FROM ACCESS TO JUSTICE TO MANAGING JUSTICE: THE TRANSFORMATION OF THE JUDICIAL ROLE

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INTRODUCTION

The core functions of the Australian judiciary have changed little since colonial times. Their task is to decide cases impartially, fairly and according to law. So long as the *Constitution,* with its guarantee in Chapter III of an independent judiciary, remains in force the courts will continue to perform that task. Partly because their core functions have not altered over time, they are widely perceived to be unresponsive to, if not immune from the tumultuous changes that have affected the social and economic structure of the country.

As is so often the case, public perception and reality are at odds. While the core functions discharged by the judiciary remain intact, the **manner** in which those functions are discharged has been transformed. Moreover, the transformation has occurred over a very brief period of time. The courts have responded to insistent demands

for greater "access to justice" by accepting responsibility for tasks that would have seemed alien to the judicial role only two or three decades ago. Indeed the extent of change has been such that its significance is not fully appreciated within the judiciary itself.

The most obvious and frequently noticed change is that Australian courts now actively manage their caseloads. Case management, recently enthusiastically embraced in the United Kingdom, requires the courts to accept onerous managerial responsibilities. Hence the new catchphrase, "managing justice". But the transformation of the judicial role goes well beyond case management and its implicit rejection of the laissez-faire model of adversarial litigation. The courts have accepted new and expanded notions of accountability, some of which are bound up with the principle of consumer orientation. These notions impose further responsibilities on the courts, and expose the judiciary to greater scrutiny than the traditional accountability mechanisms associated with "open justice". And, as the courts accept greater responsibilities for administering the justice system, the traditional judicial reticence to participate in public debate about the workings of the courts will become unsustainable.

Some have lamented these developments, but they are unlikely to be reversed. On the contrary, the process of transforming the judicial role from passive decision-maker to accountable manager of the justice system is very likely to continue. Rather than attempt to stem the tide, energies should be directed to the fundamental task: to identify what is essential to the discharge of core judicial functions and what is not.

THE ACCESS TO JUSTICE REPORT

Aspirations and Sub-Themes

In 1994, in an article published shortly after the release of the report of the Access to Justice Advisory Committee ("AJAC"),[1] I commented on the curious fact that public concern about Australia's judicial system appeared to have peaked just as the judiciary was undergoing a process of far-reaching change.[2] That concern reflected a widespread community belief that the court system was costly, inaccessible and beset with delays.[3] The AJAC itself had been established by the Commonwealth Government in response to what the Minister for Justice described as a "crisis of confidence" in the institutions, including the courts, fundamental to the rule of law in a democratic society.[4] While at the time it might have been thought that the Minister's somewhat apocalyptic language could be dismissed as standard political rhetoric, the sentiment was echoed three years later by the then Chief Justice of Australia who lamented that the "system of administering justice [was] in crisis".[5]

The *Access to Justice Report* responded to the somewhat alarming spectre of a justice system apparently on the verge of collapse, by formulating lofty aspirations as a guide to a national strategy for improving "access to

justice". It identified three principal objectives that had to be pursued. The first was equality of access, meaning that

"[a]ll Australians, regardless of means, should have access to high quality legal services or effective dispute resolution mechanisms necessary to protect their rights and interests."[6]

The second objective was "national equity", in the sense that

"Australians should enjoy, as nearly as possible, equal access to legal services and to legal services markets that operate consistently with the dictates of competition policy".[7]

The final objective was equality before the law. This expression was interpreted as requiring positive measures to overcome discriminatory attitudes and practices within the justice system, in particular towards women and indigenous people.[8]

In keeping with these broad objectives, the *Access to Justice Report,* unlike the Woolf Report in the United Kingdom,[9] chose not to focus exclusively on reforms to court procedures. The national strategy proposed in the *Report* addressed a diverse range of issues such as the regulation of the legal services market in the light of competition principles, the restructuring of legal aid, alternative sources of funding for litigation, the promotion of alternative dispute resolutions mechanisms and consumer complaint schemes. Nonetheless, the *Report* did consider a number of topics specifically concerned with the operations of the courts, including chapters on "Courts and the Community" and "Efficient Civil Court Procedures".[10]

The *Access to Justice Report* identified two sub-themes or principles of particular significance to the role of the courts in enhancing access to justice. The first was described as the "principle of accountability".[11] The principle was said to apply to the courts because they "perform services for the public and utilise public resources". The *Report* noted that the courts themselves had recognised the principle by publishing their major objectives and reporting on their performance in meeting those objectives. It observed, however, that unlike other public institutions, the accountability of courts must be reconciled with the principle of judicial independence, a concept fundamental to the rule of law and to the maintenance of a democratic system of government in Australia. The problem was how to reconcile the two principles.

The second sub-theme identified in the Report as of particular significance to the courts was the desirability of adopting a "more consumer-oriented approach". This was said to reflect a principle that the legal system, including

the courts, should be more responsive to the needs and expectations of people who come into contact with the judicial system. So far as courts and tribunals are concerned, the principle of consumer orientation implies that

"special steps must be taken to ensure that courts and tribunals take (or continue to take) specific measures both to assist people to understand the way those institutions work and to improve the facilities and services available to members of the public. These steps require sensitivity to the needs of particular groups such as child carers and non-English speaking people."[12]

While the *Report* might be thought to have encouraged expectations that would be difficult for the court system to satisfy, it accepted that there are limitations on the capacity of reforms to meet community expectations for change in the justice system. The focus of public discontent is largely on the court system, yet it is

"often simply impossible for courts to resolve disputes not only fairly, but cheaply and swiftly".[13]

The *Report* identified a tension between the goal of fairness and the goal of swift decision-making:

"Fairness...has its price, both in terms of cost and delay. Of course, unfairness may have an even greater price".[14]

The *Report* also acknowledged that there is no single solution to the problems of delay and expense in the resolution of disputes:

"Hard fought litigation, whether between large corporations or between spouses locked in bitter conflict over custody or property claims, is likely to be expensive, at least when compared with the usual expenses of everyday life. Litigation is labour intensive and legal representation costly. This is not to say that the system cannot be substantially improved, for example, by the use of techniques of case management in the courts and by lawyers operating within a more competitive legal services market. It does mean, however, that even major improvements will not necessarily satisfy expectations that litigation should be swift and inexpensive in most, if not all, cases."[15]

Proposals for the Courts

The *Access to Justice Report* drew attention to the "quiet but enormously significant revolution" that had occurred in the higher courts, as they had moved away from a laissez-faire approach to the conduct of litigation in favour of a more interventionist role in managing their workload.[16] The *Report* considered that active case management, together with procedural reforms designed to encourage early disclosure of evidence and maximise opportunities for settlement, would be likely to decrease the cost of civil litigation, provide flexibility in the ways in which courts

resolve disputes, promote early settlement and utilise scarce court resources more effectively.[17]

The *Report* recommended continuation of the process of procedural reform, including the development of case management techniques.[18] This recommendation was accompanied by a proposal that the Commonwealth and the States provide the resources necessary to enable the Australian Institute of Judicial Administration ("AIJA"), in conjunction with the courts and with independent research agencies, to conduct and publish evaluations of procedural innovations. In addition, the *Report* recommended the establishment of, and support, for a statistics collection program to identify best practice court procedures.[19]

The *Report* noted another important development that had taken place within the Australian court system. Courts had acknowledged the drawbacks of an approach which focussed more or less exclusively on the convenience of judges, court staff and lawyers. In consequence, they had taken steps to implement the principle of consumer orientation. They had developed strategies, for example, to ensure that court staff were aware of equity and cross-cultural issues, that language barriers were be addressed and that the physical facilities in court buildings were adequate to meet the diverse needs of parties, witnesses, jurors and their family members. Some courts had published performance standards and information showing the extent to which the standards had been met in practice. In certain instances, the published standards related to **judicial** performance, for example, by specifying the time span within which reserved judgments should ordinarily be delivered or targets for disposing of particular categories of cases. The *Report* expressed the view that courts and tribunals should publish more comprehensive and specific performance standards and report regularly on the extent to which they have been achieved. It accepted that such standards had to be consistent with the principle of judicial independence, but considered that the best way to ensure that the principle was not impaired was for the judges themselves to prepare the necessary standards as part of their responsibility for the effective and efficient administration of the court system.[20]

Encouraged by the example of the *Courts Charter for England and Wales,* published by the Lord Chancellor, the Attorney-General and the Home Secretary,[21] the AJAC recommended that each federal court and tribunal should develop and implement a charter specifying standards of service to be provided to members of the public coming into contact with the court or tribunal.[22] The *Report* proposed that each court charter should deal with standards of judicial performance, including timeliness in bringing matters on for hearing and in the handing down of decisions. Once an appropriate set of standards had been developed and published as a court charter, the standards were to be reviewed annually.[23]

The proposed charter was also to set up complaints handling procedures and methods for drawing the existence of these procedures to the attention of members of the public. Although the recommendation did not specifically state that these procedures should include the handling of complaints about judges, the *Report* makes it clear that this was contemplated. The precedent the AJAC had particularly in mind was the Family Court's *Policy on Handling of Complaints and Representations,* which provided for complaints about judicial officers to be addressed by the Chief Justice of the Court.[24]

The *Report* identified judicial education as another issue of particular significance for the work of the courts and for promoting access to justice. It described the development of judicial education programs in this country as in its "infancy".[25] Nonetheless, the *Report* recorded that the AIJA had undertaken important educational initiatives, especially in the areas of gender equality and aboriginal cultural awareness, and that the AIJA and the Judicial Commission of New South Wales were planning to conduct an orientation program for newly appointed judge and magistrates.[26] The *Report* proposed that the Commonwealth should explore, in conjunction with the States, the possibility of establishing an independent national judicial education centre.[27]

What is significant about the three areas identified in the *Access to Justice Report* - court procedures, court charters and judicial education - is that the courts themselves were the principal architects of change. Case management in Australia was not imposed on courts in consequence of recommendations made by an external inquiry. Rather, it evolved in response to the pressures created by expanding judicial workloads and to the realisation that the culture and attitudes of lawyers and litigants required change if delays, in particular, were to be substantially reduced. Similarly, courts and tribunals themselves recognised that they had to take measures to improve the levels of service provided by their staff to members of the public. In the case of judicial education, while the AIJA and the Judicial Commission of New South Wales made substantial contributions to the development of new programs, the concept could not have been successfully introduced without the active support and involvement of the judiciary. The *Report* explicitly recognised that change in the justice system is an ongoing process in which the courts must play a very important role.

The *Access to Justice Report* did not explain why the courts should have apparently suddenly emerged as the instigators of significant change in the justice system. Doubtless there is no single explanation for the courts embracing a hitherto unfamiliar role. One motivating factor was a belated recognition that governments were no longer prepared (if they ever were) to accept that the endemic problem of delays and excessive costs in litigation could be cured simply allocating more resources to the courts and, in particular, by appointing more

judges.[28] The creation of new courts, such as the Federal Court of Australia and the Family Court, which were relatively free to develop their own procedures and institutional cultures, played a part in the process. So, too, did the fact that the Australian judiciary rapidly expanded in the 1970s and 1980s, bringing a new generation of judges to the task of adjudication.

Another important factor - perhaps the most important, at least at federal level - was the transfer of responsibility for court administration from the executive to the courts themselves. While judicial self-governance was at first confined to federal courts and tribunals (commencing with the High Court in 1979[29]), and even now has not been extended to most State courts, it inevitably brought with it a greater sense of institutional accountability on the part of courts exercising self-governance. It is very difficult for a court to avoid addressing public concerns about excess delays or the disproportionate costs of litigation if that court is responsible for its own administration. It is no coincidence that the advent of judicial self-governance coincided with the courts being prepared to rethink their own role in the administration of justice.[30]

The Aftermath: The *Justice Statement*

The *Access to Justice Report,* which was prepared in under six months, was intended to provide an "action plan" capable of early implementation. A number of the recommendations were in fact implemented through the then Government's *Justice Statement,* announced in May 1995.[31] Not surprisingly, the rhetoric that accompanied the *Justice Statement* matched that employed by the Government at the time the AJAC had been established. Hence the Prime Minister characterised the policy measures as a "wide-ranging national strategy to create a simpler, cheaper and more accessible justice system".[32] The *Justice Statement* specifically endorsed, among other things, court charters, active management of litigation by courts and tribunals, benchmarking as a means of enabling courts to measure their efficiency and effectiveness and professional development programs for judges.[33] Funds were allocated to enable further work to be done in these areas by courts and tribunals, assisted by bodies such as the AIJA.

The *Justice Statement* was of course a political document and not all of its initiatives have been carried through.[34] It is, however, significant that a Commonwealth Government was prepared to fund court-initiated programs on strategies designed to reduce delays in the justice system and enhance the quality of services provided by the courts to members of the public. Subsequent developments have indicated that support of this kind is not confined to one side of the political divide.[35]

TOWARDS MORE REALISTIC EXPECTATIONS

The *Access to Justice Report* was but one of an

astonishing number of reports prepared in Australia in the 1980s and early 1990s on the theme of access to justice by Parliamentary committees, government-appointed bodies, law reform commissions and independent agencies.[36] Since 1994, the flow of reports has continued largely unabated, culminating (for the time being) in the ALRC's report on *Managing Justice,* published in 2000. The intense interest in access to justice in this country reflected and, to some extent, influenced developments in other common law jurisdictions. Official reports in the United Kingdom, Canada and Ireland proposed sweeping procedural reforms to overcome civil justice systems beset by problems of delay, cost and inaccessibility attributable, according to Lord Woolf's report, to "the unrestrained adversarial culture of the present system".[37] Each of these reports stated the objectives of the civil justice system in expansive terms. Lord Woolf, for example, identified a number of principles which the civil justice system should meet in order to "ensure access to justice". In his view, the system should aspire to

*"(a) be **just** in the results it delivers;*

*(b) be **fair** in the way it treats litigants;*

*(c) offer appropriate procedures at a reasonable **cost;***

*(d) deal with cases with reasonable **speed;***

*(e) be **understandable** to those who use it;*

*(f) be **responsive** to the needs of those who use it;*

*(g) provide as much **certainty** as the nature of particular cases allows; and*

*(h) be **effective:** adequately resources and organised."*[38]

The terms of reference for the ALRC's inquiry required it to review the adversarial system of conducting proceedings before federal courts and tribunals. The ALRC was to have regard, *inter alia,* to the need for a "simpler, cheaper and more accessible legal system" and the (then) Government's *Justice Statement.* The terms of reference did not explicitly state that the justice system or the adversary system was in crisis, but they can certainly be read as implying that such was the case.

The ALRC makes an important contribution to the debate about the civil justice system by rejecting what seems to be the conventional view that the system is in deep crisis and that it cannot survive without drastic change. In *Managing Justice,* the ALRC identifies a number of important problems with the system, but expresses the firm view that the problems, although difficult, are not irremediable. Indeed, the ALRC, concludes that its extensive empirical research

"indicated that much of the system performs better than many of the institutional participants believe and the anecdotal 'common wisdom' suggests".[39]

The ALRC accepts that there are dangers in the perception that the civil justice system has such deep-seated and intractable flaws that urgent and far-reaching remedies are required for its salvation. These dangers include importing solutions from the jurisdictions without sufficient analysis of the legal and social culture of which they form part and without an appreciation of the difficulties of transplanting the solutions to a different environment.[40]

Equally important is the ALRC's debunking of the widely accepted belief that the critical policy choice facing reformers is whether to jettison the adversary system in favour of an "inquisitorial" or non-adversarial model.[41] This belief generally rests on an assumption that the two "systems" function in very different ways and that the procedures and techniques employed by civil courts bear little resemblance to those of the common law courts. The fundamental difficulty with this dichotomy is that so-called adversary and inquisitorial systems have a great deal more in common than a superficial comparison might suggest. Thus Professor Zuckerman, in an analysis cited by the ALRC,[42] rejects the persistent belief that civil law procedures are inquisitorial or judge controlled, whereas common law procedures are adversarial and party controlled, even as a matter of theory.[43] He suggests that the clearest trend to emerge from surveys of the civil justice system of three common law jurisdictions and ten civil law countries is

"a general tendency towards judicial control of the civil process....

The contemporary dominant view is that the disruptive self-interest of parties and their lawyers can only be kept at bay by an active judiciary that directs the litigation process...".[44]

In short, civil and common law systems in practice share many characteristics, while systems that are usually classified under the one rubric incorporate quite divergent features.[45]

The ALRC recognises that any good dispute resolution process, whether delivered by courts, tribunals or alternative dispute resolution mechanisms, must include "an element of individualised justice".[46] Inevitably, therefore, there is a tension between the objectives of expedition and cost minimisation, on the one hand, and the constraints imposed by the requirements of procedural fairness and principled and just outcomes, on the other. The tension is intensified when it is recognised that the courts, for constitutional and other reasons, perform functions other than the resolution of particular disputes, such as maintaining the rule of law, protecting individuals against unlawful actions by the executive government and formulating principles for the resolution of future disputes. Moreover, the Courts must perform these functions in

accordance with the principles of open justice, a process that is necessarily labour-intensive and time-consuming.

The key to determining what is desirable and feasible in the justice system is what the ALRC describes as the "proportionality principle": the idea that the procedures and resources dedicated to the resolution of a dispute should be proportionate to the value, importance and complexity of the dispute.[47] This does not mean that "value" or "importance" is to be assessed solely by reference to monetary value of what is at stake in the litigation. But it does mean that an objective of the civil justice system should be to ensure that the resources required to resolve a dispute are proportionate to the issues at stake. It follows, as the ALRC observes, that the

"task is to strike an effective balance between the concerns for individualised justice and for efficient use of limited public resources across the system." [48]

The balancing exercise must take account of the private resources devoted to litigation, if only to minimise the risk that an unjust outcome will occur because one party is substantially better resourced than the other.

CONTINUATION OF TRENDS

Case Management

Since publication of the *Access to Justice Report* (although not necessarily by reason of that fact) case management seems to have been accepted as virtually an article of faith by all Australian courts, civil and criminal.[49] In a recent discussion paper, Peter Sallmann and Richard Wright comment that

"[m]odern caseflow management and so-called managerial or interventionist judging [have] revolutionised the litigation process."[50]

They point out that Australian courts, although initially influenced by delay reduction programs in the United States, have been far quicker than their counterparts in the United Kingdom, Canada and New Zealand to adopt the principles of caseflow management. The authors identify seven necessary ingredients of caseflow management:

- *court supervision and control from filing to disposition;*
- *time and clearance standards for overall disposition;*
- *times for conclusion of critical steps in litigation, including discovery;*
- *early identification of long or otherwise potentially problematic cases;*
- *trial setting policy which schedules an appropriate number of cases to ensure the efficient use of judge time, while minimising the need to re-fix cases as a result of overs scheduling;*
- *commencement of trials on the original date scheduled with adequate advance notice; and*

- *firm consistent adjournment policies.*[51]

The concept of case management has been enshrined in practice notes and strategic plans published by Australian courts. For example, the Supreme Court of New South Wales Practice Note 120 (which replaces earlier practice notes) provides for a "Differential Case Management List" in the Common Law Division and sets out detailed procedure to be followed in the list.[52] The County Court of Victoria, in its current three year *Strategic Plan*, reports on the 1996 "Civil Initiative" which "effected a paradigm shift from party driven litigation to Judge managed litigation".[53] It also reports on the implementation of the *Crimes (Criminal Trials) Act 1999* (Vic), which requires the Court to undertake judicial management of criminal cases. The *Strategic Plan* identifies these objectives:

"

- *clarifying the issues and thus making trials more relevant and their conduct better controlled by trial Judges, thus reducing the complexity and length of matters;*

- *early identification of pleas of guilty;*
- *providing hearing date certainty; and*
- *reducing the backlog of matters."*[54]

The District Court of New South Wales, the largest trial court in Australia, has a Strategic Plan which commits the Court to the effective determination of cases in an orderly, cost effective and expeditious manner by

"

- *the ongoing development of criteria for case management which reflects time and other appropriate considerations and monitoring performance[; and]*

- *meeting its obligations in the operation of the court system without undue delay."*[55]

The Court's *Annual Review* publishes time standards for the commencement of hearings in the criminal jurisdiction and the disposition of cases in the civil jurisdiction, together with statistics measuring compliance with those standards.[56]

The Federal Court has carried case management one step further by introducing the individual docket system ("IDS"). As with the concept of case management itself, the individual docket system was introduced by the Court on its own initiative.[57] The ALRC reports in *Managing Justice* that there had been "unanimous positive feedback

in consultations and submissions about the operation of the IDS", reflecting the benefits that derive from the same judge dealing with a case from start to finish.[58] The ALRC identifies several areas of concern, notably the need for published guides that accurately record the practice of the Court and delays in securing hearing dates that could be experienced when a particular Judge's docket was overcrowded.[59] Nonetheless, the ALRC's consultations and submissions strongly support continuation of the IDS.

Although the ALRC carried out considerable empirical research in the course of its inquiry and emphasises the importance of such research to civil justice policy making, [60] it did not conduct a systematic evaluation of the IDS. To be fair, this omission was largely due to the fact that the Federal Court had set in train arrangements for an independent evaluation of the IDS to be carried out by the Justice Research Centre of the Law Foundation of New South Wales. That evaluation, based on interviews with judges, legal practitioners and court staff, has now been completed.[61] It is important to appreciate that the Centre's research does not attempt to evaluate whether the IDS has succeeded in its objectives of reducing case processing times and litigation costs.[62] Rather, it assesses the workings of the IDS based on interviews with participants in the system, including judges, administrators and lawyers. The evaluation, although confirming that there is widespread support for the Federal Court's IDS, paints a more complex picture than that portrayed by the ALRC. For example, the evaluation draws attention to the fact that judges and practitioners tend to have different perceptions of the objectives of IDS. The report also identifies practical difficulties, such as the problem of achieving equity in the distribution of workload among judges in a system in which each case is counted as a single unit. The evaluation highlights the importance of attempting to achieve uniformity in administration of the IDS, in particular by providing more precise information as to the various practices adopted by judges and the different registries of the Court.

The evaluation makes an important contribution to understanding the attributes and drawbacks of what it describes as "one of the most distinctive and significant models of case management to be found in an Australian superior court".[63] This is not to say that the evaluation has addressed all questions that deserve careful scrutiny. In particular, there has not yet been any systematic research designed to ascertain whether the IDS has materially reduced the costs and improved disposition rates in the Federal Court. But the Justice Research Centre's report illustrates that reform initiatives within the courts and independent evaluation of those initiatives go hand in glove. Intuitive judgments about the success or otherwise of new procedures are no substitute for a systematic, independent analysis of whether the objectives have been met.

The experience with the IDS in the Federal Court

reinforces three important points:

- first, any significant court reforms should be accompanied by a strategy for evaluating the extent to which the reforms achieve their stated objectives;
- secondly, the court introducing reforms must accept responsibility for ensuring that mechanisms are in place for an independent evaluation to be carried out; and
- thirdly, the process of review of procedural innovations is a continuing one, that must be informed by empirical evidence and not merely intuition.

These propositions are consistent with the ALRC's emphasis on empirical research as a means of assessing the practical impact of procedural reforms.[64] But they imply something more. The courts, having accepted case management as a strategy for reducing delays and costs in litigation, should accept a broader responsibility. They should do more than merely co-operate with sporadic studies undertaken by bodies such as law reform commissions or research institutes. As part of their own managerial responsibilities, they should be prepared to ensure that the procedures and practices they adopt are properly evaluated.

This does not mean that the courts themselves must carry out the necessary research. On the contrary, an independent evaluation of court procedures will ordinarily require external agencies to be involved, albeit usually in consultation with the relevant court. Moreover, it is necessary to recognise that although there has been a significant upsurge in empirical research into the justice system in recent years, much of it supported by the AIJA, this is not an area that has traditionally attracted a great deal of academic interest.[65] Furthermore, courts need to appreciate - as they often do not - that evaluation of procedural reforms is a complex and difficult process that raises as many questions as it resolves. Unless courts actively ensure that the procedural of case management and procedural reform is informed by empirical research, there is a substantial risk that the process either will not achieve its objectives or will generate unintended and undetected consequences.

Consumer Orientation

The principle of consumer orientation has been widely embraced by Australian courts, although it is fair to say that the embrace has not been as universal or wholehearted as that enveloping case management. Professor Parker's valuable study, *Courts and the Public,* [66] confirms that "all court systems in Australia are moving in the direction of consumer-orientation and a culture of service".[67] In some areas, such as the introduction of new technology and experimentation with procedural change, Australian courts are "arguably amongst world leaders". But, as Professor Parker argues,

some courts are moving considerably more quickly than others. As he points out, the process is made more complex by the fact that Australia does not have **a** court system, but "multiple hives of largely unco-ordinated activity". Moreover, although an "incipient culture of continuous improvement is evident in Australian courts...it is not matched by a culture of subsequent evaluation". In Professor Parker's view:

"Courts need to continue working on issues of internal culture and how they see themselves. In rather simple terms, they need to consider whether they are organised as 'Judges and Co' or along the lines of a 'whole court' approach where the focus of the organisation is all on doing justice whilst serving the public."[68]

While Professor Parker is correct to be cautious about developments, there is now a substantial literature in Australia which addresses the difficult issues raised by the principle of consumer orientation. In particular, a number of studies have addressed the question of performance standards.[69] A recent study, prepared for New South Wales Courts, argues, for example, that four basic principles should be followed in designing performance standards:

- *performance should be measured against goals fixed by the courts;*
- *the courts should set goals for themselves, in measurable terms;*
- *performance measurement should support management activity; and*
- *key performance indicators should be comprehensive, but also simple and as few in number as possible.*[70]

Many courts have acted upon these or similar principles. This is seen, for example, in the adoption of court charters and strategic plans which set out service objectives and, in some cases, rights that litigants have in their dealings with the particular court. The Family Court's *Service Charter,* for example, states that litigants have a right to

- *fair and helpful assistance;*
- *[have their] privacy respected and information about [them] kept confidential unless the law requires otherwise;*
- *a fair and just hearing in a safe environment;*
- *timely decisions by the Court; and*
- *restricted access to information on the file held by the Court in relation to [their] proceedings.*

These "rights" are backed up by a procedure for making complaints to the Chief Executive Officer of the Court.

Many courts now commit themselves to standards of timeliness, both in relation to individual cases and across their caseload. Thus, the County Court of Victoria's *Strategic Plan* commits the Court to seeking to ensure that decisions are handed down within one month of a hearing.[71] The Court's objective of "timely disposition of matters and access to justice services" is supported by a "primary source target" to dispose of 90 per cent of civil litigation within twelve months of the date of issue of the proceedings.[72]

Perhaps the most detailed formulation of performance standards is that prepared for client services in Local Court of New South Wales. These are based on the principles articulated by the National Center for State Courts in the United States, namely accessibility, equality, timeliness, independence and accountability and public trust.[73] The current standards which were prepared in consultation with the Local Courts, identify five governing principles as follows:
Principle 1: Access to Justice
Principle 2: Expedition and Timeliness
Principle 3: Equality, Fairness and Integrity
Principle 4: Independence and Accountability
Principle 5: Public Trust and Confidence.

Under each Principle, specific standards and benchmarks are set. By way of illustration, Standard 2.1.1 requires the court to ensure

"timely case processing while keeping current with its incoming caseload".

Benchmark 2.1.1 requires 95 per cent of matters to be finalised within six months of commencement while Benchmark 2.1.3 contemplates that all contested hearings will be listed within two months of requesting a hearing date.[74]

Performance standards imply that performance is capable of being assessed and therefore measured. It is here that a conflict has emerged between courts and judges, on the one hand, and what Chief Justice Spigelman has called the "new public management".[75] The conflict has been provoked largely by the work of the Steering Committee for the Review of Commonwealth/State Service Provision, for which the Productivity Commission acts as the secretariat. The Review, which is published annually, reports on performance indicators in a variety of areas including education, health community services and justice. It attempts to compare the performance of courts on such issues as timeliness of disposition and expenditure per "lodgement" and "finalisation".[76]

Chief Justice Spigelman has vigorously argued that the reliance by the new public management on quantitative measurement carries with it serious dangers. This is because an emphasis on "outputs", which are measurable, as distinct from outcomes, which involves matters of

judgment, has significant distorting effects:

"concentration on outputs, which are readily measurable and less costly to monitor, gives an inappropriate significance to considerations of efficiency over those of effectiveness".[77]

As his Honour points out, there are limits, for constitutional and other reasons, on the actions courts can properly take to ensure efficient and expeditious disposal of cases. To assess the performance of a court simply by readily measurable outputs may well say nothing about whether the court is effectively performing its core functions.

Other senior judges have made similar point. Chief Justice Nicholson of the Family Court has characterised the work of the Steering Committee as "neither effective nor credible".[78] He argues that:

"it is hardly useful or credible to compare the performance (however described and measured, both issues in themselves) of the courts in Australia. There are fundamental differences in constitutional frameworks, governance arrangements, jurisdictions and funding frameworks between courts in Australia. Clearly, comparisons between courts on measures such as cost per case would misinform public perception and debate and should be eschewed."[79]

Chief Justice Doyle of the Supreme Court of South Australia and his co-author, Mr Jacobi, have also warned of the dangers of using simplistic measurements as indicators of the relative performance of courts.[80] As they point out, comparing the performance of different courts against a single benchmark is often meaningless. For example, the concept of a "disposition" has different meanings in different courts and, in any event, important qualitative issues cannot be reduced to measurable outputs and benchmarks.[81]

These warnings about the dangers associated with the inappropriate use of quantitative performance standards are very powerful. In particular, any attempt by the Executive Government to make courts "accountable" by linking resources to quantitative performance standards may well threaten core judicial functions. Yet care must be taken not to throw the baby out with the bathwater. One reason why the Executive Government may be prone to rely on inappropriate measures of judicial performance is that the courts themselves have done so little to develop worthwhile measures of workload and output.

It is undeniable that many aspects of judicial work cannot be reduced to simple (or even sophisticated) quantitative benchmarks. But such benchmarks can be very useful, for example, in determining whether a court is acting effectively to minimise avoidable delays or costs in litigation. Despite calls for co-ordinated efforts to collect

comparable statistics in order to identify best practices among courts,[82] very little has been done to achieve this objective. Much of the statistical information dutifully compiled by courts and published, for example, in annual reports is of little value. As Chief Justice Doyle and Mr Jacobi suggest, the judiciary should recognise the need to

"avoid wasting precious resources by collecting and reporting information that is of no use to anyone".[83]

Courts should not be surprised if the Executive Government publishes and seeks to make use of inadequate or misleading statistics when the courts are content to do much the same thing. Doubtless there is little practical value in comparing, for example, "non-appeal matters finalised" across different courts without any attempt to take account of the nature and complexity of different "matters".[84] Yet the courts themselves present data relating to the disposition of widely divergent "matters" without distinguishing between different categories of cases.[85]

The current debate about benchmarks is both illuminating and open to misinterpretation. It is illuminating because it has demonstrates the very considerable dangers of over-reliance on quantifiable measures of court performance. The commentators have been right to draw attention to the possibility that such information might be misused by the Executive Government to make the courts "accountable" in ways that are incompatible with the independence of the judiciary and the rule of law.

The debate is open to misinterpretation because the courts may draw the wrong conclusions. It would be unfortunate if the courts responded to the danger that benchmarks might be used inappropriately by withdrawing from the field of performance standards. It would be equally unfortunate if the courts resisted attempts of the outside bodies, whether associated with government or otherwise, genuinely to refine and improve the quality of data available about the justice system. An example of such an attempt is the work being undertaken by the Australian Bureau of Statistics in consequence of a Memorandum of Understanding between that body and the National Centre for Crime and Justice Statistics.[86] Perhaps the most important lesson to be learned from the current debate, as Chief Justice Doyle and Mr Jacobi have pointed out, is that the courts should actively strive to improve the quality of the data they compile and publish.[87]

A commitment by the courts to improving the quality of published information about the workings of the justice system carries with it other responsibilities. The courts, or at least their leaders, should be prepared to explain publicly the purposes for which performance standards and statistical data can and cannot legitimately be used. They should be prepared to state and restate to a sceptical public fundamental principles about the rule of

law and the place of the judiciary in our system of government. This implies that the courts will be thrust more frequently into the relatively unfamiliar territory of vigorous public debate, including direct rebuttal of those who misinterpret or misuse published information about the operations of the judicial system. The alternative is to leave the courts even more vulnerable than they now are to the vagaries of the political process.

CONCLUSION

The changes in the judicial function identified in the *Access to Justice Report* in 1994 have continued apace. Case management is regarded as an article of faith by most Australian courts. The principle of consumer orientation has not only been accepted as a desirable objective, but implemented in practice by many courts. These changes imply a transformation of the judicial role from the traditional model of a passive decision-maker, little concerned with public perceptions of the judicial system, to one in which the courts actively revise procedures and administrative processes in order to achieve defined objectives.

The ALRC selected "*Managing Justice*" as the title for its final report on the federal justice system because the expression has a double meaning. It conveys the idea that

*"our civil justice system works best when judicial officers take an active role in **managing** proceedings from an early stage."*[88]

The expression can, however, be used in an aspirational sense, conveying the ALRC's hope that the report would *"assist in **managing to achieve** an Australian federal civil justice system of the highest order".*[89]

"Managing justice", as applied to the courts, can be used in an even broader sense than that employed by the ALRC. It encapsulates the idea that the courts should accept responsibility not merely for managing the conduct of litigation, but for a wider range of activities designed to enhance the responsiveness and accountability of the legal system to the community, but in ways that are consistent with judicial independence. For reasons that I have given, the functions of the courts should include formulating and reporting on appropriate performance standards, initiating and supporting the objective evaluation of procedural and managerial reforms and improving the quality of published statistical information about the judicial system.

This expanded role implies, too, that the judges must contribute actively to public debate concerning the role and functions of courts in the Australian system of government. The ongoing discussion concerning the use and misuse of court statistics and performance standards is an example of that kind of activity. An expanded role in public debate seems inevitable if future office holders General follow the view of the current Commonwealth Attorney-General, adopted for reasons that he has publicly

articulated, that the judiciary should no longer expect the Attorney-General to defend its reputation, presumably even against baseless attacks.[90] The Attorney-General has acknowledged that one consequence of his position is that "it is...up to judges to take the lead in defending themselves and their courts against direct criticism".[91] He has given as a "clear example" of a situation where a court can and should respond in its own defence "criticism of a court's administrative processes", a concept that would seem to include, for example, criticism of the performance of courts based on a misuse or misunderstanding of published statistics.[92]

It may seem strange that the role of the courts is expanding at the same time as many courts are under sustained attack for allegedly engaging in judicial activism. The two issues are, however, distinct. Whatever view is taken about the limits of the judicial law-making function, the expansion of the role of the courts in managing justice is likely to continue. The process that has been under way for some time is not readily reversed. Two illustrations show why this is so.

It is difficult to see how courts can much longer avoid taking measures to curtail the activities of those "querulous" litigants who impose disproportionate burdens on limited judicial resources.[93] The courts have established an extensive array of principles and practices designed to assist and protect unrepresented litigants.[94] These principles and practices are readily justifiable on the assumption that such litigants are prepared to act rationally and ultimately accept the legitimacy of adverse decisions. The courts have, however, given relatively little thought to the self-protective measures that may be needed in the small but significant minority of cases when the assumptions break down. A minority of litigants are prepared to make and persist with baseless allegations. Frequently those same litigants resolutely refuse to accept the legitimacy of adverse judicial decisions, no matter how great in number or how fair the process by which they have been reached. While procedures are available, for example, to declare a person to be a vexatious litigant, they are rarely invoked, in part because the criteria that must be satisfied are so stringent.[95] In consequence, many courts are required to devote substantial time and resources to claims that are frequently not merely baseless, but have a disruptive effect on the civil justice system.[96] Unless the courts themselves are prepared to tackle the problem - perhaps by challenging some long-held assumptions about the sanctity of facilitating access to the justice system for all litigants - the problem will get worse.

A second illustration concerns the procedures for making complaints against judges. The ALRC, in its report on *Managing Justice,* retreated, largely for constitutional reasons, from the earlier proposal that the Commonwealth should establish an independent judicial commission, modelled on the Judicial Commission of New South Wales,

to receive and investigate complaints against federal judges and magistrates.[97] It recommended instead that federal courts and tribunals should

"develop and publish a protocol for defining, receiving and handling bona fide complaints against judges, judicial officers and members, as well as complaints about court systems and processes".[98]

The recommendation has important implications for judicial independence because it contemplates that the courts themselves will establish and implement protocols for addressing complaints about conduct not necessarily serious enough to warrant removal from office pursuant to the procedure laid down by s 72(ii) of the *Constitution.* As Chief Justice Gleeson has recently observed,

"the more serious the complaint, the easier it is to devise means to deal with it.... The difficult cases tend to be those in which the complaint, even if made out, would not justify removal. The complainant is likely to assume that there must be some other sanction available. It can be difficult to satisfy an aggrieved person whose complaint is justified, but who sees no form of sanction visited upon the judicial officer involved. False expectations can be created."[99]

These observations underline the sensitivity of the ALRC's recommendation.[100] But they also indicate that the ALRC's recommendation, if generally implemented, will mark yet a further addition to the institutional responsibilities discharged by the courts in Australia.

It is widely acknowledged that the functions performed by Australian courts changed significantly during the last years of the twentieth century. The changes have usually been explained and understood in terms of case management and the additional responsibilities thereby imposed on judges. It has become clear, however, that case management is only one aspect of a more fundamental shift in judicial responsibilities. Despite the concerns of those who resist the notion that courts should be seen as service providers, the fact is that they have chosen to become accountable in ways that transcend the traditional mechanisms associated with "open justice". While the core of the judicial function remains both intact and inviolate, the expansion of the judicial role marks a transformation in the relationship between the courts and the wider community. The transformation has yet to run its course.

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* I wish to acknowledge the valuable research assistance of Aaron Cornish and Alex de Costa

[1] *Access to Justice: An Action Plan* (1994) ("*Access to Justice Report*"). I declare my interest as Chairman of the AJAC.

[2] R Sackville, "Change and Accountability in the Justice

System" (1994) 4 JJA 67, 68.
[3] A F Mason "The Australian Judiciary in the 1990s" (1994) Bar News (Autumn/Winter, 1994), 7.
[4] *Access to Justice Report,* par 1.2.
[5] G Brennan, "Key Issues in Judicial Administration" (1997) 6 JJA 138, 139.
[6] *Access to Justice Report,* par 1.9.
[7] *Id,* par 1.12.
[8] *Id,* pars 1.14 1.16.
[9] Lord Woolf, *Access to Justice: Interim Report* (HMSO, 1995); *Access to Justice: Final Report* (HMSO, 1996).
[10] *Access to Justice Report,* Chs 15, 17. Other Chapters specifically concerned with the workings of the Courts were Ch 16 ("Court Fees"), Ch 19 ("Court Dress") and Ch 20 ("Courts and the Electronic Media").
[11] *Id,* par 1.19.
[12] *Id,* par 1.22.
[13] *Id,* par 1.43
[14] *Ibid.*
[15] *Id,* par 1.44.
[16] *Access to Justice Report,* par 17.5, citing P A Sallmann, "Managing the Business of Australian Higher Courts" (1992) 2 JJA 80, 80.
[17] *Id,* par 17.41.
[18] *Id,* Action 17.1.
[19] *Id,* Action 17.2.
[20] *Id,* pars 15.63, 15.70.
[21] The Lord Chancellor's Department, *The Courts Charter* (HMSD, 1992).
[22] *Access to Justice Report,* Action 15.1.
[23] *Id,* Action 15.2.
[24] *Id,* par 15.68.
[25] *Id,* par 15.82.
[26] *Id,* par 15.86. The Judicial Commission had already set up a range of programs for magistrates.
[27] *Id,* Action 15.4.
[28] I Scott, "Is Court Control the Key to Reduction in Delays?" (1983) 57 ALJ 16, 18.
[29] See generally T W Church and P Sallmann, *Governing Australia's Courts* (AIJA, 1991).
[30] R Sackville, note 2 above, 72-74.
[31] The Attorney-General's Department (Cth), *The Justice Statement* (Office of Legal Information and Publishing, 1995).
[32] *Id,* iii.
[33] *Id,* Ch 4.
[34] For a political assessment of the *Justice Statement,* see D Watson, *Recollections of a Bleeding Heart* (Random House, 2002), 576-577. The author notes that the initiatives were "almost universally welcomed" but it was seen as the first shot in a campaign for an election that was not due for another ten months. Watson laments that *we [the Government] waded towards salvation thigh-deep in cynicism and disbelief".*
[35] An illustration is the support given by the Commonwealth and State Governments to the

establishment of the National Judicial College of Australia: see *Options for the Establishment of a National Judicial College* (Report of the National Judicial College Working Group to the Standing Committee of the Attorneys-General, May 2001); *News Release* (the Hon Daryl Williams QC, MP, 25 July 2001).

[36] Citations to reports are to be found in the terms of reference for the AJAC (*Access to Justice Report,* xxvi-xxvii) and in Australian Law Reform Commission, *Managing Justice* (2000) ("*Managing Justice*"), par 1.77.

[37] Lord Woolf, *Interim Report* note 9, above, 19. For a brief overview, see R Sackville, "Reforming the Justice System: The Case for a Considered approach" in H Stacey and M Lavarch (eds) *Beyond the Adversarial System* (Federation Press, 1999), 36-39.

[38] *Final Report,* 2.

[39] *Managing Justice,* par 1.53.

[40] *Id,* par 1.54, quoting R Sackville, note 37 above, 40-41.

[41] *Id,* pars 1.111 ff.

[42] *Id,* par 1.128.

[43] A S Zuckerman, "Justice in Crisis: Comparative Dimensions of Civil Procedure" in A S Zuckerman (ed), *Civil Justice in Crisis: Comparative Perspectives of Civil Procedure* (Oxford University Press, 1999), 47.

[44] *Ibid.*

[45] R Sackville, note 37 above, 49-50.

[46] *Managing Justice,* par 1.88.

[47] *Managing Justice,* par 1.92, citing A Zuckerman, note 43 above, 48.

[48] *Id,* par 1.95.

[49] For a survey of developments in both State and federal jurisdictions, see Western Australian Law Reform Commission, *Review of the Civil and Criminal Justice System* (Consultation Draft, 1998) vol 1, Section 2.2. See also Western Australia Law Reform Commission, *Review of the Civil and Criminal Justice System: Final Report* (1999), Ch 12.

[50] P A Sallmann and R T Wright, *Going to Court: A Discussion Paper on Civil Justice in Victoria* (Civil Justice Review Project, April 2000), 67.

[51] *Id,* 70-71.

[52] See, too, District Court of New South Wales, Practice Note 33, "Case Management of Civil Actions".

[53] County Court of Victoria, *3 Year Strategic Plan: 2001-2004,* 7.

[54] *Id,* 8.

[55] District Court of New South Wales, *Strategic Plan,* 15.

[56] District Court of New South Wales, *Annual Review 2000,* 15-16.

[57] The key features of the Federal Court's IDS are summarised by the ALRC, *Review of the Federal Civil Justice System* (DP 62, 1999), par 10.50; see also F McRae and D Rusehena, "Trial Date Certainty: the Adoption of the Individual Docket System within the Victorian Federal Court Registry" (2000) 9 JJA 201.

[58] *Managing Justice,* par 7.6.

[59] *Id,* pars 7.11-7.24.
[60] *Managing Justice,* pars 1.27 1.46.
[61] T Wright and C Sage, *The Federal Court Individual Docket System: A Post Implementation Evaluation* (Law and Justice Foundation, 2002, not yet published).
[62] An evaluation of this kind is a formidable undertaking, as indicated by the RAND Corporation's Institute for Civil Justice evaluation of the case management regime introduced by the *Federal Court Civil Justice Reform Act* (1990) (US): J S Kakalik, T Dunworth, L A Hill, D McCaffrey, M Oshiro, N M Pace and M E Viana, *Just, Speedy and Inexpensive? An Evaluation of Judicial Case Management under the Civil Justice Reform Act*; *Implementation of the Civil Justice Reform Act in Pilot and Comparison Districts*; *An Evaluation of Judicial Case Management Under the Civil Justice Reform Act*; *An Evaluation of Mediation and Early Neutral Evaluation Under the Civil Justice Reform Act* (RAND: Institute for Civil Justice, 1996). Compare *Civil Justice Reform Evaluation; Emerging Findings* (Lord Chancellor's Department, March 2001) (an early evaluation of the *Civil Procedure Rules* introduced in 1999, to implement recommendations made in Lord Woolfe's report on *Access to Justice*).
[63] T Wright and C Sage, note 61 above, 1.
[64] *Managing Justice,* pars 1.27 1.46.
[65] *Id,* par 1.43.
[66] S Parker, *Courts and the Public* (AIJA, 1998).
[67] *Id,* 159.
[68] *Id,* 162.
[69] See, for example, R Mohr, H Gamble; T Wright and B Condie, "Performance Measurement for Australian Courts" (1996) 6 JJA 156; P Sallmann and R T Wright, note 50 above, Ch 10; S O'Ryan and T Landsell, "Benchmarking and Productivity for the Judiciary" (2000) 10 JJA 25.
[70] L Glanfield and E Wright, *Model Key Performance Indicators for NSW Courts* (Justice Research Centre, 2000), 2-4; see too T Wright, *National Key Performance Indicators for Courts* (Discussion Paper, Attorney-General's Department of NSW, 2002).
[71] County Court of Victoria, *Strategic Plan,* note 53 above, 11.
[72] See also the Supreme Court of Queensland's *Protocol on Reserved Judgments,* reproduced in P Sallmann and R T Wright, note 50 above, 191-192.
[73] See B Condie, H Gamble, R Mohr and T Wright, *Client Services in Local Courts: Standards and Benchworks* (Centre for Court Policy and Administration, Wollongong, 1996). The standards incorporated have been the subject of trials in six courts in New South Wales: see R Mohr, B Condie and H Gamble, *Client Services in Local Courts: Principles, Standards and Benchmarks* (available online at http://www.uow.edu.au/law/crt/clientsservices/index.htm. The standards are based on Commission on Trial Court Performance Standards, *Trial Court Performance Standards* (National Centre for State Courts, 1990).
[74] S O'Ryan and T Landsell, "Benchmarking and

Productivity for the Judiciary" (2000) 10 JJA 25.
[75] J J Spigelman, "The 'New Public Management' and the Courts" (2001) 75 ALJ 748.
[76] The latest report is Steering Committee for the Review of Commonwealth/State Service Provision, *Report on Government Services* (2002). The terms of reference are set out in vol 1, xvii. "Court Administration" is dealt with in vol 2, Ch 9.
[77] JJ Spigelman, note 75 above, 754.
[78] A Nicholson, "In Response to 'Towards a More Compliant Judiciary?" (2002) 76 ALJ 231, 234.
[79] *Ibid.*
[80] J Doyle and C Jacobi, "Judicial Independence and Public Sector Accountability" (2002) 11 JJA 168.
[81] *Id,* 172.
[82] See, for example, *Access to Justice Report,* Action 17.2; S Parker, note 66 above, 167 (Recommendation 14).
[83] J Doyle and C Jacobi, note 80 above, 172.
[84] *Report on Government Services 2002,* Table 9.9. To be fair, the notes to the Table expressly state that care should be taken when comparing timeliness data across jurisdictions because the complexity and distribution of cases may vary.
[85] See, for example, Federal Court of Australia, *Annual Report 2000-2001,* Appendix 7. The Federal Court is far from alone in this practice.
[86] The MOU was initiated by Commonwealth, State and Territory departments concerned about the quality and comparability of data published in the annual *Report on Government Services.* See *Report on Government Services 2002,* 500-501, acknowledging that *"[d]ifferences in court jurisdictions and in the allocation of cases between courts across States and Territories affect the comparability of efficiency and effectiveness data".*
[87] J Doyle and C Jacobi, note 80 above.
[88] *Id,* par 1.14.
[89] *Managing Justice,* par 1.15.
[90] D Williams, "Who Speaks for the Courts?" in *Courts in a Representative Democracy* (AIJA 1995), 190-192. Compare the Statement by the Judicial Conference of Australia in relation to an attack under Parliamentary privilege on Kirby J: (2002) 76 ALJ 278.
[91] D Williams, "Opening Address" (Judicial Conference of Australia Colloquium 2001), 3.
[92] *Ibid,* See *Guide to Judicial Conduct* (AIJA for the Council of Chief Justices, 2002), par 5.6.1:
A judge should avoid involvement in political controversy, ***unless the controversy itself directly affects the operation of the courts, the independence of the judiciary or aspects of the administration of justice.*** (Emphasis added.)
[93] The expression has been used by Professor P Mullens, Professor of Forensic Psychiatry, Monash University Medical School, address to Federal Court Judges, unpublished, 22 August 2000.
[94] AIJA, *Litigants in Person: Management Plans: Issues for Courts and Tribunals* (2001); *Managing Justice,* pars

5.7 5.11, 5.152 5.157.

[95] See, for example, *Ramsay v Skyring* (1999) 164 ALR 378, 389-391.

[96] Certain categories of impecunious litigants in the High Court are exempt from filing fees: *High Court Rules,* O 16 r 30. In a recent application involving what were described as "irresponsible allegations", McHugh J suggested reconsideration of the exemption in the absence of a showing that the litigant has an arguable case: *Savvas v Commissioner for Land and Planning* (C6/1998, 17 June 2002).

[97] The proposal was put forward in ALRC, *Review of the Civil Justice System* (Discussion Paper 62, 1999), Proposal 3.5.

[98] *Managing Justice,* Recommendation 11.

[99] A M Gleeson, "Public Confidence in the Judiciary" (Address to the Judicial Conference of Australia, Launceston 2002).

[100] See generally D Drummond, "Towards a More Compliant Judiciary?" (2001) 75 ALJ 304 (Part 1), 356 (Part II).