The Supreme Court of Tasmania
"An Institution In Motion"

(Speech made by the Honourable Chief Justice Shanahan at the Law Society's Winter Criminal Law Conference on 18 July 2025)

Upon my ceremonial welcome I observed that the Supreme Court of Tasmania under my leadership would, like all good institutions should, seek to become a better version of itself by pursuing Tasmanian solutions to emerging but well documented structural and process issues. Courts are organic institutions and whilst many see them as bastions of tradition and certainty they are constantly evolving before our eyes as contemporary need crystallises. That evolution is a natural development with its own rhythm although, from time to time, expectations on courts can drive a more imperative approach to change.

I want to explain this morning why I consider this to be such a time, the foundation for that assessment and the Court's nascent response.

1. The Promise to the Tasmanian Community

A court must seek to maximise the *quality*, *efficacy* and *efficiency* of its decision making, that is the promise that it makes to the community it serves. There is also an essential *timeliness* that is necessary to safeguard the liberty of individuals and the commercial utility of court based dispute resolution. Indeed, meeting those challenges is what guarantees the Court's relevance. One of my tasks as Chief Justice is to ensure that the Court adopts systems and procedures that reflect contemporary best practice and that it continues to meet the needs of the Tasmanian community. However, before seeking to invest in change it is always important to have a sense both of history and context, to best appreciate and value the institution as formed.

2. History

It is not hard to access the proud history of Australia's oldest supreme court, now over 200 years, because that narrative is well documented in Justice Estcourt's seminal work "From Convicts to Computers". That history helps to understand the Court's evolution to-date, its fabric and structure and the personalities that have formed it. As I walk down the corridor in Judges Chambers I am surrounded by the portraits of those that have come before me, and I am reminded everyday of their contribution. The reality is that my role is essentially that of a custodian preserving the best of the past whilst working towards a better and effective future. What is less readily available is context, that requires engagement with the institutional and social setting within which the Court operates.

3. Context

On arrival, I engaged in a broad process of consulting with those who use or rely upon the court and its services. That process involved over thirty meetings with institutions, associations, stakeholders and interest groups, including the Law Society of Tasmania and the Tasmanian Bar Association amongst many others. Indeed, my door remains open to anyone who feels that they need to speak with me about the Court, albeit it should be noted that does not include litigants with matters pending for hearing or decision.

I will continue to have a listening brief as to where those both inside and outside the Court believe there are areas of improvement. Some of the areas that have been clearly identified in the course of my consultative meetings engage core values that are critical to the Court's performance, especially the timeliness of its dispositions and whether its processes reflect the best available practice. Improvement in that space will, of necessity, require the support of the profession, procedural change and, in time, more resources. I will now outline some of the emerging developments that you will see as the Court re-positions itself.

4. Criminal Listings

The first and generational change that will become obvious is the move by the Court to control its own criminal listings. The seeds of this project were well planted before my appointment as it became clear that integrated listing and planning within the Court required that level of control. Also the notion of one party to criminal proceedings, the State, controlling the listing of matters in the Court is broadly recognised as inapposite.

Before discussing how the new system will work I want to acknowledge the work of the Office of the Director of Public Prosecutions that has carried the burden of criminal listings to-date. The Court's determination to take over the listing role in crime reflects the practice in every other jurisdiction in Australia. It is not a reflection on the quality of the work of the DPP but rather an acknowledgment that the Court must have control of its own processes if it is to better manage its work load and outcomes.

The touchstone for Court listing is that matters be "judge ready". In most Australian jurisdictions that outcome is facilitated by case management. Judicial case management involves the *active* role of judges in overseeing court cases from *the outset*. The two concepts of most significance here are that case management is *active* and that it occurs from the *outset*. It requires judges to take an active interest in how parties are progressing a matter towards resolution, for example in a criminal trial list progress towards a guilty plea or a trial.

The primary goal is to streamline the litigation process, reduce delays, and enhance the overall efficiency of the judicial system. The new system will highlight the role of the Associate Judge in representing the face of the Court in the first instance adopting an active and engaged approach to readying matters for trial. Parties can expect that they will be asked where a matter is up to, whether there are any delays and how those delays can, and should, be overcome.

The Court's new criminal listing process will be active from September 2025, albeit there will be a short period of overlap as the DPP assists the Court to assume responsibility for trial grids going forward. The Court has developed a series of documents and identified listing dates going forward for 2025/2026. The aim is that the change-over be seamless, but like all new systems there may be some teething problems and the Court is seeking the support and good will of the profession to ensure that this critical initiative is successful.

The new system has the support of executive government and, with four new members of staff, will have an impact on the number of matters pending in the criminal list, but that reduction will not be immediate; it will take time to be reflected in the Court's statistical signature. It is likely that as the criminal listing system is implemented the Court will be able to develop and fine tune case management processes to make listing more effective.

5. Justice Connect

A building block at the heart of a more responsive criminal justice system in Tasmania is the "Justice Connect" project. That project is described on its home website as:

> The Justice Connect program team is delivering a major digital transformation of Tasmania's justice system to replace outdated and inefficient practices with an integrated end-to-end digital solution. This transformational solution will be called Astria, named after an ancient Greek goddess of justice.
>
> This program of work impacting multiple government agencies and areas within the Department of Justice will be implemented in stages. The first stage is focusing on criminal and corrective justice system.
>
> The multi-disciplinary program team developing Astria is a unique, agile collaboration using subject matter experts from different jurisdictions, government agencies and functions who are embedded within the program team as the 'voice of the user' throughout development.
>
> On 30 August 2021, the former Minister for Justice (MP Elise Archer) and our vendor partners signed the Astria implementation phase contract. This milestone marked the start of the work required to deploy Astria in the following releases:
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> - Release 1: Jury Management - Live November 2022
> - Release 2: Criminal Corrections - Planned Go live early 2025
> - Release 2.1: Parole Board - Planned Go Live 2025
> - Release 3: Criminal Courts and Prosecution – Estimated 2026

The Justice Connect project envisages an integrated linked information network which connects all parts of the justice system to replace outdated and inefficient practices thereby reducing delay and ensuring inter-connectivity. Its primary objects are to be lauded but it has to be implemented in a manner which recognises the roles of the institutions it serves.

Judges of the Court withdrew from the programme in early 2024 over deeply held concerns about the protection of information and judicial independence. Those concerns emerged because information technology within the Court was being run by agencies outside of its control, technology which included the email systems by which judges communicate with each other, and their computing resources with the obvious sensitivity to confidence around judgment writing and intra-Court communications.

Since my appointment, the Court has re-engaged with Justice Connect on the understanding that the Court's information system technology can be operated out of the Court itself so that it has control over its email, and other IT systems, to ensure that its independence and confidentiality are not compromised. That programme is the subject of a consultancy that is shortly to be filled, and the review will better inform decision-making going forward. The Court is to have the benefit of a new ICT Manager which will allow the Court to ensure that its information technology is fit for purpose and continues to provide the best available support for its operations, including its new listing functions.

6. Statistical Profile

The Court monitors its performance and I have access to an up-dated snapshot of its statistical profile. There are concerns that the profile of the Court should represent a useful management tool which demonstrates how the Court itself its performing rather than merely documenting delays that have occurred before a matter reaches the Court. Put differently, observing the court as the apex of a pyramid in which other parts of the system have contribute to delay is not a useful reflection on the Court's efficiency. That also includes how various matters are measured and used in comparative analysis. It is important to be able to measure progress and that requires that the Court have up to date information technology and adequate resources in this space.

Active case management will make those seeking to use the Court more accountable for delay for which they are responsible. That does not mean that the Court itself cannot improve its own efficiency, it is contemplated that when matters are provided to judges in a "judge ready" state that the use of judicial time and other resources will become noticeably more efficient. Those measures may be extended beyond criminal case management to encompass civil matters and appeals. When the Court makes rules and publishes practice directions it does so to ensure efficiency, fairness and justice. If such rules and practices become honoured in the breach rather than implemented the Court is placed in a difficult position. Case management can be used to ensure compliance.

7. Acting Judges

In 2016 there were five Acting Judges appointed to deal with the then criminal backlog, Acting Justices Porter, Martin, Slicer, Bongiorno and Marshall. In 2021 Justice Jago was appointed as the sixth puisne judge of the Supreme Court. The additional judicial resources represented by Justice Jago's appointment and the availability of Acting Judges since 2016 have largely been offset by the impact of COVID-19, judicial indisposition and conduct issues and the continual and emerging backlog created by a number of systemic pinch points in the criminal justice system.

Recognition of a criminal backlog requiring the appointment of five Acting Judges in 2016 demonstrates the longevity and significance of the criminal backlog in Tasmania. The current extent of that backlog also suggests that simply adding additional judges is not a panacea or "magic bullet". In an interview that I gave to "The Examiner" earlier this year I observed:

> It is an overly simplistic response, and something of a "kneejerk reaction", when presented with a backlog to merely seek additional judicial resources, and that is especially so when the causes of delay may occur before matters enter a court's list or be driven by factors beyond the control of the court. The notion that simply appointing more judges will necessarily deal with the problem may actually mask the true causes of delay, and "bake" the backlog into the system.

Whilst any analysis of the causes for the current criminal backlog cannot be met *solely* with requests for new judges, the Supreme Court of Tasmania is comprised of only seven full time Judges and an Associate Judge. In order to function efficiently it must be responsive and flexible and that is extremely difficult with its limited numbers, its regional responsibilities and the demand for its services without available additional judicial resources by exception which, up to this date, have been provided by Acting Judges.

Of three recent Acting Judges - Acting Justices Martin, Marshall and Porter - Martin AJ's term expired on 30 June 2025, and Marshall AJ is indisposed. In any event, Marshall AJ's commission is part time and will expire on 30 September 2025. Porter AJ's commission is also now part time and is to expire on 31 December 2025. Porter AJ will not be taking any new work after 30 June 2025 and has served as an Acting Judge since 2017. The result is that the Court currently has no available Acting Judges and that situation is unlikely to change throughout 2025.

Thus the question arises how will the Court function in the absence of Acting Judges? Its need for additional judges will continue but will fluctuate from time

to time. The Court will continue to need the flexibility offered by the appointment of acting, reserve or auxiliary judges to deal with matters arising by exception. That need has been high since 2016. I acknowledge that those appointed as Acting Judges have given very significant service to the Tasmanian community.

A proposal being examined is to develop a system of "reserve" judges. This is a system that has been tried and works well in Victoria and Queensland. A system of reserve judges does not require frequent requests to executive government for the appointment or re-appointment of Acting Judges. A system of reserve judges also provides additional judges at short notice in circumstances where, otherwise, the process of appointing a new Acting Judge can be lengthy.

Reserve judges might be appointed to a pool for a period - five years is usual in other States - to be available to the Supreme Court *as required,* hence "reserve" rather than "acting". By "as required" is meant a reserve judge's engagement, i.e. by a request from the Chief Justice that the reserve judge sit for a period or for a purpose. This makes an important distinction between: (i) *appointment* to the panel as a reserve judge, and (ii) an actual *engagement* to sit. A reserve judge would be remunerated only when he or she is *engaged* to sit. Engagements by the Chief Justice might be for a period of six months, but renewable at least once. A group of five reserve judges would allow some variety and capacity within that pool when the Chief Justice is looking to make an engagement, for example where some reserve judges in the pool are otherwise unavailable because they are travelling, ill or otherwise committed.

Were such a system introduced then the number of reserve judges could be adjusted over time to better reflect the State's needs. The cost of reserve judges can be monitored and budgeted for as they would be paid in the normal way. One of the additional benefits of a reserve judge system is that executive government would be able to see, as a matter of statistical fact, when the combined services required of a pool of reserve judges in any one year exceeds the service that might otherwise be provided by a new (additional) permanent judge – which service might be represented as a "quota". Thus, when the service of the total annual services required of the pool of reserve judges totals more than a quota, there would, *arguably*, be a case for the appointment of an additional permanent judge.

The greater the amount of use of reserve judges over a quota the stronger the case would become for the appointment of a new permanent judge. In that circumstance, the Chief Justice would not need to seek additional permanent appointments to the Court until the demand for reserve judges exceeds a quota. Those figures would be part of the Court's annual reporting. Even where additional permanent appointments are made the flexibility of the Court will continue to require the appointment and occasional engagement of reserve judges.

8. The Horizon

A clear picture of the Court's challenges has emerged over the past five months as I have examined the direction of the Court and harvested the feedback of those concerned with the Court's position and progress. Steps towards greater efficiency and flexibility have already been taken. The journey in respect of criminal listings and new ICT resources in the Court is well underway. Other initiatives have been slowed by the electoral cycle but it is to be hoped that the considerable progress that has already been made can be built on in the immediate future.

The Court continues to aspire to better serve the people of Tasmania and to meet its obligation as one of the three arms of Government in this State. It is of importance to appreciate that change also brings opportunity. The next chapter in the Court's narrative has the potential to deliver exciting developments to add to the achievements of the last 200 years. As Shakespeare observed through his character Lucio in *Measure for Measure*:

> "Our doubts are traitors and make us lose the good we oft might win by fearing to attempt."