Australian Lawyers Alliance
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'Improving Access to Justice through the Procedures, Structures & Administration of the Courts'

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It is a great pleasure and an honour to have been invited to address this gathering of members of the legal profession. I would like to commence my remarks by acknowledging the traditional owners of the lands on which we meet, the Noongar people, and by paying my respects to their Elders, past and present.

I should also commence by emphasising that the views which are expressed are my personal views and should not be taken to represent the views of any court or other judges.

I have chosen a rather ambitious title for this address; namely, 'Improving access to Justice through the Procedures, Structures & Administration of the Courts'. It is perhaps useful to commence by making some observations about what I mean by 'access to justice'.

This is, of course, a phrase that is in very common use. It is one of those phrases that is capable of meaning all things to all men and to all women. What I mean when I use that expression today, is to identify all those things that are justifiably said, by many critics of the justice system, to provide impediments to access to that system.

They include the inordinate cost to litigants in that system and the delays which are sometimes protracted. They include the limited transparency of the processes of our courts, notwithstanding that they are open to the public, and in particular, the limited public accessibility to those courts via the media, who are after all, in this respect, essentially representatives of the public. They include the undue complexity which sometimes borders on incomprehensibility, of the laws and procedures which we apply in our courts.

They also include the fact that, by necessity, as a result of the cost to which I have referred, many litigants in our court system have to represent themselves. However, they are provided with almost no support or assistance in undertaking that daunting task, and have very limited access to the information that they need to enable them to adequately acquit their responsibilities to the court and to protect their own interests.

And perhaps most importantly of all, the expression 'access to justice' necessarily incorporates reference to the quality of justice delivered by the system, in terms of the fairness and justice of outcomes.

However, it must be emphasised that all these things are relative. There is, of course, a relationship between cost, delay, and the quality of outcome. A cheap and quick process may reduce the prospect of a just outcome. Like most things in life, it is a question of striking the right balance.

I will refer once again to an analogy which I have used in the past. That analogy commences with the observation that the Australian justice system is, in many respects, one of the best justice systems that money, a lot of money, can buy. Our systems, processes and procedures are designed to aspire to perfection in terms of fact finding and in terms of providing parties with the opportunity to ventilate issues and advance propositions of law. In many respects, it can be described as the Rolls Royce of justice systems. But there is not much point in owning a Rolls Royce if you cannot afford to supply the petrol that is needed to enable it to fulfil its basic function of transporting you from one place to another.

If you cannot afford to run your Rolls Royce, you can place it in your garage, boast about owning it, polish it, admire it, and sit in it from time to time. But you cannot use if for its basic function, which is that of getting you from one place to another. It seems to me that in some respects our justice system is analogous to this Rolls Royce, in that many Australians simply lack the financial means, knowledge and endurance to participate fully in its processes. While they can take some comfort that they live in a country which has such a justice system, to them it is inaccessible and, to that extent, of limited relevance.

I would like to segregate my observations as to the ways in which we might address these problems by reference to the two basic functions of the justice system; namely, the civil function and the criminal function. The basic objective of each function is of course quite different. In the civil side of the court's work, our task is to resolve disputes between parties, be they citizens or between the citizen and the State. On the criminal side of the court's work, our task is to enforce the laws of the state on behalf of the public. Although the basic functions of the court in these two areas of jurisdiction are quite different, the steps that are being taken, and which in my view should be continued, in order to address impediments to access to justice, are surprisingly similar.

THE CIVIL JUSTICE SYSTEM

The Vanishing Trial

Justice Kenneth Hayne has spoken of what he describes as 'the vanishing trial' in the civil context. That description is entirely justified by the statistics maintained by the Supreme Court of Western Australia. Those statistics show that less than 3% of the cases commenced in our court are resolved by a trial, which of course means that more than 97% are

resolved by some other means; most often by agreement between the parties.

It would be interesting to gather empirical evidence to understand why this ratio is as it is. In particular, it would be interesting to know whether the high rate of resolution of cases by agreement between the parties is due to our provision of systems which encourage them to arrive at that consensus, or alternatively due to their emotional and financial exhaustion after participating in pre-trial processes. That information might assist in making decisions with respect to the most effective pre-trial processes to be engaged.

There are a number of conclusions which flow from the facts presented by these statistics. The first is that the expression 'alternative dispute resolution' is a misnomer. Resolution of a dispute by agreement between the parties is not the 'alternative' - it is the primary means by which disputes in our court are resolved. In our court, and many others, the trial is the alternative means of dispute resolution.

There are a number of observations which follow from this. The first is that our current systems arguably involve an undue focus on preparation for trial, given that only a small percentage of cases will actually go to trial. What is required are systems which better identify and discriminate between those cases that are most likely to go to trial, and those cases that are most likely to be resolved by some other means. That requires sensitive and subjective case management systems. Unless those systems are effective to identify and discriminate between cases, there will be a misallocation of the resources not only of the court, but also of the parties, in preparing for a trial that will never occur.

There is another conclusion which follows from the recognition of the means why which most civil cases are resolved. That concerns the timing of the application of alternative dispute resolution processes. The conventional wisdom was that a mediation, which is the alternative dispute resolution process most commonly engaged in our court, should be the last step taken before a trial. That conventional wisdom was underpinned by the proposition that unless and until the parties had fully exhausted the various interlocutory processes available to them, and perhaps exchanged evidence and experts reports, they would not be in a position to fully and accurately estimate their prospects of success, and therefore reluctant to settle.

There is obviously much to be said for this proposition, but there are countervailing considerations. In order to test the validity of that proposition, in our court for some years now we have encouraged early mediation - often as early as the closure of pleadings, sometimes even earlier than that. In a number of cases in my list I have referred the parties to mediation at the time of their first appearance before the court. What we have found is that the rate of successful resolution at early mediations is almost identical to the rate of successful resolutions at mediations conducted as the last step before a trial.

It is difficult to know exactly why this is so. However, based on anecdotal evidence, it seems that one of the impediments to settlement at a mediation which is conducted just before a trial is the substantial costs which the parties have invested in preparation for their trial. Often recovery of those sunk costs is a key objective which cannot be achieved by a mediated outcome. When a mediation is conducted early in the process, those costs have not been incurred, and experienced litigants will

be aware of the scale of costs they are likely to incur between that early mediation and commencing their trial. Those potential savings can be injected into the settlement process.

There are other implications flowing from the significance of consensual dispute resolution in our courts, including implications for legal education and continuing professional development. Arguably those educative activities currently place disproportionate emphasis upon trials and the trial process, and insufficient emphasis upon the significance of 'alternative' dispute resolution.

The Adversarial Process

Our justice system is of course underpinned by an assumption that the processes involved are fundamentally adversarial. The reason for that is best expressed by a pithy observation made by Lord Eldon as long ago as 1822, when he observed:

> Truth is best discussed by powerful statements on both sides of the question.

However, it seems to me that there are a number of reasons why the desirability of a continuing focus on an adversarially based system should be questioned.

The first is that the fairness and efficacy of that process assumes that the parties have equal access to the resources needed to present their cases. That is not an assumption that can safely be made in contemporary Australia. In many of the cases before our courts, the parties have quite disparate access to resources.

Secondly, the adversarial process is fundamentally antithetical to the consensual dispute resolution process. The latter encourages parties to come together and arrive, by consensus, at an agreed resolution of their dispute. The adversarial process is much more likely to push parties further apart by encouraging them to adopt fundamentally opposed and adversarial positions. While, as I have suggested, dual streams of preparation for case resolution are appropriate, including streams aimed at adversarial dispute resolution and a stream aimed at trial, it is difficult to run those streams in tandem when their philosophies are fundamentally opposed.

Thirdly, the adversarial system is inefficient because it requires each party to litigation to prepare each and every matter that is put in issue. This means that if there are two parties to a litigation, both will prepare an issue, if there are three, three parties will prepare it and so on. This is fundamentally inefficient from an economic perspective.

Fourthly, the adversarial process tends to encourage parties to focus on issues upon which they think they have a forensic advantage, rather than the real or substantive issues that had caused the parties to disagree in the first place.

By these observations I should not be taken to promote the inquisitorial system which has been adopted by our European colleagues. Rather, what I am suggesting is that our current processes need to be less adversarial, and more collegiate. There is a greater role for judicial activism in supervising the identification of the issues and identifying the most cost effective and speedy way in which those issues can be fairly and justly resolved.

There are useful lessons to be learned in this area from processes that have been utilised by the Family Court of Western Australia, and the Family Court of Australia for some years now, particularly in the area of disputes with respect to children. The less adversarial processes engaged by both those courts have been welcomed by parties to the proceedings, and empirical research shows that they have many advantages over more conventional adversarial processes.

Case Management

It follows from the observations I have made that case management processes need to be structured so as to enable a tailored solution for each and every case. In this area one size simply does not fit all, yet we currently have Rules of Court which largely proceed on the assumption that standard and inflexible procedural rules can be made to apply to each and every case.

Each case must also be consistently managed. That requires that it be managed by the same judicial officer - that is, under a system generally known as docket management. In our Supreme Court we have embraced docket management and eschewed file churning, which occurs when files are passed from one judicial officer to another. Not only does this produce inconsistency for the parties, but it is fundamentally inefficient from the court's point of view, because of all the reading in that is required by different judicial officers whenever the file changes hands.

The Supreme Court of Western Australia has, like many other courts, adopted the basic principle of proportionality first identified by Lord Wolff, almost 15 years ago now. Under that principle, interlocutory processes will not be countenanced unless the time and cost absorbed by

those processes is proportional to their contribution to a just and fair outcome of the case. The days in which we would allow parties days of court time to argue about pleadings and other procedural niceties are gone.

The focus of our processes is upon early issue identification, so that the resources of the parties and the court are focused only upon the real issues in the case.

As I earlier suggested, case management systems must have a dual focus and the capacity to discriminate between those cases that are most likely to go to trial, and those cases that are most likely to be resolved some other way.

The Trial

Recent years have seen significant changes in the way in which we approach civil trials, and I am sure that those changes will continue in the future. In the Supreme Court evidence-in-chief is invariably given by the tender of a witness statement from the witness, which is exchanged in advance. Our experience has been that this dramatically reduces trial length, and eliminates the prospect of ambush or a party being taken by surprise at trial.

In the commercial cases that are commonly tried in our court, my experience, and I believe the experience of my colleagues, is that the oral evidence of witnesses adds very little to the fact finding process. In that class of case the documents tell the story and if they are contemporaneous, are generally much more likely to be reliable than a witness with an interest in the case orally putting his or her slant upon the

events some years after they occurred. Enthusiasm for communication by email often means that there is an indelible contemporaneous record of communications between the parties, which gives a clear guide to the likely events. That guidance is often more reliable than the later oral testimony of witnesses.

Of course these observations do not apply to all types of case, and there are some areas of jurisdiction, such as personal injury, where credibility issues loom large and the oral testimony of the witness is of vital importance. But, based on our experience in the Supreme Court, it seems to me that there is generally great scope for use of witness statements to abbreviate trial length and therefore cost.

Similarly, it seems to me to be likely in the future that time limits will be imposed by courts upon cross-examination. We have all been in cases in which repetitive cross-examination adds significantly to trial length, and therefore cost, but insignificantly to the fairness or justness of the resolution of the case.

Expert evidence is an area in which very substantial costs are incurred by parties to civil litigation. There is much than can be done to improve our processes in this area and I would like to see those processes modelled on the groundbreaking work that has been done by the Supreme Court of New South Wales. Early identification of the issues upon which expert evidence is to be obtained, and agreement as to the common assumptions upon which the experts are to be briefed, together with a requirement for expert conferral prior to trial and the taking of concurrent evidence from experts at trial seem to me to offer scope for dramatic improvement in efficiency in this area.

Recent trends have shown that the trial process is becoming much more written and much less oral. This is I think a trend that should be encouraged, but on condition that the parties and their legal advisors behave responsibly. There is no point in preparing overly voluminous documents at great expense to the parties and considerable inconvenience to the courts. The courts must play a role in imposing disciplines on the lawyers in this regard.

Self-Represented Litigants

The high cost of legal representation means that self-represented litigants will be an inevitable feature of our system for years to come. Through no fault of their own (usually), they cause significant disruption to court lists because of their lack of familiarity with what is expected of them. Despite the inefficiencies and costs created for the courts by such litigants, at present we provide little or no assistance to self-represented litigants, nor are there systems in place to provide such litigants with the information which they need to be of assistance to the courts, and to adequately present their own case. From a system-wide perspective, this seems to me to be fundamentally inefficient, and some public investment on the provision of information to self-represented litigants would be amply repaid in savings of court time.

THE CRIMINAL JUSTICE SYSTEM

Although, as I have observed, the fundamental objectives of the criminal justice system are quite different to those of the civil justice system, perhaps surprisingly many of the steps that have been taken to improve access to justice in the civil justice system can and are being replicated in the criminal justice system.

Alternative Dispute Resolution

For many years it has been thought that the criminal process is not readily amenable to alternative dispute resolution. In the Supreme Court of Western Australia we have challenged that assumption and introduced a process of quasi-mediation for our criminal cases which we call Voluntary Criminal Case Conferencing (VCCC). That process has been in use for a couple of years now, and the statistics we maintain show that it is paying substantial dividends in terms of trial days saved. Those trial days are saved either by an early resolution of a case by a plea of guilty, sometimes to a lesser or different charge, or by the identification of the real issues in the case thus saving trial time. To take a recent example, a case that was estimated at four weeks in duration was reduced to one day duration because of the parties agreeing upon the real issue to be tried. We must prevent criminal trials occupying weeks in which endless witnesses are called to give non-contentious evidence. The limited resources of the system cannot allow such inefficiencies to continue. Our recent experience has shown that the legal profession can be successfully encouraged to assist the courts by agreeing non-contentious facts and issues.

Case Management

Many of the advances in the civil justice system to which I have referred have been achieved through flexible systems of case management. Similar approaches are now being adopted in criminal justice systems in courts at all levels. In the Supreme Court we have reflected the desirability of holistic case management by introducing the Stirling Gardens Magistrates Court. Under the procedures which have been created with respect to this court, all cases within our exclusive jurisdiction are automatically referred to that court, which sits in the

Supreme Court building, and which comprises magistrates who are judicial officers of the Supreme Court. This means that the cases that are to be resolved in the Supreme Court are holistically and seamlessly case managed from their inception. Our ambition, which has been realised, although perhaps not quite to the extent that we would like, is to reduce the period of time between the laying of the charge and its final resolution. The reason we have not been as successful as we would have liked is because of things which are beyond our control - most notably the steps that have to be taken by the parties in order to get ready for either the VCCC or a trial. Very often, in our cases, the delays in the provision of forensic evidence are responsible for delays that cannot, under current arrangements, be eliminated. Nevertheless, we are confident that the introduction of this seamless case management has significantly reduced delays due to other causes.

The Adversarial Process

It is difficult to see any significant alteration in the fundamental nature of the adversarial process applied to the determination of guilt or innocence. However, once that determination has been made, either by plea or verdict, there is no reason, in my view, why a less adversarial approach could not be adopted at the stage of sentencing. Indeed, there are many examples of such an approach already in existence in Western Australia in what I, and others, describe as 'problem solving courts'. Those courts include the Drug Court, the Domestic Violence Court and the Community Courts relating to indigenous people. They proceed upon an assumption of a collegiate approach to a common problem which is to be addressed by all engaged in the process; namely, fashioning a sentencing which will reduce the likelihood of the offender reoffending, while at the same time giving appropriate weight to the other important considerations in the

sentencing process. This in turn proceeds upon an assumption which I regard as self evident; namely, that much crime is symptomatic of more fundamental underlying problems. A common example in Western Australia is substance or alcohol abuse. Unless and until the underlying problem which has caused the offender to commit his or her crime is addressed, the likelihood of reoffending is high. A collegiate and non-adversarial approach to the identification of the underlying problems and their resolution is, in my view, much more likely to be effective in reducing reoffending, and thereby in protecting the community, than an adversarial approach. Analysis of recidivism rates from the Western Australian Drug Court provides strong support for this view.

The Criminal Trial

Although there is perhaps less scope for improving the efficiency of the criminal trial than in the case of civil trials, because of the necessary oral focus of a jury trial, there is, as I have already suggested, much scope for greater issue refinement and early issue identification. This will only occur if an obligation of disclosure is imposed upon the defence, and in particular an obligation to identify the real issues in the case. Any notion of defence disclosure causes defence lawyers to bristle, perhaps understandably. However, as I have suggested, the days in which juries are expected to sit day after day to hear from witnesses whose evidence is not controversial can no longer be tolerated when we are endeavouring to make limited resources stretch further in the public interest. For my own part, I can see no significant threat to justice or unfairness arising from the imposition of an obligation of defence disclosure aimed at the early identification of the real issues in the case.

Self-Represented Litigants

Fortunately in Western Australia self-represented litigants do not pose a significant issue in the superior criminal courts. However, they are a standard feature of the Magistrates Court and the numbers involved make it highly unlikely that legal representation will make any significant impact on the magnitude of the issue. What that in turn means is that broad scale systems for the provision of information to people who are engaged in the criminal process is needed. Expenditure on the provision of that information is likely to be recouped in terms of savings in court efficiencies.

The Courts and the Media

Modern technology enables the public to have much greater practical access to proceedings in our courts than ever before. There are a number of means through which this might be achieved.

The first and most obvious is to enable broadcasters access to our courts and to broadcast the proceedings of our courts to the public. I notice that the Premier of South Australia has recently called for the introduction of those processes in that State, and of course there are many jurisdictions in the world, including New Zealand, where this occurs routinely.

There are however some issues with this means of improving public access. Almost by definition the cases in which the broadcasters are most interested will be criminal cases. But those are the cases in which the greatest sensitivities arise in relation to the privacy of participants in the court process including jurors, witnesses, victims and the families of victims. There is also a real risk that the presence of a camera in the court room might encourage inappropriate behaviour on the part of the

participants in the process, including the lawyers and dare I say it, perhaps even the judges.

Another alternative is netcasting. Current technology enables anybody to become a broadcaster through the internet with modestly inexpensive equipment. The advantage of netcasting, as opposed to using third party broadcasters, is that the court can control the netcast and, through means of a small delay and a 'kill' button, prevent any inappropriate material going out.

However, the disadvantage of netcasting, if it is to go live or nearly live, is that experience in other jurisdictions has shown that court proceedings are fundamentally boring. As practitioners will know, there are many long gaps in court process and some of our processes are likely to be inexplicable to the average viewer. Experience in other jurisdictions has shown that after initial enthusiasm has waned netcasting audiences dwindle almost to the insignificant in a relatively shortly time.

Another alternative, which we are promoting at the Supreme Court in conjunction with the University of Western Australia Law School and the Media department of that university, is to use material recorded by the court to produce edited packages which provide information to the public as to our processes and procedures. In other words, a day's hearing might be reduced to an edited package of perhaps a half an hour's duration which is augmented by explanatory material by way of voiceover or subtitle. That material can then be loaded onto each of our website and the university's website and made available to people who have an interest, perhaps because they are shortly to appear before the court. This is an important means through which practical information can be

provided to people who are likely to become engaged in the court process. We will also continue our current practices under which sentencing remarks are posted on the internet, and audio feed of those remarks made available to the media on request, and which permits broadcasting of parts of proceedings in which there is great public interest.

Another consequence of the increasingly written nature of our court proceedings is that it makes it much harder for media observers to accurately report those proceedings. If the evidence is given in the form of a written statement, or an affidavit, or there is much debate about the pleadings, or the submissions are produced in writing, it is very hard for an observer sitting in the back of the court room to make any sense of what is going on, or to accurately report it to the public without access to those documents. If the courts are serious about providing public access to our proceedings, it follows, in my view, that access should generally be provided to all documents relied upon in open court. This is the presumption which underpins the provisions of the *Magistrates Court Act 2004* (WA), under which the public are given presumptive access to documents used in open court subject to a power in the court to restrict access in an appropriate case for good reason. The Heads of the courts of Western Australia have recently resolved to adopt that model for all courts in the State and it is to be hoped that resolution can be implemented by Government without further delay.

Given that, to a significant extent, the media represent the public and provide the means by which the public can have access to what is occurring in their courts, it also seems to me that we need to be more sensitive to the needs of the media than is evident in some of our

contemporary court room architecture. The most recent court room building constructed in this city makes no particular provision for representatives of the media to occupy a space in which they can clearly see and hear what is occurring in the court room. In my view this is unfortunate, and will necessarily reduce the quality of media reporting, and therefore the quality of the information available to the public.

Courts and the Government

One of the things that I was surprised to learn upon my appointment to judicial office was that the administration of the courts is not controlled by the judiciary, but by Executive Government. Much is said in Australia about the independence of the judiciary, and it is taken as given. However, if the judiciary do not have the capacity to determine when and where they will sit, or the resources that will be made available to the parties who appear before them, it seems to me that describing us as 'independent' is rather overstating the position.

There are also fundamental economic problems with the current arrangements for the administration of the courts. Any economist will tell you that dividing the responsibility for providing an outcome from the authority to control expenditure aimed at producing that outcome is fundamentally inefficient. Yet that is precisely what occurs in the courts of Western Australia. The judiciary are, quite rightly, held responsible for the provision of justice to the residents of this State. However, we lack any authority to determine how the limited resources made available for the fulfilment of that responsibility are to be deployed. Those decisions are made by officials who report to the Attorney General, not to the judiciary. This segregation of responsibility from authority is fundamentally inefficient and wasteful of limited public resources.

There are also important issues of accountability at stake here. When complaints are made with respect to the inadequacy of the delivery of judicial services, it is relatively easy for the head of the relevant jurisdiction to blame the lack of provision of resources by Executive Government. Equally, it is relatively easy for Executive Government to blame the judiciary for the inefficient deployment of those resources. Each conveniently blames the other and neither is ultimately held accountable for any inefficiencies in the system, which are therefore more likely to continue.

The Structures of our Courts

Lawyers have a particular enthusiasm for hierarchies, and that is evident in our court structures. Unfortunately, each hierarchy involves a seam, or division of function which can be artificial, unnecessary and inefficient.

There are many examples of the advantages to be derived from a more seamless approach the administration of justice. I have already mentioned one of them, in the Stirling Gardens Magistrates Court. There are others drawn from recent experience. Two years ago the Indigenous Justice Taskforce was created to deal with the dramatic increase in the number of sexual assault cases brought in the Kimberley. That Taskforce involved a collegiate approach by all the courts involved, together with the various government agencies involved, and endeavoured to approach the cases on a seamless basis, without particular regard to individual jurisdictions. Rather, each case was managed holistically from commencement to completion. This promoted efficiency, and reduced cost and delay.

This is of course not to say that different court structures are not justified, where they have different processes and procedures. For example, it is obviously sensible to have a Magistrates Court with reduced formality and simplified procedures aimed at summary disposal, which reduces expense to both the public and the parties. However, this is not to say that a process which requires one case to pass through two courts is necessarily efficient. In criminal cases, I am not at all convinced that current procedures which involve a case first being managed by a magistrate, and then later by a judge in another court, are the most effective means of reducing the period between the laying of a charge and its ultimate disposition. Our experience with the Stirling Gardens Magistrates Court would suggest otherwise.

However, if there is no real difference between two courts in terms of formality, expense and process, it is difficult to see the justification in creating separate courts.

This seems to me to be the situation which prevails when comparison is made between the Supreme and District Courts of Western Australia. The judges of those courts have terms and conditions which are not greatly different (about 10% in terms of remuneration), they wear different coloured robes in criminal sittings, and the scales of costs applicable in each court are identical. There are some procedural differences between the courts, but those are mainly idiosyncratic rather than functionally derived. When the District Court was created in 1969, it was the expectation that the court would sit in districts or regions, but that has never occurred. The differences between those two courts is more superficial than substantive.

In many other jurisdictions the inefficiencies which derive from undue segregation of court structures have been realised, and amalgamations made. This has occurred in a number of jurisdictions in the United States, and in the United Kingdom, where there is only one superior criminal court (the Crown Court).

As I have already mentioned, there is a fundamental difference between the functions performed by a civil court and by a criminal court. That fundamental difference is recognised in the structure of the profession in which most practitioners, with some notable exceptions, practice either as civil lawyers or criminal lawyers. It seems to me to be odd that our courts are not aligned on the same basis.

At present in Western Australia the distinction between our two superior courts is made by reference to the significance of the case rather than the basic function being performed. So, we have two superior courts which each do civil work and criminal work. It seems to me that there would be much to be said for a realignment of the differentiation between our superior courts by reference to function, rather than the status of the judge or the significance of the case. In other words, consideration should, in my view, be given to the creation of one superior criminal court and one superior civil court, from each of which an appeal would lie to the Court of Appeal.

There are many practical considerations which would underpin such a change. The people and groups engaged in the criminal process are fundamentally different from those engaged in the civil process. In a criminal court there are jurors, police, victims and their families and of

course provision has to be made for prisoners in custody. This informs, in a fundamental way, the architecture and personnel who are required.

In the central business district (CBD) of Perth there are three buildings in which superior court criminal work can be conducted, and three buildings in which superior court civil work can be conducted. This is fundamentally inefficient. Within two blocks in the CBD district, there are two civil registries in our superior courts and two criminal registries. This does not seem to me to be the most efficient utilisation of limited public resources.

In my opinion there are a number of advantages that could be easily realised in a realignment of the kind I have suggested.

There would be efficiencies of scale in listing cases before judges. Those efficiencies would extend to and include the development of specialised lists in which both judges and practitioners could evolve practices and procedures that would be designed to deal efficiently with the particular issues which arise in those lists.

Such a realignment would promote standardised procedures and forms developed by reference to function, not by reference to the name plate on the front of the building in which the court is sitting. Registries could be rationalised, and one civil registry and one criminal registry created. Computer systems could be standardised by reference to the judicial function being performed, and the IT needs of that particular function.

The use of buildings could be rationalised. Last year, a very good building for the conduct of jury trials was opened in the CBD and it could

be utilised for all such trials, as the home of the superior criminal court. The current arrangements with respect to the location of civil trials in the Supreme Court is hopelessly expensive and inefficient, due to the repeated failure of successive governments to provide the Supreme Court with the facilities it needs in order to conduct its business. That longstanding deficiency could be addressed by the construction of a purpose built civil court, which could deal with all superior civil court cases. Such a building would be much cheaper than a combined civil and criminal court building.

There are also differing needs for staff in relation to the functions being performed. A judge presiding over a criminal trial needs an Orderly and experienced Associate to act as Clerk of Arraigns. However, a judge presiding over a civil trial may not need an Orderly and has greater need for a legally qualified Research Assistant. Accordingly, the human resources provided to the judges could be better fashioned to meet the function in which they are engaged.

Circuits could be conducted much more efficiently, on the basis that any judge visiting the particular town would dispose of all the business awaiting disposition in that town, rather than only dealing with the business before his or her particular court.

And, significantly, there would be advantages in the simplification of the systems from the perspectives of the users. At the moment, in Perth, every day litigants go to the wrong place because they are confused as to the structures of our courts. If we had one superior criminal court and one superior civil court, there would be much less scope for such confusion.

Turning now to the disadvantages of such a realignment, it seems to me that the most significant disadvantage is likely to be some judicial antagonism to this proposal for a variety of reasons. However, with the greatest of respect to my judicial colleagues, the reality is that there will always be limited public resources made available to the courts to discharge our important functions. Our task is to make the most efficient use of those limited public resources. Its seems to me that there is scope for significantly improving the efficiency with which we currently deploy those resources by a realignment of the superior courts along the lines I have proposed. At the very least, it is a topic worthy of further consideration.