Law and Order in a Rapidly Changing Society

I would like to thank the University for the opportunity to participate in this series. Austin Asche,in whose honour it has been established, has made a truly remarkable contribution in so many different roles to the people of the Northern Territory, the broader Australian community and, of course, this University.

I met Austin shortly after I signed the roll of counsel at the Victorian Bar in 1961.

My recollection of him as a barrister at that time is that he conducted himself in a manner that could be fairly described as softly firm. He always polite in his dealings and expression with those around him. He listened to the views of others, including I should add, some rather self-impressed younger lawyers like myself, and relied in his advocacy upon quiet persuasion. These became his trademarks and contributed to his considerable reputation for integrity and fairness.

We were never opposed to each other as we usually worked in different areas, but I became well aware of his abilities through his forays into the criminal courts. In those days, when legal aid services were even more limited than, regrettably, they are at present, there was a convention at the Bar that, as a matter of social responsibility, Queen's Counsel would appear from time to time, effectively *pro bono,* for the accused in murder trials. The stakes were, of course, very high with initially a single sentence of death, and later mandatory imprisonment for life without parole, being imposed upon conviction. After

Austin took silk, he accepted more than his share of this work and successfully represented the defence in a number of these cases. In the process, he attracted the admiration of the criminal law practitioners, a group, who, in my experience, have never been lavish in their praise of other advocates, particularly those who they regard as interlopers in the area.

Much time has passed since I would engage in conversation with him over coffee in Owen Dixon Chambers and much has changed in our society. There have been remarkable transitions such that almost every aspect of the lives and relationships of its citizens has been dramatically transformed.

There are challenges not only to the capacity of many of our structures and processes to deal with new and complex problems but, and very importantly, to some of the core principles upon which our systems operate. Fundamental questions concerning the proper role and function of government and governance in the twenty first century and the nature of our relationships and obligations to each other as citizens are being raised. Value propositions and social priorities that would have been regarded as beyond dispute, even a very few years ago, are now being queried. These questions, although they are seldom clearly identified, can be seen to be reflected in our social and political debate concerning a wide range of matters, including health, education and consumer protection, and, more fundamentally, the concept of the welfare state that provides the foundation for many our structures and approaches.

This evening, I propose to direct attention to some of the challenges as I perceive them and, specifically, to their potential significance for our social compact and the manner in which we approach issues of law and order. That expression is usually employed in the context of the discussion of criminal law issues, but I will be using it in a much broader sense. I do not intend to attempt to delve into the boring complexities of the law but to draw attention to some pressures that I see are likely to influence the kind of society we are creating, perhaps to some extent by default.

The inevitability of great change and at an accelerating rate is beyond argument. What remain to be considered are the principles that will guide it and the forms that it will take.

It is important to bear in mind from the outset that our system of government and our legal and regulatory structures are based upon a particular view of the nature of the relationship between the citizen and the state. That relationship and the values and priorities inherent in it are, I believe, altering in response to a variety of pressures of an economic and social character, and the community can be seen to be deeply divided concerning some aspects of it.

In this context, most of those present will recall the Commonwealth Treasurer's repeated announcements that what he termed “the age of entitlement" was over. His remarks were,

of course, aimed specifically at what he asserted were the economically unsustainable expectations of financial support that had developed in the community generally as a consequence of earlier adopted policies. He contended that these policies were misguided

and had resulted in unmeritorious claims being made upon the public purse and that their continuation would be seriously damaging to the long term health of the economy and involve further unfairness to those whose personal endeavours provide the source of the funds.

It is a powerful and superficially attractive statement that recognizes the need for acceptance of a sense of personal responsibility for one's own welfare and, seemingly, isolates an exploitative minority who abuse the goodwill and compassion of those around them.

Statements to this effect, and there have been a large number of them made both within and outside the political arena over recent times, do not simply draw attention to the asserted development of an unacceptable culture of welfare dependency and the need for budgetary restraint. Rather, they represent a significantly different view of the proper function of government to that which we have accepted in Australia for many years. It is upon that view and its broader implications that I intend to focus at this point. My reason for doing so is my concern is that the adoption of what is essentially primitive nineteenth century liberalism presented in more appealing language may potentially impact very heavily upon the vulnerable among us and detrimentally alter the character of our community.

According to this approach, which is being increasingly promoted and clearly gaining greater acceptance as a basis for policy formation, government at all levels has become too intrusive in the lives and freedoms of ordinary members of the community; is

unjustifiably restricting the exercise of their basic rights; and, at the same constitutes a substantial impediment to the development of rational policies in many areas.

The basic proposition underlying this position is that societal and personal advancement are much more likely to be attained and in a far more efficient and less costly fashion through individual endeavour and competition. Some regulatory structures are recognized as required to ensure the safety of the nation against internal and external threats and the overall sustainability of the system but their areas of operation should be confined to the performance of what are regarded as a limited number of essential functions.

There are, in my opinion, some inherent difficulties associated with this view of the proper function of government in the complex environments of the twenty first century.

Among them is the consideration that there are many features that define a modern democratic state, such as we aspire to be, that do not fit well within it, including the very notion of society itself. We are social beings and since the earliest days of human evolution have joined together for mutual protection and advancement. Our present day understanding of the social compact within which we function collectively and individually incorporates the recognition of the entitlement of each of us to reasonable access to health, education, employment opportunities and welfare services in times of need. These entitlements constitute the broadly accepted aspirations of peoples across the world and reflect our interconnectedness and interdependence as citizens and human beings.

It is difficult to see how the enormous contributions made by Commonwealth, State and Local government over the last one hundred years to the educational, health, social welfare and opportunity for justice as well as the economic development that have been broadly enjoyed within our society can be so easily discounted as it has been in much recent discussion of this kind. In so far as there is within it an implication that these advances would have been at all likely without the use of government power and the strong support of a n essentially egalitarian community, it is at least naive.

Government should be only concerned to provide a stable framework for an ongoing struggle between competing individual interests with anticipated growth and development ultimately providing benefits for the whole, but rather in terms of the resources available to support community goals. These goals should in turn, represent the practical applications of basic human rights principles of justice and equality of opportunity. Our community has long accepted that government has a very important role at this level. Consequently, much of the work of our various agencies is concerned with the maintenance of the standards and balances required to avoid exploitation of the vulnerable

In the present context of challenges to law and governance in our community, one of my major concerns with the resurgent liberalist conception of the role of society generally is that it gives little or no recognition to what we know about the consequences of disadvantage.

Clumsy or ill-conceived policies that ignore this aspect may well increase alienation and further entrench the problem. The too readily drawn distinction between the " deserving "

and the " undeserving " poor ignores the realities of disadvantage and its effects but acts as balm to our consciences and helps avoid recognition of the actual policy choices being made and our motivation for making or accepting them.

Of course, there will always be some who will abuse any rights and entitlements available to them and care must be taken to prevent this as far as possible. This group, I should add, is by no means confined to the "undeserving" poor as much of the current rhetoric suggests. It can, and clearly does, include some of our wealthiest corporations and individuals for whom everything is not enough and who seemingly see no obligation to contribute to taxes and structures from which they personally benefit very substantially indeed.

Again, no rational person challenges the proposition that it is necessary for a country to live within its means in its endeavours to satisfy its aspirations and, of course, not all of them are realistically attainable at any given time. There will always be difficult choices to be made and priorities fixed. The real as distinct from the claimed or asserted values of a society are to be found not in its formal and usually self-laudatory rhetoric or indeed in the carefully crafted and skilfully presented justifications for policy decisions but within those choices and priorities. This brings me back to the Treasurer's comments and why I have chosen to refer to them in the context of remarks on issues of law and order.

The existence of a relationship between social policy and the character and incidence of criminal conduct has been well documented in volumes of research in many jurisdictions over a long time and is evident in my personal experience. By far the major part of my

work since I began practice as a lawyer has involved the criminal justice system and in a variety of roles, including those of barrister, judge, and as a parole board chairman for approximately 17 years. In those different capacities, I have observed more than fifty years of individuals pass through the criminal courts and have interviewed literally thousands of prisoners. Often, I have felt that I have been engaged in picking over the pieces of the broken lives of both victims and offenders, aware that they could never be put together properly as they were too damaged and some cases pieces had either been lost or no longer fitted.

The people I have dealt with have come, for the most part, as our prison population has always come, from the most economically and socially disadvantaged sections of our society and included over representation of the mentally ill, the intellectually disabled, the uneducated and unemployed and of course, our indigenous people.

On far too many occasions, the crime could be seen to have been a product in large measure of damage to which we, as a society, had contributed substantially. In a moral sense, it seemed to me, we were frequently complicit, although we would never be held to account or our contribution acknowledged. It is that experience that has prompted me to speak as I am today and why I am so conscious of the policy directions being advocated both within and outside government.

I do not want to be understood as not appreciating that there are individual choices and personal responsibilities for which individuals can and should be held properly accountable or that punishment and retribution are to be regarded as minor considerations in determining an appropriate response, for that is far from the case. But it must also be appreciated that the criminal justice system is an extremely crude instrument that can only assist to a very limited extent in the reduction of anti-social behaviour.

I relate what I have just said to the current rhetoric about individual responsibility and policy choices because I believe that the emphasis on cost shifting to the individual in areas of health, education and social welfare, unless great care is taken and I have seen little indication that it is likely to be, will contribute to the consolidation of existing disadvantage, increase the number of families and individuals so affected and aggravate the problems posed by alienation and social dysfunction.

The point should also be made here that, to the extent that engagement in criminal activity is a consequence of disadvantage, it is only one of its damaging manifestations. There are many others and they are destructive in different ways. They can be seen in the levels of domestic violence and family dysfunction and in our health and unemployment statistics.

There are important questions to be considered in these areas that extend well beyond whether specific budgetary decisions or administrative arrangements are reasonable in the circumstances. They relate to the underlying choices and priorities involved as it is these that will reflect our real values and determine the kind of community that we are

establishing. We must remain conscious of them. Unfortunately these questions are more likely to be avoided rather than exposed in the white noise and spin that currently passes for political debate.

I now turn to a different set of challenges to the justice and integrity of our processes. It can be found in the issues concerning those who attempt to enter Australia by boat as asylum seekers. The challenges here are concerned with our often repeated assertions that we respect human rights and honour the Rule of Law and our international obligations. Again, there are important questions to be considered that relate to our real as distinct from our asserted values and priorities.

Australia became a signatory to the International Convention on Refugees on the 25th January 1954 and the Convention on the Rights of the Child in December 1990. The undertakings accepted in neither of these important international instruments, it should be pointed out, has been incorporated into our domestic law over the many years that have elapsed. In the case of the Refugee Convention, it has now been over sixty years and Australia was one of the nations directly involved in the drafting of the Convention on the Rights of the Child.

Signing conventions enables a country to assert such a commitment, but only if it incorporates their provisions into its domestic systems so that they enforceable in its courts can it legitimately claim real adherence. Not only have we repeatedly breached our obligations under both of these Conventions but we have distorted our own processes to provide a colour of pseudo legitimacy to what we are doing.

An important feature of international Conventions is that, because they are intended to apply to widely diverse societies, legal systems and factual circumstances, they are generally expressed in broad language. This allows for some flexibility in interpretation and the manner of implementation. The Convention on the Status of Refugees is no exception, but its intent and principles are crystal clear as the 2010 Introductory Note by the Office of the UNHCR points out:

"The Convention is both a status and rights-based instrument and is underpinned by a number of fundamental principles, most notably non-discrimination, non-penalization and non-refoulement. ...The Convention further stipulates that subject to specific exceptions, refugees should not be penalized for their illegal entry or stay. This recognizes that the seeking of asylum can require refugees to breach immigration rules. Prohibited penalties might include being charged with immigration or criminal offences relating to the seeking of asylum, or being arbitrarily detained purely on the basis of seeking asylum ".

Fundamental to adherence to the Rule of Law in a community and any properly functioning system of law and order is transparency in decision making and the ability of those affected to challenge the exercise of executive power. However, both have been progressively limited in this area both by statutory provisions and bureaucratic processes as the inescapable logic of the policy position of both major parties in this area has required the adoption of more and more extreme positions.

This is a disturbing trend but, I should add, the attempt to exclude processes of the judicial review of bureaucratic action has regrettably become a much more common feature of legislation generally over recent years. This presents another and quite separate set of challenges to the operation of the Rule of Law in this country that merits considerably more attention than it has received to date.

It appears likely, based on experience to date, that the issue of boat arrivals will be temporarily solved. But this will come at some cost. In monetary terms, vast sums are being diverted to this area and it can be expected that much more will be spent. We have entered to our shame into arrangements and acted, on occasions, as apologists for regimes with little respect for the rule of law. I have already commented on the distortions to our own legal processes. There are also issues arising from the militarisation of our response and the use of our international security apparatus as instruments of government policy.

There is public concern about the potential impact that a more liberal entry policy may have upon us and the general lifestyle and culture we enjoy. That is entirely understandable. It would be surprising if it were not so. Equally obvious is the fact that there are practical limits to what can reasonably be done to assist the large numbers who seek to come here. Unfortunately, what is happening is that reliance is being placed upon the implementation of a populist three word mantra as the cornerstone of government credibility and resolve to address these issues. The effect of that reliance is to inhibit proper debate and the development of rational principle based policies that accommodate

legitimate apprehensions on the one hand and the practical capacity to respond to real need on the other.

Turning to some separate challenges that are sometimes conflated with those related to asylum seekers, quite a while ago the historian, Geoffrey Blainey, coined the expression " the tyranny of distance ", but it is probably now more appropriate to speak of the tyranny of proximity.

Geographic distance no longer provides a measure of security against international turmoil and terrorist activity, as the world enters a new phase of post-colonial adjustment. Difficult questions are emerging concerned with the need for protection of the community, on the one hand, and the limits on individual freedom that can reasonably be imposed upon those who may be perceived as a potential threat, on the other. Only the most naive would assume that there is no significant risk of home grown terrorist activity but complex issues are arising concerning how far an open democratic society, which regards freedom of movement and religious and political expression as centrally important values, can proceed to control and monitor the activities of its citizens..

There has been justified apprehension expressed recently about the return to this country of Australian citizens who have been involved with overseas extremist bodies and only very recently two men, who it was considered by the authorities intended to leave in order to participate in such activities of this kind, were turned back at the airport. Legislation is being introduced that will enable greater surveillance of the activities of not only people

who fall into these groups but an indefinitely wide range of other individuals who it is perceived may constitute a threat. There are implications in developments of this kind for an open democratic society that places immense importance on freedom of thought and expression. The challenge of taking the steps necessary to secure the safety of our citizens without at the same time abandoning principles that define our nation as an open democratic community is one with which, in common with other western nations, we are currently confronted.

The rapid evolution of the internet has given rise to a number of complex questions relating to the balance to be struck between our desire to maintain freedom and privacy of communication on the one hand and the safety of our community on the other. The sheer volume of internet traffic and the multiple sources involved is likely to make the task unmanageable without our engagement in a kind of electronic arms race that allows for much wider monitoring and limits the scope for privacy. The balances between public interests and private rights will need considerable attention in the proposed legislation as will the arrangements for its subsequent monitoring.

There is, of course, some risk that over enthusiastic use of even very carefully drafted measures of this kind will not only have little practical value but actually encourage a sense of disaffection and alienation and extremist views in some vulnerable individuals or communities.

Different challenges have arisen in an international context for our law enforcement agencies as crime is taking new forms, utilising the opportunities presented through a range of increasingly sophisticated technologies.

The dissemination of child pornography, identity theft, money laundering and other forms of fraudulent activity, often organized and controlled from some far distant location, are presenting increasing problems as greater use is made by criminal groups of electronic communication and the development of international networks. Exposure of these activities can be extraordinarily resource intensive and sometimes requires the cooperation of the law enforcement agencies of several countries. Prosecution of the organizers is often extremely difficult or impossible as, even if they are identified, they may be well beyond reach. The need for highly sophisticated investigative techniques and the development and maintenance of the levels of expertise necessary to detect and respond to these rapidly adapting forms of criminal activity are creating considerable pressure on limited police resources and will be ongoing. Law enforcement will inevitably have to become more international in scope and character if it is to be effective and, of course, much more expensive. However, its reach will remain quite limited in a number of areas where there is increasing vulnerability for even the most careful citizen.

Another set of issues that must be addressed relates to the extent to which we should to place reliance upon the criminal law as our primary means of limiting the damage occasioned by drug abuse generally. This has been the subject of a continuing debate in this country for a long time. What is apparent is that despite the best endeavours of our law enforcement bodies and the huge amount of resources allocated, there is no indication

that drug abuse is declining or is even being effectively controlled. Regularly, there are reports of the interception of enormous quantities of illegal substances by police or customs officials but the impact appears to be marginal and very short term.

The difficulties for effective law enforcement in this area are being compounded by development of new designer drugs or variants of existing compounds that are not encompassed by existing prohibition regimes. A possible answer to this problem may be an enhanced registration system of the kind recently adopted in New Zealand and which focusses upon the safety of the use of the materials and not their recreational use effects. It is a fairly bold experiment. Whether or not it will prove to be effective in limiting the damage occasioned by drug abuse or simply aggravates the problem by increasing the number of problematic substances lawfully available remains to be seen. I suspect that it is likely to be the latter.

Assuming that our present policy of criminalisation is almost certain to continue for quite some time, I favour a combination approach under which severe deterrent penalties would remain applicable to larger scale dealers and a range of individualized responses available for personal users. These would extend to the use of safe injecting rooms and include the controlled supply of drugs to some severely addicted persons. I understand that there are many who would regard the suggestion of supplying drugs to addicts or providing facilities for the injection of banned substances as entirely unacceptable and recognize the force of that view. However, I see little point in simply continuing an overly simplistic law enforcement approach that depends almost entirely upon deterrence. At best, this has achieved only limited success and at the same time has contributed to a range of other

social problems and affected the safety of our citizens. We do need to be more innovative and provide greater levels of support for addicted persons and lawful avenues to address their problem.

A different set of challenges, but also connected to developments in both the physical and social sciences and technology, is being encountered in our system of trial by jury in criminal cases. That system has evolved from an early form of trial before the members of the accused's local community. Initially, the process proceeded on the footing that those were familiar with the individuals and issues involved would be best equipped to determine where the truth lay. Over time, the jury came to consist of persons who were accepted as independent and objective and knew nothing of the parties. The underlying premise that the combined experience and understanding of a number of persons provides the most reliable foundation for the assessment of the reliability of evidence however still remains at its centre.

This structure works relatively satisfactorily in most of the situations with which the courts deal on a day to day basis. But even in the general run of cases the process is becoming increasingly problematic. Take, for example, the application of the standard of proof in a case dependent on scientific evidence. The probability or likelihood ratio that a minute sample of DNA, invisible to the naked eye, is attributable to a single individual can be assessed, using current methods of analysis statistical calculation, as being in the order of septillions to one. It is an overwhelming ratio that, as a practical proposition, leaves no real room for doubt. The evidence in such a case will normally be provided by a forensic scientist whose area of expertise would almost certainly be mysterious to the judge and

jury alike. Seldom, in my experience, are the advocates equipped to challenge it or, usually more importantly, draw attention to its limitations and relevance to the issues in the case. A question arises in such cases as to the reliability of the fact finding process that has been pursued.

I have been particularly conscious of the widening knowledge gap between expert witnesses and the other groups involved in our investigative, prosecutorial and criminal trial processes since shortly after my retirement as a judge, when I conducted a review on behalf of the Victorian State Attorney General into the wrongful conviction of a young man. He had been found guilty of a crime that had firstly not been committed by anyone and second, in circumstances where everything, except a single piece of what proved to be unreliable forensic evidence, pointed to his innocence of any wrongdoing. What was most disturbing about the whole extraordinary episode was that there was no indication that, at any stage of the process, there was appreciation by any of those involved of the possible source of the problem.

There have been a number of other cases and Inquiries over the last thirty years in which the capacity of the system to deal properly with the effect and reliability of expert forensic evidence has been raised. Some well-known examples include, the Splatt Royal Commission in South Australia and the Chamberlain Royal Commission. Within the last few weeks, the ACT Court of Appeal set aside the conviction of David Eastman after nineteen years for the murder of Assistant Commissioner Colin Winchester. This followed an Inquiry conducted by the Hon. Brian Martin who found that the forensic evidence given at the trial was seriously flawed.

These Inquiries have demonstrated not only the kinds difficulties encountered at the trial level but also that the principles applied by appellate courts are not always sufficient to enable miscarriages of justice to be identified and corrected. This problem is likely to increase as the knowledge gap between the forensic experts and those involved in the trial and appellate processes widens. Consideration should, I think, be given to the establishment of a Court of Last Resort, either nationally or in each jurisdiction to reconsider such cases.

Similar difficulties to those presented by the handling of forensic science and medical evidence arise in the investigation and prosecution of complex fraud cases, insider trading, tax evasion or those involving irregular financial transactions. In those matters, elaborate techniques, possibly operated across jurisdictions and legal systems, have been devised by highly skilled individuals to avoid detection and prosecution.

A question arises as to the appropriateness of our currently composed tribunals of fact, judges and juries, to determine these issues. There is much greater reliance now upon the use of civil penalties for what is often arguably criminal conduct in the commercial area. I recognize the practical considerations underlying this shift but am uncomfortable with the absence, on occasions, of proper criminal accountability for the immense social and personal damage created by truly reprehensible conduct.

It is not reasonable to anticipate that the participants in trials of the future will enter the courtroom with sufficient background knowledge and understanding to enable confidence

to be had in their capacity to deal with cases of this kind. Nor is the current technique of endeavouring to provide some instruction in the course of the proceeding likely to provide a satisfactory solution.

One approach may be to have more of the disputed technical issues determined separately by specially constituted panels. The conclusions could then be presented to the court as part of the evidentiary matrix in a process directed to the real criminality involved.

The potential for error and concern about the ultimate reliability of the outcome is criminal jury trials that may take many months, and unfortunately some do, is, I suggest, apparent. One such trial in Victoria occupied close to two years and the whole process from the laying of charges to the ultimate acquittal of some of the accused on appeal took approximately six years. I should add that the ultimately acquitted individuals had been in custody for the entire period. As far as I am aware, they received no compensation for their loss of liberty during an extraordinarily protracted process. Fortunately, much work is being undertaken across the country to simplify the process and reduce the length and cost of trials.

The widespread dissemination of information through the internet and social media also poses an increasing challenge to the traditional operation of the jury in criminal trials. Under the current system, the issues are to be determined solely on the evidence presented before them and the instructions provided by the trial judge. During much of my time as a barrister, the jury would be sequestered throughout the proceeding and denied access to any newspaper or other reportage of the matter. Nowadays, all that has

changed. Seldom are they kept together prior to and even during retirement and it would be naive to accept that deliberations may not be influenced from time to time by a range of outside influences, including the jury's own internet searches. These would, on occasions, reveal information such as the accused's prior criminal history that would ordinarily be excluded as potentially contaminating their deliberations. The traditional approach of endeavouring to quarantine the jury from exposure to this external knowledge is not going to be sustainable and either the rules and restrictions with respect to it will need to be adapted and greater trust placed in the jury or a different method of trial employed. This may increase the shift to judge alone trials..

A number of jurisdictions now allow for this to occur in serious criminal cases and the involvement of juries in both criminal and civil cases generally has been in decline for a long time. If, as I anticipate, that process is likely to continue, perhaps with more than one judge in some cases, there will be a quite significant change in the relationship between the community and the criminal justice system.

The jury has functioned not only as a fact finding tribunal but, because it has been seen to be independent of both the State and individual participants, has acted as a powerful protector of the integrity of the system and a bulwark against the abuse of executive power or idiosyncratic or politically motivated decision making. It would be an extremely unfortunate development if direct community connection diminished in significance. Hopefully, that will not happen but it may well take a different form.

Until the nineteenth century, the victim generally had the carriage of the proceeding and, in effect, confronted the accused with the allegations made against them. It was only at a relatively late stage of our legal history that Crown Prosecutors assumed the role of presenting the prosecution case as a representative of the monarch. An important consequence of this was that the complainant was, for practical purposes moved to the periphery of the process. On many occasions, they were neither consulted nor informed about the issues or progress of the matter in they were intimately involved. Over time, this led to understandable resentment and the development influential victim supports groups.

Complainants now generally have a right to submit or make a victim impact statement as part of the sentencing process but still have quite limited or no input in most jurisdictions with respect the conduct of the case. It would not be surprising if they soon have a role in the trial process itself with separate representation. If such a change in relation to disputed questions of fact were to be introduced, new rules and balances of rights and protections would have to be developed and the trial would look very different to that with which we are familiar.

The phenomenon of the mega trial in the civil cases in which they more commonly occur, is likely to require movement away from the single judge system currently employed. Some proceedings are arguably too complicated or likely to take too long to be handled by one person in the current fashion. These proceedings often involve substantial preliminary argument and the hearings can be extraordinarily costly both in monetary and resource terms. New methods of dealing with them, including mediation and arbitration are being employed but they have proved to be only partially successful and much remains to be

done in this area, including the possibility of having more than one judge or a judge and assessors.

As I remarked at the commencement of my remarks, there will be radical change the character and effect of much of which cannot even be predicted. I have attempted to draw attention to just some of those that I see have implications at a basic level for our systems directed to the maintenance of law and order. How we address this change will depend upon our real values and priorities and the balances we effect between our respective rights and obligations as members of a community.

I would like to conclude on a final cautionary note. Some broadly accepted rights are frequently referred to as inalienable. Whether or not that is a useful description is arguable as they can certainly be lost or taken away if we are not careful. Whether we permit this to occur is largely within our control. There is no need to be apprehensive about the fact of change which, in any event, will occur whether we like it or not but it is vital to remain conscious of the importance of ensuring that the essential values inherent in our social compact are not forgotten in the process.

Thank you.