The State of Justice

Law Week Address – May 2007

The Hon Wayne Martin
Chief Justice of Western Australia

Monday, 7 May 2007
Supreme Court

Introduction

The Court sits today, at the suggestion of The Law Society, to mark the commencement of Law Week 2007. This is the first time we have sat ceremonially to mark this important event in the legal calendar, although I hope it will not be the last. It provides us with an opportunity to mark the important contribution made by the legal profession of this State to the operation of the rule of law within our community. It also provides an opportunity for the courts to report to the public on the administration of justice in the State over the last 12 months and to identify the challenges that lie ahead.

Welcomes

I would like to commence by expressing our gratitude and welcome to His Excellency the Governor and Mrs Michael. Your attendance this morning does our Court a great honour, but perhaps more importantly, signifies the importance of the rule of law to our State.

I would also like to welcome those who will also be speaking this morning – the Attorney General, the Honourable Jim McGinty MLA, the President of the Bar Association, Mr Ken Martin QC, and the President of the Law Society, Ms Maria Saraceni.

We are also honoured to be joined this morning by our judicial colleagues from the Federal Court of Australia, Judge Jane Crisford representing Chief Judge Stephen Thackray of the Family Court of Western Australia, Chief Judge Toni Kennedy of the District Court, Judge Denis Reynolds, President of the Children's Court, Chief Magistrate Steven Heath, Coroner Alastair Hope, and Justice Michael Barker, President of the State Administrative Tribunal, who wears two hats but no wig this morning.

We are also honoured this morning to be joined by a number of distinguished retired members of this and other courts and their partners.

Law Week

Law Week provides a valuable opportunity for the legal profession and the courts to better inform the public about the services we provide and the role we play within the community. The legal profession and the courts are the means by which the community obtains access to justice and both have a continuing obligation to do whatever we can to improve that access. It is impossible to overstate the importance of this right to justice. But there remains room for improvement.

Access to justice can be improved in many different ways. One important way is the demystification of the law and its processes. Although significant progress is being made in this area, the technical complexity of the law and the stylised form of language which we use in the courts can be the source of confusion and misunderstanding which can in turn lead to a lack of trust and confidence. We lawyers must try harder to use language which is comprehensible to ordinary Western Australians. Even language which appears to us to be innocuous and simple may be confusing.

Take, for example, the instance in which a witness was asked by counsel whether their appearance in court was as a result of a subpoena. The witness answered that she would have come to court dressed the way she was anyway. Even attempts to put witnesses at their ease can fall flat – take for example, the Barrister who asked the witness to speak slowly and

clearly, and tell what happened to the Judge, to receive the response, "Why – what happened to the Judge?"[1]

Although these examples are lighthearted and mundane, they illustrate a more significant point, which is that continued use of language which reinforces the traditional mystique and aura of the legal profession and the courts can be a source of confusion and therefore unhelpful.

Law Week is an opportunity for all of us, as legal professionals, to promote greater understanding of the law, the legal system and of our profession within the broader community. It is an opportunity to focus on improving the accessibility of the law to the wider community.

Law week is a valuable initiative. However, it is more than anything an inspiration – in the sense that our Law Week contribution should be merely a beginning, and not an end, to the steps we take in our community to foster greater legal understanding. Law Week should inspire us all to try a little harder.

The Role of the Legal Profession

The profession, both through its various associations – such as the Law Society, Bar Association, Women Lawyers of Western Australia, Criminal Lawyers Association of WA and Family Law Practitioners Association of WA – and its many members, has continued to take steps throughout the past year to promote greater understanding of the law and the profession within our community. It has also taken steps to improve

[1] These two examples are drawn from Beverly Tate *Caught in the Act: Humorous Moments from Australian Courts* – Federation Press Sydney 1992 at 120 and 100, respectively.

our legal system and its accessibility to the Western Australian community.

The Law Society has continued to provide a fine example, maintaining a highly visible public face, providing a forum for legal professionals, ensuring opportunities for continuing legal development and education both for members of the profession and the wider community, vigorously engaging topical issues within our justice system, and actively contributing to the development of a wide range of legislative reforms. I have referred to the work of the Law Society because it is probably the most visible face of the profession in our community, but significant and valuable contributions are also made by the many legal professional associations to which I have already referred.

***Pro bono* Legal Assistance**

The legal profession of this State has a long and proud tradition of service to the community in a variety of ways, including through the provision of *pro bono* legal assistance. The last year has seen the national launch of a target number of hours of 35 hours per annum for each and every legal practitioner. I am sure that the profession will be doing what it can to achieve that target, and nationally more than 3000 lawyers have signed up to the target. In consultation with the Law Society, the Court is currently considering whether it might be desirable to introduce a scheme to formalise and encourage the provision of *pro bono* assistance to litigants, together with any desirable changes to the Rules of Court.

Legal Aid

The last year has also seen some significant advances in the contribution made by the Legal Aid Commission of WA to improving access to justice. Perhaps the most significant of those developments has been the implementation of a scheme for the provision of legal assistance to those who are at risk of imprisonment in the Magistrates Courts. The State Government is to be congratulated for providing the funding to enable that assistance to be provided. Another important development has been the recognition of the inadequacy of the rates of remuneration provided to counsel appearing in criminal appeals. Although those rates have been improved over the last year, they remain inadequate, and therefore discourage better lawyers from taking important appellate work.

Litigation Funding

Last year, the High Court delivered an important decision clarifying the legal issues relating to the provision of litigation funding by third parties.[2] The removal of the legal uncertainties that have surrounded this developing mechanism for the provision of legal assistance should have a beneficial impact upon the improvement of access to justice.

Self-represented Litigants

Even with improved arrangements for *pro bono* representation, legal aid and third party funding, there will always be self-represented litigants in our courts, in some cases by choice. In recognition of this fact, the Government has encouraged all courts and SAT to prepare Management Plans for self-represented litigants within their jurisdictions. A comprehensive plan for the Supreme Court has been prepared and is

[2] *Campbells Cash and Carry Pty Ltd v Fostif Pty Ltd* [2006] HCA 41; (2006) 229 ALR 58; (2006) 80 ALJR 1441;
Mobil Oil Australia Pty Ltd v Trendlen Pty Ltd [2006] HCA 42; (2006) 229 ALR 51.

about to be finalised. The provision of online information to prospective parties by the State Administrative Tribunal, the Magistrates and District Courts has been very successful. The Supreme Court is in the course of endeavouring to implement similar arrangements. They will be particularly advantageous in the probate jurisdiction, where there is a high volume of uncontentious cases involving self-represented litigants.

Equal Treatment Benchbook

The Courts and Tribunals of this State deal with a wide variety of persons from differing cultural, ethnic and religious backgrounds. They also deal with persons with differing forms and degrees of disability, and people who, for one reason or another, have difficulty comprehending legal processes and the steps that should be taken to protect their interests when they come into contact with those processes.

Following upon the success of the Aboriginal Benchbook for Western Australia, developed under the auspices of the Australian Institute of Judicial Administration in 2002, and models which have now been produced in New South Wales and Queensland, work is under way for the production of an Equal Treatment Benchbook, which will provide advice and source material for use by judicial officers and Tribunal members throughout the State, when they encounter parties or witnesses with special needs and interests. Input and assistance has been sought from a wide range of community organisations. When the benchbook is completed, it will be made available to judicial officers and the public in both hard copy and online.

This is an important initiative which will hopefully reduce the disadvantage suffered by the many people who encounter our justice

system with special needs and interests. If we are to maintain public confidence in the justice system, it is essential that the Courts and Tribunals respect and acknowledge the differing sensitivities and concerns of the various groups which make up our diverse Western Australian community. I am grateful to the Attorney General and his Department for the support which has been provided for this important initiative.

Aboriginal People and the Law

The Equal Treatment Benchbook will be developed in conjunction with a revision of the Aboriginal Benchbook, and the two publications will be linked so as to provide a combined resource. Tragically, Aboriginal people are still grossly over-represented in our criminal justice system. Tonight, Aboriginal people will comprise almost 42% of the prison population, as compared to 3% of the general population of the State. Tonight, about one out of every 16 Aboriginal men in this State will spend the night in prison. Despite the recommendations of the Inquiry into Aboriginal Deaths in Custody, since that inquiry, the Aboriginal imprisonment rate has increased, rather than decreased.

And even more alarmingly, given that 50% of the Aboriginal population is aged 20 years or under, the situation is even worse in the juvenile justice area. Aboriginal youths comprise over 80% of the inmates of the States two juvenile custodial facilities – Rangeview and Banksia Hill. Viewed by reference only to the Aboriginal population, the imprisonment rate of Aboriginal people in this State is almost double that of the next highest jurisdiction in the country – the Northern Territory. And for most Aboriginal offenders there is an Aboriginal victim. Aboriginal women

have a 45 times greater chance of being assaulted than non-Aboriginal women.

These shocking statistics reveal a continuing crisis in the interaction between Aboriginal people and the justice system in this State. They correspond with the appalling statistics relating to the state of Aboriginal health around the country.

It is not easy to see the solution to these apparently intractable problems. Perhaps all that can be said with any confidence is that whatever we have done in the past doesn't appear to have worked very well. My own view, drawn from a continuing programme of consultation with Aboriginal people around the State, is that the over-representation of Aboriginal people in the justice system is a symptom of more fundamental underlying problems of cultural dislocation and social disadvantage. Unless and until we can assist and support Aboriginal people in the improvement of standards of health, education, housing and levels of employment, there is a limit to what can be achieved within the justice system itself.

But amongst the gloom created by this appalling picture, there are some rays of hope. Last year, the Law Reform Commission of Western Australia delivered a landmark report identifying a large number of steps that might be taken to enhance the efficacy and relevance of the law and the justice system for Aboriginal people. I know, Mr Attorney, that your Government is committed to doing whatever it can to reduce the over-representation of Aboriginal people in the justice system, and to improve the efficacy and relevance of the courts' dealings with Aboriginal people. The recent recruitment of Aboriginal liaison officers for regional

courts around the State will be a significant step forward. And the processes and programmes endorsed by the State and Regional Aboriginal Justice Agreements are continuing, and should have a significant beneficial impact. Aboriginal community courts are now in operation at Norseman and Kalgoorlie and, hopefully, their use will spread throughout the State.

The magnitude and apparent intractability of this problem is such that it would be unrealistic to expect significant short-term success. However, we must not let that discourage us. Each of the initiatives to which I have referred shows the prospect of improving the situation in the longer term and must be pursued, hopefully in conjunction with steps that address the more fundamental underlying issues of cultural dislocation and social disadvantage.

Courts and Tribunals – General

I would like now to report upon a number of issues of general application to the Courts and Tribunals of the State.

Relationships with Government

The Courts and Tribunals of the State continue to enjoy a cordial and co-operative working relationship with Government. Inherent in that relationship is the inevitability of different views as to the extent of the resources that should be provided to the justice system. However, despite those differences, Mr Attorney, you and your Department are always ready, willing and able to do whatever can be done to meet the needs and requirements of the justice system within the constraints imposed by resource limitations.

Relationships between the Courts and Tribunals

The Courts and Tribunals of the State continue to work co-operatively together with a view to providing a justice system which maximises efficiency and which is as seamless as possible, despite the differing jurisdictions. A number of steps have been taken over the last year or so to enhance the collegiality of our approach. They include regular meetings of the heads of jurisdiction and the Department, to discuss issues of common interest and the most efficient collegiate response to those issues.

Courts and Tribunals Administration

That collegiate approach has fostered a general awareness that it is now time to review the systems and procedures for the administration of the Courts and Tribunals of the State. Those systems derive from traditional administrative systems which evolved in England many centuries ago. Under those systems, all the administrative staff of the Courts and Tribunals are employed and directed by, and are responsible to, the Department of the Attorney General, rather than the judiciary. A number of reviews have pointed out that these structures, which segregate the authority for the provision of services from the responsibility for providing those services, are inconsistent with contemporary management principles. They also have the potential to threaten the institutional independence of the judiciary, because, for example, a court which lacks the capacity to authoritatively determine where and when it will sit cannot properly be described as truly independent of Government.

The Courts and Tribunals of the State have recently presented to Government a detailed submission proposing a new administrative structure, which would involve the creation of an independent authority,

governed by the judiciary, which would assume responsibility for the administration of the State's Courts and Tribunals. Such an authority could be modelled on the Courts Administration Authority which has operated in South Australia since 1993, or derivations of that model which have been more recently implemented in Canada and Ireland.

This submission has only been delivered to Government very recently. It raises a number of significant issues which are likely to require detailed consideration. I look forward to pursuing the consideration of these issues with Government in the course of the next year.

A Judicial Commission

Another example of the collegiate approach being taken by the Courts of this State is their presentation of a submission to Government proposing the creation of a Judicial Commission. The submission proposes the creation of a Judicial Commission modelled along the lines of that which has operated most successfully in New South Wales for more than 20 years. The core functions of such a Commission would include:

- Dealing with complaints against members of the judiciary
- Compilation and dissemination of data on sentencing to the judiciary
- Continuing judicial education

These are all important functions. While I appreciate that the creation of such a Commission would have resource implications, I would hope that Government could find a way to provide the resources to achieve these important objectives, and look forward to pursuing discussions with the Government on these issues over the coming year.

Judicial Accountability

Much has been written and said over the centuries about the vital need for judicial independence. However, independence must carry responsibility, and more recently there has been a growing awareness of the need for appropriate mechanisms for judicial accountability. The two proposals recently presented to Government, for a new model of Court Administration and a Judicial Commission, would, if adopted, go a long way towards enhancing judicial accountability by providing a structure in which the judiciary would be responsible for the efficiency with which their functions are discharged, and individual Judges would be amenable to an independent complaints adjudication process.

Judicial Assistance Committee

Another joint initiative which has already been implemented is the establishment of a Judicial Assistance Committee (modelled on that which has been successfully operating in South Australia) with representatives from the various Courts and SAT. Judicial officers are not immune from the growing demands and stresses of contemporary society. Representatives on this Committee provide a pastoral care and counselling function in cases in which a judicial officer might benefit from support and assistance. They can also organise the provision of external counselling or medical assistance if appropriate.

The Appointment of Senior Counsel

To emphasise that the process of appointment of Senior Counsel should not only be but also be seen to be a collegiate process, the Judges of the Supreme Court have endorsed a procedure which has broadened the processes for appointment to include a committee with representatives from various courts, adopting practices that ensure transparency and

procedural fairness. That committee, which I chair, advises me on applications for appointment as part of an extensive process of consultation relating to each application. These processes provided a successful model in 2006 and the Court is in the process of issuing a Practice Direction to more formally entrench these new arrangements for the future.

I turn now to the individual courts and the SAT starting with the Supreme Court.

Supreme Court

Access Issues

The Court is committed to taking whatever steps it can to improve public access. During the last year the Court's website was revised and updated and is now much more user friendly. As I have already mentioned, there is a project under way to enhance the information provided by the website, which should in due course include the provision of forms and information on how to complete them, and, ultimately, enable documents to be lodged electronically with the Court. While the Court's reasons for decision in individual cases are published on the website, we have not yet been in a position to publish the transcript of observations made by a Judge at the time of passing sentence. Steps are being taken to enable that to occur, in the hope that members of the public interested in the reasons for a particular sentence may be able to obtain fuller information on that subject than is presently available through the media.

My recent address to the Press Council of Australia, which is available on the Court's website, sets out my own views as to the steps that might be taken to improve public access to the proceedings in our courts. The

guidelines relating to the release of information held by the courts in the form of documents and transcript are currently under review and will be reissued with a view to providing uniform procedures and processes enhancing public access to that information. An experimental project is also under way, assessing the possible ways in which the public might be given greater audio visual access to proceedings in our courts, whether in the form of regular webcasting of those proceedings, or more refined and informative packages which might be much more interesting and educative than live webcasting. The outcomes of that project will enable the Judges of the Court to make an informed decision as to the steps that might be taken in this area.

In the meantime, the Court is continuing to maximise its use of audio visual and electronic facilities. An increase in the extent of those facilities available to the Court would enable us to operate more efficiently.

A New Supreme Court Act and Rules

I am pleased to report that the Government has approved a project for a complete revision of the *Supreme Court Act* and the *Rules of Court*. That project will enable the Court's legislative framework to be updated to reflect contemporary practices and community expectations. I am hopeful that those revised structures will provide much greater flexibility, and the capacity to manage each case by reference to its particular circumstances with a view to achieving a just resolution as quickly and cheaply as possible.

In the context of this project, consideration is being given to the possibility of a *Civil Procedure Act*, which would enable the adoption of

a uniform core of Rules of Civil Procedure applicable to the various courts of the State, but at the same time permit some jurisdictional variation to allow for differing areas of jurisdiction along the lines of structures now in place in New South Wales and Queensland. We are also giving consideration to the desirability of greater uniformity with other jurisdictions, particularly the Federal Court, which has its own Rules project under way.

The Court of Appeal

The Court of Appeal is now into its third year of operation. Acknowledging that I am far from impartial, I don't think it is too early to say that the creation of the Court has been successful in efficiently providing judgments of the quality required in what is essentially the final Court of Appeal in all but the most exceptional cases.

However, the Court of Appeal has a very substantial caseload to discharge. While the time between hearing and judgment is generally acceptable, due to the hard work of the Judges on the Court, the time between entry of an appeal and hearing is longer than it ought to be, because of the sheer volume of cases. I am hoping this situation will improve when Justice Owen has completed his commitment to the Bell case. In the meantime, judicial resources are being deployed from the General Division to the Court of Appeal to assist with its workload.

The Criminal List

Due to the efficient management of Justice Miller, the criminal list is in better shape than it has been for many years. We are in the happy position in which we can usually provide a trial date to the parties as soon as they are ready. The only impediment to getting cases to trial sooner is

the time taken by the parties to get ready for trial. Lack of timely preparation for criminal trials by the representatives of the parties is a continuing cause of last minute adjournments. Not only is this extremely inefficient and wasteful of limited judicial resources, it is also extremely disruptive to those with an interest in the trial, including witnesses, the accused, and the victim or family of the victim. The Court will be working with relevant stakeholders to improve this situation in the coming year.

A form of individual case management has also been introduced into criminal cases through the status conferences which are often held by the Judge in Charge of the Criminal List, now Justice Blaxell. Where it is thought that more intensive case management is appropriate, the case will be referred to the Principal Registrar for more specific supervision.

During the last year, an innovative process aimed at earlier case resolution has been trialled. Appropriate cases have been referred to Mr Ron Cannon, a very senior and experienced practitioner, who then conducts a conference with representatives of the parties aimed at identifying any means through which the case might be resolved without a trial, or at least issues within the case resolved. Although this project is still in its early phases, early indications are that it has been successful, and it was recently resolved to extend the trial for a further period of 6 months.

The Civil List

I am pleased to report that the civil side of the Court's work is in as good condition as the criminal side, and a better condition than it has been for the last 10 years or more. In the past there have been problems with

substantial delays between the completion of a hearing and delivery of judgment. That problem has been successfully addressed by recognising the need to specifically allot time for judgment preparation at the time a Judge is allocated to a particular case. Through this means, and the application of special measures to address a backlog of reserved decisions, that backlog has been eliminated. I am pleased to advise that judgment has been delivered on all matters heard before the beginning of this year, except for the Bell case, another matter heard in September and one heard on the last sitting day of December. I am told that judgment on the two latter matters is imminent. Justice Owen is working tirelessly on the Bell case, but the breadth of the evidence and the complexity of the issues means that judgment is necessarily still some time away.

This has been achieved without any adverse impact on the delay between a case being ready for trial and the trial date. All cases entered for trial before the end of last year, and that are indeed ready for trial, have either been tried or allocated hearing dates in the first 6months of this year. And that in turn has been achieved while at the same time providing additional judicial resources to the Court of Appeal, and in one instance, to the District Court. I would like to acknowledge the hard work and dedication of the members of the Court which has enabled these achievements.

The Commercial and Managed Cases List

One of the most effective and enduring means of improving access to justice is by improving the practices, processes and procedures of the Courts to ensure early identification of the matters truly in dispute and their resolution with a minimum of interlocutory delay and expense.

In September 2006, the Court commenced a new system for the management of some civil cases, with the express purpose of speeding up cases which in the past have dragged on for many months or even years. The Court transferred all Supreme Court cases within the existing Expedited List, the Corporations List and all defamation cases to a new list, called the Commercial and Managed Cases List. A team of five judicial officers now "docket manage" the cases in the List, which is currently around three hundred cases a year (and climbing) including commercial cases, mesothelioma claims, major building and construction cases, and defamation actions. Within the list, a degree of informal specialisation by the managing judicial officers has evolved.

In hearings which require significant case management, a single judge is now responsible for getting that case to speedy settlement or trial. The churning of files between different judicial officers has been largely eliminated. The objective of the List is to bring cases to the point where they can be resolved by mediation or tried in the quickest, most cost effective way, consistent with the need to provide a just outcome. A fundamental aim is the discouragement of interlocutory disputes with all means at the Court's disposal, including costs orders in appropriate cases. The principle of proportionality is a feature of the reform - the time and effort put into a case by various parties must be proportional to the importance of the issues and the value of the subject matter involved. Legal processes prior to mediation or trial are only permitted if the time and expense involved is justified by the contribution they make to the just resolution of the case. Anything which interferes with the speedy resolution of the case by mediation or trial has to be justified. The legal

representatives of the parties are actively encouraged to comply with *Supreme Court Rules* O 59 r 9 ("Parties to confer before making application"), by engaging in face-to-face discourse preferably and otherwise by telephone, rather than merely by letter.

The List is managed to ensure that mediation operates as a critical part of the new process. In general, no case will be listed for trial without the mediation process having first been exhausted. Having regard to the objectives of the List, parties are also encouraged to carefully consider the ambit of any discovery sought. As appears from the standard directions that have been developed for the List, parties should give consideration to the provision of discovery in stages, or on particular issues only. It is also recognised in the administration of the List that while pleadings certainly may have a role in an appropriate case, that is not inevitably so and they may not be appropriate where they would consume a disproportionate amount of time and expense. Innovative approaches to expert evidence are also encouraged, including the parties conferring with a view to agreeing some or all of the facts upon which the expert opinions are to be based and the questions to be addressed to the experts. Conferral of experts prior to trial will normally be ordered. The taking of expert evidence concurrently at trial is also considered.

Early experience in the operation of the list has been very positive. There are noticeably fewer interlocutory disputes. My subjective impression is that cases in the list are settling much earlier than they otherwise would have. And if they don't settle, they are coming on for trial quicker than they might have.

The development of the Commercial and Managed Cases List recognises the fact that different types of cases require different types of resources. It has introduced into the Court's practice and procedure a range of innovations in approach that I believe will facilitate the early resolution of cases and improve access to justice.

Court Management

The processes for the internal management of the Court have also been substantially revised over the course of the last year. By resolution of the Judges and Masters, an Executive Management Committee has been created which I chair. The Committee includes the President of the Court of Appeal, the Senior Judge of the General Division, another member of the Court chosen on an annual rotational basis, the Principal Registrar and the Executive Manager of the Court. It meets fortnightly. The minutes of its meetings are published to all members of the Court, usually within a day or so of the meeting. This process has enabled a range of views and experience to be brought to significant issues of administration, and at the same time provides a process which is transparent and a ready means for communication with all members of the Court.

At the same time, the Committee structure within the Court was substantially revised. All existing Committees were disbanded and reconstituted. Each Committee now reports to the Executive Management Committee.

Accommodation

The Court in which we sit today has been substantially refurbished since our last ceremonial sittings. I would like to take this opportunity to express my sincere gratitude to Justice Murray, who chairs the Court's Accommodation Committee, and to his team, for the work which they have put into the refurbishment of the three major Courts in this building, which are, in my not entirely unbiased view, the best preserved heritage Courts in the country.

Four years ago we celebrated the 100th anniversary of the opening of this building. This year is the 170th anniversary of the opening of the oldest remaining building in Perth, and in which we will shortly take morning tea. Designed by Henry Reveley, it served as a Court for most of the 19th century. It now houses the Francis Burt Law Education Centre.

More contemporary provision for the long-term accommodation requirements of the Court is, of course, long overdue. I am pleased to publicly record my gratitude to you, Mr Attorney, for having authorised the engagement of independent consultants who have spent much of the last year undertaking a careful and detailed evaluation of the various ways in which the future accommodation requirements of the Court might best be met. That analysis has demonstrated that an extension to the accommodation on our existing site which respects the heritage and public recreational aspects of that site is not only feasible but by far the most effective means of securing our future accommodation requirements. Further work on preparation and planning for that project is continuing. If Government continues to endorse the project, extensive consultation with interested stakeholders and the public will, of course, be required before any proposals are finalised.

This morning I sit directly underneath the crest of the English Royal family. It comprises two animals – one from Africa and the other from mythology, and uses words from a foreign language. Because of its historical significance in this and the other two heritage courts in this building, it should, of course, remain. But in courts where those heritage considerations do not apply, the Judges and Masters of this Court have resolved that the State crest should be used in place of the Royal crest, and the other courts of this State have agreed to follow that approach. Accordingly, as and when courts are built or refurbished, unless there are heritage considerations, the State crest will be used.

Judicial Attire

Some of you may have noticed that we are not as colourfully dressed as on past ceremonial occasions. Last year, the Judges and Masters resolved that we would wear contemporary robes for ceremonial sittings of the Court, and reserve our more traditional regalia for criminal trials in which, it is argued, it confers advantages of anonymity and solemnity.

The District Court

The District Court is the State's major trial court for more serious criminal matters. It also deals with most personal injury cases.

Criminal trial delay in the District Court remains a significant problem. Inroads have been made into the problem over the last year, so that the median delay to trial in criminal cases has been reduced from 58 to 51 weeks. However, that period is still the longest in the country. The Chief Judge of the District Court has initiated a substantial Criminal Delay Project which aims to make further inroads into that period of delay.

However, the problems flowing from late adjournments to which I have referred, and the limitations on judicial resources, impose limits upon the extent to which any such project can improve current delays.

Within its existing resources, the District Court has achieved a very good rate of clearing its existing criminal cases, which has resulted in a reduced backlog of those cases.

On the civil side of the Court's work, trial delay has been reduced from 35 weeks to 10 weeks, a significant improvement and a period of delay which is quite acceptable. The Court has also undertaken a significant Civil Trial Preparation Project, which has resulted in more active pre-trial case management, which has in turn resulted in an improved settlement rate. The focus upon earlier mediation has also proven successful.

Hopefully at around this time next year, the District Court will embark upon a new phase of its development, as it takes up occupation of the new building which is currently taking shape on the corner of Hay and Irwin Streets. The new building will provide substantially improved facilities in a number of respects. However, because the lease of courts currently used by the District Court and the Magistrates Court in the May Holman Centre will expire earlier than the time at which the new building will be ready for occupation, there will be a period commencing at the end of this year over which court accommodation will be severely strained. Planning is under way to ensure that maximum utility is obtained from our remaining court resources, and the problem is being approached in a collegiate and co-operative way by all courts.

The Magistrates Court

The major achievements of the Magistrates Court over the last 12 months include the development and consolidation of a number of problem-solving courts. Those courts recognise that criminal conduct is often the symptom of a more fundamental underlying cause, and endeavour to address that cause rather than merely respond to the symptom. The Drug Court provides a prime example of a problem-solving court. A review of that Court's operations conducted during the course of the last year has demonstrated that it has been very successful in reducing the likelihood of reoffending. And because it has achieved that success by treating offenders in a non-custodial environment, the taxpayers of this State have been saved the large cost of incarceration. Evaluated on a purely economic basis, the Court is a demonstrated success. And, of course, this takes no account of the misery and disruption to families and the community generally which is avoided if reoffending is reduced. However, there remains a waiting list of those who can be processed by the Drug Court – largely as a result of the limited availability of treating resources. It is to be hoped that Government can find the resources to enable the Court to include within its operations all those who would benefit.

The Magistrates Court has also successfully operated family violence courts in the metropolitan area, and there are plans to expand their operation over the coming year. The Magistrates Court also operates an intellectual disability division, and a mental health list.

I would also like to repeat my earlier mention of the formation of Aboriginal Community Courts in Kalgoorlie and Norseman during the last 12 months. These are significant developments which I hope will be repeated in other regional areas around the State.

The Magistrates Court has also made good use of technology to assist self-represented litigants in civil matters. Self-represented litigants are able to use the internet or computers provided at some courts to produce the appropriate initiating document from the Court's website by answering a series of prompts or questions. It is hoped to expand the service to include electronic lodgment of those documents in the future, subject to the provision of the necessary resources.

The challenges which confront the Magistrates Court are related to the inevitable limitation upon resources. There is a desperate and demonstrated need for the appointment of an additional Magistrate to serve in the Kimberley – preferably in the East Kimberley. The Kimberley region has an area approximately equal to the State of Victoria. It is currently served by only one Magistrate, based in Broome. Broome is 1100 kilometres by road from Kununurra. And during the wet, movement around the region is severely impeded by the impassability of the roads and airstrips.

The size of the region and its caseload means that despite his best efforts, the current Magistrate can only visit a number of locations infrequently. In some cases it is 6 months or more between the laying of a charge and the first appearance in Court. If the matter has to go to trial, there may be further delays of 6 or 12 months. When those matters are finally resolved, their relevance to the people concerned has substantially diminished.

The difficulties created by the need to travel to remote communities are also imposing strains upon the magisterial resources based in Kalgoorlie,

and which are required to serve a large area of the State, including the Central Desert regions.

Resourcing issues also arise in the south-west of the State for different reasons – namely, the rapid population growth in that area. The caseload of the Magistrates based at Bunbury is very substantial and they are likely to need assistance in the foreseeable future.

Children's Court

The jurisdiction of the Children's Court can be segregated into two categories – namely, jurisdiction to deal with children charged with offences and jurisdiction under the *Children and Community Services Act 2004* to hear and decide applications by officers of the Department for Community Development ("DCD") to remove a child from parents or guardians and applications by the Chief Executive Officer of DCD for Protection Orders for children.

Criminal Jurisdiction

The workload of the Children's Court in the criminal jurisdiction substantially increased in 2006. The total number of charges dealt with was up by about 16 percent. The total number of charges dealt with by the President was up by 72 percent.

Despite this substantial increase the Court has still managed to list trials within an acceptable time frame. Trials heard by Magistrates are usually completed within about 3 months of the first appearance. Trials heard by the President are usually completed within 12 to 14 weeks of listing. That is still longer than desirable and attempts are continually being made to reduce it further.

In December the Office of the Director of Public Prosecutions successfully took over the prosecution of all cases heard by Magistrates and now prosecutes all cases in the Children's Court. The Court is appreciative of the expert and dedicated staff assigned to the Children's Court section of the DPP. This has resulted in increased efficiencies including the reduction of cases going to trial and many trials taking less time than they would have previously.

Access to legal representation is essential for children to ensure justice and efficiency. It is pleasing that all children dealt with by the Court are legally represented by the expert and dedicated lawyers from Legal Aid, the Aboriginal Legal Service or members of the private profession.

There are a number of challenges that need to be tackled. As already mentioned, the detention rate for Aboriginal youth is unacceptably high. The number of children in custody before their charges are dealt with is also unacceptably high and is placing unnecessary strain on staff and children at Rangeview and Banksia Hill. There are many and complex reasons for all of this.

These challenges need to be addressed in a cooperative way by various Government agencies. The Children's Court also has a proper role to play in conjunction with those agencies.

With the assistance of the Aboriginal Liaison Officer of the Court and video links the Court wishes to provide better access to parents, carers and community members in country areas to participate in Court proceedings and particularly sentencing involving their child. This better

connection with the Court would help everyone understand decisions and why they were made and maximise the chances of success of Court orders.

In relation to children on remand in custody the Court proposes to consider introducing procedures to speed up reviews when bail is refused. More use of video link facilities would assist in enabling bail decisions to be made quicker and also reduce the need for children to be transported about the State in custody.

Children's & Community Services Act 2004

On 1 March 2006 the President issued Practice Directions in relation to applications under the Act. The Directions require DCD to file an affidavit in support of the application when the application is made.

The purpose of this procedure is to inform respondents at the very beginning of the proceedings of the reasons for the application. Having that information respondents are then able to obtain early and meaningful legal advice.

Legal Aid of Western Australia is to be commended for putting in place quality legal services accessible in the Children's Court building for ready access by respondents. This maximises the chances of a proper resolution at the front end of the proceedings.

The expectation that the operation of the Act would substantially increase the work load of the Court has been realised.

The number of protection applications made to the Court in Perth increased by about 66 percent in 2006. Statewide the number of applications in the first 3 months of 2007 was nearly double that for the corresponding 3 months in 2006. Despite that significant increase it is pleasing to note that the finalisation rate has actually increased.

The President appreciates the support of the Attorney General in providing the necessary resources to enable the appointment of an additional Magistrate to the Court and the provision of Legal Aid services to help deal with this additional workload.

Family Court of Western Australia

Earlier this year, Chief Judge Holden retired from the Family Court of Western Australia after 15 years of service. Although Chief Judge Thackray has taken over as Head of Jurisdiction, no additional Judge has been appointed to replace Chief Judge Holden. This will inevitably impact adversely on the timeliness with which that Court can discharge its important responsibilities and has already increased the court's backlog of cases. The delayed resolution of issues arising from family breakdown, particularly unresolved issues relating to children, is likely to have a traumatic effect on those involved.

There is also a clear and demonstrated need for the appointment of a resident Family Court Magistrate in Bunbury, to serve the rapidly growing population of the south-west. Public statements made by the respective Attorneys General reveal a dispute between the State and Federal Governments in respect of the funding required to replace Chief Judge Holden and appoint a resident Magistrate in Bunbury. It is obviously inappropriate for me to express any view as to the merits of

that dispute. It is, however, appropriate for me to encourage the Governments to resolve their differences so that these appointments can be made sooner rather than later, in the interests of the parties whose cases and lives are delayed by the lack of judicial resources.

On a happier note, last year, the Family Court introduced an innovative case management system to deal with cases involving children. The system involves individual case management of cases by Judges and/or Magistrates and involves more active judicial intervention and a less adversarial process. Tenders have recently been called for an evaluation of the outcomes of this new system.

During the last year, the jurisdiction of Family Court Magistrates has been expanded to enable them to hear and finally determine cases involving children and property disputes where the value of the property does not exceed $700,000.

The Court has also taken advantage of improvements in technology, including digital recording systems and the provision of an e-search facility on the Court's website, which assists litigants obtaining information from their file, including listings, documents lodged and orders made.

The Court has also worked with Legal Aid WA to expand the duty lawyer service to self-represented litigants both in Perth and Bunbury, and has opened the Family Court Resource Centre, where clients and lawyers have online access to Family Court legislation, forms and information.

The State Administrative Tribunal

The State Administrative Tribunal is in its third year of operation, having commenced on 1 January 2005. It currently exercises jurisdiction under 140 different Acts of Parliament and under more than 830 enabling provisions. It exercises jurisdiction in four main areas:

- Human rights;
- Development and resources;
- Vocational regulation; and
- Commercial civil matters

In the year ended 30 June 2006, the Tribunal received 5232 new applications, and during the same period resolved 5406 applications.

The Tribunal has successfully achieved the objectives of informality and expedition. In the human rights stream, which deals with guardianship, administration, discrimination and mental health matters, the average time from lodgement to completion of an application is 65 days. In the development and resources stream, which deals with planning, development and resources matters and land valuation and compensation, the average time from lodgement to completion of an application is 158 days. In the vocational regulation stream, which deals with complaints concerning occupational misconduct and reviews relating to occupational registration, the average time from lodgement to completion of an application is 116 days. In the commercial and civil stream, which deals with strata title and retirement village disputes, commercial tenancy and credit matters, and which reviews State revenue decisions and other commercial and personal matters, the average time from lodgement to completion of an application is 36 days.

The Tribunal strongly emphasises the use of mediation, which has been successful in resolving a number of applications without need for final

determination. Because of the large number of self-represented parties in proceedings before the Tribunal, all Tribunal processes have been designed with the needs of such parties in mind. The Tribunal's website has been designed on the same basis, and contains the SAT Wizard, which is a user-friendly system enabling prospective parties to identify the type of application they wish to make, complete the application on line, and then print it off and provide it to the Tribunal in hard copy. The President of the Tribunal, Justice Barker, is very keen to take the next significant step in that process, which is to enable parties to lodge applications and other documents on line.

The Tribunal has also been proactive in the development of innovative processes and procedures, including procedures relating to the receipt of expert evidence and commonly takes the evidence of experts concurrently.

The Coroner's Court

Some of the most difficult issues presented to the Coroner's Court arise from deaths which take place in hospitals. In order to assist the Court to evaluate those issues, a part-time medical practitioner has been employed to provide advice to the Coroner in relation to medical issues connected with such deaths.

The lessons learned from the review of deaths in hospitals are now being published in a booklet "*From Death We Learn – Lessons from the Coroner*" which is published on a regular basis.

Steps are being taken by the Court to encourage improved reporting of deaths in hospitals. The Court is working with the Health Department to produce a form which is to be completed when such deaths occur.

Important issues addressed in the course of coronial inquiries over the last year include child deaths and issues concerning the Department of Community Development, issues relating to mental health treatment, and issues relating to air safety.

For many years now, the Coroner's Court has focussed particularly on indigenous health issues. That focus will continue in the coming year when an inquest is planned which will examine issues relating to substance abuse in remote communities.

As with most courts, the challenges for the future arise from resource limitations. The State Coroner considers that the current level of resourcing does not provide as much assistance from counsel as he would like and that the Coronial Counselling Service is overtaxed in the provision of its important counselling services.

Conclusion

In this report, delivered at the ceremony marking the commencement of Law Week, I have endeavoured to provide a report on the state of justice in Western Australia as at May 2007.

It only remains for me to again thank His Excellency the Governor and Mrs Michael for their attendance this morning, to express my appreciation to those at the Bar table for their remarks, to thank you all for the interest which you have shown in the justice system by your

attendance this morning, and to formally declare the commencement of Law Week 2007.