

Reasons to be Optimistic: Investing in Local Courts

The Hon Justice Robert Beech-Jones*

In Ernest Hemingway's 1926 novel *The Sun Also Rises*, one of the characters, Mike Campbell, a Scottish war veteran with many personal problems that you would see every day in your courts, is asked how he went bankrupt. "Two ways", he responds. "Gradually and then suddenly".¹

Mike Campbell's statement can easily be adapted to the criminal justice system. How does a crisis in the criminal justice system unfold? In short, gradually, then suddenly. The form of crisis I am talking about is when the delays in hearings pile up and then accelerate, until they reach a point where the enforcement of the criminal law and the fairness of trials completely breaks down.

The actual title of this speech is *Reasons to be Optimistic*. I know this speech is not sounding optimistic yet but in referring to potential crises I am not talking about Australia, much less about Queensland. Instead I will spend some time talking about a potential crisis in criminal justice which may be, or is said to be, developing in a comparable jurisdiction, namely England and Wales, and which has led to a difficult debate over whether to adopt potentially painful structural changes. I want to just describe the debate in that country and do so in our terms, and then compare the proposals with some gradual positive reforms in Australia that were made over many years. Those reforms lead to your being here in your positions today. I contend that those reforms bore dividends in terms of avoiding, or potentially avoiding, the necessity to consider more drastic and painful decisions.

To get there please bear with me whilst I tell you all some things you all already know, but only really to set the context, before I outline the position in England and Wales. I was at the end of the day a barrister and as you are all painfully aware, that's how we do things.

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¹ Hemingway, *The Sun Also Rises* (1926) at 136.

Local and Magistrates Courts: Criminal Jurisdiction

The structure, functions and powers of Magistrates and Local Courts in criminal cases across Australian States and Territories are very similar, although they are affected by whether the relevant State or Territory has an intermediate trial court (i.e. a District Court or County Court) sitting between the Magistrate or Local Court and the relevant Supreme Court. I will briefly describe the criminal jurisdiction of the Local or Magistrates Courts of three States: New South Wales, Tasmania and, of course, Queensland.²

Each of these Courts has a very substantial criminal jurisdiction. They each have a jurisdiction to conduct committal proceedings.³ The Local Court of New South Wales has a jurisdiction to try most summary offences.⁴ The Tasmanian Magistrates Court has a general jurisdiction to hear and determine summary offences⁵ and the Queensland Magistrates Court has jurisdiction over summary offences across a range of Acts.⁶

Each of the three Courts can hear and determine certain classes of indictable offences. Within those classes, whether they are dealt with summarily mostly depends on an election by either or both of the accused and the prosecution.⁷ Unlike New South

² Each of the three Magistrates or Local Courts of New South Wales, Tasmania and Queensland also have a substantial civil jurisdiction predominantly in money claims, with the relevant limit in New South Wales being \$100,000 (subject to certain exceptions), in Queensland being \$150,000 and in Tasmanian being \$50,000: see respectively *Local Court Act 2007* (NSW), ss 29, 30 and 32; *Magistrates Courts Act 1921* (Qld), ss 2 (definition of 'prescribed limit') and 4(1); and *Magistrates Court (Civil Division) Act 1992* (Tas), ss 3 (definition of 'prescribed amount') and 7-9.

³ *Criminal Procedure Act 1986* (NSW), s 56; *Justices Act 1959* (Tas), s 60; *Justices Act 1886* (Qld), ss 103B and 104.

⁴ *Criminal Procedure Act 1986* (NSW), s 7(1). See also *Criminal Procedure Act 1986* (NSW), s 259, Sch 1, Tables 1 and 2.

⁵ *Magistrates Court (Criminal and General Division) Act 2019* (Tas), ss 11(1)(a), 99 and 101; see also *Magistrates Court (Criminal and General Division) Act 2019* (Tas), Schs 1 and 2.

⁶ *Justices Act 1886* (Qld), s 19.

⁷ In New South Wales, 'Table 1' offences must be dealt with summarily unless either the prosecution or the person charged with the offence elects to have them dealt with on indictment: *Criminal Procedure Act 1986* (NSW), s 260(1). 'Table 2' offences must be dealt with summarily unless the prosecution elects to have them dealt with on indictment: *Criminal Procedure Act 1986* (NSW), s 260(2). In Tasmania some indictable offences are able to be tried summarily with the consent of the defendant: *Justices Act 1959* (Tas), s 72(1), 72(3). Other offences of that kind may be tried summarily with the consent of the prosecution and the accused (s 72(4)). In Queensland, indictable offences that must be dealt with summarily if the prosecution elects to have the charge heard and decided summarily are listed in s 552A(1) of the *Criminal Code Act 1899* (Qld), indictable offences that must be dealt with summarily

Wales, in Queensland, the Magistrates Court must decline to exercise summary jurisdiction over these indictable offences where the magistrate is satisfied that, "because of the nature or seriousness of the offence or any other relevant consideration the defendant, if convicted, may not be adequately punished on summary conviction".⁸

Each Court has substantial sentencing powers. In New South Wales the Local Court has power to impose a sentence of up to 2 years imprisonment for an individual offence⁹ and up to 5 years imprisonment for an aggregate sentence, i.e. a single sentence for multiple offences.¹⁰ In Queensland, a Magistrate can ordinarily sentence offenders for up to 3 years' imprisonment,¹¹ with higher limits in certain specialised contexts.¹² In Tasmania, the limit is 3 years for a first offence, or 5 years for a second or subsequent offence.¹³

I make four points about these provisions.

First, when the jurisdiction of each Court is considered along with Local and Magistrates Courts' sentencing powers, what is striking is the seriousness of the offences that all three Courts can deal with summarily. In New South Wales many of the indictable offences that can be dealt with by the Local Court have maximum sentences above 10 years' imprisonment¹⁴ and can be as high as 16 years imprisonment.¹⁵ In Queensland many such offences carry a maximum penalty of 7

unless the defendant elects otherwise are listed at s 552B, and other specified indictable offences which must be dealt with summarily are listed at s 552BA. A person liable to summary conviction under these provisions can ordinarily receive a maximum penalty of 3 years from the Magistrates Court: *Criminal Code Act 1899* (Qld), s 552H(1)(b).

⁸ *Criminal Code Act 1899* (Qld), s 552D(1). In Tasmania, s 72(1) of the *Justices Act 1959* (Tas) provides that a judge "may ask the defendant if he is willing to be tried or sentenced by the justices instead of by jury and, if that person ... does not object to his being tried or sentenced by the justices, the section creating the offence shall be deemed to have created a simple offence and the complaint shall be dealt with accordingly".

⁹ *Criminal Procedure Act 1986* (NSW), ss 267 and 268.

¹⁰ *Crimes (Sentencing Procedure) Act 1999* (NSW), s 53B; see also *Crimes (Sentencing Procedure) Act 1999* (NSW), s 58.

¹¹ *Criminal Code Act 1899* (Qld), s 552H.

¹² See, eg, *Drugs Misuse Act 1986* (Qld), ss 13(4)(a), 13A(5) and 14(3)(a); *Criminal Code Act 1899* (Qld), s 552H(1)(a). See also *Criminal Code Act 1899* (Qld), s 552H(1)(c).

¹³ *Sentencing Act 1997* (Tas), s 13.

¹⁴ See generally *Criminal Procedure Act 1986* (NSW), sch 1, table 1.

¹⁵ For example, in New South Wales, the following 'Table 1' offences must be dealt with summarily unless either the prosecution or the person charged with the offence elects to have them dealt with on

years imprisonment, and some attract a maximum penalty as high as 14 years imprisonment.¹⁶ In Tasmania some of the indictable offences that can be tried summarily¹⁷ include escaping from lawful custody,¹⁸ indecent assault,¹⁹ theft of property that has a value up to \$100,000,²⁰ and various offences relating to fraud, forgery, receiving or taking reward for stolen property or insolvency.²¹ Like most indictable offences in Tasmania, these offences attract a maximum sentence of 21 years imprisonment.²² Added to this is the complexity that arises from hearing serious charges in circumstances involving, say, multiple accused.

Second, each of these Courts is also conferred with jurisdiction to determine certain federal criminal offences.²³ Local and Magistrates Courts can hear matters where the charge carries a sentence of up to a maximum of 10 years imprisonment, and where both the prosecutor and the defendant agree for the charge to be heard and determined by a court of summary jurisdiction.²⁴ In those cases, the maximum penalty that the court of summary jurisdiction may impose is 1 year or 2 years depending on the applicable maximum penalty.²⁵

indictment: 'Sexual touching - child under 10' (*Crimes Act 1900* (NSW), s 66DA, which carries a maximum penalty of 16 years imprisonment; see also *Criminal Procedure Act 1986* (NSW), sch 1, table 1, pt 1, cl 1) and ; 'Supply of prohibited drugs', where the amount of the prohibited drug concerned is more than the applicable indictable quantity but not more than the applicable commercial quantity of a prohibited drug (*Drug Misuse and Trafficking Act 1985* (NSW), s 25(1), the maximum penalty for which is fifteen years imprisonment: *Drug Misuse and Trafficking Act 1985* (NSW), s 32(1)(c)). See also *Criminal Procedure Act 1986* (NSW), sch 1, table 1, pt 6, cl 29.

¹⁶ In Queensland, the following offences can be heard summarily: 'Coercive Control' (where the defendant has pleaded guilty), contrary to s 334C of the *Criminal Code Act 1899* (Qld), which has a maximum penalty of 14 years imprisonment (see also *Criminal Code Act 1899* (Qld), s 552A(1)(a); and 'serious assaults' contrary to s 340 of the *Criminal Code Act 1899* (Qld), which, depending on the circumstances, can be punishable by up to 14 years imprisonment: see *Criminal Code Act 1899* (Qld), s 340(1)(a)(iii), s 340(2)(a)(iii), s 340(2AA)(a)(iii).

¹⁷ *Justices Act 1959* (Tas), s 72.

¹⁸ *Criminal Code Act 1899* (Qld), s 107. See *Justices Act 1959* (Tas), s 72 and Sch 3, pt I, cl 1.

¹⁹ *Criminal Code Act 1899* (Qld), s 127. See *Justices Act 1959* (Tas), s 72 and Sch 3, pt I, cl 6.

²⁰ *Criminal Code Act 1899* (Qld), s 234. See *Justices Act 1959* (Tas), s 72 and Sch 3, pt II, cl 1.

²¹ *Criminal Code Act 1899* (Qld), ss 253, 258, 259, 260, 261(a)-(b), 264, 265, 266(1)-(2), 280(a)-(c), 281, 282, 284, 293-296(1). See *Justices Act 1959* (Tas), s 72 and Sch 3, pt II, cl 11-47.

²² *Criminal Code Act 1924* (Tas), s 389(3).

²³ *Judiciary Act 1903* (Cth), ss 39(2) and 68(2).

²⁴ *Crimes Act 1914* (Cth), s 4J(1).

²⁵ Where the maximum penalty for the relevant offence does not exceed 5 years, the summary court cannot impose a sentence of imprisonment that exceeds 12 months (*Crimes Act 1914* (Cth), s 4J(3)(a)) and where the maximum term of imprisonment is more than 5 years but does not exceed 10 years, then

Third, on my journey through Queensland legislation I noticed various provisions that appear to enable summary and some indictable offences to be determined by the Magistrates Court constituted by Justices of the Peace,²⁶ in which case there is a limit of 6 months on any term of imprisonment that can be imposed.²⁷ My understanding is that these provisions are rarely if ever used.²⁸

Fourth, on this optimistic journey through the various statutes I did not find any provision which expressly imposed on any of the relevant Courts an obligation to give reasons for decisions made in the exercise of their respective criminal jurisdiction. But there is no doubt that there exists such an obligation as an incident of the judicial process.²⁹ The obligation to explain why some judicial decisions³⁰ have been reached stems from the common law but may have a constitutional dimension as well.³¹ I will save you the various descriptions of the content of the obligation to give reasons as I am sure they are burnt into your souls. At this point it suffices to state that there are various authorities that discuss the content of that obligation in the context of Magistrates and Local Courts which emphasise the volume of work being dealt with in busy lists and by busy courts.³²

The existence of the obligation to give reasons is itself one reason to be optimistic. As you can see I am not necessarily addressing reasons for you to be optimistic. But I say this because the obligation to give reasons facilitates the vindication of appeal rights.³³ When jury trials in civil cases were common, appeals from the "merits" of jury

the summary court cannot impose a sentence of imprisonment that exceeds 2 years (*Crimes Act 1914* (Cth), s 4J(3)(b)).

²⁶ *Justices Act 1886* (Qld), s 27, read with s 4 (definition of "justices"); *Criminal Code Act 1899* (Qld), s 552C(1)(b), read with s 552C(3)-(4).

²⁷ *Criminal Code Act 1899* (Qld), s 552H(1)(c).

²⁸ A program appears to exist allowing Justices of the Peace to hear cases in certain remote communities: 'Remote Justices of the Peace (Magistrates Court) Program' (Queensland, 2021, online) <<https://www.courts.qld.gov.au/services/court-programs/remote-justices-of-the-peace-program>>.

²⁹ *Public Service Board of New South Wales v Osmond* (1986) 159 CLR 656 at 666-667.

³⁰ *Public Service Board of New South Wales v Osmond* (1986) 159 CLR 656 at 666 - 667; *Wainohu v New South Wales* (2011) 243 CLR 181 at 215 [56].

³¹ See *Wainohu v New South Wales* (2011) 243 CLR 181.

³² *Acuthan v Coate* (1986) 6 NSWLR 472 at 478-479; *Director of Public Prosecutions (NSW) v Illawarra Cashmart Pty Ltd* (2006) 67 NSWLR 402 at 407-408 [15]-[18]; *Hettiarachchi v RACV* [2016] VSC 97 at [38].

³³ *Pettitt v Dunkley* [1971] 1 NSWLR 378 at 382 and 388; *Fox v Percy* (2003) 214 CLR 118 at 126 [23]-[24]; *Wainohu v New South Wales* (2011) 243 CLR 181 at 214 [55].

verdicts were notoriously difficult.³⁴ More broadly the provision of reasons promotes transparency in decision making, a value of importance.³⁵ It's all very well to say that a decision was made by a professional judge, however that fact is not demonstrated only by the conduct of the hearing or the decision that was made, but by the explanation for why the decision was made as well. The provision of reasons is an important difference between trial by judge and trial by jury.³⁶ The valuable benefits of trial by jury include the pooling of wisdom of 12 people drawn from a cross-section of the community, and the confidence in the result that follows from knowing that all of the jury (or a large majority of them) agreed on the result.³⁷ With juries you get all that, but with judges and magistrates you get reasons and that is also important.

Structure of Criminal Courts in England and Wales

This brings me to England and Wales.

At first blush the structure of the criminal courts of England and Wales appears very familiar to us. Their Magistrates courts operate as a point of entry. Those courts deal with summary offences and, in a way that I will outline, some offences that can be tried either on indictment or summarily; what they call 'either way' offences. They no longer have committal proceedings for indictable offences,³⁸ but the Magistrates courts can make directions for the progress of cases through to the Crown Court.³⁹

Above the Magistrates courts sits the Crown Court which, to our eyes, looks like a District or County Court, but is actually a mixture of those Courts and the criminal trial sections of a State or Territory Supreme Court. The Crown Court's jurisdiction is exercised by a mixture of High Court Judges (ie, our Supreme Court), Circuit Court Judges and Recorders (ie, part-time judges).⁴⁰ High Court judges, Circuit Court judges

³⁴ *Mechanical and General Inventions Co Ltd v Austin* [1935] AC 346 at 375; *Warren v Coombes* (1979) 142 CLR 531 at 552; *Swain v Waverley Municipal Council* (2005) 220 CLR 517 at 531-532 [35]-[36].

³⁵ Gleeson, 'Judicial Accountability', *The Judicial Review*, vol 2 (1995) 117 at 122; *Wainohu v New South Wales* (2011) 243 CLR 181 at 214-215 [56].

³⁶ *Warren v Coombes* (1979) 142 CLR 531 at 552.

³⁷ *Cheatle v The Queen* (1993) 177 CLR 541 at 549, 552-553, 560-561; *Williams v Florida* (1970) 399 US 78 at 100, quoted in *Brownlee v The Queen* (2001) 207 CLR 278 at 288.

³⁸ See *Criminal Justice Act 2003* (UK), Sch 3; *Magistrates' Courts Act 1980* (UK), ss 19-21.

³⁹ Sir Brian Leveson, *Independent Review of the Criminal Courts*, Part 1 (2025) at 127 [8] ("Leveson Report 1").

⁴⁰ As well as qualifying judge advocates, District Judges (Magistrates' Courts) and, subject to certain requirements, justices of the peace: *Senior Courts Act 1981* (UK), s 8.

and Recorders sitting in the Crown Court preside at jury trials of indictable offences.⁴¹ To an extent the seriousness of the charge determines which type of judge presides.⁴²

There is a right of appeal by way of review from the Magistrates courts to the Crown Court⁴³ similar to that from the Magistrates or Local Courts to District or County Courts in this country.⁴⁴ Those appeals are heard by a High Court judge, a Circuit Court judge or a Recorder sitting with between two and four Justices of the Peace; ie, magistrates.⁴⁵ Appeals from convictions on indictment and sentences in cases heard before the Crown Court run to the Court of Appeal (Criminal Division),⁴⁶ and the jurisdiction exercised by the Court of Appeal (Criminal Division) is similar to that exercised by Courts of Appeal and Courts of Criminal Appeal in this country. Also, the High Court hears appeals (sometimes in the form of stated cases) from, and exercises a supervisory jurisdiction over, Magistrates courts and the Crown Court.⁴⁷

All this looks familiar, but when we look a bit closer some potentially significant differences are apparent.

The first two differences I will mention is the limited type of cases the Magistrates courts in England and Wales currently deal with, and the limits on the Magistrates courts' sentencing powers compared to Australia. At present the maximum sentence a Magistrates court can impose for a summary offence is 6 months imprisonment and 12 months imprisonment for 'either way' offences.⁴⁸ Chasing down which offences are 'either way' offences was not straightforward⁴⁹ but they include some offences of violence, theft, non-aggravated burglaries, fraud and minor drug offences. The most serious 'either way' offences I could identify were making a threat to kill and intentionally or recklessly destroying and damaging property, each of which carries a maximum sentence of ten years.⁵⁰ However most of the 'either way' offences I came

⁴¹ *Senior Courts Act 1981* (UK), ss 46, 79.

⁴² *Senior Courts Act 1981* (UK), s 75; *Criminal Practice Directions 2023*, [5.10].

⁴³ See, eg, *Crimes (Appeal and Review) Act 2001* (NSW), s 11.

⁴⁴ *Magistrates' Courts Act 1980* (UK), s 108.

⁴⁵ Or a qualifying judge advocate: *Senior Courts Act 1981* (UK), s 74(1).

⁴⁶ *The Criminal Procedure Rules 2025* (UK), r 39.1.

⁴⁷ *Senior Courts Act 1981* (UK), ss 28-28A; *Magistrates Court Act 1980* (UK), s 111.

⁴⁸ *Magistrates' Courts Act 1980* (UK), s 32; *Sentencing Act 2020* (UK), s 224(1A).

⁴⁹ Many are listed in Schedule 1 to the *Magistrates' Courts Act 1980* (UK).

⁵⁰ *Offences against the Person Act 1861* (UK), s 16; *Criminal Damage Act 1971* (UK), ss 1(1), 4(2).

across carried maximum sentences of 2 years or less.⁵¹ Overall the 'either way' offences are generally much less serious than those that can be dealt with in Magistrates Courts and Local Courts of the three Australian jurisdictions I have outlined.

There is a two-stage process in the Magistrates courts for dealing with 'either way' cases. The Magistrates court makes an assessment of whether the case should be referred to the Crown Court by considering whether the offence is more suitable for summary trial or a trial on indictment. In making this decision, the Magistrates court will consider the adequacy of the sentence that the magistrate would have the power to impose if the accused was found guilty.⁵² If the Court decides the case is suitable to be determined in the Magistrates court, the accused can then elect whether to have a trial before a jury in the Crown Court.⁵³

So far these are some, but not remarkable, differences to what we have here but then we come to a further significant difference which is the result of history, namely the composition of the Magistrates court. In some instances the Magistrates court is constituted by a salaried judicial officer known as a District Judge (Magistrates Court)⁵⁴ or part time judicial officers known as Deputy District Judges (Magistrates Court) who are paid a fee and sit for a minimum of 15 days a year.⁵⁵ However, for the bulk of the cases the Court is constituted by 2 or 3 Justices of the Peace⁵⁶ which, like our Justices of the Peace, are unpaid volunteers who are not required to be legally trained. They sit for a minimum of 13 full days a year, for a minimum of 5 years, up to the age of 75.⁵⁷ They receive special training and are supported in Court by legally qualified

⁵¹ See, eg, *Malicious Damage Act 1861* (UK), s 36; *Offences Against the Person Act 1861* (UK), ss 34, 36, 38, 60; *Telegraph Act 1868* (UK), s 20; *Debtors Act 1869* (UK), s 13.

⁵² *Magistrates' Courts Act 1980* (UK), s 19.

⁵³ *Magistrates' Courts Act 1980* (UK), s 20.

⁵⁴ Judiciary, 'District Judges (Magistrates' Courts)' (Web Page) <<https://www.judiciary.uk/about-the-judiciary/who-are-the-judiciary/judges/district-judge-mags-ct/>>.

⁵⁵ Judiciary, 'District Judges (Magistrates' Courts)' (Web Page) <<https://www.judiciary.uk/about-the-judiciary/who-are-the-judiciary/judges/district-judge-mags-ct/>>.

⁵⁶ Judiciary, 'Magistrates' (Web Page) <<https://www.judiciary.uk/about-the-judiciary/who-are-the-judiciary/magistrates/>>.

⁵⁷ Gov.UK, 'Become a magistrate' (Web Page) <<https://www.gov.uk/become-magistrate/can-you-be-a-magistrate>>.

advisers employed by the government.⁵⁸ They do not have the security of tenure normally associated with judicial officers.⁵⁹

To give you an indication of the overall structure of the Magistrates courts, in 2024 to 2025 there were approximately 130 District Judges (Magistrates Court)⁶⁰ compared to around 14,500 volunteer unpaid magistrates.⁶¹ The Leveson Report, to which I will come, fairly described these magistrates as "public[ly]-spirited",⁶² which they clearly are. However, as I will seek to illustrate, that type of structure has limits compared to a system that uses full-time professionally qualified judicial officers with appropriate protections of tenure.

Leveson Report: Problems

In December 2024, the UK government commissioned an Independent Review of the Criminal Courts by the retired President of the Queen's Bench Division of the High Court, the Right Honourable Sir Brian Leveson. Sir Brian Leveson delivered a report on his review in two parts, the first in June 2025 and the second in February 2026.

The first part of the Leveson Report describes a criminal justice system in crisis with a bulging unmet case load and lengthening delays before cases come on for trial. Leveson states that as at December 2024 some cases were being set down for trial in 2029.⁶³ What the report shows starkly is that England and Wales are in the middle of a surge with 75,000 open cases in the Crown Court as at December 2024, which is projected to increase to 105,000 open cases by March 2029.⁶⁴ As you know, increases in delay like that cause many difficulties, not the least of which is an increase in time on remand.⁶⁵

⁵⁸ Leveson Report 1 at 127 [6].

⁵⁹ House of Commons Justice Committee, 'The role of the magistracy', *Sixth Report of Session 2016-17* (11 October 2016) at 26-27.

⁶⁰ Judiciary, 'District Judges (Magistrates' Courts) (Web Page) <<https://www.judiciary.uk/about-the-judiciary/who-are-the-judiciary/list-of-members-of-the-judiciary/dj-mags-ct-list/>>.

⁶¹ Danechi, 'Court statistics for England and Wales' (House of Commons Library, 14 April 2026) at 26.

⁶² Leveson Report 1 at 127 [6].

⁶³ Leveson Report 1 at 31 [2], 37 [2].

⁶⁴ Leveson Report 1 at 37 [2].

⁶⁵ Leveson Report 1 at 43 [15].

The Leveson Report identified three factors as contributing to this emerging crisis. The first was the ever-increasing complexity of criminal law and procedure,⁶⁶ something you are all familiar with, and which is illustrated by the increased use of tendency or propensity evidence. The second was rising caseloads from the pandemic, which you are all also familiar with, as well as delays resulting from industrial action taken by the Criminal Bar Association,⁶⁷ something we have not experienced. The third was resource constraints and inefficiency across the system.⁶⁸ I will outline what the Leveson Report recommended to address that third element, but I just note that the Report warned:⁶⁹

"The combined impact of all of this is that there is a real risk of total system collapse in the near future. That is to say that cases have little or no chance of being brought before the court, victims and witnesses disengage and if they do attend court that would be three or four years later, when they cannot recall specifics."

Leveson Report: Proposals

The Leveson Report made numerous recommendations to address the issues it identified including various proposals for structural reform. I will outline some of those changes but overall, if implemented, they have the potential to significantly restrict the availability of jury trials. In making those recommendations Sir Brian Leveson said that his position is that there is no constitutional or common law right to trial by jury in England and Wales and that any such claim is not a basis for limiting reform.⁷⁰ That contention has been much debated.⁷¹ In this country we look to s 80 of the Constitution.

The Leveson Report made a number of recommendations designed to expand the number and type of cases dealt with at the Magistrates court level, such as removing

⁶⁶ Leveson Report 1 at 64.

⁶⁷ Leveson Report 1 at 71.

⁶⁸ Leveson Report 1 at 51.

⁶⁹ Leveson Report 1 at 32 [4].

⁷⁰ Leveson Report 1 at 143 [42].

⁷¹ Leveson Report 1 at 144-147; see also Bar Council, "Written evidence to the Justice Select Committee: "Legislative scrutiny: Courts and Tribunals Bill"" (March 2025) at [2]; United Kingdom, House of Commons, *Parliamentary Debates* (Hansard), 9 July 2025 at volume 770, column 949-964.

the right to elect for a jury trial for offences with a maximum sentence of less than two years,⁷² reclassifying many 'either way' offences as summary,⁷³ as well as restricting litigants' ability to appeal from the Magistrates court to the Crown Court.⁷⁴

The most interesting part of Leveson's recommendations for our purposes is the point at which the Report stops short in its proposals for the Magistrates courts. Leveson did not propose expanding the limit on magistrates' sentencing powers of 12 months imprisonment. Instead, Leveson proposed the creation of a new branch of the Crown Court constituted by a judge sitting with two magistrates to hear and determine cases without a jury.⁷⁵ This new branch would hear all 'either way' offences where the sentence that would be imposed on the defendant if convicted is unlikely to exceed three years,⁷⁶ but with power to impose a greater sentence if appropriate.⁷⁷ Appeals from this branch would run to the Court of Appeal (Criminal Division).⁷⁸

Further, for more serious cases that progress to the Crown Court on indictment, Leveson suggested the introduction of trials by judge alone, either where the accused elects for a judge alone trial and with the approval of a judge, or where a judge directs that a trial by judge alone is appropriate, having regard to the anticipated length or complexity of the trial.⁷⁹ Some States and Territories in this country have provision for such judge alone trials⁸⁰ and several enable judge alone trials to occur where the

⁷² Leveson Report 1 at 154 (Recommendation 14).

⁷³ Leveson Report 1 at 167 (Recommendation 18).

⁷⁴ Leveson Report I at 198 (Recommendation 21).

⁷⁵ Leveson Report 1 at 239 [15].

⁷⁶ Leveson Report 1 at 243 [22].

⁷⁷ Leveson Report 1 at 245 [27].

⁷⁸ Leveson Report 1 at 271 [77].

⁷⁹ Leveson Report 1 at 279 [3].

⁸⁰ See, eg, *Criminal Procedure Act 1986* (NSW), s 132; *Criminal Code Act 1899* (Qld), ss 614-615; *Juries Act 1927* (SA), s 7; *Criminal Procedures Act 2004* (WA), s 118; *Criminal Code Act 1924* (Tas), s 361AA; *Supreme Court Act 1933* (ACT), s 68B. Victoria and Northern Territory do not permit judge alone trials. Victoria only permitted trial by judge alone for two relatively short periods during the Covid-19 pandemic: see s 32 of the *COVID-19 Omnibus (Emergency Measures) Act 2020* (Vic), which introduced judge-alone trials in July 2020 and was repealed in April 2021, and s 3 of the *Justice Legislation Amendment (Trial by Judge Alone and Other Matters) Act 2022* (Vic), which commenced on 30 March 2022 and was repealed on 30 March 2023.

accused does not consent, but their availability in that circumstance is heavily circumscribed.⁸¹

UK Government Response

On 25 January 2026 in response to the Leveson Report, the Lord Chancellor introduced the *Courts and Tribunals Bill 2026* (UK) into the UK Parliament.

The Bill went beyond the Leveson Report in some respects, including in its proposed effect on the availability of jury trials. In short, if enacted, the Bill would remove the right of a defendant to elect to be tried by jury for all 'either way' offences and instead the Magistrates courts would determine whether the case should stay in that Court and be tried summarily or be referred to the Crown Court.⁸² For cases sent to the Crown Court, it would then be for the Crown Court to determine whether the case should be tried with or without a jury.⁸³ The Bill then provides that, unless the offence, or any of the offences charged (if more than one), is triable only on indictment, or the Court considers that if the accused is convicted they are likely to receive a custodial sentence of three years or more,⁸⁴ then the defendant is to be tried by judge alone. The Bill does not create any new division of the Crown Court and Leveson's proposal that these trials include magistrates sitting with a judge was not included in the Bill.⁸⁵ As for more serious indictable offences, the Bill does not enable a defendant to elect to be tried by judge alone as suggested by Leveson, but it does pick up the second of Leveson's proposals with respect to judge-alone trials by empowering the Crown Court to order a judge alone trial in relation to certain offences where satisfied that the trial would be of a complexity or length that made it appropriate for the trial to be conducted without a jury.⁸⁶ The Bill also includes a provision enabling the limit on Magistrates

⁸¹ See *Criminal Procedure Act 1986* (NSW), s 132(7); *Criminal Code Act 1899* (Qld), s 615(4); *Criminal Procedures Act 2004* (WA), s 118(5); *Criminal Code Act 1924* (Tas), s 361AA(8).

⁸² House of Commons Library, *Research Briefing: Court and Tribunals Bill 2024-26* (6 March 2026) at 29 ("HOC Research Briefing").

⁸³ HOC Research Briefing at 29, fn 75; *Courts and Tribunals Bill*, cll 3-5.

⁸⁴ HOC Research Briefing at 34.

⁸⁵ HOC Research Briefing at 34.

⁸⁶ HOC Research Briefing at 37. The court would also need to be satisfied that it is not in the public interest for the trial to be conducted with a jury and that there are no other reasons why it would be more appropriate for the trial to be conducted with a jury: *Courts and Tribunals Bill*, cl 4(2) proposing insertion of s 42A(3) to the *Criminal Justice Act 2003* (UK).

courts' sentencing powers to be increased from 12 to 18 or 24 months imprisonment,⁸⁷ and replaces the automatic right to appeal from Magistrates courts to the Crown Court with a permission stage and restrictions on the scope of appeal.⁸⁸

It would be something of an understatement to note that these proposals are encountering resistance both within Parliament across all parties and outside Parliament from many stakeholders. The Parliamentary Committees considering the Bill received 78 submissions and have conducted hearings over 6 days.

The proposed restrictions on the availability of trial by jury appear to be the most contentious. The Bar Council expressed fundamental disagreement with the restrictions on what it described as the "deeply entrenched constitutional principle of a jury trial" and the removal of a defendant's right to appeal from the Magistrates courts to the Crown Court.⁸⁹ The Council strongly disputed that either jury trials or the automatic right to appeal are the cause of the delays in the system.⁹⁰

Several submissions expressed concern about the effects of the reforms on minority communities' confidence in the fairness of the judicial system.⁹¹ In relation to the proposal to extend the Magistrates courts' powers and to conduct trials by judge alone in the Crown Court, the Bar Council's submission noted that the time required by a judge to prepare written reasons for convicting or acquitting a defendant had been significantly understated, and the impact of this workload on reducing the time available to a judge to continue with other work whilst juries are in retirement had not been accounted for when determining the effect on reducing delays in the criminal justice system.⁹² The Law Society's submission similarly noted that there was no

⁸⁷ HOC Research Briefing at 38.

⁸⁸ HOC Research Briefing at 41. Litigants will no longer be entitled to a full re-hearing before the Crown Court; appeals will be confined to issues for which permission to appeal has been granted.

⁸⁹ Bar Council, "Written evidence to the Justice Select Committee: 'Legislative scrutiny: Courts and Tribunals Bill'" (March 2025) at [2].

⁹⁰ Bar Council, "Written evidence to the Justice Select Committee: 'Legislative scrutiny: Courts and Tribunals Bill'" (March 2025) at [1]-[2].

⁹¹ HOC Research Briefing at 53-54; JUSTICE, 'Submission to Justice Committee in response to 'Call for evidence - Courts and Tribunals Bill' at [3], [16], [36]; Criminal Law Solicitors' Association, 'Submission to Justice Committee on the Courts and Tribunals Bill 2026' at 6.

⁹² Bar Council, "Written evidence to the Justice Select Committee: 'Legislative scrutiny: Courts and Tribunals Bill'" (March 2025) at [29], [37].

"robust evidence" to suggest the time savings afforded by judge-alone trials would be significant.⁹³

The Law Society also expressed concern that judge-alone trials and the giving of reasons could undermine victims' confidence, presumably referring to cases where the victim's evidence is not fully accepted, compared to jury verdicts where there is an absence of reasons.⁹⁴ By contrast the Victims' Commissioner submitted that jury verdicts "with no accompanying rationale ... can leave victims with many unresolved questions, hampering their ability to move on" and welcomed the "increased transparency" that reasons would provide.⁹⁵

As I understand it, the Bill has had its first and second reading in the House of Commons, been through the Committee stage and is now back before the House of Commons.

Gradual or Sudden Change?

If one steps back from the Leveson Report and its aftermath, you can see that the Leveson Report implicitly recognised the limits on calling on a Magistrates court, constituted by unpaid volunteer judges without legal qualifications and protections of tenure, to decide cases beyond a particular level of complexity or seriousness. The proposed legislative response departs from the Leveson Report in seeking to increase Magistrates courts' sentencing powers, but that same concern is still implicit in the Government's proposals for trials by judge alone in the Crown Court for offences with custodial terms of up to three years.

For many years in this country we have had full-time, paid, legally qualified members of the judiciary with security of tenure performing that function; namely you. That work is performed across a range of cases that encompasses both the work of Magistrates courts in England and Wales and the proposed expanded judge-alone jurisdiction of the Crown Court. Your caseload can extend to the most basic of summary cases, such

⁹³ The Law Society of England and Wales, "Submission from the Law Society of England and Wales to the Justice Select Committee legislative scrutiny: Courts and Tribunals Bill" (11 March 2026) at 3.1.

⁹⁴ The Law Society, "Courts and Tribunals Bill: House of Commons, Second Reading, 10 March 2026" at 3.

⁹⁵ Victims' Commissioner for England and Wales, "Submission to the Justice Select Committee Inquiry: Legislative Scrutiny - Courts and Tribunals Bill" (March 2026) at [24].

as parking offences, to the very serious and complex charges that I outlined earlier. One of the many advantages of that range of matters is that it means that the cross-section of the community exposed to the excellent work you do is broad. The cross-section of the community who witnessed the criminal trials I presided over in the Supreme Court of New South Wales was much narrower.

I will come to outline some of the changes that lead to the position we are in but my principal point is that "investment" in the positions of Magistrates and Local Court judges over decades and their performance of that work over time in communities has built a level of trust in your conduct and disposition of cases that makes some means of addressing problems such as delay building up in the system easier, and I mean easier for governments and legislatures, to negotiate. In particular, one way that such delays are often addressed is by amending the list of offences that can be dealt with summarily or on indictment, so as to redirect more cases to the Local and Magistrates courts. Of course, that redirection must often be accompanied by extra resources and that can include extra appointments.

In this country, having already built up and established community and professional trust in the robustness of the Local Courts and the Magistrates courts, it is not, as Sir Humphrey Appleby would have put it, a "brave" decision, or at least *that* brave a decision, to increase the sentencing powers of a Magistrate or Local Court judge or to increase the seriousness or complexity of the cases they hear by moving cases to those courts to deal with a surge in cases (or a pandemic). My recollection is far from perfect and it can be hard to prove a negative, but I cannot recall in recent years any significant stakeholder opposition, much less community opposition, to such changes when they have been made. By and large the legal profession also seems to have accepted those types of changes, presumably because they recognise the trade-off between the advantages for their clients of a quicker hearing and a lower potential sentence in a Magistrates or Local Court compared to a jury trial that will most likely take longer to come on, with the potential for a higher sentence if their client is convicted. But that acceptance would not exist without their having confidence in the Magistrates and Local Courts; that is, confidence in you.

Contrast that with England and Wales which over centuries has constructed a criminal justice system based on an entry level court constituted by over 14,000 volunteers.

You cannot help but be impressed by their preparedness and capacity to do that job under those conditions but the limits of relying on such a structure to do so much work in an ever increasingly complex system of criminal justice are now being exposed. The result is that significant structural reforms involving summary trials of reasonably serious offences are being debated without the years of accumulated public and professional trust in that process that exists here, and which is the result of the investment that has been made in you and the work you do.

So that is another reason to be optimistic.

How did we get here?

The last part of this speech briefly describes how we got to this point, which I also think is a reason to be optimistic.

In a comprehensive paper⁹⁶ the former Chief Judge of the Local Court of the Northern Territory, John Lowndes SM, described the evolution of the office of magistrate in Australia from the first Justice of the Peace that came with European arrival⁹⁷ to the end of the millennium.

John Lowndes' paper broke that development down into seven stages, namely:⁹⁸ (1) moving from honorary Justices of the Peace to paid magistrates; (2) transitioning from "police magistrates" to "stipendiary magistrates"; (3) transforming a lay, untrained and unqualified magistracy into professional and legally trained judicial officers; (4) the incorporation of magistrates into the public service; (5) the expansion of the jurisdiction of courts presided over by magistrates and the increasing complexity of that jurisdiction; (6) the separation of magistrates from the public service; and (7) the extension of "judicial independence" to the courts presided over by magistrates.

I am only going to describe how the last of the steps discussed by John Lowndes unfolded and confine myself to those three jurisdictions I mentioned at the outset: Tasmania, New South Wales and Queensland.

⁹⁶ Lowndes, 'The Australian Magistracy: From Justices of the Peace to Judges and Beyond – Part 1' (2000) 74 *Australian Law Journal* 509 at 514-516.

⁹⁷ Governor Arthur Phillip.

⁹⁸ Lowndes, 'The Australian Magistracy: From Justices of the Peace to Judges and Beyond – Part 1' (2000) 74 *Australian Law Journal* 509 at 510.

I am pleased to say that the first cab off the rank amongst those three was my original state of Tasmania, as far back as 1969. In November of that year, the *Stipendiary Magistrates Act 1969* (Tas) came into force. That Act removed stipendiary magistrates from the provisions of the *Public Service Act 1923* (Tas).⁹⁹ Under the *Stipendiary Magistrates Act 1969* (Tas), to be appointed as magistrate one had to be a legal practitioner of not less than 5 years standing,¹⁰⁰ and was entitled to hold office "during good behaviour" but could be suspended or removed from office by the Governor on the address of both Houses of Parliament.¹⁰¹ In the second reading speech the Tasmanian Attorney-General noted that it is in the public interest that magistrates have independent status as otherwise "the public may feel that the administration of justice by magistrates who are public servants is not as fair and impartial as it ought to be".¹⁰²

The only record we have of what transpired with the Stipendiary Magistrates Bill in the Tasmanian Parliament is a report in Hobart's *The Mercury* which records a strong attack on the Bill by the opposition for not going far enough, especially by allowing the Attorney-General to supposedly direct which magistrate sat in which location, and enabling the government of the day to appoint temporary stipendiary magistrates "on any terms" and at "its whim".¹⁰³ The opposition also pursued an amendment to remove the word "stipendiary" from the Bill's title. The *Stipendiary Magistrates Act 1969* (Tas) was later repealed and replaced by the *Magistrates Act 1987* (Tas) but the provisions protecting tenure that I referred to remained.¹⁰⁴ The adjective stipendiary was dropped in the 1987 Act, and the Court was reorganised along modern lines with a Chief Magistrate and a Deputy Chief Magistrate.¹⁰⁵

Similar changes were made in New South Wales by the *Local Courts Act 1982* (NSW) save that in its original form the *Local Courts Act 1982* (NSW) provided that a magistrate could be removed from office by the Governor for "incompetence, misbehaviour or contravention of the terms and conditions of his service".¹⁰⁶ That

⁹⁹ *Stipendiary Magistrates Act 1969* (Tas), s 4(2)..

¹⁰⁰ *Stipendiary Magistrates Act 1969* (Tas), s 8(1).

¹⁰¹ *Stipendiary Magistrates Act 1969* (Tas), s 9(1).

¹⁰² Bingham, *Stipendiary Magistrates Bill 1969*, second reading speech at 2.

¹⁰³ *The Mercury*, 'Everett Blasts Bill for Stipendiary Magistrates', 11 September 1969 at 11.

¹⁰⁴ See *Magistrates Act 1987* (Tas), s 9.

¹⁰⁵ See *Magistrates Act 1987* (Tas), Part II.

¹⁰⁶ *Local Courts Act 1982* (NSW), s 18(2)(a).

legislation passed with bipartisan support.¹⁰⁷ One amendment proposed by the opposition which was not accepted was to change the procedure for removal of a magistrate to require an address to the Governor from both houses of Parliament.¹⁰⁸ That amendment was defeated on the basis that the government thought a hearing in the legislature was an unfair process.¹⁰⁹ However, these aspects of the *Local Courts Act 1982* (NSW), including that Act's removal processes, were superseded a few years later by the passage of the *Judicial Officers Act 1986* (NSW) which established the Judicial Commission of New South Wales.¹¹⁰ After the *Judicial Officers Act 1986* (NSW) was passed, the suspension and removal of Magistrates was governed by the procedures and protections of that Act.¹¹¹

As a matter of history, the passage of the *Local Courts Act 1982* (NSW) did not come into force without some grief. I will just mention one of those stories.

In 1983, after the *Local Courts Act 1982* (NSW) was passed and before that Act came into effect in January 1985,¹¹² the understanding of the stipendiary magistrates was that they would be appointed magistrates under the *Local Courts Act 1982* (NSW).¹¹³ This impression was reinforced by the then Chairman of the Bench of Stipendiary Magistrates, who was advised that all Magistrates would be reappointed and spread the word amongst the Magistrates accordingly.¹¹⁴ However when the music stopped and they all sat down, 95 were sitting but 5 were left without a chair. This touched off litigation. In the end the last remaining magistrate who still sought reappointment lost a 3-2 decision in the High Court in 1990 about whether the New South Wales Attorney-General was bound to consider his appointment in accordance with a previous policy addressing his suitability in his own right, or whether the Attorney-General could consider any appointment in competition with new applicants.¹¹⁵

¹⁰⁷ New South Wales, Legislative Assembly, *Parliamentary Debates* (Hansard), 30 November 1982 at 3530.

¹⁰⁸ New South Wales, Legislative Assembly, *Parliamentary Debates* (Hansard), 30 November 1982 at 3530.

¹⁰⁹ New South Wales, Legislative Assembly, *Parliamentary Debates* (Hansard), 1 December 1982 at 3585.

¹¹⁰ *Judicial Officers Act 1986* (NSW), Part 3.

¹¹¹ *Judicial Officers Act 1986* (NSW), Part 7. Local Court judges' tenure and removal from office is now governed by *Local Court Act 2007* (NSW), Sch 1, cl 3 and *Constitution Act 1902* (NSW), s 53.

¹¹² *Attorney-General (NSW) v Quin* (1990) 170 CLR 1 at 7.

¹¹³ *Attorney-General (NSW) v Quin* (1990) 170 CLR 1 at 8.

¹¹⁴ *Attorney-General (NSW) v Quin* (1990) 170 CLR 1 at 8.

¹¹⁵ *Attorney-General (NSW) v Quin* (1990) 170 CLR 1; see also *Macrae v Attorney-General (NSW)* (1987) 9 NSWLR 268.

To round off the circle in New South Wales I note that with effect from 28 March 2026 the title of Magistrates in New South Wales was changed to Judges of the Local Court.¹¹⁶ This amendment also passed with bipartisan support.

Lastly in this mini round up, there was the enactment in Queensland in 1991 of the *Stipendiary Magistrates Act 1991* (Qld), which required appointees to be legally qualified and to have practiced law for at least five years,¹¹⁷ and provided for security of tenure by precluding their suspension or removal without a Supreme Court determination that proper cause exists for such suspension or removal.¹¹⁸ In the second reading speech for that bill the Queensland Attorney-General emphasised the need to legislate to protect judicial independence.¹¹⁹ Like in New South Wales, this bill had strong support from the opposition. They suggested going further and establishing a judicial appointments commission.¹²⁰

Apart from geographical connections of the location to this speech or to me, one of the reasons I chose those three jurisdictions at those times is because these reforms were pursued by governments of different persuasions and supported by oppositions of different persuasions. Even so there was an overall acceptance within the different State legislatures of the utility of these developments and their importance to public confidence in the administration of justice. I have no insight into the inner machinations of how these changes came about, especially what the advice from the public service was at the times in question. I can only guess what the local Departments of Finance might have thought of a proposal to create a host of permanent positions, free of public service control, reserved for qualified lawyers, whose salary and entitlements were fixed by independent tribunals and out of departmental control,¹²¹ who could not be removed except in reasonably rare circumstances and who were in the habit of sometimes making decisions the government did not like.

¹¹⁶ *Local Court and Bail Legislation Amendment Act 2025* (NSW), sch 1.

¹¹⁷ *Stipendiary Magistrates Act 1991* (Qld), s 4.

¹¹⁸ *Stipendiary Magistrates Act 1991* (Qld), ss 15(3), 17(1).

¹¹⁹ Queensland, Legislative Assembly, *Parliamentary Debates* (Hansard), 23 October 1991 at 1981.

¹²⁰ Queensland, Legislative Assembly, *Parliamentary Debates* (Hansard), 14 November 1991 at 2955-2956.

¹²¹ See *Stipendiary Magistrates Act 1969* (Tas), s 10(2) and *Public Service Tribunal Act 1958* (Tas); *Local Courts Act 1982* (NSW), s 24(1)(a) and *Statutory and Other Offices Remuneration Act 1975* (NSW), ss 11-13; *Stipendiary Magistrates Act 1991* (Qld), s 18 and *Judges' Salaries and Pensions Act 1967* (Qld), s 4(1).

Whatever the objections, if any, these reforms happened. These reforms required ongoing investment in the sense of financial and other support appropriate to the status and nature of judicial officers and their work. As my reference to England and Wales is meant to illustrate, in the decades since that investment has yielded what I think the economists call avoided costs; that is, savings and benefits from expenses or adverse consequences that were not incurred because action had already been taken to prevent them. Investments in the justice system are full of such "savings"; that is, adverse consequences and potentialities that we cannot say with certainty were avoided and which we can never precisely quantify. The obvious savings are investments in court infrastructure but as we know, those savings extend to such matters as investment in drug and alcohol rehabilitation services and restorative justice initiatives.

In the case of the Local and Magistrates Courts of this country, we can identify good decisions, and I think by looking at an overseas comparator we can see some severe and painful potentialities that we have avoided and hopefully will continue to avoid. These decisions were the product of legislative and government processes. I do not know but would be surprised if they yielded anyone short-term political gain. Instead they required ongoing investment and resources to build community confidence over time. That these decisions were the product of the political process is to the credit of those who took part in and supported them and is another reason to be optimistic.

Of course with these changes come responsibilities. I mentioned earlier the obligation to give reasons. Along with your court craft in running cases fairly and efficiently, the discharge of that obligation is at the very core of your *raison d'être* as judicial officers. What is important is the nature and context of the decision, not the identity or status of the judge. Magistrates and Local Courts are not repositories of, and do not deliver, second tier justice. The transparency provided through the giving of quality reasons where appropriate is a counterpart to the indisputable benefits of jury trials. It is another reason for the rest of us to be optimistic.

You could be forgiven for considering this speech as having had an overly functional or process driven perspective. There is of course a lot more involved in delivering justice according to law in the Local and Magistrates Courts. Across any given week in your courts there will always be the mixture of the sad, the bad, pathos, the mundane

and the deadly serious and every now and then a case that gives some cause for real optimism. Those are stories for a different day and for others to tell.

Without your work and that of your predecessors, the decisions of governments and legislatures of all persuasions to invest in Magistrates and Local Court judges would have yielded nothing. For that and all the avoided costs, I thank you for your service and thank you for listening.