Law Week - May 2008

Opening Address

"The State of Justice - The Truth about Crime and Sentencing"

The Hon Wayne Martin
Chief Justice of Western Australia

5 May 2008
Supreme Court of Western Australia

Introduction

The court sits today to mark the commencement of Law Week 2008. This provides the court with an opportunity to mark the important contribution made by the legal profession of this State to the provision of justice to our community, to report upon the achievements made by the courts of this State during the last year, and to identify the challenges which we face in the coming year. The Court sat last year for the first time to mark this occasion, and I hope this sitting will become something of a tradition.

Welcomes

I would like to again express our gratitude and welcome to His Excellency the Governor and Mrs Michael. Your attendance is a great honour to our Court. It also publicly acknowledges the importance of the administration of justice to our community.

I would also like to welcome those who will be speaking this morning - the Attorney General, the Honourable Jim McGinty MLA, the President of The Law Society, Mr Dudley Stow, and the President of the WA Bar Association, Mr Craig Colvin SC. In addition we are honoured to be joined this morning by our judicial colleagues from the Federal Court of Australia, Justices French, Siopis and McKerracher, Acting Chief Judge Martin of the Family Court of Western Australia, Chief Judge Kennedy of the District Court, Judge Denis Reynolds, President of the Children's Court, Deputy Chief Magistrate Libby Woods representing Chief Magistrate Heath, State Coroner Alistair Hope, and Justice Michael Barker, President of the State Administrative Tribunal.

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 focused occasion upon which the legal profession and the courts can provide information to the community concerning the administration of justice in Western Australia. The provision of greater information relating to legal services and the processes and procedures of our courts is one of the ways of improving access to justice, by improving information and understanding about our justice system, which at times must seem incomprehensible to many Western Australians.

Another way of improving access to justice is by increasing the availability of the services offered by the legal profession of this State. As I have observed on many occasions, the legal profession has a long and proud tradition of providing assistance at reduced rates or without remuneration at all in appropriate and worthy cases. During the last year, the courts have endeavoured to encourage and reinforce that tradition by enacting a rule which creates an opportunity for pro bono legal practitioners to be paid should a favourable order for costs be made as a consequence of the provision of their services.

But Law Week is mostly about the provision of information to the community about the justice system of this State. One of the most enjoyable aspects of my job is the opportunities which it provides to meet with a wide range of members of our community from all walks of life, and to answer questions which are posed in relation to our justice system. Not surprisingly, those questions are often directed at the topic of

criminal law and sentencing. So, before turning to report on the activities of the Courts of this State over the last year, I would like to make some observations on those important issues. The theme of my remarks, and the general theme of this address, is conveyed by the subtitle - "The Truth about Crime and Sentencing".

In my discussions with members of the community, in the letters I receive, the comments on talk-back radio which I hear, and the letters to the Editor published in the newspapers which I read, I gain the sense that there is a widespread public perception that we live in an increasingly lawless society and that the courts are responding ineffectively to this perceived wave of crime by imposing sentences that are increasingly lenient. As I will endeavour to show, this perception could not be further from the truth.

So how has this perception been created? Like most public perceptions, I believe that this perception has been created by the media, both electronic and printed. However, in making this observation, I do not intend to be in any way critical of the media. On the contrary, I actively encourage and support the reporting of cases which are tried in our courts, and of informed commentary upon those cases. And because I accept that it is quite unrealistic to suppose that commentary upon and criticism of court cases will always correspond with what judges would describe as informed, I also accept that it is in the public interest to encourage a full range of discussion upon the merits and demerits of court processes and outcomes, including discussion with which I and the judiciary would strongly disagree.

There are, however, two aspects of media reporting and commentary upon court cases that are inherently likely to produce a distorted public perception of the level of crime and the severity of sentencing in our community.

The first aspect is that the media, quite understandably, are unlikely to give any attention to cases which do not excite public attention and comment. I again emphasise that this is not an adverse reflection upon the media, but a reflection upon the nature of news. Similar to a point made by Chief Justice Gleeson, it is extremely unlikely that one would ever read an article commenting on the fact that the Narrows Bridge has remained intact overnight. But if the Narrows Bridge falls down overnight, that is news. For the same reason, it is unlikely that one will ever read an article advancing the proposition that a Judge has taken account of all relevant facts and circumstances and imposed a sentence which is entirely fair and reasonable. The cases about which one reads will inevitably be the small subset of cases in which there is a perceived criticism of the sentence imposed.

To try to put this proposition in some kind of numerical perspective, the courts of Western Australia impose about 80,000 sentences per year. The vast majority of those sentences are imposed in the Magistrates Court. An avid consumer of media might read and hear about 50 or 100 of those cases in the course of a year. Almost by definition, they will be the 50 or 100 cases in which there is room for differing opinions about the adequacy of the sentence imposed. However, a perception of the entire system is created by a view formed on the basis of that tiny subset of cases. And very often, understandably, maximum media attention will be given to the case when the sentence has just been imposed, and before

there has been an opportunity for an appeal court to review the adequacy of that sentence, and if, some time later, the sentence is increased on appeal, again understandably, that does not receive the same degree of media attention.

The second aspect which is likely to distort public perception drawn from media reporting is that reporting is generally focused upon individual cases, rather than upon the level of crime within the community as a whole. Again, because of the nature of news, it is the most violent and shocking cases which receive the attention of the media. And some of the cases we see in our courts are shocking. But a report about an individual case, or even 10, 20 or 50 cases, does not tell you anything meaningful about the general level of crime within our community.

The rate of reported crime

The figures showing the level of reported crime in Western Australia strongly refute the public perception that we live in an increasingly lawless society. Before looking at those figures, it is necessary to emphasise that they do not record total crime, but only crimes which are reported to the authorities. The rate at which crimes are reported depends significantly upon the nature of the crime. So, in the case of homicides, it is reasonable to assume that the rate of report is extremely high because of the significance which we properly address to the death of any member of our community. In the case of crimes like car theft, home burglary and property theft, it is also reasonable to conclude that the report rate is very high, because of the necessity to make a police report before claiming on insurance. In the case of assaults, the report rate is likely to be much lower because of the propensity of some victims of less serious assaults to simply get on with life, without being involved in police action or a court

case. And in the case of sexual assaults, it is reasonable to infer that the report rate is very low, because of the stigma associated with that particular offence, and the fact that such offences are often committed by family members or friends, so that the repercussions of a report may be profound, and a number of other reasons. The rate at which sexual assaults are reported can be increased significantly by the provision of improved support for victims, and in particular, the generation of a belief that a victim reporting such an assault will be protected by the authorities, and not stigmatised for something which is not their fault. This is, I think, one explanation for the significant increase in sexual assaults reported in the Kimberley, following the deployment of health workers, the provision of screening for sexual disease, and the creation of a permanent police presence in many Kimberley communities as a result of the Gordon Report. So, somewhat paradoxically, in the area of sexual assault, an increase in the number of assaults reported may be the positive consequence of improvement of services to victims of assault and community awareness, rather than a reflection of an increase in the total level of sexual assault within the community. A similar observation may be made in respect of domestic violence. An increase in the reported number of assaults in a family situation may be, in part, due to improvements in the support provided to victims of those assaults.

It is also worth observing that in areas of crime in which the report rate is relatively low, a small increase in the report rate can result in a significant increase in the total level of reported crime in the category. To give an example, if one assumes that only 25% of sexual assaults are reported to the authorities, and that rate increases to 30% as a result of the positive measures to which I have referred, in numerical terms that is an increment of 20% in the total level of sexual assaults reported.

With these observations in mind I turn to look a little more closely at the reported figures per head of population for various types of crime.

Homicide

The rate of homicide in Western Australia is consistently below the national average. Because, thankfully, the numbers of homicide cases per year are relatively small, and subject to significant annual variations, it is dangerous to draw conclusions from comparisons based upon small samples.

However, bearing that important qualification in mind, between 1996 and 2005, the indexed rate for homicide and related offences fell from 116.2 to 86.5 - a decline of about 25%.

Robbery

Over the same period, the indexed rate of offending for robbery declined marginally from 89.4 to 82.6.

Motor vehicle theft

Over the same period, motor vehicle theft was more than halved, from an indexed rate of 133.1 to 63.2.

Burglary

Between 1996 and 2005, the indexed rate of reported unlawful entry with intent fell from 97.3 to 63.2 - that is, less than two-thirds of the rate of burglary experienced in 1996.

Offences against the person

The only significant categories of crime in respect of which there has been an increase in recent years are in the categories of assault and sexual assault. Indexed rates of reported incidences of both crimes increased over the last 10 years - assaults more substantially and sexual assaults more marginally. However, it is important to note that the category of assault covers a very wide range of cases, and that it is likely that the rate of report for offences against the person is significantly lower than the rate for any of the other categories of crime I have mentioned. Accordingly, it is difficult to know from those figures, the extent to which the number of offences against the person has in fact increased, or whether some part of the increase is due to an increase in the rate of reporting of those offences.

This uncertainty as to the precise increment does not detract from the significance of the reported increase in offences against the person, such as assault. And while property crimes are, of course, significant, crimes that threaten our physical safety are, in my view, at a different level of significance, as the sentences imposed by the courts reflect. There has been widespread concern recently expressed about the proliferation of assaults upon those performing public duties - such as police officers, transport guards, nurses, ambulance drivers and teachers. I share those concerns. Those who provide the public services upon which our community depends are entitled to expect the full protection of the law, and those who commit a significant assault upon any such officer can and should expect to serve a term of imprisonment - as the decisions of the courts, including appellate courts, generally show.

So in summary, the area of assault is the one area in which we do not appear to be making progress in reducing the level of offending.

In relation to sexual assaults, because of improvements in the way in which we deal with victims of such assault, and what I perceive to be increased community abhorrence at crimes of that kind, it is reasonable to infer that at least some of the marginal increment in reported sexual assaults is due to an increase in the rate of report. This is, of course, not to suggest that there is any reason for complacency in relation to an increase in the reported rate of sexual assault - on the contrary, I will refer later in this address to the steps which have been taken by the courts to respond to the situation which emerged in the Kimberley during the course of the last year.

Summary

The figures for reported crime do not generally sustain the public perception that we are living in an increasingly lawless community. On the contrary, they show that in most areas of significant crime, significant reductions have been achieved over the last 10 years. There is, however, one particular area of continuing concern, and that is the area of offences against the person. This data is also supported by 'victim surveys' of individuals and households in Western Australia about their experiences of crime. In my opinion, a significant contribution to the improvement in reported crime has been made by the improved rate of detection of offenders in relation to crimes reported to police; and the WA Police are to be congratulated for that.

Sentencing

As I have observed, there is a widespread public perception that the judiciary are weak and ineffective when it comes to imposing sentences, and that even serious offenders are often spared sentences of imprisonment. While I can understand how this perception has been created, it is completely wrong. The figures show that more people are being sent to prison for longer periods than ever before.

In 1987, the imprisonment rate in Western Australia was 110 per 100,000 of population. 20 years later, in 2007, the rate had more than doubled to 241 per 100,000. Over the last decade alone, the average minimum sentence to be served before eligibility for parole imposed by the higher courts of this State increased by one quarter. Over the same period, the average time actually served increased by one-third, suggesting a reduction in the rate of grant of parole. In relation to homicide cases, over the same period, the average minimum time served by persons convicted of wilful murder increased from 15.8 to 21 years, that is, by one-third, and for those convicted of murder, from 10.5 to 12.6 years, that is, by one-fifth.

In comparison with other Australian jurisdictions, the imprisonment rate in Western Australia is very high. It is more than double the rate applicable in Victoria, and is the second highest rate within Australia. The highest imprisonment rate in Australia is in the Northern Territory, which appears related to the fact that the Northern Territory has the highest percentage of Aboriginal population of all the jurisdictions of Australia. But, when comparisons are undertaken by head of Aboriginal population, the imprisonment rate of Aboriginal persons in Western Australia is almost double that of the Northern Territory.

I make no apology for saying again that the gross over-representation of Aboriginal people in the criminal justice system of Western Australia remains the greatest challenge facing that system. Despite the best efforts of all concerned to reduce the rate of imprisonment of Aboriginal people, it has grown exponentially. In 1987, the rate of Aboriginal imprisonment was 1,331 per 100,000. 20 years later, in 2007, that rate had almost trebled to 3,886 per 100,000. That figure should be compared to the rate of 141 per 100,000 in respect of the non-Indigenous population, so that the rate of Aboriginal imprisonment is about 27 times that of the non-Indigenous population. This increase in Aboriginal imprisonment has occurred despite the implementation of literally hundreds of recommendations of the Royal Commission into Aboriginal Deaths in Custody which were aimed at reducing the rate of imprisonment. We must strive to find effective ways of reducing these appalling statistics.

So, in summary, whatever the public perception, the fact is that the courts of Western Australia are imprisoning significantly more people and for significantly longer than ever before.

Turning now to the issue of the perception of leniency in individual cases, I can well understand the puzzlement of many members of our community when they see a sentence imposed which is only a relatively small proportion of the reported maximum available, even though the offence committed was serious. However, there are a number of issues which must be borne in mind before one could reasonably conclude that the imposition of such a sentence represents a failing on the part of the Judge or Magistrate concerned.

The first issue which must be borne in mind is the so-called "truth in sentencing" legislation passed in 2003. At that time, government resolved to abolish the automatic remission of one-third of every sentence imposed, so that the sentence imposed more truly reflected the time to be served. However, an across the board increase of all sentences actually served by reason of the abolition of that remission, would have brought the prison system to the point of collapse. Accordingly, in order that the sentence imposed more accurately reflect the time to be served, it was necessary to adjust the sentence actually imposed by the court down by one-third, to reflect the abolition of remission. So legislation was enacted requiring Judges and Magistrates imposing prison sentences in respect of penalty provisions enacted before 2003 to reduce the sentence which they would otherwise have imposed by one-third.

I make no criticism of the government for passing this legislation. However, the legislation did have the consequence that when the Criminal Code, or any other statute, stipulates the maximum penalty of imprisonment in a provision that was enacted before 2003, the maximum sentence actually available to be imposed is one-third less than that stipulated in the statute. This is capable of creating the wrong impression in relation to the severity of the sentence actually imposed.

There are other aspects of the sentencing process in which the options available to the court are constrained by law. One of those aspects is parole. If a court decides that a person should be made eligible for parole, in order that their return to the community can be supervised, the portion of the sentence during which that person is to be eligible for parole is not within the discretion of the court, but is stipulated by statute, being half the sentence imposed up to a maximum of 2 years.

Again, I emphasise that in drawing attention to these statutory provisions, it is not my intention to criticise the government in any way, but merely to point out that anyone evaluating the performance of a Judge or Magistrate when passing sentence, needs to know the legal constraints to which they are subject. Other constraints include the need to give effect to the mitigating factors specified in the *Sentencing Act*, such as the need to give a substantial discount for an early plea of guilty, and the need to give credit for a good prior record. So, when the "truth in sentencing" legislation is combined with the need to give credit for mitigating factors, it will often be the case that the effective maximum which a court is able to impose lawfully may be as low as one-third of the maximum specified in the statute book.

The courts are keen to improve the level of information available to the public on these issues. Accordingly, the Supreme Court has resolved to publish the observations made by the Judges of that Court at the time of passing sentence on the Court's website, as soon as possible after sentence is passed - hopefully on the same day. In this way, anyone with an interest in the reasons why a particular sentence was imposed, can review all those reasons if they wish, rather than be confined to a necessarily brief media report.

Our desire to take this step is reinforced by a number of studies which have shown that when members of the public are given all the information which was available to the sentencing Judge, without being told the sentence actually imposed, and are then asked to impose a hypothetical sentence themselves, they are significantly more likely to arrive at a sentence which is more lenient than that actually imposed by

the Judge (see for example, the recent study by Austin Lovegrove of the University of Melbourne [2007] Crim LR 769).

The publication of sentencing remarks on the internet is one of the ways in which we are trying to use modern media to improve access to our courts. Another way is by increasing access to broadcasters. In that regard, during the last year, the Supreme Court entered into an arrangement with Channel 7 for the recording and broadcast of sentencing hearings, and the passing of sentence upon persons who are featured in its programme "The Force".

The Courts

Intercollegiate co-operation

Before making some brief observations relating to each individual court, I would observe that a very significant feature of the activities of the courts of the State over the last year has been the intercollegiate co-operation between those courts. That co-operation has manifested itself in a number of ways. The first is the monthly meeting of all Heads of Jurisdiction with senior members of the Attorney General's department. Issues of common interest are considered and addressed on an intercollegiate basis. As a result of those meetings, a number of joint approaches have emerged in relation to issues of common interest, including the possible creation of a Judicial Commission and the possible revision of the processes for the administration of our courts through the creation of an administrative authority under the control of the judiciary and independent of executive government. Under current arrangements, the judiciary lack the authority to direct how the courts in which they sit will be administered, which is not only quaint, but also inefficient. As I

reported last year, submissions have been made to government on both of those topics, and the response of government is awaited.

Other joint initiatives include the development of a combined courts programme for continuing judicial education.

Indigenous Justice Taskforce

During the last year we have also seen how an intercollegiate approach can confer real benefits for the administration of justice. As I have already mentioned, around the middle of last year, we became aware of a vast increase in the number of cases of sexual assault arising in the Kimberley. This increase was a result of significant numbers of communities in the Kimberly having real access to police and other services, which many of us take for granted, for the first time as a result of the Government's implementation of the recommendations made by the Gordon Inquiry. It was critical that this very significant initiative not be diluted by the inability of the judiciary to respond in a timely way.

Accordingly, with the support of my judicial colleagues, I created the Indigenous Justice Taskforce, which includes representatives of all relevant courts, the police, the Director of Public Prosecutions, the Aboriginal Legal Service, the Legal Aid Commission, the Attorney General's department, and the Department of Corrective Services. The Taskforce meets frequently and has compiled a database of all the relevant cases and tracks the point in the system which is reached from time to time by each of those cases. Through this means, we are able to effectively deploy judicial and other resources to streamline the passage of those cases through the system, and through the diligent co-operation of all relevant agencies, to ensure that there are no unnecessary hold-ups.

Even though all these cases are within the jurisdiction of the District Court, because of the strain already imposed upon the judicial resources of that court, it was agreed that the Supreme Court would supply the Judges necessary to deal with the cases, for the time being at least, although the District Court judges will be hearing some of these cases in the new few months. During the months of April and May, Justices McKechnie, Jenkins, Murray, Blaxell and I will all be conducting hearings in the Kimberley with a view to moving these cases forward to an early conclusion. In fact, Justice McKechnie is sitting in the Kimberley today, which is why he is unable to be present this morning. Present indications are that the project is achieving its objectives. That would not have been the case but for the diligent co-operation of all agencies concerned, and I would like to take this opportunity to publicly express my appreciation to all those agencies for what has been an outstanding combined effort.

Transport of Persons in Custody Working Group

Following the tragic death of a prisoner in transit between Laverton and Kalgoorlie, again with the support of my judicial colleagues, I created a working group to address the general issue of the transport of persons in custody. The objective of that working group is to take all available opportunities to reduce the occasions upon which persons are transported from one place to another in custody, by changing the procedures applicable to the determination of issues relating to bail, and greater utilisation of telecommunication for bail hearings. While the working group is at a relatively early stage in its deliberations, changes have already been agreed in relation to the procedures relating to the consideration of bail in remote locations which are intended to facilitate

the determination of bail issues by a Magistrate without the person in custody necessarily being taken to the Magistrate.

I turn now to report briefly upon each of the Courts of the State, and the State Administrative Tribunal.

Supreme Court

Court of Appeal

Despite an unrelenting workload, the Court of Appeal has made steady progress in reducing the backlog of criminal and civil appeals, and the time lapse between a case being ready for hearing, and it being heard, is, in each jurisdiction, less than it has been for some time. Because of the priority given to criminal cases, we are now almost in the position in which the majority of criminal cases can be given a hearing date as soon as they are ready to be heard. The position is not so good in relation to civil appeals, and although it is better than it has been for some time, the delay in the hearing of those appeals is of continuing concern to President Steytler and I. In order to address that situation, judicial resources have been consistently deployed from the General Division to assist the Court of Appeal, and later this year it is hoped to substantially increase those resources over 2 months or so, with a view to making substantial inroads on the civil appeal backlog.

Criminal

The criminal jurisdiction of the Supreme Court remains in very good shape and, generally speaking, trials can be listed as soon as they are ready to be heard. The programme of voluntary criminal case conferencing, upon which I reported last year, has continued to expand, with the appointment of Kevin Hammond, formerly the Chief Judge of

the District Court and Corruption and Crime Commissioner to assist Ron Cannon in the conduct of conferences. The programme continues to achieve success in resolving cases without need for trial, or reducing the length of trial required, by resolving some of the issues.

A very significant innovation in criminal process in the Supreme Court was achieved during the last year, in the formation of the Stirling Gardens Magistrates Court. This Court, which sits in this building, is operated by two of this Court's Registrars serving as Magistrates. Every case within the jurisdiction of the Supreme Court is transferred to the Stirling Gardens Magistrates Court after its first mention, wherever the case might be throughout the State. The case can then be seamlessly managed by the Magistrates of this Court, in co-operation with the Judge in Charge of the Criminal List, with a view to the provision of early voluntary criminal case conferencing, and, if necessary, the provision of an early trial date. Through this means, we are aiming to list cases for trial, where a trial is necessary, about 6 months after the charges have been laid. If that timetable is achieved, it will be a significant improvement. The early indications are that we are likely to achieve that target. Once again, we are fortunate to have had the full co-operation of all agencies involved including the Director of Public Prosecutions and the Legal Aid authorities. I would like to record my appreciation for the substantial contribution which they have made to the early success of this project.

Civil

The civil jurisdiction of the Supreme Court remains in as good a shape as it has ever been. Generally speaking, cases can be listed for trial as soon as they are ready to be heard, and any significant delays in the delivery of judgment after trial have been eliminated. The Commercial and Managed

Cases List continues to grow, and appears to have been successful in encouraging the significant reduction of interlocutory disputes and the early disposition of cases either by mediation or trial.

Disappointments

However, the last year has not been without its disappointments. Prominent amongst them has been the substantial delays which have been encountered in progressing the project relating to the revision and re-enactment of the *Supreme Court Act*, which has been bogged down within government for most of the last year. Despite the long overdue need for a government commitment to the resolution of the accommodation difficulties which this Court has experienced for the last 17 years, and which have been the subject of continuing agitation by my predecessor and I, we still do not have any commitment by government to provide the resources necessary to satisfactorily resolve that issue. However, we cannot and will not give up on that project, and will continue to do whatever we can to persuade government of the need to properly house the State's highest court.

Another disappointment has been our failure to make faster progress in using modern technology to improve public access to the proceedings in our courts by the publication of sentencing remarks on the internet and improving access to broadcasts of proceedings in our courts. Progress in improving public access to our courts by providing court forms electronically, and allowing them to be filed electronically, has been slower than we would have liked due to lack of resources. We now lag significantly behind other jurisdictions in this area. However, we continue to pursue improvements in these areas.

District Court

Civil Trial Preparation Project

In July 2007, the District Court implemented its reform of the Civil Trial Preparation process. This reform, which followed a significant consultation process with the legal profession and other stakeholders, is designed to improve the quality of trial preparation and reduce costs to litigants by:

- Discontinuing the requirement for parties to file documents no longer considered useful;
- Changing the timing certain documents are filed in order to reduce or avoid the need for rework by parties;
- Enhancing trial management of expert evidence; and
- Improving the way in which court files are prepared for trial Judges.

The Court is monitoring project outcomes and will make any required adjustments.

Criminal Listing Project

In 2006, the Court initiated the Criminal Listings Project in response to unacceptable criminal trial delay. Since then, the Court has reviewed its operations, and those of relevant interstate courts, and developed a raft of strategies designed to reduce delay. These reforms, which comprise a total rethink on how the Court manages its criminal business, are currently being implemented and include:

- Minimising the use of Judges in non-trial hearings and appointing non-criminal commissioners in order to divert Judges to criminal trial work;

- Streamlining criminal case management and setting new speedier standards for the completion of pre-trial obligations; and
- Enhancing hearing support and streamlining paperwork to enable the court to hear more cases in less time.

The Court is confident these strategies will reduce trial delay.

New Building

The District Court is about to relocate to its new headquarters in a purpose-built court complex that offers significant service improvement for clients. The new complex includes a high security court room, more jury and video courts, and high quality facilities for all court users, the judiciary and court staff.

This year the Court has spent significant time planning to ensure a seamless relocation to the new building, which will occur next month.

Magistrates Court

The Kimberley

One of the most difficult problems addressed by the Magistrates Court over the past year has been the inadequacy of judicial resources available to deal with the increasing number of cases arising in the Kimberley region. The vastness of the geographic area of that region, and the size of the caseload has made it impossible for a single Magistrate to adequately service that region. It is therefore pleasing to record the commitment of the government to the appointment of an additional Magistrate to service the area of the East Kimberley. However, that additional judicial resource will only provide the minimum judicial resources required to discharge the caseload of the court in the conventional way. It is, I think, doubtful that even with the additional Magistrate, there will be sufficient

judicial resources to provide the more time intensive processes required in order to conduct Aboriginal Community Courts in the Kimberley region. The apparent success of the Community Court in Kalgoorlie strongly suggests that similar benefits could be achieved in other parts of the State with significant Aboriginal populations, including the Kimberley.

Another problem area for the Magistrates Court has been the south-west where a large increase in population, not matched by an equivalent increase in magisterial resources, has resulted in unacceptably long delays for hearings.

There have also been difficulties in providing staffing for courts in regional areas, particularly those in mining regions. The more generous salaries and conditions offered by the resource industry has made it difficult to retain or recruit suitable staff in those locations, and has led to an unavoidable reduction in the level of service that the court has been able to provide. The scarcity of accommodation in those areas has also made circuits and the provision of relieving Magistrates extremely difficult.

On a more positive note, I have already referred to the apparent success of the Kalgoorlie Community Court. The expansion of Family Violence Courts within the metropolitan area has seen these courts commence operations at Fremantle, Rockingham and Midland. Courts will commence in Armadale and Perth before the end of the year. The Family Violence Court has also commenced operations in Geraldton. Each of the Family Violence Courts has been supported by an Aboriginal Reference

Group which has assisted in the development of culturally appropriate procedures and programmes.

The Perth Drug Court recently introduced a special Aboriginal list using less formal procedures, with a view to encouraging more Aboriginal participation in that court.

During the last year, a third Magistrate was appointed to the Kalgoorlie region, to enable better servicing of the Aboriginal communities within that region, and to permit the necessary level of engagement with Aboriginal communities with a view to the development of further Aboriginal Community Courts within that region.

Children's Court

The work of the Children's Court in both its criminal and protection care jurisdictions has continued to increase. The number of sentences passed by the President of the Children's Court in 2007 was up by 47% compared to 2003. This is an indication of a significant increase in the seriousness of the cases coming before the court. Over the same period, criminal cases dealt with by Children's Court Magistrates increased by 32%. Notwithstanding these increases in caseload, the Court continues to dispose of its cases in a timely fashion.

In the care and protection jurisdiction, the number of applications increased 45% over the last year, having almost doubled the year before.

The number of Aboriginal children in detention, both on remand and under sentence, continues to be unacceptably high. Aboriginal children represent about 70% of children sentenced to detention, and about 80% of

the population of each of the two juvenile detention facilities (the increment being due to children on remand).

In March of this year, the President of the Children's Court convened a workshop for a number of government agencies interested in the work of the Court, including the Juvenile Justice Section of the Department of Corrective Services, the Departments for Child Protection, Education, Health, Sport and Recreation, Police, Indigenous Affairs, and Outcare and Mission Australia. The purpose of the workshop was to endeavour to obtain agreement by all agencies to work together in an holistic way for the delivery of programmes and supports to young offenders and their families. That objective was achieved.

The change of approach following the workshop is aimed at better addressing the causes of criminal behaviour. A wrap-around scheme providing greater care and management of juvenile offenders is now being piloted with all agencies working together to provide a package of programmes and supports in relation to that scheme.

The number of juveniles on remand has increased significantly over recent years. About 60% of children in custody are now on remand. In 2003, the equivalent percentage was 32%. The Children's Court has taken steps to reduce the number of children remanded in custody, including convening on weekends to hear bail applications. However, there is a pressing need for the provision of more hostel accommodation and crisis care for children and the increasing use of diversionary procedures including cautions and juvenile justice teams.

The Court has issued a Practice Direction preventing children from being removed from their communities and from being transported from rural Western Australia to Perth, unless a decision to refuse bail has been made by a Judge or a Magistrate. Bail hearings will be heard by video link or telephone by local Magistrates, or by a Judge or duty Magistrate based in Perth if the local Magistrate is unavailable.

The building of the Children's Court in Perth is to have extra video link facilities installed. This will better enable bail applications to be heard, and will also facilitate family members located in country Western Australia observing and being included in the court process when young offenders are being sentenced in a courtroom in Perth. These facilities are also being used to avoid children in detention being required to attend court for remand hearings, and to facilitate the involvement of adults in custody in care and protection proceedings in which they may be involved.

The Children's Court has participated in the Indigenous Justice Taskforce and has responded to the significant number of young persons who have been charged with sexual offences in the Kimberley. Sittings will be held in Kununurra and Broome in June of this year in order to conduct trials on the basis of a rolling list. As with adult offenders, there has been excellent co-operation between the Director of Public Prosecutions and the Aboriginal Legal Service in the proper management and preparation of these cases, and I would like to express my appreciation to those agencies for their assistance.

The operation of the Children's Court is facilitated by the excellent work and the co-operation between the Office of the Director of Public

Prosecutions, the Aboriginal Legal Service and the Legal Aid Commission, together with members of the private profession. The contribution of the Legal Aid Commission to the care and protection jurisdiction of the Court has been vital. That Commission represents respondents from the start of proceedings and actively negotiates with the Department for Child Protection. Work is progressing in relation to a programme of pre-application mediation, which has the potential to reduce the number of cases going to court and through this means, provide benefits to both parents and children.

Following last year's drug summit, funding was approved for a second case worker to assess and manage young offenders on the Children's Court Drug Court programme. As a result of that additional resource, there is potential to expand that programme. The Court is particularly keen to ensure that young Aboriginals are given the opportunity to engage in intensive substance abuse rehabilitation.

Family Court

The major change in the family law jurisdiction has been the commencement in July 2007 of legislation requiring many potential litigants to attend family relationship centres for mediation prior to being able to commence proceedings in the Court. Whilst this is a most worthwhile initiative, regrettably, it has not produced the significant reduction in filing of matters which some anticipated when the legislation was introduced. The new legislative requirements do not apply to families where there have been serious issues relating to child abuse or domestic violence and, regrettably, such cases form a substantial proportion of the workload of the Court.

The Court has continued to refine its Child-Related Proceeding model, which is an innovative case management system applied to all cases involving issues relating to children. Every matter is now individually case-managed by a judicial officer in collaboration with a designated family consultant (formerly known as counsellors). Each family is also assigned a nominated case co-ordinator who is the first point of reference in the Registry. The Court commissioned an independent evaluation of the model, which has recently been completed. The report of the evaluation provides overwhelming support for the model from clients and other stakeholders.

There continues to be international interest in the court's case management system. Judicial authorities in Singapore have requested that all of their Family Court Judges be attached to the Family Court of Western Australia for a week each during 2008. Chief Judge Thackray and Ms Kay Benham, the Director of Court Counselling, have been invited to Singapore to provide training to judicial officers, family counsellors and the local legal profession on key features of the Family Court's case management system.

The Court has obtained funding for the employment of two Indigenous Family Liaison Officers to provide advice and assistance in cases involving indigenous families with family law problems. The Court has been successful in attracting two well-qualified officers who have already been involved in a number of cases in the Perth Registry, as well as accompanying Magistrates and consultants on country circuits.

A matter of major concern to the Court is that Western Australia receive its fair share of the national Family Law budget. The Court has faced a

severe funding shortage during the course of 2007/08 and has yet to learn whether there will be review of its baseline funding. The matter is receiving the active attention of the new Federal Government, but the Court is particularly concerned to ensure that sufficient funds are received to engage the additional family consultants recommended by the evaluation of the Child-Related Proceedings model, as well as to improve the level of services provided to the growing population in the south-west region of the State.

State Administrative Tribunal

The State Administrative Tribunal exercises jurisdiction under 143 enabling Acts of Parliament, as at 30 June 2007. Applications lodged with the Tribunal increased by 6% in the 12-month period ending 30 June 2007. The Human Rights stream of the Tribunal, which principally deals with guardianship administration and discrimination cases, accounts for about 48% of all applications made to the Tribunal. In the 12 months to 30 June 2007, the average time of finalisation of those cases, from lodgement to completion of an application, was 53 days.

The Development and Resources stream, which principally deals with central and local government decisions regarding planning, development and resources, and which also hears matters related to land valuation and compensation, accounts for about 9% of all applications to the Tribunal. In the 12 months to 30 June 2007, the average time from lodgement to completion of an application in this stream was 175 days.

The Vocational Regulation stream, which principally deals with occupational misconduct, accounts for 4% of all applications to the

Tribunal. In the 12 months to 30 June 2007, the average time from lodgement to completion of an application was 148 days in that stream.

The Commercial and Civil stream, which principally deals with strata title and retirement village disputes, commercial tenancy and credit matters, and which reviews State revenue decisions, accounts for about 39% of all applications to the Tribunal. In the 12 months to 30 June 2007, the average time for lodgement to completion of an application in this stream was 40 days.

During the last year, the Tribunal has announced its sponsorship of the Vista Public Lecture Series, under the patronage of His Excellency the Governor. During the series, a number of outstanding Western Australians will address public lectures on topics of community importance. This is part of a very strong community relations programme conducted by the Tribunal.

The jurisdiction of the Tribunal is likely to steadily expand, as new jurisdiction is regularly conferred upon it. This will necessitate the identification of new premises and additional members of staff and further resources for the Tribunal to enable it to maintain its current performance benchmarks into the future.

Coroner's Court

During the last financial year, the Coroner's Court received 2,341 cases.

Over the last 12 months, the Coroner's Court conducted significant hearings into multiple deaths. In one of those hearings, the State Coroner held an inquest into 22 deaths of Aboriginal persons in the Kimberley.

The inquest was held to explore the reasons for a large of number of deaths which appeared to have been caused or contributed to by alcohol abuse or cannabis abuse, and was intended to identify reasons for an alarming increase in suicide rates. Following public hearings of the Court, which attracted and raised significant public attention, the findings and reasons of the Court were delivered on 25 February 2008. The report contained 27 recommendations made with a view to reducing the number of avoidable deaths. The government has announced its response to that report.

Another of the public hearings into multiple deaths responded to issues raised with the Court concerning problems experienced by suicidal persons in relation to accessing mental health facilities. The Deputy State Coroner held an inquest into four deaths in such circumstances. That inquest is not yet complete. That inquest also closely reviewed the circumstances of other deaths, including five particular deaths, which had been finalised administratively. The inquest is addressing important issues of risk assessment, adequacy of facilities, discharge, planning and communication with families and carers of the mentally ill.

Also during the last year, it was decided by government that there should be an extensive review of the Coroner's Court and coronial practices, and in November 2007, a reference dealing with that topic was given by the Attorney General to the Law Reform Commission of Western Australia.

Summary

As one might expect with a system as complex and multi-faceted as our justice system, the last year has seen a number of achievements, and some

disappointments. Happily, I am convinced that the former outweigh the latter. I am sure the year ahead will bring many challenges, but the effective intercollegiate co-operation between the various courts and agencies involved in our justice system which we have seen over the last year, inspires confidence that we are well equipped to meet those challenges.