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Courts and our democracy – Just another government agency?

Public misapprehension of the role of the Courts

Recently *The Australian* newspaper published an article about problems in the Department of Justice and the corrections system in Victoria. The article related to the death of a prisoner in custody. It included a statement that there were failings at the highest levels of justice.

This statement troubled me. It involved a misapprehension of justice and the role of the courts. It is a misapprehension perpetuated these days within the public sector and possibly misunderstood in the media and the community. Justice is delivered by the courts applying the rule of law.

Rather than my delivering a pontificating legal address about the 'Rule of Law', let me try to give the concept a political setting. At the Commonwealth Heads of Government meeting in Abuja, Nigeria, in 2003, the *Latimer House Principles on the Three Branches of Government* were resolved. They were seen as a set of guidelines on good practice governing relations between the Executive, Parliament and the Judiciary 'in the promotion of good governance, the rule of law and human rights'.

Although now ten years old the principles are worth revisiting. They describe the three branches of government or the trinity articulated by Montesquieu centuries ago. They describe that the relations between

Parliament and the Judiciary should be governed 'by respect for parliament's primary responsibility for law making on the one hand and for the judiciary's responsibility for the interpretation and application of the rule of law on the other hand'.

Significantly, the guidelines state that the judiciaries and parliaments should fulfil their respective but critical roles '*in the promotion of the rule of law in a complementary and constructive manner*'.

The guidelines go on to consider the independence of the Judiciary. They state that 'an independent, impartial, honest and competent judiciary is integral to upholding the rule of law, engendering public confidence and dispensing justice'.

The guidelines also include a section on the role of non-judicial and non-parliamentary institutions. They expressly focus on the role of the Executive.

Significantly, the guidelines state that an independent, organised legal profession is an essential component in the protection of the rule of law and that the Executive must refrain from obstructing the functioning of an independent legal profession.

Incongruity of the public sector and political perception of the courts as 'part of the Government of the day

Now the *Latimer House* guidelines state the high principles that would be adopted without hesitation by Victorian politicians and public administrators. Let us look, however, as to how the interaction between the Parliament, the

Judiciary and the Executive plays out in practice. It is particularly the interaction between the Judiciary and the Executive upon which I will focus.

We should recall that Thatcherism had a dramatic impact on public administration. In the 1990s Victoria shifted to mega-departments and the courts found themselves as a mere business unit along side areas such as gaming, emergency services, corrections and police. The title of 'justice' was appropriated to cover all sorts of non-court functions, indeed, anything remotely connected to social control, culminating in a department of justice. Under this system, departmental officers make the ultimate decisions, not the courts, about the provision of resources to the courts. Thus, notwithstanding its constitutional function under the Australian *Constitution* and the *Constitution Act of Victoria* the Supreme Court of Victoria is 'business unit 19' of the Department of Justice.

The development of 'law and order' as a political topic overlooking or pushing to one side the traditional role of the rule of law

For a long time now, law and order has become part of the political armoury of the modern politician. I can remember years ago, Senator Ivor Greenwood speaking publically about the need for law and order and the promotion of a sense of safety in the community.

This, of course, has continued to be developed into a principal political plank of state governments. 'Law and order' is associated with a prominent police presence and a strong spectre of corrections as a consequence of any breach to the laws of the state. Yet, whilst the police investigate and prevent crime and the corrections authorities carry out society's admonition,

punishment, rehabilitation and general consequences for criminal offending, it is only achievable because of the application of the rule of law.

Parliament creates the laws of society and together with the common law, judge made law developed by the courts, we have the set of rules that underpin the rule of law. However, as we know, Parliament is the law maker. It is up to the courts to apply the rule of law. So, for example, it is not the role of the Parliament to submit a person to trial for wrong doing and, if convicted, sentence the individual. That is the role of the courts.

I suspect it is in fact confusing for the public which starts out equating the courts with justice to observe blurred lines between the facilitator of resources for the courts – the government department, the investigator of crime – the police, and the enforcer of the courts decision – the corrections system.

We would rarely hear a politician or a public administrator speak of 'the rule of law'. Rather, they are more likely to speak of 'law and order' and 'community safety'. What in fact has occurred is that the concept of the rule of law has merged with the more populist catchcry 'law and order' and 'community safety'.

Public administrators' concept of justice as a 'service' that they (i.e. the public administrators) provide cf. the application of the rule of law by the courts

It is important to understand that the courts serve the community. However, they do not serve the community in the same way as members of Parliament or public administrators. Courts serve the community by applying the rule of law in an open and transparent way. The courts cannot

apply the rule of law in a way that is politically expedient or subject to the policies of the government of the day. This of itself sometimes creates a misapprehension on the part of some public administrators as to what they believe courts should do.

Alexander Hamilton cautioned in the *Federalist Papers* that in practice the Judiciary is the weakest of the three branches of government because it controls neither the sword nor the purse. Yet, through the application of the rule of law the courts have the power and authority to overrule or strike down the laws made by the Parliament, to direct or restrain actions by Ministers of the government of the day and the public administrators serving that government.

The significance of the role that the courts play in cases where the citizen versus the state and citizen versus citizen

One way of comprehending the value and significance of courts to our democratic structure is to reflect on the types of cases that go through the courts. In criminal cases the state represented by the prosecuting authority brings a citizen before the court. It is a matter of *the State v the Citizen*. We have important, fundamental principles applied in our criminal justice system. A person is entitled to a fair trial, a fair hearing and is innocent until proved guilty beyond reasonable doubt. Whilst we now have a *Charter of Human Rights* in Victoria, these principles are ancient rights that can be traced back to the origins of our democratic society, the development of the rule of law and our civilisation as we know it.

Day in day out, in the Victorian courts, individuals are prosecuted for minor through to major criminal offending. On any given day across the state, but in particular in Melbourne, individuals are prosecuted for offences in the

Magistrates' Court such as drink driving, assault, theft, drug trafficking and possession. In the County Court accused are prosecuted for more serious crimes and tried before a jury of 12 individuals. The prosecution carries the obligation to prove the guilt, beyond reasonable doubt, of the individual. In the County Court the serious offences played out each day involve cases such as intentionally causing serious injury, drug trafficking and rape. In the Supreme Court, mostly, the cases are homicide cases where the citizen faces the prospect of life imprisonment if convicted.

The importance of the courts in maintaining peace and harmony

Sometimes it is forgotten in the running commentaries about our political structures and society that the courts play an important part in maintaining peace and harmony within our society. Professor Hazel Genn in the 2008 Hamlyn Lectures spoke about the role of civil justice as a public good. It facilitates peaceful dispute resolution between citizens thereby avoiding citizens resorting to confrontation and violence as may occur in less civilised societies. There is a collective benefit in the rule of law. It supports the tranquillity of the state through ensuring social order, cohesion and, significantly, restraint on the Executive. As Professor Genn also points out civil justice re-enforces the civic values and norms of our society.

Most disputes in society are not resolved in court. In the civil cases litigated in the courts less than five percent ultimately go before a judge. These days civil litigation is largely resolved through alternative dispute resolution such as mediation and arbitration or settlement between the parties. However, it is the fact of a civil justice system symbolised by the courts that enables parties to enforce their rights. It is also the power of the courts that brings reluctant parties to the negotiating table.

Sometimes there is a view in society that judges are old fashioned because of the ancient rituals of the court room, our procedures, our insistence on due process and very often our appearance in the robes that we wear. However, the modern judiciary plays a critical role in the efficient management of cases and the promotion of alternative dispute resolution between parties frequently culminating in settlement of cases to the greater social good.

That is the civil side.

On the criminal side there has been a growth in the criminal justice system. We need only look at the shelves of statutes enacted each year in State and Federal Parliaments to have some indication of the extent to which modern society is increasingly regulated by the laws of the state. Professor Genn has described this phenomenon as 'legislative hyperactivity'. Inevitably as politicians and public administrators seek to ensure the delivery of the law and order agenda combined with a sense of safety in the community so there is a greater call on the judiciary to oversee the application of those laws, the application of the rule of law and the protection of the citizen's rights.

All this leads to the maintenance of peace and harmony in our society.

Just as the courts are the protectors of the rule of law so they need to be protected and separated from the Executive

In the interests of society the courts, as the protectors of the rule of law, need themselves to be protected and separated from the Executive. Sometimes, too, they need to be protected from the Parliament. I will speak in a moment about courts' performance. However, there is a dramatic

difference between the performance by the courts of their role and function and that of the Executive.

The Judiciary performs in a constant way: transparently open to the public and in a way that enables the public to know how the outcomes are determined. Each day courts list their cases so that the public know what cases will be heard where. This is part of the openness of the courts. It facilitates the media in learning which cases will be determined on a particular day. It also enables the public, if they wish, to come and sit in a court room and observe justice played out. When the public come they do not see a bureaucrat perform an office-like function, writing a report, preparing a budget or distributing funding. A judge does not sit at a desk in a private office. Instead a judge sits in an open court room. The events in the court room - that is what is said - are recorded, evidence is documented and the case is argued in an open court room before an impartial, unbiased individual who is beyond corruption. The judge is independent and must be so. Ultimately when the case is decided a judge is bound to give reasons for the decision. This is all part of the transparency of justice. The judge is not preparing a report to a political master. The judge provides a reasoned judgment which is publically available to the parties and, in the Supreme Court usually on line, so that the public knows why the decision was reached. This in turn enables an aggrieved individual to have at least one right of appeal to a higher court to identify any error by the first court. All this is part of the justice system.

It is a long, long way from the offices of the Department of Justice.

However, judges need to be able to focus on their work in an environment that is adequately resourced. It is difficult for courts to compete against the

palpable human demands on government of medical care, educational needs and housing and accommodation requirements. It is easy to comprehend why a politician will more readily react to meeting the fundamental and immediate human needs of health, education and housing before turning to the sometimes less obvious needs of justice. However, if we do not have courts applying the rule of law and delivering a justice system we put at risk the very provision of health, education and housing services. Without the courts, there will be no civil society or democracy.

It is fundamental to our democratic society that the courts be protected and separated from the Executive.

The undesirability of a government department (in Victoria the Department of Justice) controlling judges' staff, court registries, IT and other essentials

In Victoria we have a courts governance system where court budgets and resources are controlled by the Department of Treasury and Finance and the Department of Justice. Treasury determines each year the budget to be provided to the courts. For the Supreme Court we have an annual budget of about \$50 million dollars. A large part of the total budget of the Department of Justice is calculated on the provision of the needs of the courts.

The courts charge fees for litigation. They do not set or keep those fees. The monies go directly into consolidated revenue, the government's fund. The Supreme Court is the highest revenue earner of the courts (about \$13M of the total courts' fees pool of about \$25M). Under s.29 of the *Financial Management Act* a portion of the total courts' fees are returned to the Attorney-General who distributes the monies among the courts. \$3M is automatically paid to meet the unfunded contract liability for the PPP for the

County Court building. Under the previous government a sizeable portion went to projects of the Attorney-General and to meet unfunded recurrent expenditure. The balance was broadly split across the three main courts (about \$1M each). The current Attorney-General is endeavouring to ensure that the courts receive all the monies for their purposes.

It is important for citizens to know that despite courts charging fees, especially the Supreme Court, they do not keep or control them.

The approach of public administration is to see court fees as a means of costs recovery. Yet even then, the level of costs recovery by government in the Supreme Court is about 31 per cent compared with approximately 9-11 per cent in the Federal Court. It remains that the delivery of justice is an important and necessary cost to government. It is a fundamental cost for our social democracy. Costs recovery is anathema to the concept of justice.

The Victorian Department of Justice has a very large budget. Included in its budget is a component for depreciation (about \$50M) and contingency (about \$30M). If the courts need funding for their buildings or to meet an unexpected contingency (such as the damage to the Supreme Court building in March 2010 following the dramatic hail storms in Melbourne) the courts must appeal to the Department of Justice to accommodate the financial need. If an unexpected phenomenon arises in litigation, such as the prosecution of the various killings during the gangland era, we must turn to the Department of Justice to provide us with the necessary funding to meet that demand. We have no independent resources available to us. If the Department does not exhaust its depreciation or contingency monies the courts do not have access to the funds. Indeed, we have no say over the

funds even though they are calculated and budgeted by Treasury in part on the basis of the courts' needs.

If government introduces law reform measures such as extended supervision orders for serious sex offenders whose sentences have expired, the courts are usually expected to simply take on the extra burden.

Similarly, when governments determine to increase the resources of the police, traditionally this has occurred in isolation without considering what the consequences might be for the courts. Let me give a more recent example. The state government over a period of four years will increase the police numbers in Victoria by 1700. We know that with the increased numbers the Victoria Police will particularly focus on domestic violence including sexual offences. Experience dictates that inevitably there will be an increased reporting of crime and therefore an increased prosecution of crime within the courts. However, no provision is made for an increase in the Judiciary and courts' resources to meet that demand. I estimate that the increased number of police in Victoria will lead to an increase in the order of 25 per cent of sexual offences cases in this state. This in turn will have a flow on effect into trial courts, in particular the County Court and then the Court of Appeal within the Supreme Court. That is not to suggest that I am critical of the increase in police numbers. Rather, it is to highlight how the courts are over-looked. It is also to demonstrate that if the courts are to perform their role and function of applying the rule of law then they should not be involved in the political equation. It needs to be understood that the courts are above and beyond politics.

Most recently the State government announced its sustainability measures resulting in reduction in numbers of staff in the public sector. In the last

eight years the courts have largely been quarantined from these types of arrangements. The cut in staff numbers was announced across the board with very few exemptions. Initially the courts were not excluded and thus the reductions would have applied to judges' staff.

When a judge sits in court their staff are essential to the judicial process. If I take a criminal trial, the judge's staff consist of an associate and tipstaff or two associates. With a criminal trial those staff will assist with the empanelment and management of the jury. The judge does not do that directly. I mentioned earlier that everything that occurs in court is usually recorded. In trials, transcripts are produced. The staff who prepare the transcripts, the Victorian Government Reporting Service, prepare the transcribed word of what the judge, barristers and witnesses say in court. But the courts themselves do not directly control the staff or fund the provision of that transcript.

Court cases do not occur in isolation. Parties need to file papers in both criminal and civil proceedings, trial and appellate. These papers are received in registries where files are created in both hard and soft copy. Judges do not create the files but the files themselves are an important part of the judicial process. The files will contain the very document, called the writ, that commences the proceeding and brings the dispute before the court. All these files and documents need to be managed. Court registries are an integral part of courts and their function. Thus reductions to judicial staff, transcription services and registries would impede the sittings of judges and their application of the rule of law. Initially when the State government's sustainability measures were announced the courts, especially the Supreme Court were dramatically affected. The action reflected a misunderstanding of what courts do and their vital role. It was an example of courts being

treated as just another government agency. Fortunately, the intervention of the Attorney-General largely resolved matters and protected the courts.

As a demonstration of the Executive purported controlling the courts, in the Victorian Parliamentary Public Accounts and Estimates Committee Outcomes Report for 2010-11 a curious paragraph appeared. It recited that the results for the Department of Justice's performance measure 'Quality of Court Registry Services' had consistently been above 95 per cent but that for 2010-11 the figure had declined to 85 per cent. The Public Accounts and Estimates Committee approached the Department of Justice for information about the 'sudden and significant decline in service quality'. The Department responded saying that the 85 per cent figure was merely an estimate and that the actual result was confirmed at 95 per cent. The Department went on to report that 'it has introduced changes to ensure the actual result can be reported sooner rather than rely on an estimate'.

The question must be asked, what was the Department of Justice doing reporting upon the performance and work of court registry services? To be direct it is none of the business of the Department of Justice. More so, it was curious that the Department of Justice did not involve the courts themselves, certainly not the Supreme Court, in seeking advice on the performance of the Court's registry. Another point, the information that was vetted by the Public Accounts and Estimates Committee was derived from the Annual Report of the Department of Justice. A further question can be asked, what was the Department of Justice doing reporting on court registry services in its departmental report. Again, I reiterate, the performance of court registries has nothing to do with the Department of Justice. It is the business of the courts themselves.

For many years the courts have been concerned about the fact that IT services are encompassed within the mega Department of Justice. The concern was heightened with the announcement of the previous government of the CenITex proposal for the centralization of IT resources. In a nutshell, the Supreme Court informed the government that it would not participate in the CenITex process. It was seen to go to the very heart of the independence of the Judiciary. The Supreme Court was prepared to “pull the plug” and return to typewriters. As matters stand, there is a potential capacity for the operators of the Department of Justice IT system to look into the judgments of judges before they are delivered. That is to not to say it occurs, nonetheless, the potential is dangerous and offensive.

I am very pleased to say that by the end of this financial year the Department of Justice will have assisted the Supreme Court in achieving a separate IT system from the Department. For the first time judges' emails, judgments and other court documents will be entirely separate from the Department of Justice. Now it might be asked is this all just a little too precious? The fact remains that a significant litigator in the Supreme Court is the Secretary and the Department of Justice. The citizen at the other end of that litigation needs to know that the Court is separate from the Secretary and the Department. The need for the independence of the Supreme Court in this regard is self evident.

Inevitably there are other aspects of government management of courts that warrant consideration. The Integrated Court Management System was the subject of criticism by the Ombudsman in his report on government IT services (completed in consultation with the Auditor-General). The ICMS system was developed over six years ago by the then Victorian government

in order to achieve an integrated data collection system for the Victorian courts and, at some point, e-filing. It has been implemented, so far, only in the Supreme Court and partly in the Coroner's Court at a total cost of over \$60 million. It has not proved a success. In developing the system the Department of Justice held the control and took the leadership function. The Judiciary was essentially left out of the specification process.

The report of the Ombudsman demonstrates the need for the courts to have their own system and self manage that system.

Current systems of governance in Australia – the federal model, the South Australian Authority model and the states executive model

We have three courts governance models in Australia: the federal model – independent and self managed of which the Federal Court is the obvious example; the courts authority model – a cooperative and joint institution run by the three courts, Supreme, District and Magistrates, chaired by the Chief Justice of which South Australia is the prime example; the executive model – a dependant institution run within a state government department of which all states except South Australia are examples and of which Victoria is the most extreme example.

The current state of governance developments in Victoria: the Government's policy for a Courts Executive Service

In the state context a number of attempts have been made at altering the executive model. Eighteen months ago, the Victorian Attorney-General, the Hon. Robert Clark, commenced the development of a new courts governance model for Victoria. The Attorney-General largely contemplated a South Australian courts authority model with appropriate adaptation for

Victoria including any suitable aspects of the federal model. Study discussions were led by the Attorney with the Victorian heads of jurisdiction and Department of Justice personnel to see the Chief Justice of South Australia, the Honourable John Doyle AC and his courts administration authority colleagues. We also met, separately, the Chief Justices of the Federal Court and the Family Court of Australia with their CEOs.

Next the Victorian Attorney established a Courts Executive Service Steering Group chaired by the former Federal Court Chief Justice the Honourable Michael Black AC. It consisted of the Victorian heads of jurisdiction, the secretaries of the Departments of Premiers, Treasury and Justice and two leading economists. We met for the better part of 2011 and provided a report to the Attorney-General. The Attorney-General's proposal to separate the courts from the Executive arm of government is essentially supported by the courts.

However, inevitably the creation of a courts executive service and separating it from the Executive arm of government is challenging for some public administrators across the wider public service. In my experience the courts are interrogated as to why and how they should be separated from the Executive arm with a largely dominant focus on costs saving, economies of scale, efficiencies and productivity savings.

If I turn back to some of my observations at the beginning, this kind of language and approach seems to equate courts with government departments, hence the title of this discussion.

A little while ago the community services component of the Victorian Department of Health was separated. A new department was created. The

split apparently cost millions of dollars. By contrast, the separation of the courts from the Victorian Department of Justice is generally considered by some public administrators to be one that can be achieved on a cost neutral basis which will provide efficiencies and opportunities for costs savings. Do remember here we are talking about the separation of the third arm of government not just the splitting of a department. Whereas the health experience was allocated millions, the courts are expected to achieve something greater, but, with savings. It seems to me that there is a serious misunderstanding, indeed, misapprehension, as to the role of the courts.

Currently, the senior Justice Department administrators provide extensive support. They and the courts do their best to make things work. Some excellent projects have been achieved. However, the present courts governance structure is inappropriate, clumsy and compromises the independence of the courts. This is a non-partisan matter that the courts have been explaining for almost ten years.

The Victorian Attorney-General continues to pursue the establishment of the courts executive service. He is supported by the courts.

The special constitutional role of Supreme Courts: *Kable, Kirk, Totani*

I have spoken broadly about the judiciary and the courts. Yet there is a special constitutional role of State Supreme Courts under the Australian *Constitution*. Sometimes, state parliaments have endeavoured to constrain the powers of Supreme Courts and their capacity to intervene in government action. In a line of cases in the last few years the High Court of Australia

has made it clear that the state Supreme Courts have a special constitutional role.

The High Court has held that the supervisory jurisdiction of state Supreme Courts cannot be removed by a state parliament.

Furthermore, legislation that would compromise the integrity of a Supreme Court will be struck down as invalid.

In that context it is at least ironic and, indeed, questionable, for government departments under the Executive to be able to interfere in and constrain the functions of courts through the provision of services and resourcing.

Courts' accountability and performance: the measurement of courts performance

All of the Victorian courts are accountable to the Victorian Parliament. They each provide separate annual reports.

In addition, under the Council of Australian Governments (COAG) regime there is the annual report of government services (ROGS). Included in the report is a chapter on courts administration. There is detailed analysis of each of the state and federal courts on a state and national basis broken down into categories of civil and criminal, trial and appellate. The report is intended to provide a national comparison of courts' performance.

In the Supreme Court as part of assessing our own performance we have embarked upon the *International Framework for Court Excellence*. The framework was developed by an international consortium. Under the rubric

of the framework the Supreme Court has developed a strategic statement. Our goal is to be an outstanding superior court. We define our purpose as safe-guarding and maintaining the rule of law to ensure:

- Equal access to justice
- Fairness, impartiality and independence in decision making
- Processes that are transparent, timely and certain
- Accountability for the court's use of public resources; and
- The highest standards of competence and personal integrity.

In addition, as part of the framework we have developed a five-year plan, a business plan, and have prepared to publish public feedback and assessment of our performance.

All this is intended to be part of the ongoing improvement of transparency and accountability of the Supreme Court. The framework documents I have just mentioned will shortly go up on the Supreme Court website. They are presently delayed because we must await facilitation by the State government's 'e-gov' services before we can put up our own material on our own website.

External review of courts' performance

There are of course other agencies that will purport to vet court's performance and integrity: the Auditor-General, the Ombudsman and, when established, IBAC.

The question of performance audits of non-judicial functions of courts was examined in Victoria by a parliamentary committee reviewing the *Audit Act 1994*. The position adopted by the committee, on independent legal advice,

and supported by government was it is unlikely that there are any constitutional impediments to the Auditor-General conducting audits of the non-judicial functions of the courts assuming it would not interfere with the exercise of the courts' jurisdiction or affect the exercise of the judicial function. However, there are difficulties in discerning the line between what is judicial and what is non-judicial or administrative. A similar principle applies with respect to the Ombudsman.

As for IBAC or any corruption commission, at the end of the day someone must supervise the investigator and protect the citizen from unlawful investigation. And that, at the end of the day, will be the Supreme Court.

The need for the recognition of courts' capacity to be accountable and administratively competent

The reticence or scepticism that is displayed by some towards greater independence for the courts fails to recognise the effectiveness of the modern superior court. The Victorian Supreme Court for a number of years has achieved a balanced budget. It has dramatically reduced delays through judge-driven initiatives and reforms acknowledged by the government allocating \$3.2M to the court. It has introduced its own electronic filing system presently being piloted called RedCrest at a fraction of the cost of the ICMS system I mentioned earlier.

When we look at the Report on Government Services data we see that the Victorian Supreme Court delivers justice at a nationally efficient and economic level.

What every citizen is entitled to expect

Every Victorian citizen is entitled to expect a Judiciary made up of judges who are independent and impartial and who decide cases without fear, favour, affection or ill-will. That is the judicial oath we take as judges. The citizen is also entitled to be confident that there will be sufficient judges assigned to hear cases; that court sittings will be scheduled; that court lists will be controlled and managed in a way so that cases can be heard expeditiously; that there will be courtrooms available where judges can sit and determine cases; and that there will be a registry and court staff capable of carrying out these functions and supporting judges in the delivery of justice in the determination of disputes between citizens and between the citizen and the state. Above all else the citizen is entitled to expect a Judiciary which is not subjected to controls and interference from the Executive, independent of the government of the day and beyond corruption.

Inevitably, the question posed as to whether courts are just another government agency is answered with a resounding no.

The courts must be given an institutional structure that enables them to truly function independently.

Democracy is precious.

Because of the critical role of the courts in our democratic system their independence cannot be compromised.

Postscript: a few hours before the lecture was given the State Budget for 2012-13 was delivered. At p. 186-190 of the Budget under the Department

of Justice section a heading appears 'Dispensing Justice'. There follows a set of 'outputs' under which the aims of the Department (as distinct from the courts) are stated including to 'administer justice according to law'. The statement demonstrates another appropriation of the courts' function by the Executive.

Further, at p. 186-190 of the Budget a series of 'major outputs', 'deliverables' and 'performance measures' are laid down. The Supreme Court was not consulted about the inclusion of these disaggregated targets. They are rejected as inappropriate. The Court sets targets and reports on its performance to the Parliament. Targets are not set by the Treasury. They also carry the inference that if the Supreme Court does not meet these externally imposed targets funding will be reduced.

The targets equate the courts with a car factory. If the courts do not meet 'management's' production-line target they will be penalised. The courts deliver justice and apply the rule of law. They do not 'produce' cars, widgets or anything else.

Relevantly, the rest of the Department of Justice section in the Budget sets out 'major outputs', 'deliverables' and 'performance measures' for all or most of the Department. They cover a range of Executive activities including emergency management, gambling, liquor regulation, racing, consumer protection and legal policy and law reform. The approach reflects yet again the serious misapprehension that the courts are 'just another government agency'.