentences with which it substantially disagrees.

The third point is that our public is generally given a substantially incomplete account of the reasons why Judges impose the sentences they do. I do not say that critically of the media, which generally plays a very important part in informing people about the work of the courts. But nothing can equal actually sitting in the Criminal Court and observing the care with which the process is gone through. I urge you to consider visiting the courts and witnessing a sentencing morning.

Finally about sentencing, we have the benefit in Queensland of a system where the Judge's sentencing discretion is still relatively unfettered. Other systems, like so-called grid sentencing and the like, have been tried elsewhere and have on my assessment failed. The scenarios facing sentencing Judges are infinitely various and cannot in a civilized society be addressed adequately by some sort of mechanistic process. That said, many would accept contemporary conditions have warranted some special measures, such as the serious violent offender regime, and there is currently and quite properly attention to the charter for punishment of those who carry lethal weapons intended for discharge into human targets.



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I have talked about the significance of the work of the courts and sentencing, the area which most often attracts attention. May I remind you now of the State courts which carry out this work.

There are three principal State courts, the Supreme Court, the District Court and the Magistrates Court. The jurisdiction of the courts increases as we go up the chain.

The bulk of the day-to-day work of the courts is accomplished in the Magistrates Court. There are 87 Magistrates in Queensland. They sit in 32 centres around the State and circuit to 85 more, some very remote, for example in the Torres Strait. Magistrates have power to imprison for up to three years, and to deal with civil cases involving up to \$150,000

Then there is the District Court. There are currently 36 District Court Judges, 14 of them centred outside Brisbane. The District Court sits in eight centres State-wide and circuits to 37 more. The District Court has jurisdiction over all indictable offences, unless excluded. Excluded offences are offences where the maximum penalty is more than 20 years, but there are some exceptions to this limit for example rape for which the maximum penalty is life imprisonment. The District Court can give judgment in a civil case in an amount up to \$750,000. An important additional jurisdiction of the District Court is exercised in the Planning and Environment Court, where the monetary jurisdiction is limitless.

There is no limit to the jurisdiction of the Supreme Court. In practice, of course, the Supreme Court deals with the most serious crimes, homicides and major drug crime, and the most significant civil cases, often involving multimillion dollar claims. The Supreme Court includes the Mental Health Court. There are currently 27 Supreme Court Judges, including the President of the Queensland Civil and Administrative Tribunal. Three of those Judges are centred outside Brisbane, in each of Rockhampton, Townsville and Cairns. The Supreme Court sits in 12 centres around the State. Of the 27 Supreme Court Judges, six are Judges of Appeal comprising the Court of Appeal Division of the court. The other division is the Trial Division.



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Now what I have told you about the dispersal of Judges around the State reflects the unique character of Queensland within the Federation, and that is its decentralization. It is very important that courts go to the people, and not the other way around. This also means, however, that the cost of delivering justice services in Queensland is correspondingly higher. Yet Queensland has fewer judicial officers per 1,000 head of population than any other State or Territory. Yes, our Judges do work consistently hard.

That provides an entrée into some discussion of the role of the judiciary. When the election result was clear, a number of people asked me: will that affect you and the courts? I think the suggestion behind that question, quite a remarkable question from my point of view, was that there was some newly injected uncertainty about the security of the judiciary. What those enquirers overlooked was the critical hallmark of the judiciary, which is its independence from the legislature and the executive.

As a branch of government, the judiciary is unique: from your perspectives especially, because it is not elected, yet wields substantial power – extending as I have said to the power to deny a person his or her liberty. But I immediately acknowledge something common to the courts and the legislature. The effectiveness of all our work depends absolutely on public confidence. If the people didn't respect our judgments, there could be insurrection. I believe that Queenslanders do generally have great confidence in the work of their courts.

We are acutely conscious there is inherent fragility about that public confidence. One way of enhancing it, is for courts to communicate with their public, explaining their processes. How can people be confident about a process of which they are ignorant? Contemporary courts are well alive to this. That partly explains why the Chief Judge and I are here today.

We want to communicate an appreciation of the significance of the courts. Most analysts would say it rests in their independence, their separation from the executive and the legislature. As you know, under our Westminster system inherited from England in 1788,



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there are three branches of government. In theory, they are separate. But in practice the executive and legislature have been brought together in parliament with systems of checks and balances to ensure they monitor each other. Both those arms of government comprise elected representatives.

For the system to operate democratically, the independence of the non-political judiciary must be absolutely secure. Of course in a democracy the creating and administering of the law must be subject to the will of the people. But to ensure the impartial application of the law, the judiciary must be completely immune from political pressure. Sometimes the rule of law means courts must make judgments which governments find distasteful: the courts must be in a position to apply the law fearlessly, to stand fearlessly between citizen and State.

Accordingly, while Judges and Magistrates are certainly dedicated to public service, they are not in fact “public servants”, the designation of those who administer the executive which stands separately. Public servants implement ministerial policy, while Judges deliver justice according to law, at no one’s behest.

What does judicial independence involve? Essentially, impartiality, that is freedom from any external influence which may corrupt.

It is a critically worthwhile feature of our judiciary that the Judges are not elected, by contrast with the Judges in some American States. In this country, and reflecting the English Act of Settlement of 1701, Judges of most courts are appointed for life, meaning in Queensland until the age of 70, subject to removal for misbehaviour. Security of tenure means there is no incentive to please the body which would re-appoint.

In practical terms there is some difficulty maintaining a completely independent judiciary. That is because there is necessary material dependence on the other arms of government. The executive is the paymaster.



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For true judicial independence, Judges must enjoy security in three respects: security of tenure, meaning a guaranteed term of appointment, necessary so that Judges are not concerned about making decisions to please the body responsible for their possible re-appointment; financial security, said to be necessary to ensure Judges are not tempted to accept bribes, although there is no need for that justification in contemporary Australia; and institutional security, or control over the administration of the courts, preventing among other things the other branches of government from influencing the allocation of Judges to particular cases.

The judiciary depends on the other arms of government to respect that independence, and that respect is a feature of Queensland democracy.

Now independence has an important corollary, and that is accountability. As the public becomes increasingly more interested in the operation of the judiciary, it more and more seeks an accountable judiciary, not just in justifying decisions made in the cases which come before the courts, but also on the more administrative side, avoiding delay and minimizing the expense of litigation.

Accountability is achieved by Judges giving comprehensive reasons for judgment, which is virtually unique to the judiciary; through the appeal process; and fundamentally, by conducting our court proceedings in public. What we do there is for all to see and assess. Another form of public accountability is achieved by courts publishing annual reports.

We are soon to see the unveiling of a serious material manifestation of this third branch of government. In July this year the Supreme Court and the District Court will move into the new metropolitan courthouse at 415 George Street. It will be opened by the Governor on 3 August. I wish to say a little about this new building, especially because it reflects our embrace of the best of contemporary capabilities.

This will be the most significant new public building in the CBD since the construction of the Executive Building. The building has risen with considerable speed, bearing in mind its



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complexity, especially with the need for separation of jurors, prisoners, the public and the Judges. The “turning of the sod” ceremony took place on 6 October 2008, less than four years ago.

The new courthouse covers 60,000 square metres of floor space, spread over 16 levels, including 39 established courtrooms. Fourteen of those will be capable of electronic trials, seven civil and seven criminal. All of the courtrooms will accommodate the electronic display of evidence, and 17 will allow fully for the reception of evidence by video link – presently we have only nine courtrooms with that capacity. Twenty-two courtrooms will have full teleconferencing capacity, presently only seven. There will be video link from courtroom to the cells, and interview rooms will have video conferencing facilities – allowing for conferences with prisoners at correctional centres, for example. Jury rooms, all 24 of them, will at last have DVD/VCR installations. The building will include four remote evidence and vulnerable witness suites, and an entire floor for the Library. There will be capacity for translation of evidence by an interpreter remotely located: useful to meet a current phenomenon where we may have difficulty finding, locally, someone fluent in both English and some exotic dialects spoken for example by allegedly illegal entrants. The ground floor will include the Sir Harry Gibbs Legal Heritage Centre showcasing, with the aid of state-of-the-art technology, the history of the courts and the legal profession.

From the inception of the project, the maximum infusion of natural light has been a firm stipulation, and that has been achieved. There is even influx of natural light into the cells, implementing a recommendation of the “Deaths in Custody” report. Needless to say it is an environmentally friendly building, with so-called water harvesting and recycling, an innovative air-conditioning system and solar cells for energy needs. The artwork, inside and out, will be brilliant. The people will acquire a new, large, ambient grassed plaza, comparable in area to Post Office Square and Queen’s Park.

This is a new metropolitan courthouse of which all Queenslanders will be proud, and significantly, albeit necessarily centred in South-East Queensland, it is a courthouse which will serve the interests of all Queenslanders in one way or another.



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May I finally say something about my own approach as Chief Justice. I was appointed to this office in February 1998, having been privileged to serve the preceding 13 years on the Supreme Court. I am presently 63 years of age, so I look forward to another seven years as a Judge and Chief Justice. Serving in the role is a great privilege and substantial challenge.

When I assumed the role in 1998, I informed the then Attorney-General, Mr Denver Beanland, that my intended approach would be somewhat different in two respects.

The first was that I intended to sit substantially, as well as dealing with the administration of the court, but sit not only in the Court of Appeal Division of the Supreme Court, but also at first instance, and that has occurred. A consequence is that my first instance decisions are subject to appeal to the Court of Appeal, and they have sometimes been reversed. The rule of law operates in a healthy way in this State. The Office of Chief Justice has not been diminished by those reversals, whereas the Judges of the Trial Division especially are I believe heartened that the Chief Justice is prepared to discharge the work of the Supreme Court at all levels.

The second somewhat unusual feature of my Chief Justiceship, I said, would be that I would visit and sit at regional court centres not infrequently, and I generally endeavour to sit in each regional Supreme Court centre at least every two years. That is, I suggest, no more than an appropriate recognition of the significance of the regions, of the relevance of all citizens of our vast State.

I hope, ladies and gentlemen, you have found what I have said this morning to be informative, and I will be happy in due course to endeavour to answer any questions you may have of me.