THE STATE OF THE JUDICATURE

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Murray Gleeson*

In a society committed to the rule of law, and organised as a federation, the role of the judiciary is to uphold and enforce the Constitution, resolve disputes between citizens, or between governments, or between citizens and governments, as to their legal rights and obligations and to administer criminal justice.

There are 976 judicial officers (including acting judges and acting magistrates) in Australia, of whom about one-third are appointed by the New South Wales Government. The next largest jurisdictions are Victoria, then Queensland, and then the Commonwealth.

The magistracy

The judicial officers with whom members of the public are most likely to come into contact are magistrates, sitting in Local Courts.

In Australia, most magistrates have always been full-time, salaried, professional officers, although, in the past, they were not necessarily qualified to practise as lawyers. The social conditions sustaining the lay magistracy in England, which to this day plays an extensive role in the administration of justice in that country, never existed here. Historically, Australian magistrates formed part of the public service of the States and Territories. They performed many administrative, as well as judicial, functions; and they were closely associated, in terms of recruitment, conditions of service, and promotion, with the executive government.

The criminal and civil jurisdictions exercised by magistrates covered matters regarded as appropriate for summary disposition. Summary disposition has always been the method by which the legal system has dealt with the great majority of criminal offences, which are not regarded as sufficiently serious to require trial by jury. In New South Wales, for example, 98 per cent of sentences are

imposed in Local Courts[1]. That figure is typical. There is an increasing tendency for parliaments to provide for summary trial of offences, sometimes at the election of the accused, and prosecuting authorities have established policies of encouraging summary disposition of cases, in the interests of savings in cost and time, provided the range of available charges and penalties is adequate to reflect the criminality involved[2]. Similarly, many forms of civil dispute are more conveniently and appropriately resolved in a summary fashion.

Cost and delay are problems endemic to all legal systems. There is no single or simple answer, but there are available responses. One is to increase the capacity of the court system to deal with matters summarily, where that can be done fairly. The availability of a level of courts specifically designed to deal with criminal cases, and to resolve civil disputes, summarily, has always been, and will continue to be, the justice system's primary response to the besetting evils of cost and delay. It is upon the magistrates' courts that we depend principally for our ability to make justice accessible to ordinary people. The legal profession, and the community generally, have a large stake in the capacity of Local Courts to deal promptly, fairly, and inexpensively, with the bulk of litigation. That stake is not sufficiently recognised. The profession ought to take a strong and active interest in the magistracy. In the past, most magistrates have had a background in the public service, and that may account for a degree of distance from the profession.

But that is changing rapidly. More and more magistrates are being recruited from the profession, and magistrates, especially through their leaders, are participating more closely in professional and judicial organisations. These are welcome developments.

In New South Wales, with the proclamation of the *Local Courts Act* 1982, and the enactment of the *Judicial Officers Act* 1986, the magistracy achieved structural independence of the executive government, and became part of the judicial branch of government. That approach has now been followed in all States. A leading role in this movement was taken by the former New South Wales Chief Magistrate, Mr Clarrie Briese. He understood that, while the historic links between the magistracy and the public service could not be ignored, it was important to the health and strength of the justice system that the judicial officers who deal with the great majority of civil and criminal cases should see themselves, and be seen by the public, as independent of the executive government. Above all, criminal justice should be administered, not by so-called "police courts", but by judicial officers who are conspicuously separate from investigators and prosecutors, who have professional qualifications equal to those of the lawyers who appear before them, and who see themselves as part of the judicial branch of government.

The expansion of the criminal and civil jurisdictions of Local Courts has occurred across Australia. Particular mention should be

made of two relatively new jurisdictions. In every State, Local Courts have power to make apprehended violence orders. In New South Wales, in the year 2000, there were 40,000 applications for such orders, and 27,000 orders were made. A basic purpose of law is to keep the peace. This is grassroots law; but its administration imposes an enormous demand upon the resources of the courts. There has also been a growth of what are sometimes called "problem oriented courts", which deal with such matters as diversion programmes for drug dependent offenders, domestic violence, mental health issues, and the specialised needs of indigenous offenders. Problem oriented courts involve consultation, diversion, reappraisal and constant supervision of offenders. Activities of this kind are also demanding of resources[3].

One of the most significant recent developments has been the establishment of the Federal Magistrates Court, which first sat in July 2000. Before then, there was no federal magistracy. Summary matters in federal jurisdiction were dealt with by State magistrates invested with federal jurisdiction. And, to a substantial extent, that continues to be the case in relation to criminal matters.

The Federal magistracy was set up to provide a simple and accessible service to litigants, and to ease the workload of the Family Court and the Federal Court. Eighteen magistrates have been appointed. The Chief Magistrate is Diana Bryant QC. Federal magistrates are appointed pursuant to Ch III of the Constitution, and

they have the same tenure as federal Justices. Like other federal courts, the Federal Magistrates Service is responsible for administering its own affairs, and is separate from the Commonwealth Public Service. The court's workload has expanded rapidly. In places where it sits regularly (capital cities and major regional centres) it receives between a quarter and a third of all family law applications, and most of the work of federal courts in bankruptcy and unlawful discrimination. Rules of court were introduced on 30 July 2001. Their objective is to establish simple procedures, and to avoid the need for multiple court attendances. It may be expected that the jurisdiction of the court will continue to expand.

Courts and information technology

Australian courts have embraced information technology with enthusiasm.

One of the most notable achievements in relating technology to the work of courts has been that of the Australasian Legal Information Institute (AustLII). It was established in 1995 by Professor Greenleaf and Associate Professor Mowbray, as a joint facility of the Law Schools of the University of New South Wales and the University of Technology Sydney, on a non-profit basis. It operates on the principle of full access to public legal information. AustLII has set up databases of case law, legislation and other legal

materials. It hosts the High Court internet home page. High Court judgments and transcripts are converted to hypertext mark-up language and programmed to load automatically. That is done at no cost to the Court, and saves the Court having to acquire the technical assistance that would otherwise be necessary to produce the same result. High Court transcripts and judgments are available to practitioners, and the public, usually within a couple of hours. AustLII has achieved international recognition. The search engine developed by it has been used both by the British and Irish Legal Information Institute (BaiLII) and the Canadian Legal Information Institute (CanLII).

The financial basis of AustLII's operations is a matter that requires the consideration of governments and the profession. AustLII plays a major role in the dissemination of case law. During a single month in 2000, the full texts of over one million cases were accessed on AustLII; an average of 34,000 per day. Access rates for the High Court during 2000 were about 300,000 per month. Initial funding for AustLII came from the Law Foundation of New South Wales, together with a grant from the Australian Research Council. The Law Foundation funding has ceased. It would be a matter of serious concern if this important service, which is widely used by courts, governments, and the profession, were to diminish because of lack of sufficient funding. It is in the interests of the profession and the public that the service be continued, and enhanced.

One aspect of the availability on the internet of judgments of most Australian superior courts, which should not go unremarked, is the extent of value adding which is required of modern judges. In the past, reserved decisions were either read, or handed down, in open court, and it was then up to interested parties, and legal publishers, to decide what to do with them. They simply consisted of the reasons for judgment, produced in a form convenient to the individual judge. Now, judges are required to produce their judgments in accordance with protocols adapted to information technology. A standard media-neutral format is adopted, involving separate numbering of paragraphs, common methods of citation of authority, catchwords, and, in some cases, headnotes. The amount of time and effort that goes into the technical aspects of judgment production is considerable. Much is now expected of courts in addition to deciding cases and producing reasons for decision. Some courts endeavour to make some decisions more accessible by producing judgment summaries. In Tasmania, the Australian Capital Territory and the Northern Territory, reasons for sentences are promptly published on the internet, in the hope that they will be more readily available to the public and the media, and more widely understood.

Most Australian jurisdictions now make extensive use of information technology for the purposes of case management and other internal systems controls. Courtroom technology is developing

rapidly, and Australian courts, within the limits of the available resources, are exploiting these advances. Video-conferencing is widely used, and saves much time and cost. The High Court, for several years, has routinely used video-conferencing for special leave applications; and it is now regularly used for meetings of Justices in order to minimise the need for interstate travel. There are many ways in which video-conferencing can produce cost savings going beyond the courts and the parties to litigation. For example, in motor accident cases the evidence of a police officer who attended the scene is often required. The officer in question may have been posted to a different locality between accident and court case, and attendance at court may be inconvenient and costly. A facility to take the witness's evidence by video-link may be very convenient. In a number of jurisdictions, bail applications have been dealt with in that way for years. The evidence of vulnerable witnesses is often taken with the assistance of video-links to the main courtroom as, of course, is the evidence of overseas witnesses.

Electronic filing of court process is being increasingly adopted. Most law firms are equipped to take advantage of such facilities. The Electronic Appeals Project is being advanced by a working group under the auspices of the Council of Chief Justices, and electronic appeal books have already been used in a number of major cases.

Judicial management

There are two forms of management that are relevant: the management of courts as institutions; and what is now known throughout the common law world as case management.

In Australia, the federal courts are self-administered. They control their own budgets, employ their own staff, and, within the resources allocated to them, set their own priorities. With the exception of South Australia, which has a different system again, State courts are still to a considerable extent administered as cost centres in a Department of the executive government. But in all Australian courts, judges and magistrates now take a substantial part of the responsibility for court administration. Although judges generally are willing recipients of this additional responsibility, it imposes demands upon them which did not exist in an earlier age. The amount of judicial time devoted to matters of court administration is substantial.

Case management is another aspect of the system's attempts to respond to the twin problems of cost and delay. In the past, judges in most jurisdictions, commercial lists being the most notable exception, left it to the parties to prepare cases for trial and, except when their intervention was sought by one party because the other was in default, dealt with cases as and when they reached the head of the queue. When a case finally came on for hearing, judicial

intervention in its progress was minimal. That has changed. Judges now take charge of cases from their inception, and actively participate in the progress of the queue. And when a hearing commences, most judges push it along, according to personal style, actively. This, again, is a worldwide phenomenon. Principles of active case management were originally introduced into Australia following American examples, and have since been taken up in the United Kingdom. Everywhere, this new responsibility is accepted. But a common concern is emerging, both among judges, and among members of the legal profession. Lawyers charge for their services on a time basis. The imposition upon them, by judges, of pre-trial activity, involves lawyers' time, for which clients have to pay. There is a balance to be maintained, between appropriate judicial intervention, and the imposition of costly demands upon litigants. Sometimes, judicial activity which is intended to save time and expense can produce the opposite effect.

One of the problems facing courts in all common law jurisdictions is the need to avoid inefficient allocation of scarce judicial resources. In the common law world, the judiciary is small compared to that of civil law countries. Judges are expensive; not because they are highly paid, (compared to practitioners of equivalent experience they are modestly paid), but because of the support staff and facilities they require. The efficient allocation of resources suggests that, so far as possible, judges should do work that only judges can do; and work that does not have to be done by

judges, and can be done just as effectively by court officers and administrators, should be left to such suitably qualified people. Court administration is now a recognised field of study and expertise. Courts are constantly seeking ways of devolving to court officers decision-making which does not warrant the attention of a judge. In the area of corporations law, for example, work that once was done by judges is now routinely attended to by Masters and Registrars. Finding better methods of husbanding scarce resources of judge-time is an important aspect of court management.

One example of innovative and purposeful judicial management is the Supreme Court of Victoria's Pegasus Two Programme. This is a co-operative initiative of the Court and the legal profession. It aims to reduce the length of criminal trials, and to ensure, as far as possible, that, once a jury is empanelled, its members will not be required to undertake lengthy absences from the courtroom during legal argument. Pre-trial hearings are held outside normal court hours, so that trial counsel are able to attend. Jury time spent out of the courtroom in criminal trials has been reduced to an average per trial of a little over an hour.

National Judicial College of Australia

On 25 July 2001, the Standing Committee of State, Territory and Commonwealth Attorneys-General, announced their agreement in principle to establish the National Judicial College of Australia.

The original proposal for such a College came from the Australian Institute of Judicial Administration and the Council of Chief Justices of Australia and New Zealand. Since 1986, the Judicial Commission of New South Wales has conducted programmes of orientation, training and continuing legal education for judicial officers in that State, and has achieved international recognition for its work. The courts in all other Australian jurisdictions have conducted their own in-house education programmes and, in recent years, the Judicial Commission of New South Wales and the AIJA have co-operated in a regular orientation course for newly appointed judges. That course has been attended by judges from most Australian jurisdictions and from overseas. The time has come for a national institution.

The working group which made recommendations to the Standing Committee of Attorneys-General was co-chaired by Chief Justice Doyle of South Australia, and the Secretary of the Commonwealth Attorney-General's Department, Mr Cornall. The cost of administering the College will be funded by Commonwealth, State and Territory Governments. The cost of attendance at courses by judicial officers will be met by the relevant courts. In announcing the decision, the Commonwealth Attorney-General said:

> "The main role of the College will be to provide professional development for judges, masters and magistrates. The College will provide courses in the development of practical skills and education in legal and social issues. There will also be orientation activities

following appointment to judicial office and ongoing professional development."

Experience, both within Australia and overseas, (as, for example, with the Judicial Studies Board in the United Kingdom, and American Judicial Colleges), has shown that the success of formal programmes of judicial education depends heavily upon the support given by courts and, in particular, by Chief Justices, and upon the input of experienced judges, and former judges. What is involved is, to a large extent, peer group education. Having spent almost ten years as President of the Judicial Commission of New South Wales, I am conscious of the extent to which it is necessary to rely upon the experience, effort and goodwill of serving and retired judges in order to make an endeavour of this kind successful. I am confident that the Australian judiciary, and the legal profession, will support this new College. It is expected to be operating next year. Its establishment will represent an important milestone in the history of the Australian judiciary.

International mutual judicial assistance

The expansion of international trade, commerce and intercourse has resulted in increased awareness of the importance of multinational and bilateral arrangements concerning such matters as service of process, taking of evidence, and enforcement of judgments between nations.

At the 8th Conference of Chief Justices of Asia and the Pacific, held in Seoul in September 1999, it was resolved to encourage the development of bilateral arrangements on mutual judicial assistance of this kind in relation to civil and commercial cases between countries in the region. At the 9th Conference, held in Christchurch last week, Chief Justices reported on the considerable progress that has been made in this important area. Since September 1999, Australia has entered into bilateral treaties with the Republic of Korea and with Thailand, and is about to commence negotiations for a bilateral treaty with the People's Republic of China.

Guidelines for Judicial Conduct

The Council of Chief Justices has decided that it is timely and appropriate to provide judicial officers, on a national basis, with practical guidance as to what is expected of them concerning problems, and issues, likely to confront them in relation to their behaviour as holders of judicial office. In conjunction with the Australian Institute of Judicial Administration, the task of producing appropriate written guidelines was taken up. The assistance of former senior judges was obtained, and an extensive process of consultation was undertaken, in order to identify issues upon which there was a need for guidance, and to obtain the general opinion of the judiciary upon questions that might have been regarded as doubtful.

What is involved is not, in any sense, a legislative function. Many aspects of judicial conduct are, of course, already regulated by rules of law. Those rules, governing such matters as disqualification for bias, are enforced by the courts. We are here concerned with behaviour that is not already covered, or not clearly covered by existing legal rules. The Council of Chief Justices has no authority to impose prescriptive standards upon judges, who are independent, not only of government, but also of one another. The ethics of any profession represent the consensus of opinion among right-thinking members of the profession. Standards of professional behaviour are best developed by experience, not imposed by edict. Furthermore, prescriptive standards, or "codes of conduct", are often expressed at a level of generality which states the obvious, but fails to address doubtful practical questions which may perplex or embarrass even experienced judicial officers.

The members of the Council of Chief Justices possess a unique fund of experience in dealing with issues of the kind that concern Australian judicial officers, and complaints about judicial behaviour made by members of the public. One way or another, such complaints usually end up on the desk of a Chief Justice. The local legal and social culture is often significant in determining the kinds of problem that need to be addressed. Some matters, that may be of concern in other places, are not issues in Australia. Other

matters, such as relations between the judiciary and the profession, are strongly influenced by local conditions and customs.

The Council of Chief Justice decided that what is needed is not a collection of prescriptive rules, promulgated by a body with no authority to legislate, and no desire to do so.. What is needed is a statement of principles and a set of practical guidelines, directing the attention of judicial officers to issues which experience has shown to be of practical concern in this country, and indicating appropriate responses to those issues.

An example which illustrates both the difference between a code of conduct and a statement of general principles accompanied by explanatory guidelines, and also the significance of local circumstances, is the subject of judges engaging in public debate about controversial issues.

The Code of Conduct adopted for the judiciary of Pakistan contains the following provision:

> "Article V
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> Functioning as he does in full view of the public, a Judge gets thereby all the publicity that is good for him. He should not seek more. In particular, he should not engage in any public controversy, least of all on a political question, notwithstanding that it involves a question of law".

That rule would be regarded by many members of the Australian judiciary as unduly restrictive, although the problem to which it is directed, and the need for an appropriate answer to that problem, would be accepted.

The publication "Ethical Principles for Judges", produced by the Canadian Judicial Council, takes a somewhat different, and less absolute, approach. It states:

"1. Judges should refrain from conduct such as membership of groups or organisations or participation in public discussion which, in the mind of a reasonable, fair minded and informed person, would undermine confidence in a judge's impartiality with respect to issues that could come before the courts.

2. All partisan political activity must cease upon appointment. Judges should refrain from conduct that, in the mind of a reasonable, fair minded and informed person, could give rise to the appearance that the judge is engaged in political activity

3. Judges should refrain from :

...

(d) taking part publicly in controversial political discussions except in respect of matters directly affecting the operations of the courts, the

independence of the judiciary or fundamental aspects of the administration of justice".

The Canadian approach is in line with the preponderance of Australian judicial opinion.

The proposed guidelines will combine statements of general principle, and discussion of the practical applications of those principles, in a manner that is related to Australian circumstances. They will address issues about which, in the opinion of the Chief Justices, guidance can most usefully be given.

Before leaving this topic, I should sound one note of caution. When people are appointed to judicial office, they are not required to renounce the rights and freedoms enjoyed generally by citizens. There are some who, in their zeal to maintain high standards of judicial conduct, or to protect the reputation of the judiciary, occasionally put forward proposals that overlook the fact that judges themselves have human rights. A rule of conduct which impinges upon the rights and freedoms of judges can only be justified upon the ground that it is necessary in order to maintain the independence, impartiality, integrity or reputation of the judiciary. If the suggested rule is not necessary for that purpose, it should not exist. And if it is wider than is necessary for that purpose, it should be narrowed. Guidelines for judicial conduct need to respect the rights and freedoms of judicial officers.

Draft guidelines are in the course of being completed, and such completion will follow consultation with Chief Judges of the District Courts and Chief Magistrates in order to ensure that the concerns of all levels of the judiciary are met.

Judicial review

There is no form of judicial responsibility which is more likely to bring courts, and individual judges, into the area of political conflict than what is sometimes called judicial review of legislative and executive action. This is not because the courts seek a political role. It is because, in litigation of this kind, the issues at stake often have political significance, and excite partisan sympathies. In a system of government that is organised under a federal Constitution, legislative, executive and judicial power is divided between the component parts of the federation by the agreement which formed the basis of the federal union. The terms of that agreement are set out in the Constitution. From time to time, citizens, or governments, claim that some exercise of power is contrary to the Constitution, and therefore invalid or unlawful. What is involved may be an exercise of legislative power in the form of a statute, or it may take the form of executive action. It is an aspect of the rule of law that, if a claim of that kind is made good, then the unconstitutional or unlawful act has no binding force, and citizens are entitled to an authoritative declaration to that effect. It is also an aspect of the

rule of law that it is the responsibility of the judicial arm of government to resolve disputes about the constitutional validity, or lawfulness, of legislative or executive action in cases where the exercise of judicial power has been regularly invoked. This is a matter of duty, not choice.

The right to invoke such an exercise of judicial power, in accordance with established principles about standing to commence proceedings, is matched by a corresponding duty to exercise such power. If a properly constituted challenge to an exercise of legislative or executive power is brought before a court of competent jurisdiction, the judge or judges appointed to deal with the case cannot decline to deal with the matter on the ground of expediency or personal preference. And even if, as sometimes happens, the outcome of the case is likely to have social or economic consequences of a kind that excite political controversy, the case must be decided according to law.

Applying and enforcing the law, including the basic law, the Constitution, may sometimes mean that the will of a democratically elected Parliament is defeated, or that executive action which enjoys the support of Parliament, and of the majority of citizens, is frustrated or impeded. That is the necessary consequence of the rule of law in a democracy. The majority of people, through their elected representatives, acting within the Constitution, may alter the law, but they may not disregard it.

The authority of the courts, in upholding the law and the constitution, to decide the legality of government action, even in cases of great political concern or sensitivity, is consistent with representative democracy in a society that lives under the rule of law. But that proposition has an important corollary. The system is based upon an assumption that the exercise of judicial power will be free of politically partisan influence.

When, in the early part of the 19th century, the Supreme Court of the United States established the authority of the judiciary to determine the constitutional validity of legislation, and thereby to resolve issues of great political importance, it was well understood that the existence of such a power could only be reconciled with democratic theory, and would only be tolerated by governments and citizens, if the Court, for its part, acknowledged a responsibility to stand aside from political partisanship. The court, under Chief Justice Marshall, took pains to cultivate an institutional attitude of disinterestedness.

Modern judges accept an obligation to avoid both the reality and the appearance of political partisanship. This does not mean that judges have no political opinions. And it does not mean that previous political engagement is a disqualification from judicial appointment. Of the first three members of the High Court, one had been a former Prime Minister of Australia, and another had been a

former Premier of Queensland. Some of our most respected judges were prominent in political life before appointment. But it means that, once they accept judicial office, judges must disengage from political activity and must avoid conduct that could lead a fair-minded person to distrust their ability to decide politically sensitive cases in a non-partisan fashion. This is reflected in the Canadian Principles quoted earlier, and will also be reflected in the Australia Guidelines.

Discretionary Sentencing

In our system of criminal justice, part of the function of judges is the sentencing of offenders who, following a trial on a plea of guilty, have been convicted of breaches of the law.

In each jurisdiction, it is for Parliament to establish the limits of the available sentences, and, to the extent to which it chooses, the principles according to which sentencing judges must act. Subject to any legislation as to those principles, the common law determines the manner in which judges and magistrates exercise their power.

In relation to most offences, in most Australian jurisdictions, Parliament sets a maximum penalty, and the penalty to be imposed in an individual case is fixed by a judge or magistrate exercising a judicial discretion in accordance with the principles established by the common law and by any relevant legislation. This exercise of

discretion is routinely subject to appeal, either by a convicted offender who complains that a sentence is too severe, or by a prosecuting authority complaining that the sentence is unduly lenient. In the case of some appeals, typically from magistrates, the appeal court will exercise the sentencing discretion afresh. In the case of appeals from judges to a Court of Criminal Appeal, the appeal court acts as a court of error. It will not reverse the original decision simply on the ground that it would have imposed a different sentence. It will only intervene, and re-sentence an offender, if it finds error of fact or law in the decision of the sentencing judge. Such error may be found by inference in the case of a sentence which is manifestly excessive or manifestly inadequate.

Sentencing judges, like other judges, are obliged to give reasons for their decisions. Those reasons must incorporate the facts upon which the decision is based. In the case of an offender who has been convicted following a trial, those facts, to the extent to which they are in dispute, are found by the trial judge, provided that such findings must be consistent with the jury's verdict. In the case of offenders who plead guilty, disputed facts will be resolved by the sentencing judge. However, it is common for the prosecution and the defence to agree upon some or all of the facts.

The obligation to conduct sentencing proceedings in public, and to give reasons for decisions, and the routine availability of a

right of appeal, are the means by which the judicial process is made transparent and accountable.

There is a high level of public interest in sentencing. Victims, and relatives of victims, often take a natural and proper interest in the process, as do the media. From time to time there are complaints about, and sometimes strong criticism of, sentencing decisions. In order to keep these complaints in proper perspective, however, it is necessary to bear in mind that the number of cases that give rise to public complaints and criticism, compared to the total number of sentences imposed, day by day, is small.

It is appropriate, and healthy, that there is public interest in sentencing, and it is inevitable that some decisions will be criticised. Such criticism, however, should take account of the existence of the appeal process. And it should be based upon an adequate understanding, and a fair report, of the facts of the individual case. As was mentioned earlier, in the case of an offender who has entered a plea of guilty, those facts are often put to the sentencing judge or magistrate in the form of an agreement between the prosecution and the defence.

It is unrealistic to expect that everybody who comments on a sentencing decision will take the trouble to read the reasons for the decision and, in particular, the facts upon which the decision was based. Freedom to criticise is not limited to criticism which is fair,

or soundly based, or to critics whose motives are impeccable. Judicial officers are not free to engage in public argument about their decisions, or to answer criticism which they regard as misguided or unfair. When a decision is subject to a pending appeal, it may be difficult for anybody to comment upon the merits of a decision. A Chief Justice cannot engage in debate about a decision which is likely to come on appeal to a court in which the Chief Justice presides. This is part of the price we pay for a transparent system of discretionary sentencing. The price is worth paying.

The Judicial Conference of Australia

In conclusion, I should make reference to an important judicial organization. The Judicial Conference of Australia is a voluntary association of judges and magistrates from all parts of Australia. At the end of June 2001 there were over 445 members. The JCA was set up to serve the public interest in two particular respects. One is the maintenance of a strong and independent judiciary in Australia. The other is to help the general community better appreciate what judicial independence means and why its continuation is essential to the rule of law and the survival of our democratic society.

The JCA is self-funding. The Governing Council is dedicated to encouraging as many Australian judges and magistrates as possible to join.

In April 2001 the JCA held a Colloquium at Uluru. The topics included mandatory sentencing and whether and when members of the judiciary are at liberty to, or even obliged to, speak publicly about matters affecting the judiciary as an institution, about its judicial work, and about matters of public interest which might or might not relate to the judiciary or the work of the Courts.

The next Colloquium will be held in the weekend of 26 April 2002.

The JCA has played an active role in the planning and promotion of an Australian Judicial College.

Since May 2000 the Chairman of the JCA has been Mr Justice Simon Sheller of the New South Wales Court of Appeal. Late in 2000, Professor Stephen Parker who had been the secretary of the JCA since its beginning, retired, and was replaced by Professor Anne Finlay, the Dean of Law at Newcastle University.

I commend the Judicial Conference on the work it is doing.

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* The Hon Murray Gleeson AC, Chief Justice of Australia

1 Sentencing Trends: Judicial Commission of NSW: No 19: February 2000.

2 See, for example, Director of Public Prosecution of NSW's Prosecution Policy No 7: Mode of Trial.

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3 See Prof. Arie Freiberg, Problem-Oriented Courts: Innovative Solutions to Intractable Problems? AIJA Magistrates Conference, 20-21 July 2001, Melbourne.