Smart Justice

Judge Peggy Fulton Hora (Ret)

Building Safer Communities, Increasing Access to the Courts, and Elevating Trust and Confidence in the Justice System.

Adelaide Thinkers in Residence

Smart Justice: Building Safer Communities, Increasing Access to the Courts, and Elevating Trust and Confidence in the Justice System.

Prepared by Hon. Peggy Fulton Hora,
Judge of the Superior Court of California (Ret.)

Adelaide Thinker in Residence 2009–2010

Government of South Australia

Department of the Premier and Cabinet C/O PO Box 2343 Adelaide SA 5001

ISBN 978-0-9807470-4-1 www.thinkers.sa.gov.au

Cover photo courtesy of Courts Administration Authority of South Australia

Premier's Foreword Message from Mike Rann

The justice system is a cornerstone of our society. It serves our community by keeping us safe, resolving disputes, deterring criminal activity and maintaining order.

In developed democracies such as South Australia, it is also a complex, multi-faceted system.

It comprises civil and criminal justice, alternative dispute resolution practices, police, the legal community, courts administration, the judiciary, Parole Board, juvenile justice and corrections.

It is a strong and effective system that serves us well, but can also be further developed.

Just like our health, education and political systems, the justice system must continue to evolve, to adopt new ideas in order to improve its function in the 21st century.

That is why we asked Judge Peggy Fulton Hora, our 17th Adelaide Thinker in Residence, to identify the system's current strengths, and suggest fresh approaches and programs.

We asked her to help us better understand the causes of crime so we can be more proactive in its prevention, to better manage the transition of offenders back into the community, and to continue to develop a cost-effective and responsive justice system that treats all South Australians with respect.

During her 12-week visit, Judge Hora shared her knowledge and offered guidance to an array of individuals and organisations. She offered models for innovation, and better ways of enacting justice that are based upon her vast experience in the United States, and globally.

This final report and the recommendations it contains represent the culmination of those 12 weeks of intensive work.

South Australia is noted for its innovation, and Judge Hora acknowledges that our justice system has been innovative in a number of important ways.

For example, we were the first Australian jurisdiction to introduce a mental impairment court, and we were home to the nation's first Nunga court for Aboriginal people.

Her suggestions will further advance our capacity to pioneer and refine new approaches.

I want to thank Judge Hora for the contribution she's made to South Australia through our Thinkers in Residence program, and I commend this report to you.

Mike Rann
Premier of South Australia

Judge Peggy Fulton Hora (Ret.)

Judge Peggy Fulton Hora retired from the California Superior Court in Alameda County in 2006 after serving 21 years. During that time she had a criminal assignment that included presiding over the Drug Treatment Court. She is a former dean of the B E Witkin Judicial College of California and has been on the faculty of the US National Judicial College for 17 years. Judge Hora is a Senior Judicial Fellow for the National Drug Court Institute, and Judicial Outreach Liaison for the National Highway Traffic Safety Administration.

Judge Hora has been instrumental in building the problem-solving courts movement. Her work in this area, informed by therapeutic jurisprudence, focuses on the improvement of justice throughout the world. Her international projects include drug treatment court seminars and technical assistance in the UK, Chile, Israel, New Zealand, Australia and Bermuda.

Judge Hora has lectured nationally and internationally and has written extensively on issues surrounding substance abuse, domestic violence, drug treatment courts, cultural competence and therapeutic jurisprudence. The appellate court and over 100 journals and law reviews have cited her work. Her latest article, 'Courting New Solutions Using Problem-Solving Justice: Key Components, Guiding Principles, Strategies, Responses, Models, Approaches, Blueprints and Tool Kits', will be published in the Chapman Law Review in 2011.

Judge Hora has received many awards in recognition of her work, including:

2009 – Rose Bird Award, outstanding woman jurist, California Women Lawyers
2008 – Inducted into the Women's Hall of Fame, Alameda County
2005 – Judicial Leadership and Service Award, Alameda County Probation Department
2004 – Bernard S Jefferson Judicial Education Award from the California Judges' Association
2002 – Inducted into Stanley M Goldstein national Drug Court Hall of Fame
2001 – National Association of Drug Court Professionals, Outstanding Leadership Award
1999 – Woman of the Year, State of California Legislature.

Currently, Judge Hora is a regular lecturer for the American Judicial College and remains active in the drug court movement in the United States. In her retirement, Judge Hora dotes on her eight grandchildren and travels the world seeking new adventures.

Partners and sponsors in the residency: Courts Administration Authority, Attorney-General's Department, South Australia Police (SAPOL), Department of Education and Children's Services, Social Inclusion Unit, Adelaide Law School, the University of Adelaide, Flinders Law School, Flinders University, Commissioner for Victims' Rights, Department for Correctional Services, City of Playford, Legal Services Commission, Law Foundation of South Australia.

Contents

Summary of Recommendations

1. 2020 vision for the justice system

1. Develop a 2020 vision for the justice system informed by community input and values-based budgeting.

2. Enhance information systems and develop an integrated information management blueprint to complement the 2020 vision for justice.

3. Expand the use of existing video conferencing in courtrooms by:
   - allowing electronic appearance by counsel for routine matters
   - allowing electronic appearances by defendants at the discretion of the judge or magistrate
   - using video conferencing for civil settlements, arbitration and mediation.

4. Continue research and evaluation of criminal justice initiatives in collaboration with universities to ensure a system-wide evidence-based approach.

5. Encourage law schools to offer courses in non-adversarial justice, including therapeutic jurisprudence and restorative justice.

6. Require justice system personnel, including members of the judiciary, to take up professional development opportunities, including cross-disciplinary training.

7. Adopt standards of judicial education that require professional development for both new and experienced bench officers.

8. Strengthen the program to involve Aboriginal people in the development, implementation and evaluation of government policies and programs.

9. Continue to transform the Aboriginal (Nunga) Court into a treatment court, or refer sentenced persons to existing specialist courts, to address alcohol and substance abuse, mental health and violence issues.

10. Improve the provision of high quality interpreting services, including video conferencing, for Aboriginal and other non-English speaking people; adopt a more culturally appropriate oath for Aboriginal people.

2. Building safer communities by being smart on crime

Incarceration, rehabilitation and re-integration

1. Further embrace alternatives to incarceration for non-violent offenders by developing a range of evidence-based intervention programs.
2. Adopt discharge planning that focuses on rehabilitating and reintegrating prisoners in order to reduce recidivism and improve community safety.
3. Create a compulsory Drug Treatment Correctional Centre (like the one in NSW) within the existing prisons, and include such a centre in the design of any new correctional institution.
4. Restructure bail and bond legislation so that the court has more options and can respond to breaches, consistent with evidence-based practice.
5. Ensure that rehabilitative services are evidence-based, evaluated and communicated to the Bench to inform sentencing.
6. Make prognostic risks and needs assessments available to judicial officers at bail hearings and sentencing, and to the Parole Board to enable informed release decisions.

Mental health and addiction

7. Create a forensic mental health and addiction service team for persons involved with the criminal justice system to create an integrated response to alcohol and other drug abuse and mental health matters.
8. Undertake an audit of the Drug Court using the internationally accepted key components of drug courts and expand the eligibility criteria for the Drug Court to include those diagnosed with alcohol use disorders and multiple-driving while impaired offenders.
9. Enact legislation to provide a statutory basis for all specialist courts, to include case management of defendants with major indictable charges, and to provide sentencing incentives for successful completion of intervention and rehabilitation programs.

Driving while impaired

10. Replace the terms ‘drink driving’ and ‘drug driving’ with the term ‘driving while impaired’, which can indicate one or the other or both.
11. Review current policy, practices and legislation in relation to driving while impaired to prohibit driving with any amount of controlled substance, make arrest mandatory for impaired driving, mandate a short jail sentence that cannot be waived, and develop a treatment plan as a condition of release.
12. Impose ignition interlocks for cars being driven by persons with a prior conviction.
13. Enact laws prohibiting mobile phone use while driving, ‘hands free’ or not, and prohibit texting; consider confiscation of mobile phones on arrest for distracted driving.

Family violence and restorative justice

14. Appoint a lead agency to oversee and coordinate family violence initiatives, including services for victims of family violence and perpetrator interventions.
15. Involve victims and their advocates in the planning and delivery of programs, including restorative justice programs.
16. Mandate direct perpetrator restitution to the victim for claims not covered by the state and allow the seizure of all property to satisfy a restitution order. Require perpetrators to reimburse the state for payments to their victims.
17. Locate the proposed Southern Community Court at Christies Beach Courthouse in order to maximise resources for programs and services.
18. Adopt the A-Team recommendations about the use of restorative justice practices in school discipline.

3. Fair, timely and economical justice

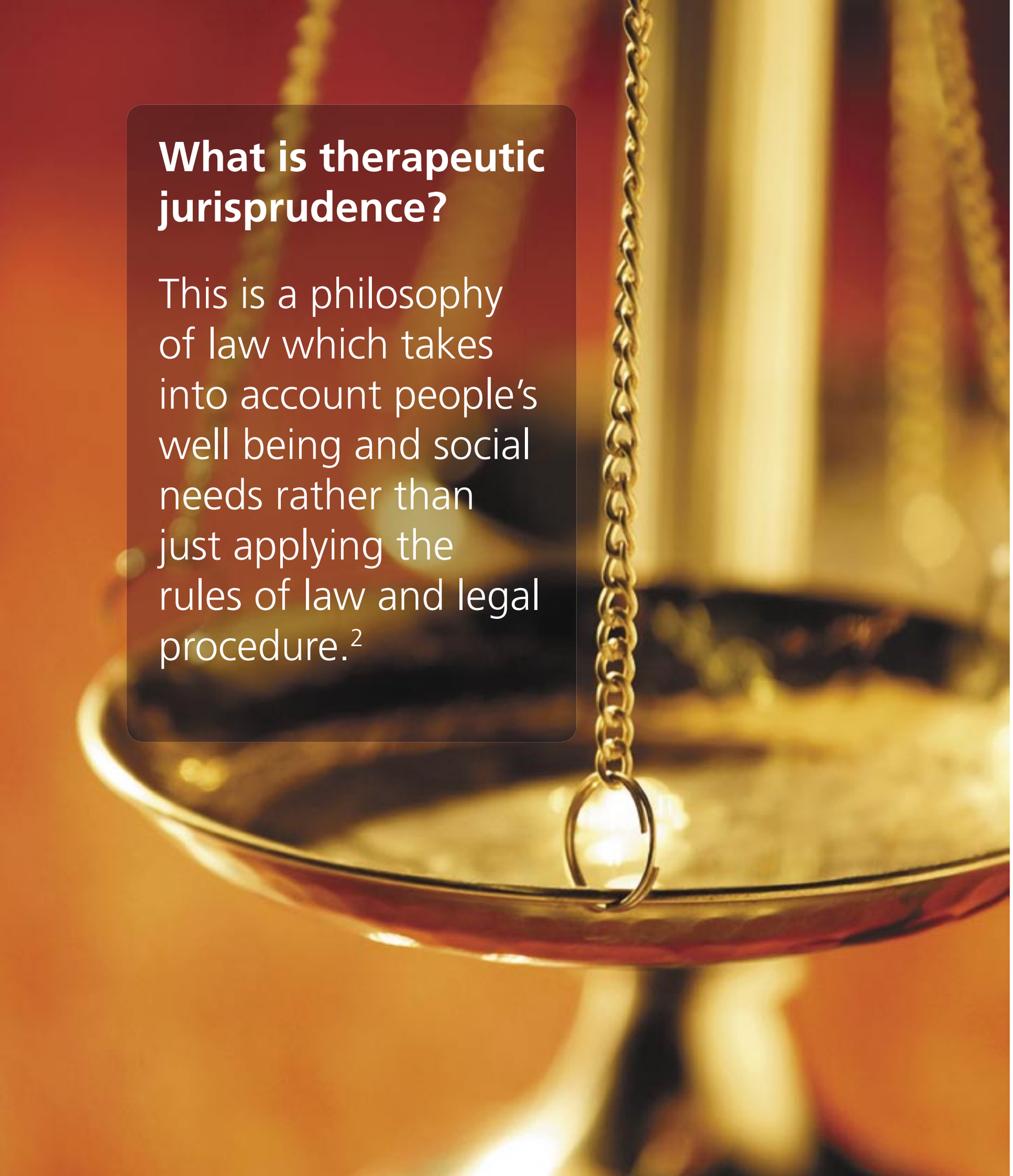
1. In consultation with the judiciary, pursue the establishment of a formal, legislative scheme of sentencing discounts, and explore the merits of introducing a legislatively based sentence indication scheme.
2. Reduce the number of matters heard in the District Court (and therefore the court backlog) by allowing the Magistrates Court, with an appropriate increase in resources, to hear more of the offences that would currently be committed to the District Court.
3. Adhere to and strengthen existing case management rules in the District Court Rules of Court and, building upon the experiences of other jurisdictions, adopt measures and judicial attitudes to improve existing practices.
4. Legally underpin the right to a speedy trial by setting a reasonable time frame for the filing of charges, and ensure that practices which unreasonably delay trials are eliminated; require reciprocal discovery, proper notice and good cause for all adjournments. Develop trial court performance standards for both civil and criminal cases that adopt these practices.
5. Consider legal aid funding of cases which rewards early disposition rather than encourages pleas on the first day of trial.
6. Continue advanced training for SAPOL prosecutors by the Director of Public Prosecution in evidence, court procedures and the conduct of hearings.
7. Have an experienced prosecutor review all charging decisions before complaints are lodged, and review cases involving serious offences to consider whether and how the matter can be disposed of at an early stage.
8. In the long term, explore court consolidation by moving to one trial court and one appellate/supreme court, rather than the current arrangement of the Magistrates, District and Supreme Courts.
9. Raise the small claims limit, and encourage the court to take a stronger lead in appropriate dispute resolution to expedite early settlement.

4. Protecting the next generation and building a better future

1. Strengthen the prospect of family reunification, where appropriate, through addressing underlying problems in the family.
2. Partner with the Australian Government to develop a Unified Family Wellness Court where issues of alcohol and other drugs, mental illness and family violence are heard in the Youth Court.
3. Create reunification and permanency plans simultaneously, so that children who cannot be reunited with their parents can be placed quickly in permanent homes.
4. Permanency planning should encourage adoption earlier in the process and adoption of children over one year of age should be encouraged.
5. Adopt a volunteer Court Appointed Special Advocate (CASA) program to ensure that every child has at least one adult consistently with him or her through the protection process.
6. Create additional intermediate sanctions between family conference and prison for youthful offenders to reduce detention rates.
7. Ensure that the new Youth Training Centre is architecturally and philosophically designed consistent with principles of restorative justice, rehabilitation, and age, gender and cultural appropriateness.
8. Adopt Youth Court performance measures to ensure the safety of children, timeliness and due process.

5. Understanding the third branch of government

1. Improve civics education in schools to increase knowledge about the process and structure of government (particularly the Judicial Branch).
2. Establish a ‘Media Judge’ (A-Team recommendation).
3. Research, redesign and refresh the Courts Administration Authority’s website to make it more informative and user friendly and allow it to better meet the needs of court users (A-Team recommendation).



What is therapeutic jurisprudence?

This is a philosophy of law which takes into account people's well being and social needs rather than just applying the rules of law and legal procedure.[2]

Introduction

The focus of my residency has been to explore innovative and alternative options to the traditional courtroom as a means to improve access to justice, reduce criminal offending, resolve civil disputes more efficiently and effectively, improve the safety and wellbeing of South Australians and increase public trust and confidence in the judiciary.

These issues are not unique to South Australia, and many other justice systems, including my own in California, have grappled with them. Geoff Mulgan (Thinker in Residence 2008) observed that the strength of the Thinkers in Residence Program is the role the Thinker can play in mobilising the creativity and collective intelligence to solve common problems.[1] I know that my work has already begun to stimulate thought and debate about how best to achieve smarter justice for South Australian citizens.

Some of the changes I recommend in this report are not new per se as they are already operating effectively in other national and international jurisdictions. However, they are new and different for the South Australia justice system because they challenge the way things have been done. Obviously there are differences between jurisdictions that need to be taken into account when making comparisons, but also, there are parallels. For example, Alameda County, California, where I served as a Superior Court Judge for 21 years, has a population of 1.5 million and 84 judicial officers, whereas South Australia has a population of 1.3 million and 87 judicial officers. Systemic change in my home justice system was never easy but it certainly was not impossible either.

I have applied the lens of therapeutic jurisprudence to the residency, as this is my specialty field, and sought to understand how the current laws, policies, practices and services associated with the justice system in South Australia have therapeutic or anti-therapeutic consequences for individuals and communities involved in the legal process. Along the way I have learnt many things about South Australia and the justice system that have surprised and impressed me, and sometimes concerned me.

There is no doubt that South Australia has an impressive history of innovation that has seen it lead the nation in many different fields. In relation to the law, South Australia was the first state to give women the vote; it was the first state to enact equal opportunity legislation; and it was the first state to have a Mental Health Diversion Court and an Aboriginal (Nunga) Court. Dame Roma Mitchell was not only the first woman governor of an Australian state (South Australia, 1991–1996), but she was also the first woman chancellor of a university in Australia (University of Adelaide 1983–1990) and the first Australian

woman Queen's Counsel (1962). There are many more firsts in social innovation and scientific and technological advances that are well documented elsewhere but which reinforce South Australia's position as a sophisticated and progressive state. Of course, the Thinkers in Residence Program is an innovation in itself which is unique in the world and which has resulted in many positive outcomes for South Australia.

In South Australia I found a smart, dedicated justice system with pockets of innovation, some good crime prevention and diversion programs — like the Police Drug Diversion Initiative — and clear best-practice program directions within the Department for Correctional Services, underpinned by prognostic risk and criminogenic needs assessment. The specifics that concerned me and that I felt could be improved upon will be the focus of this report.

The expense and shortcomings of incarceration

The over-reliance on incarceration for non-violent offenders is one issue. Incarceration reduces offending while people are in custody but in the long term this does not make the community any safer. Unless everyone is imprisoned for life, every prisoner will eventually be released back into the community, many of them ready to commit crimes again. Similarly unless there are adequate rehabilitation and reintegration services and sophisticated discharge plans, the community is no safer than before the offender was incarcerated. We know that a third of all ex-prisoners re-offend and return to prison in a relatively short period.

Incarceration is the most expensive response we have to criminal behaviour. We need to question the economics of incarceration versus other forms of legal sanctions for non-violent offenders. The fact that imprisonment is very expensive, has a limited impact on crime rates and re-offending, and disproportionately affects Aboriginal people and those with a mental illness should be persuasive enough. However, these arguments are overlooked when the conversation is only about 'tough on crime.' We also need to be 'smart on crime' and move away from an adversarial and punitive justice system which does little to protect us in the long term.

Value-based budgeting is an effective way to build agreement over funding decisions, based on the development of objectives which reflect the predominant community values, and technical estimates of recognized experts about the costs of a range of alternatives and using these two main inputs to prioritise expenditure.

As a result of the global financial crisis government revenues have been drastically reduced; there is an urgent need for the public sector to find ways to do more with less and to meet the expectations of the community for a wide range of services. This resource dilemma provides the ideal context in which to employ values-based budgeting and open community debate about the issue of imprisonment: whether a new prison should be built or whether the money could be better spent elsewhere if more effective crime prevention strategies were adopted and more community-based sanctions applied.

Substance abuse and mental health

The misuse of alcohol and other drugs is one of the most important areas to address in crime prevention. Substance abuse fuels most offending in the community. Mental health problems often co-occur with dependence on alcohol or other drugs, and many cases of child abuse and neglect involve parents with substance dependence. Evidence-based programs that help people address their substance dependence will be effective in reducing re-offending; this has been demonstrated time and again in many programs throughout the world. South Australia could be doing more in this area in terms of consolidating existing programs and ensuring that they reflect best practices. Initiatives must be widely accessible and proven to work. South Australia's driving while impaired laws (called 'drink driving', even though 23% of all drivers killed on South Australian roads tested positive for illicit drugs) are an example of outdated legislation that does not follow best practices because of the lack of treatment requirements, licence sanctions that are not tied to recovery from substance dependence, and inadequate fines.

Family violence

I am concerned about the need for more strategies to be put in place by the justice system to protect the next generation. The Premier asked me especially to look at the issue of family violence and I have also considered this in my enquiries about the Youth Court. Of course, children who are in danger or who are being harmed need to be removed to a safer environment, and they may never be able to return to their family of origin. Children in homes where domestic violence occurs have trouble learning and are subject to maladaptive physical, emotional and intellectual development.[3] About 80% of the parents who are unable to care for their children have alcohol or other drug dependence issues. Some of these families can be healed and reunited with their children if they are given the necessary treatment intervention. The Youth Court should have a more therapeutic focus in the way it deals with families, and personnel who work with the Youth Court need cross-disciplinary training on substance abuse and other mental health issues.

Future vision

The challenge for the government and the community of South Australia is to develop a vision for the future, one that balances the safety of the community with innovations based on best practice principles. This vision must also include an emphasis on case management of court files and evidence-informed decision making. Judges and magistrates need to have objective information about all the factors relating to the efficacy of rehabilitation programs and offenders' progress in order to make good and just sentencing decisions that weigh public safety along with rehabilitation.

It is also appropriate, in the light of the current financial constraints facing government, to review the administration of justice in the courts. To meet the needs of the community and victims and to be accountable for the expenditure of public funds requires that justice be administered in the most efficient and responsive manner possible. Timely, fair and economic justice needs to take an equal place alongside due process and other important legal principles as the underlying legal philosophy and practice in the courts. This is the challenge for the government, the judiciary and the legal community. In seeking to encourage the judiciary to become more active in managing the court process to achieve efficiency, I am not advocating anything very different from what my colleagues and I in California have had to take on. Adopting strict compliance requirements with rules that discourage adjournments, promote early settlement, and embrace judicial management of cases does not diminish or threaten judicial independence, nor reduce the standing of the judiciary in the public mind. On the contrary, I believe the public confidence in the court system and the judiciary will increase if issues of efficiency, timeliness and cost can be appropriately addressed.

I have every confidence that South Australia is up to meeting these challenges in tough times. The state has an innovative and thoughtful people who balance common sense with high aspirations. To assist with the identification and resolution of these challenges I respectfully and humbly submit my report and recommendations.

A 2020 Vision for the Justice System

A 10-year South Australian Justice Strategic Plan

Adelaide is known as the city ‘where innovation is a way of life’ and innovative it is. Inter-justice agency collaborations have resulted in South Australia establishing some of the first problem-focused courts in the country, and many progressive programs to reduce crime and provide safer communities have been initiated by the justice system and local government.

However, some of the developments, especially within the Magistrates Court, have been piecemeal and lack system-wide commitment. As a result, these programs have failed to attract adequate funding and/or to be evaluated and replicated in other locations. This applies particularly to the specialist courts, but both the District Court and Supreme Court should have similar programming options that would better serve their constituencies.

I understand that there are already various planning documents in place, including the Justice Portfolio Strategic Directions and South Australia’s Strategic Plan. However, these do not seem to have resulted in the committed agenda of reforms necessary within the justice system to achieve the objectives of crime reduction and prevention, and a planned and coordinated approach to the continued development and funding of these initiatives. Without inhibiting creative thinking in any way, the justice system could benefit from a 10-year plan that can work towards a common vision of smart justice developed in consultation with the public, especially disadvantaged communities. There needs to be a coordinated systematic approach to criminal law reform.

The process of review and reform of criminal law needs to be ongoing so that it remains relevant and responsive to the society it aims to protect. Law reform also needs to take a coordinated systemic approach. The criminal justice system is like a sausage — if it is poked at one end to make a change this will cause a bulge in activity and costs somewhere else. These factors need to be carefully considered and adequately planned for to maximise the benefits of reforms. Some states and territories have law reform commissions to provide a coordinated inquiry into the current practices and to provide informed advice to guide legislative change. I suggest that South Australia consider developing a law reform commission as part of the process of developing a vision for the justice system.

The strategic planning should include public meetings where South Australians get to express their concerns and interests. As we wish to increase respect for the justice system, so too must we respect the voice of the community and involve them in the planning and decision-making processes. The National Indigenous Law and Justice Framework 2009–2015[4] supports a community partnership approach to law and justice issues, particularly for those with 'adverse contact with the justice system.' This principle must be extended to the wider community.

Furthermore, there could be a greater link with other planning documents such as South Australia's Strategic Plan. For example, there could be additional targets included in this plan to:

- reduce crime through reduced recidivism
- reduce family violence
- reduce violence related to substance abuse
- reduce impaired driving and the harm caused by it
- increase health benefits through treatment for substance abuse and other mental health problems.

Finally, the 10-year SA Justice Strategic Plan should be embraced as a living document and not just another report gathering dust on a bookshelf.

Information and communication technology

South Australian justice agencies currently utilise a number of information and communication technology (ICT) systems, including the Justice Information System, the Justice Warehouse, and various other data storage facilities managed by individual agencies. Some of these rely on outdated technology. For instance, I was rather appalled to find out that Windows 2003 software was being installed in court computers in 2009. The government has started to address this situation, recently committing to overhauling the SAPOL information management systems.[5] This piecemeal approach, however, results in a police-centric system that may or may not fit the needs of the criminal courts. There is clearly a need to further enhance ICT capabilities in this state. It is critical that all agencies have simultaneous access to accurate, timely and relevant information to function efficiently and effectively.

Recent reforms to the laws for restraint of domestic and personal violence highlight limitations with existing ICT systems. The Intervention Orders (Prevention of Abuse) Act 2009, which was passed on 1 December 2009 but has yet to commence, contains notification requirements to ensure that all relevant public-sector agencies (that is, those responsible for education, families and communities, child protection and the South Australian Housing Trust) are aware that intervention orders have been made, varied or revoked by justice agencies. Current ICT systems are not able to manage this process and a working group has been set up to establish new mechanisms to allow for the exchange of information between justice and social service agencies. This example illustrates the need for a more strategic and integrated approach to ICT in South Australia.

South Australia is already using audio-visual technology in courtrooms and custodial centres to minimise the unnecessary movement of prisoners. This technology is also being used to accommodate the needs of vulnerable witnesses. Video conferencing has the potential to improve efficiency and cost effectiveness, and the expansion of such capabilities should be encouraged. In particular, given the challenges to service delivery posed by South Australian geography, the exploration of innovative ICT solutions to improve access to justice by persons in rural and remote locations should continue.

Evaluation of criminal justice initiatives: 'Does it work?'

Research and evaluation of justice initiatives is critical to improving the quality of justice. I found that this does not occur consistently in South Australia. For example, evaluations have been undertaken of the Drug Court,[6] the Police Drug Diversion Initiative,[7] and the Department for Correctional Services' anger management program for violent offenders.[8] The Magistrates Court has been surveyed to determine how it allocates its time and what employees think of their jobs.[9] Other program initiatives continue to rely on dated reviews or have not been formally evaluated. This applies to the Family Violence Court and the Northern and Central Violence Intervention programs, for example.

Planning for the Southern Community Justice Court, a recent government election commitment, has included discussion of evaluation options. The government is liaising with a range of stakeholders, including Flinders University Law School, which was one of the collaborators in the evaluation of the Victorian Neighbourhood Justice Centre (the model upon which the Southern Community Justice Court is expected to be based).[10] It is important that evaluation design is considered and funding set aside prior to program implementation so that data is captured from day one in a usable form and in the most cost-effective manner.

It makes sense for the South Australian Government and universities to collaborate in developing an evidence base. The Southern Community Justice Court is one example of how the government can work in partnership with universities in the design, implementation and/or evaluation of justice initiatives. A similar association with Flinders University staff exists in the youth justice area, while the Department for Correctional Services has a working relationship with the University of South Australia. I was pleased that the University of Adelaide and Flinders University law schools chose to become partners in my residency and hope that this experience will further enhance relationships between 'the town and the gown.'

Another way to improve relationships is through universities offering joint degrees in substance abuse and law, childhood development or social work, or similar cross-discipline courses. Law schools could also offer more subjects focused on non-adversarial justice, canvassing topics such as therapeutic jurisprudence and restorative justice. Justice portfolio staff are often made up of university law school graduates and consequently it is important that these courses provide students with a sound basis to contribute to a justice system that features smart justice.

Judicial professional development

'Judicial officers will be better able to maintain the high standards required of them if they are provided with, or given access to, appropriate professional development programs that help them to maintain and improve skills, respond to change in our society, maintain their health and retain their enthusiasm for the administration of justice.'[11]

South Australia currently has 87 judicial officers.[12] Included in this total figure are 81 full-time and six part-time judges, magistrates, masters and commissioners of the Supreme Court, District Court, Magistrates Court, Youth Court, and Environment, Resources and Development (ERD) Court.

Table 1 South Australian judicial officers

		Supreme Court	District Court	Magistrates Court	Youth Court	ERD Court	**Total**
Full- time	Judges	13	22	0	2	2	39
	Magistrates	0	0	33	2	0	35
	Masters	2	3	0	0	0	5
	Commissioners	0	0	0	0	2	2
Part-time	Magistrates	0	0	4	0	0	4
	Commissioners	0	0	0	0	2	2
Total		**15**	**25**	**37**	**4**	**6**	**87**

Judges and magistrates have academic qualifications in law, many have doctorate degrees and also typically have extensive experience as legal practitioners. They are appointed on the basis of their skills and know-how. However, there is need for continued professional development to ensure that judicial officers are well placed to respond to the challenges of judging in the 21st century. Some issues confronting today's judiciary include:

- the increased use of technology (e.g., forensic sciences, video-conferencing, electronic lodgement of court documents)
- pressure to reduce court delays and make more efficient use of resources
- greater use of problem-solving approaches which focus on addressing the underlying causes of crime
- more complex cases
- greater emphasis on the role of victims in the justice process.

In addition, judicial officers work in an environment of continuous legal reform and changing community expectations.

There is no requirement for South Australian judicial officers to undertake a particular type or number of professional development activities. However, in 2006, the National Judicial College of Australia (NJCA) developed a national standard which recommends a minimum of five days each year.[13] This document further recognises that newly appointed judicial officers should be offered orientation programs to assist them to make the transition from legal practice to the bench. Judges do not spring full-grown from the brow of Zeus, and they need time to think through their new role and responsibilities. The standard indicates that recent appointees should be offered an orientation program by the court to which they are appointed, which outlines the work and functioning of that court.[14] Anecdotally, it was reported to me that in one case 'orientation' consisted of sitting in chambers for one week without being assigned cases. This is not the best approach to an orientation. Also, within 18 months of appointment, a judicial officer should have the opportunity to attend a national orientation program, which should be of about five days' duration.

The length of training recommended for Australian judicial officers is lower than in California, which requires 15 days for new judges and five days of continuing education, in addition to ethics training, each year.[15] Further, in California, training is mandatory, while in Australia training is offered on a voluntary basis, although participation is encouraged. The NJCA has also developed a national curriculum for judicial education.[16] This program recognises that judicial officers require **not only knowledge of the law, but skills training and awareness of current social issues as well**. Framed in a non-prescriptive way, judicial officers are not necessarily expected to undertake all elements in the curriculum, but to draw from the program as relevant to their own needs and circumstances.

The Australian national curriculum includes eight modules:

- the law
- judicial management
- decision making
- judicial conduct
- social contexts
- developments in knowledge and issues of public policy
- information and other technologies
- maintaining health and well-being.

Each module includes a number of topics, many of which are in keeping with the themes canvassed in my report. For example, topics within the 'social contexts' module include: Aboriginal people; disability and impairment; and family and domestic violence.

Given the over-representation of Aboriginal people in the criminal justice system, it is inevitable that the judiciary will adjudicate matters involving Aboriginal defendants, victims and witnesses. Indigenous Justice Committees at both the national and state level regularly organise Aboriginal cultural awareness training and judicial officers should attend these sessions. The NJCA has also produced a draft curriculum framework for professional development programs for judicial officers on Australia's Aboriginal and Torres Strait Islander people, which, when finalised, will provide another useful resource.

Amending standards to include continuing professional development

Standards of judicial education should be adopted to require professional development for both new and experienced bench officers. Required education should be a minimum of five days each year for experienced judges and include courses in ethics and opinion writing, as well as substantive courses in substance abuse and mental health, docket management, cultural competence and trial techniques.

Funding for South Australian judicial professional development should be sufficient for judicial officers to participate in a range of forums. They should have opportunities to attend locally organised sessions and to regularly meet with interstate counterparts.

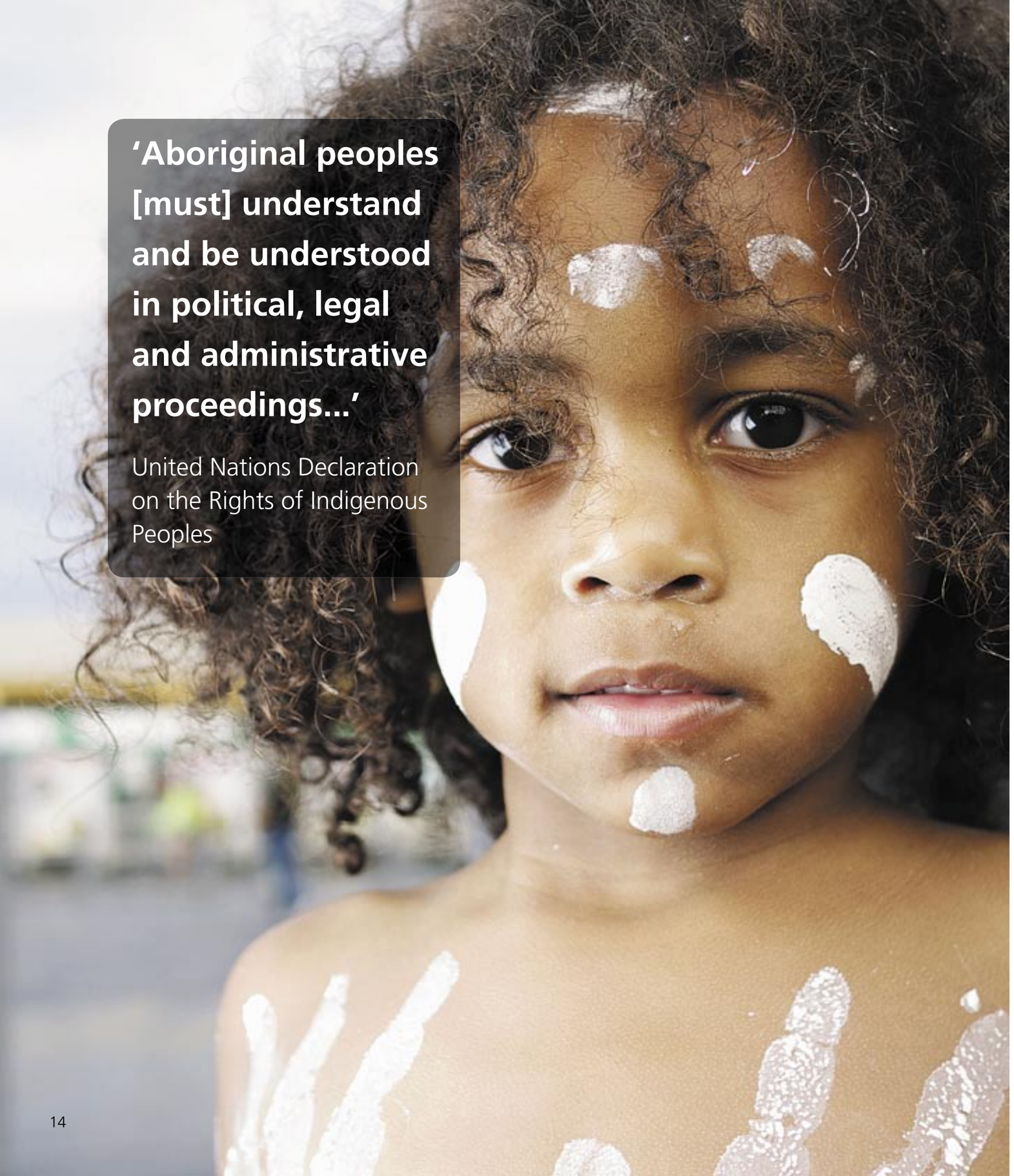
A number of national and state-based bodies offer professional development opportunities to members of the judiciary. In addition to the NJCA, national bodies include the Australasian Institute of Judicial Administration (AIJA)[17] and the Judicial Conference of Australia (JCA).[18] In South Australia, the Judicial Development Committee (JDC), chaired by Judge Christine Trenorden, offers a variety of two-day and twilight sessions. I was able to gain first-hand experience of the work of this committee, as I presented at and participated in a number of state-based forums while in South Australia, including the two-day District and Supreme Court judges' conference, two twilight sessions and an all-day mandatory education program for magistrates.

New methods and technology in education

It is important that judicial development activities embrace innovative methods of delivery and make use of new technologies. This already occurs to some extent. For example, the South Australian JDC video-records presentations, and an intranet page has been developed to enable judicial officers to share resources and access the professional development calendar of events. This should be expanded to include webinars, MP3 downloads, Internet-based and closed circuit television distance learning, as well as a listserv of new or 'hot' topics for bench officers.

The South Australian judiciary should also consider the creation of a mentor program to assist recent appointees to make the transition to the bench. It should develop a curriculum for such a program, and meetings between the new and experienced judges should take place weekly. Lessons can also be learnt from the Judicial College of Victoria, where the annual prospectus includes field trips aimed at increasing knowledge and awareness of programs offered in correctional facilities, forensic sciences, rehabilitation programs and other initiatives.[19]

Although I have focused on the importance of continued professional development for judicial officers, I recognise that there is need for ongoing education and training of all justice sector personnel. In particular, I believe that there is a gap in the availability of cross-disciplinary training on topics such as alcohol and other drugs, mental health and domestic and family violence, and would encourage agencies to pursue training in these areas.



‘Aboriginal peoples [must] understand and be understood in political, legal and administrative proceedings...’

United Nations Declaration on the Rights of Indigenous Peoples

Aboriginal justice issues

The over-representation of Aboriginal people in all aspects of the justice system, from those who are incarcerated to victims and to parents whose children are removed from their care, is extremely disturbing.

Over-representation of Aboriginal people

- In 2009 1.5% of South Australians were of Aboriginal descent, however they represented 23% of the prisoner population. [20]
- In 2008-09, the rate of Aboriginal and Torres Strait Islander children in out-of-home care in South Australia was more than nine times the rate of non-Aboriginal children. [21]
- Approximately 80% of the children in custody are Aboriginal.

There has been, and continues to be, a plethora of research, investigations, reports and intervention strategies at both state and federal levels to try and address this complex issue. I do not presume to have fully understood, in the short time I resided in South Australia, all the cultural and political complexities, nor all that has already been done or is in the planning stage to address this issue.

However, given my own experiences as a judge for 21 years, I was not surprised to learn that some experts regard Aboriginal alcohol and drug abuse as the leading cause of Aboriginal over-representation in the prison system, and a more direct cause of incarceration than economic and social disadvantage (although the effects of this cannot be underestimated).[22] I also recognise that Aboriginal people drink at lower rates than non- Aboriginal but that those who do drink alcohol tend to be more problematic drinkers than non-Aboriginal. The link between substance abuse and crime is well established and the research tells us that substance use, particularly alcohol, precedes the commission of an offence by and/or arrest of an Aboriginal person in the majority of cases.[23] I observed this myself on the occasion I attended the Nunga Court.

‘Since health, substance misuse and wellbeing issues are closely linked to Aboriginal violence, offending and incarceration, interventions that address alcohol and other drug misuse have the potential to significantly reduce the over-representation of Aboriginal Australians in our correctional system.’[24]

While the section **Incarceration, rehabilitation and re-integration into the community** in this report includes more detail about the financial, health and social costs of incarceration in relation to

Aboriginal people, there is an urgent need for more bail-based treatment programs as a diversion from prison and a sure way to reduce recidivism. This view is echoed by research, which has demonstrated that treatment offers the best alternative for interrupting the drug abuse/criminal justice cycle for offenders with substance abuse problems.[25] However, treatment should also be provided in the prison setting and, after release under parole supervision conditions, as part of the continuum of care. The National Institute on Drug Abuse in the US has developed 'Principles for Effective Drug Abuse Treatment for Criminal Justice Populations,' which I encourage all programs that currently serve offenders to follow.[26]

In the Australian context, the report of the National Indigenous Drug and Alcohol Committee, titled Bridges and Barriers, is critical of the exclusion of alcohol from current diversion programs and says that this, along with other strict eligibility criteria such as excluding crimes of violence and the requirement to plead guilty, has excluded many Aboriginal offenders from participating in diversion programs.[27] It makes no sense to exclude alcohol from substance abuse treatment programs, as research has shown that poly-drug use is common and that alcohol is most often one of the licit drugs used.[28] One study estimates that 39% of all offenders causally attributed alcohol and/or illegal drugs to the offence for which they were then incarcerated.[29]

A few issues came to my notice during my visit that I thought could be improved upon relatively easily and which would make a significant difference for Aboriginal people in the criminal justice system.

Focus of Aboriginal Sentencing Courts

The first is improving the functioning and focus of the Aboriginal Sentencing Courts, particularly the Port Adelaide Nunga Court, which was established in 1999. There are also Aboriginal Sentencing Courts at Murray Bridge and Port Augusta. Port Adelaide sees about ten Nunga defendants per month.

As I understand it, the key purpose of the Aboriginal Sentencing Courts is to increase Aboriginal participation and confidence in the administration of justice through a more culturally appropriate sentencing process, which involves participation of recognised community elders or respected persons, and more engagement from the bench in seeking to understand and find solutions attuned to the personal background and social issues of the defendants. It is not a problem-focused court in the strictest sense.

Need for supervised treatment and recovery

The court process I observed was time-consuming and did not use the opportunity to **incorporate treatment as part of sentencing**. The defendant admitted problems with alcohol, which would likely lead to his failing unsupervised bail without appropriate intervention. He should have been referred to a specialist court to have his treatment and recovery supervised, or the Nunga Court could be reconfigured to become more comprehensive and problem-focused. I am told that current practice may be incorporating some of these approaches and I would encourage this beginning effort.

I have been told that it has been past practice for offenders to be placed on supervised bonds and referred to community-based alcohol and other drug services. However, this strategy could be strengthened with regular and rigorous court supervision and access to culturally relevant services for alcohol and other drug dependence. The opportunity to reduce recidivism is at best weakened and, at worst, lost completely if people are not provided with a structured, court-supervised intervention program when an assessment finds them to be at high risk and to possess high criminogenic needs.

Painting in Nunga Court, Port Adelaide. The cover painting by Cecelia O'Loughlin depicts various communities across the State of South Australia working together to bring justice to Aboriginal people. The circles represent communities and court at various locations in South Australia where special Aboriginal Courts are regularly held. The black and white footprints moving between the communities represent Aboriginal and non-Aboriginal Australians, working in partnership in the justice system. Photo courtesy of Courts Administration Authority of South Australia.

Building on the Nunga Court successes

The Nunga Court has provided transparency to the criminal justice process and has increased the trust and confidence of the Aboriginal community in the criminal court. However, there is no evidence that the current practices in the Nunga Court reduce re-offending, or have a positive cost benefit in terms of the resources allocated to the process. There is evidence that problem-solving courts like Drug Courts do achieve these results. Therefore I recommend acting quickly to change the Nunga Court and ensure that a comprehensive evaluation is undertaken once these changes have been implemented.

One of the recommendations from the evaluation of the Aboriginal Sentencing Court of Kalgoorlie, Western Australia, reinforces both the value of an evaluation to strengthen program design and the importance in the success of alternative courts of providing offender programs. The lack of Aboriginal-specific treatment, intervention and rehabilitation programs and support services, and a lack of knowledge and information-sharing regarding available programs and services, were found to negatively impact on the effectiveness of the Kalgoorlie court.[30]

The lack of available culturally relevant alcohol and other drug services for Aboriginal offenders is also crucial. I am aware that there is a handful of government and non-government providers of community-based services for Aboriginal people, but there is no designated residential substance-abuse treatment centre in Adelaide, and that deficit has a disproportionate impact on Aboriginal people. The issue of whether or not this represents a significant service gap needs to be reconsidered in the light of the Bridges and Barriers report and the findings made public, so that the criminal justice system and the community can be assured that there is a continuum of care for Aboriginal people. As stated in the National Indigenous Law and Justice Framework 2009–2015, 'Aboriginal and Torres Strait Islanders must be active partners in the development, implementation and evaluation of policies and programs relating to substance abuse in their communities.'

Aboriginal Justice Officers

The Aboriginal Justice Officers in the courts play a very important role in ensuring that Aboriginal defendants understand the proceedings and what is required of them in relation to bail conditions and fines. This service could be expanded with the production of a DVD in languages understood by the Anangu people to explain the court process, including the witness oath, and this could be distributed through Aboriginal community contact points in the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands.

Lack of interpreters: misunderstandings and delays

South Australia recently undertook a project to increase interpreter services in the courts, and that is to be commended. However, there is some debate still about the adequacy of existing interpreter services for traditional Aboriginal people, who may not speak any English at all or for whom English is their second or third language. It is a fundamental legal right in a criminal case that the accused should understand the nature of criminal charges and criminal proceedings, and this should never be compromised by a lack of interpreters.

One court watcher told me that only 70% of cases needing interpreters get one. A study should be undertaken to actually find the facts. Are there or are there not court delays due to a lack of interpreters? How many court days are lost for lack of an interpreter? What about wasted time and costs for jurors and witnesses, let alone the counsel for both sides? How is a judge's ability to plan his or her calendar affected?

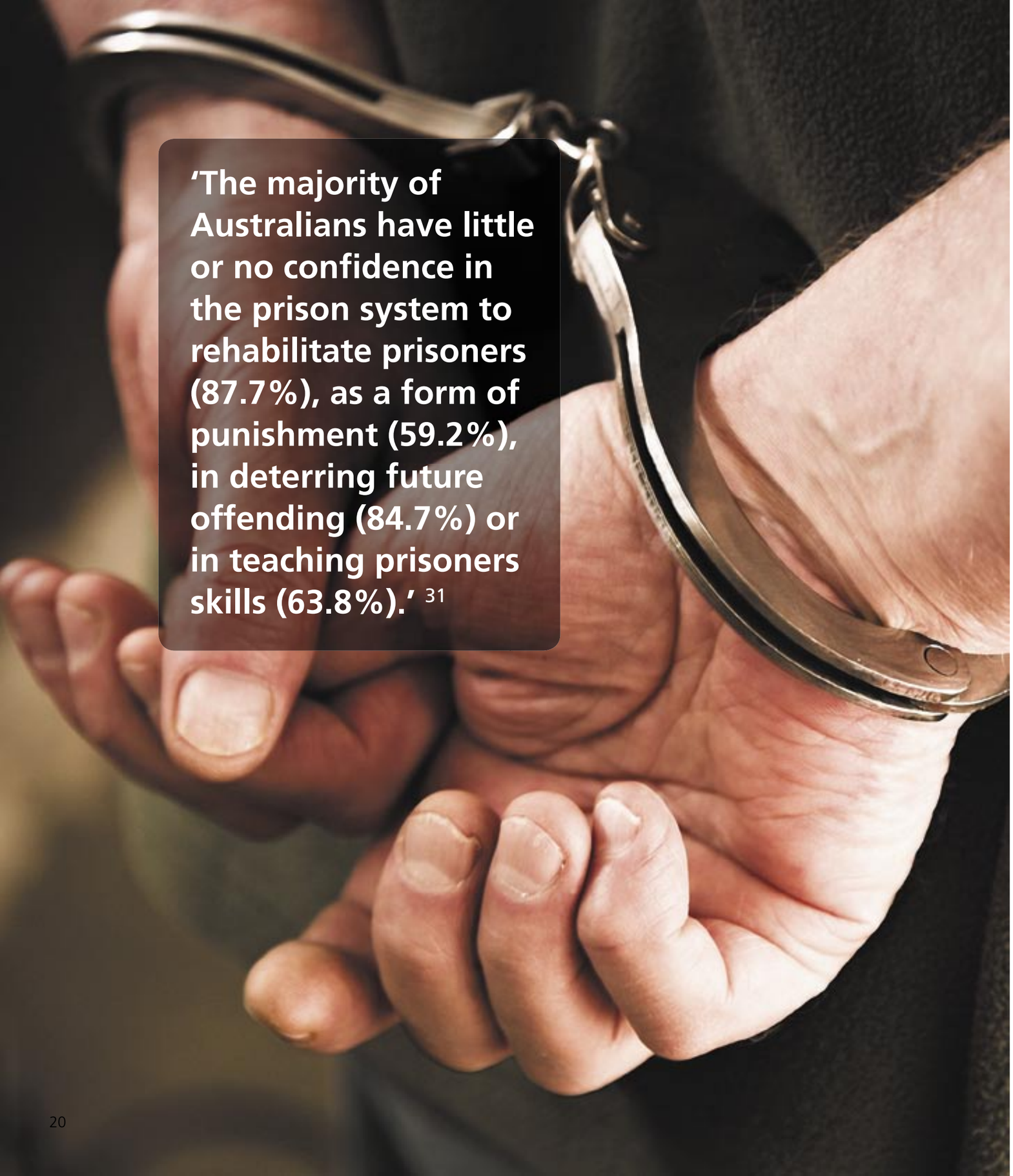
If indeed there are delays caused by unavailable interpreters, resulting in extra time in custody for Aboriginal defendants and increased trial costs, alternative methods of action must be explored. For example, the courts could appoint an interpreter coordinator and list all parties speaking a certain language on the same day; this would ensure that interpreters are available to all accused who require one, avoid unnecessary adjournments and save time and money. In remote areas, interpreters could be available by telephone, Skype, or other electronic means if the infrastructure is available.

The witness oath

There are other language issues that cannot simply be addressed by interpreters, such as the witness oath. Dr Richard Balfour, Senior Psychologist from Forensic Mental Health Services, has studied this issue and has created a more culturally appropriate oath for Aboriginal people translated, briefly, as 'You will talk straight and not say false things.' Court procedures can be confusing for those literate in English, let alone for those who do not speak English well. Dr Balfour's oath should be incorporated into regular court proceedings for those Aboriginal witnesses who do not speak English.

2020 Vision for the justice system — Recommendations

1. Develop a 2020 vision for the justice system informed by community input and values-based budgeting.
2. Enhance information systems and develop an integrated information management blueprint to complement the 2020 vision for justice.
3. Expand the use of existing video conferencing in courtrooms by:
   - allowing electronic appearance by counsel for routine matter
   - allowing electronic appearances by defendants at the discretion of the judge or magistrate
   - using video conferencing for civil settlements, arbitration and mediation.
4. Continue research and evaluation of criminal justice initiatives in collaboration with universities to ensure a system-wide evidence-based approach.
5. Encourage law schools to offer courses in non-adversarial justice, including therapeutic jurisprudence and restorative justice.
6. Require justice system personnel, including members of the judiciary, to take up professional development opportunities, including cross-disciplinary training.
7. Adopt standards of judicial education that require professional development for both new and experienced bench officers.
8. Strengthen the program to involve Aboriginal people in the development, implementation and evaluation of governmental policies and programs.
9. Continue to transform the Aboriginal (Nunga) Court into a treatment court, or refer sentenced persons to existing specialist courts, to address alcohol and substance abuse, mental health and violence issues.
10. Improve the provision of high quality interpreting services, including video conferencing, for Aboriginal and other non-English speaking people; adopt a more culturally appropriate oath for Aboriginal people.



‘The majority of Australians have little or no confidence in the prison system to rehabilitate prisoners (87.7%), as a form of punishment (59.2%), in deterring future offending (84.7%) or in teaching prisoners skills (63.8%).’ [31]

Building Safer Communities by being Smart on Crime

Incarceration, rehabilitation and re-integration into the community

People are starting to realise that incarceration alone is not effective. There is reduced support for a ‘tough on crime’ response, with research showing that ‘the proportion of Australians who agree that stiffer sentences are needed has gradually declined from a peak of 84.8% in 1987 to 71.7% in 2007’.[32]

The public’s lack of confidence in the prison system to deter future offending is borne out by the recidivism rates. Even though the South Australian rates are the lowest in the nation, 32.2% (the Northern Territory had the highest at 47.3% in 2006–07, while the national figure was 39.3%)[33], and this is to be commended, re-arrest rates are still significant and this means that the offender’s risk to the community has not diminished.

Prison statistics

- In 2009, 36% of South Australian prisoners were unsentenced (the second highest proportion of any state or territory).[34]
- 32.2% of South Australian prisoners released during 2006–2007 returned to prison with a new correctional sentence within two years.
- The total cost of incarceration in South Australia in 2007–2008 averaged $225 per day, or $82,000 per year, for each prisoner.[35]
- By comparison, the cost of residential rehabilitation was estimated to be $98 per day,[36] and not every defendant needs that high level of care. Outpatient and intensive outpatient programs cost even less.

Incarceration is but one solution to dealing with offending, but unfortunately it is the one that is most overused and is applied to all types of offences, not just the violent ones. As a result, the number of prisoners in South Australia has increased over the past five years by

28%, from 1510 to 1935. Numbers are predicted to rise to 2070 prisoners in 2011–12, leading to real concerns about overcrowding and safety issues in prison for staff and inmates.[37] Despite these numbers, however, there has not been a commensurate rise in the crime rate and this suggests that is it the 'tough on crime' policy and legislative responses that are driving up prison numbers, not a local crime wave.

It is wrong to assume that incarceration will keep people safe. Incarceration temporarily contains the problem but it does not act as a general deterrent, and it does not guarantee that offenders leave prison in better shape than when they entered. The most effective way to reduce crime and stop the cycle of incarceration is to address the root causes of crime through an integrative approach to justice — a multi-disciplinary approach that recognises the relationship between inadequately addressed social issues and crime, and one that uses evidence-based strategies to respond to those issues. **Confinement alone should not be the only strategy and should be used sparingly.**

The argument against incarceration for non-violent offences is also based on the negative health consequences for inmates and ultimately the wider community when they leave prison.

For Aboriginal and non-Aboriginal prisoners, time spent in prison is fraught with many risks to their health and well-being. Offenders have disproportionately higher rates of serious mental illness and substance use.[38] While in prison they are at increased risk of blood-borne virus transmission, physical violence, sexual assault and isolation.[39]

UK Commission review and other research: a new approach

An independent review of the penal system in England and Wales (where prison numbers have more than doubled since 1992) advocates a new approach of penal modernisation and a number of fundamental reforms, including: a significant reduction in the prison population and the closure of establishments; the replacement of short prison sentences with community-based responses; and devolving current prison and probation budgets to enable the development of local justice reinvestment initiatives that bring together the health and education sectors and local government. The commission was impressed by the role that Community Courts can play in reinforcing public safety.[40]

The increase in prison numbers was seen as a result of the penal policy and the criminal justice system:

We have experienced over 15 years of intense criminal justice hyperactivity. This intense and punitive political activity has had the effect of encouraging a more fearful and insecure population. It has raised unrealistic expectations about the role prison can play in securing a safer society.[41]

Research into prisoner populations in Australia has found that they 'are marked by severe [socioeconomic] disadvantage, stigmatisation, social exclusion and poor physical and mental health.'[42]

The cost of lengthy remand times

In 2009, 36% of South Australian inmates are on remand, while 65% are sentenced prisoners. This is the second highest rate of unsentenced prisoners in the country. Of those on remand, on average 30% will not be found guilty of the crime for which they are currently incarcerated; this results in huge economic and social costs. These high remand rates are extremely expensive, as already discussed above, and are detrimental to the well-being of the individual in custody and also to his or her family.[43]

Most of the strategies mentioned later in this report to reduce court delays will also reduce the amount of time defendants spend in remand. However, the factors that may affect the likelihood of a defendant being granted bail in the first place need to be considered in any discussion about how to reduce remand rates, such as the availability of appropriate accommodation, and the risk posed to victims, witnesses and the wider community if someone is released on bail. The risk and needs assessment instruments that have been statistically validated, like the one currently being used by the Department for Correctional Services to determine program suitability, could also be used to inform recommendations to the court about bail suitability and sentencing options, and in developing a supervision plan through probation or parole. Risk and needs assessments could also be used by the Parole Board in determining whom to release from custody and what conditions to impose.

Breaches of bail: new strategies needed

The current structure for breaches of bail leaves the judicial officer with few choices. The law is not sufficiently flexible to respond appropriately to minor breaches, so the court often fails to impose negative sanctions, thus eroding confidence in the justice system. Moreover, the defendant's behaviour has no chance of changing unless responses are **immediate, certain, consistent and fair**. Bail conditions should balance community safety with realistic limitations on freedoms. Conditions should support participation in treatment, diversion and restorative justice initiatives. There were almost 3928 arrests for breach of bail in 2008, which demonstrates there needs to be more attention to developing strategies to prevent breaches of bail.

A new approach to penal facilities

The delay of the planned new prison complex at Mobilong, due to the impact of the global economic crisis on the South Australian economy, suggests that concerns about prison overcrowding will not be alleviated unless a different approach is taken. Now is the perfect opportunity for the state government to critically review its criminal justice policy approach, and to consider a greater investment in preventative strategies and alternatives to imprisonment.

If we can reduce recidivism by using out-of-custody evidence-based programs, then we may not need to increase prison capacity. Using incarceration and intensive supervision alone will not work to reduce recidivism without effective treatment for alcohol and other drug problems and mental health issues.

10 policy initiatives to reduce recidivism

Roger K. Warren, Judge of the Superior Court of California (Ret.)

- Establish recidivism reduction as an explicit sentencing goal.
- Provide sufficient flexibility to consider recidivism reduction options.
- Base sentencing decisions on risk/needs assessment.
- Require community corrections and court programs to be evidence-based.
- Integrate services, incentives and sanctions.
- Ensure that courts know about available sentencing options.
- Train court officers on evidence-based practice.
- Encourage swift and certain responses to violations of probation.
- Use hearings and incentives to motivate offender behaviour change.
- Promote effective collaboration among criminal justice agencies.

Rehabilitation and re-integration

If the government decides to build a new prison, its design and programming will be of utmost importance, and it should use a rehabilitative model, not a punitive one. Prison safety, including the right to be free from sexual assault and other violence, should be given priority by prison management, and practices and policies within the prison system to promote and ensure an alcohol- and drug-free lifestyle strengthened. Prison health should review its guidelines for methadone administration, and provisions for medication upon release should be part of the discharge plan

There should be a minimum-security section set aside for a mandatory treatment component, like the Compulsory Drug Treatment Correctional Centre in New South Wales. Prisoners with diagnosed substance abuse issues could petition to enter the treatment section and intensive therapy could begin in preparation for the prisoner's release.

As a prisoner's release date draws near, they are given day passes, then weekend passes to ready them for the 'outside world.' Using a sophisticated discharge plan, the prisoner will make the transition into the community with a range of initiatives already in place — including clean and sober housing, outpatient treatment and job counselling — among other services calculated to prevent a return to confinement. Discharge planning should include transportation and release near the prisoner's home.

Community-based non-profit organisations that can assist ex-prisoners to reintegrate into the community and find employment should also be strengthened.

Aboriginal prisoners and re-integration into the community

Incarceration poses significant risks to Aboriginal people, who are already more likely to face greater health, social and economic challenges. Aboriginal people (mainly males) accounted for 22% of the population in South Australia's prisons in 2008–2009.[44] A 2008 study by the Australian Institute of Criminology found that Aboriginal prisoners were more likely than non-Aboriginal prisoners to have been previously imprisoned, to have been previously convicted of violent offences, to receive shorter sentences, to be reconvicted and returned to prison sooner, and to return to prison for violent offences.[45]

Prisoner re-entry is particularly important for Aboriginal people. Visiting psychiatrist to the APY lands, Dr Maria Tomasic, says, 'The many barriers to successful re-integration are exacerbated in the case of Aboriginal offenders.' She calls for specific and culturally appropriate interventions for violence and sex offending, alcohol and other drug abuse, anger management, education, literacy and numeracy, and skills development. Programs should also assist Aboriginal offenders to be in contact with their culture and communities and help strengthen and maintain their sense of identity.

Importance of family support

The safety of the community is also enhanced when families of prisoners are supported. Programs that provide such services should be acknowledged and adequately resourced. When a person is sentenced to jail, he or she most often leaves behind loved ones who are adversely affected, both financially and socially. Having a parent in gaol is a childhood risk factor for later substance abuse, and increases the likelihood that the child will grow up to go to gaol.[46] As a result of the disproportionate representation of Aboriginal people in prison, Aboriginal children are also disproportionately affected. Incarceration becomes an intergenerational phenomenon and this must cease.

Sentencing

'In order that any punishment should not be an act of violence committed by one person or many against a private citizen, it is essential that it should be public, prompt, necessary, the minimum possible under the circumstances, proportionate to the crimes and established by law.' Cesare Beccaria, On Crimes and Punishment, 1764

Criminal sentencing goals should promote community safety and respect the needs of the victim. Reduction of recidivism should be the next consideration. The justice system must develop more creative approaches for non-violent offenders, including, but not limited to, problem-focused courts and diversion programs. Sentencing should provide a real incentive for successful completion of court-ordered treatment, and lawmakers need to realise this outcome. This means that, more than ever, judicial officers must be confident that the programs provided for offenders reflect best practices and are based on credible evidence.

There will always be a proportion of offenders who must be incarcerated in order to protect the community. However, we need to ensure that they come out less likely to re-offend and better prepared to integrate into the community.

Now that automatic parole has been eliminated, there must be a process whereby a prisoner can prove his or her rehabilitation, and thus suitability for early release. Prison programs must be evidence-based and calculated to reduce recidivism after release. We must ensure that the $27 million spent on programs each year are targeted to provide opportunities for education, training, anger management and substance abuse treatment, as well as socialisation skills, parenting, good decision-making, reduction in criminal thinking and impulsivity reduction. If this is not done, then the costs of incarceration will continue to rise due to the elimination of automatic early parole. It will also be more costly after the fact, since the goal must be to keep people out of prison by keeping them from committing new offences.

Evidence-based sentencing

'The challenge of social justice is to evoke a sense of community that we need to make our nation a better place, just as we make it a safer place.' Marian Wright Edelman

Judges should focus on sentencing options that are consistent with strategies to reduce recidivism because that is the key to long-term community safety.

The current sentencing legislation does not provide incentives for offenders to successfully complete rehabilitation. Successful participation in a treatment program — one which has been demonstrated to be effective and verified through evaluation — should be mandated as relevant to sentencing, and the court should be able to reduce the sentence or dismiss charges upon successful completion.

Informed judicial discretion in sentencing

Judicial discretion has been redefined as 'sentences by judges who have considered the evidence that informs their discretion.' The State of Missouri adopted a program of 'informed judicial discretion' using risk and needs assessments. After implementation, there was a drop in the prison population of 700 inmates in two years. The State of Virginia reduced its prison population from 75% non-violent offenders to around 20% by employing risk assessment tools. This reinforces the value of verified risk assessment tools to inform judicial decision making, as mentioned earlier. An explicit assessment of each individual's risk-and-needs profile assists in selecting the type and intensity of services that would be most appropriate for an offender.

Punishment must not only fit the crime, it must fit the offender as well. A sample of 648 detainees in Adelaide showed 76% of males and 82% of the females tested positive for any drug other than alcohol. This suggests criminal courts are all in fact substance misuse courts whether they specifically address the issue or not. [47]

- Almost 300 people a year die in South Australia from alcohol-related problems and another 7000 are hospitalised.
- South Australia has the highest rate of marijuana and methamphetamine use in the country.
- Over 50% of South Australia's youth have tried illicit drugs.

Some research suggests that drug courts may be best suited for the more incorrigible and drug-addicted offenders who cannot be safely or effectively managed in the community on standard probation.[48]

Using sentencing principles developed for substance-using defendants will reduce recidivism and increase sentencing efficacy.[49]

Sentencing principles developed for substance-using defendants – Doug Marlowe, JD , PhD, Chief of Science, Law, and Policy, National Association of Drug Court Professionals

- Sentences should be grounded in reliable scientific evidence that supports their effectiveness for reducing substance abuse and criminal recidivism.
- Safe and effective management of drug offenders in the community, with the proper degree of supervision, behavioural accountability and treatment services, is preferred over incarceration.
- Determining the most effective and cost-efficient program for any specific individual requires simultaneous attention to both prognostic risk factors and psychosocial needs.
- Individuals with significant criminogenic factors should be treated in separately stratified tracks or programs.
- The higher the criminogenic risk level in a given population, the less room there is for error in applying behavioural modification techniques to improve performance.
- It is unwarranted to assume that all individuals who are arrested for a drug-related offence have a substance use disorder. Traditional treatment is not warranted if the person is not addicted. Examples of interventions for these individuals are vocational and educational training and 'coerced abstinence' (i.e., urine test-contingent sanctions and rewards).
- Sanctions and rewards tend to be least effective at the lowest and highest magnitudes and most effective within the intermediate range. This requires programs to be legally empowered to administer a range of intermediate-magnitude consequences, and to receive adequate resources to make those consequences meaningful and salient for their participants.
- The best available research evidence indicates that jail sanctions can be effective in improving outcomes when they are imposed quickly after an infraction has occurred, are brief in duration, do not interfere with the treatment process, and are imposed after lesser sanctions have failed to improve conduct.
- Individuals with long histories of addiction, mental illness or criminality have typically been exposed to repeated punishment for their misbehaviour over long periods of time. Positive reinforcement for good behaviour is often critical for producing long-term behavioural improvement.

Criminal justice response to mental health, substance abuse and co-occurring disorders

Every branch of government must have a commitment to deliver effective responses to people who suffer co-occurring disorders, addictions, alcoholism and mental illness. There have been numerous studies and reports documenting the over-representation of prisoners with mental health problems in the criminal justice system.[50] For instance, **the prevalence of schizophrenia is estimated to be 4–7% for the prison population, while only making up 0.5–0.7% of the general population.**[51] Moreover, more than a third of women in custody have been previously committed to a mental health facility, and 81% suffer from post traumatic stress disorder.[52]

Strengthen the Diversion Court initiative

South Australia was the first Australian state or territory to create a Mental Impairment Court, popularly known as the Diversion Court, to divert people with minor indictable or summary offences into treatment. There are now five such courts operating in the metropolitan area and three in regional locations. Successful engagement in treatment can result in charges being dismissed or the non-recording of a criminal conviction or penalty. It is no surprise that 80% of the participants in the Mental Impairment Court have a mental illness, while the remaining 20% have an intellectual disability, emotional problems or other mental issues.

Despite these efforts, many people with mental illness still end up in prison in South Australia. One reason is that there are no diversion programs operating in the higher courts, even though some of those cases would be appropriate for diversion. Suitable cases in the District Court should be diverted into management programs for people with mental illness and these defendants should not end up in prison.

Inadequate provision for mental health prisoners

The secure forensic mental health facility, James Nash House, has an insufficient number of beds to house all people with a mental illness who are detained. This shortage of forensic mental health beds was highlighted in the 2009 Annual Report of the Public Advocate; he recommended an increase of
20–25 beds to adequately care for people who have committed a crime but are not guilty by reason of insanity.[53] The bed shortage means that people who are mentally ill end up in the general prison system, where they are often singled out for abuse by other prisoners, or their behaviour is so bizarre and disruptive that they are put in solitary confinement, which only exacerbates their mental illness.

A key strategy in the Social Inclusion Board's plan for mental health reform is for there to be a stepped system of care from the least to the most intensive: that is, from supported accommodation to community rehabilitation to intermediate care, acute care and secure care.

Currently, when it comes time to release a patient from James Nash House, there is no 'step-down' facility, or halfway house as they are sometimes called, to ensure a safe reintegration of forensic patients back into the community. Such a facility would enable a person's risk to be assessed under community conditions and appropriate interventions to be applied to minimise risks. The decision to trial a limited release into a step-down facility should not require a court order but should be a clinical decision. This may take a legislative change.

Need to coordinate agencies

People who have both a mental illness and substance abuse problems are the norm rather than the exception these days, and those with co-occurring disorders are the 'frequent flyers' of the criminal justice system.

The Parole Board supervises forensic patients on their release into the community, which is a bifurcated system between forensic health and the Board/Department of Correctional Services. These agencies need to be better coordinated to ensure that people comply with their treatment regime and do not lapse into substance abuse.

The Drug Court

South Australia was also one of the first states to develop a drug court. However, through a series of events which often happen over time, it has moved away from some of its founding principles and is in need of an operational tune-up. Practice directives need to be developed to reflect the unique nature of the court after its expansion to include alcohol use disorders and high risk driving while impaired offenders (see page 33), a recommendation I hope is adopted. The Chief Magistrate has already been quite responsive to some of my suggestions, such as the permanent assignment of a magistrate to the court for a minimum of two years; an action that we know from research will improve outcomes. An audit of the court would not only make sure that the key components are being complied with but may also be able to track who is doing well and, more importantly, who is not, and be able to address these disparities.

10 key components of drug courts [54] **—**
National Association of Drug Court Professionals, 1997

- Drug courts integrate alcohol and other drug treatment services with justice system case processing.
- Using a non-adversarial approach, prosecution and defence counsel promote public safety while protecting participants' due process rights.
- Eligible participants are identified early and promptly placed in the drug court program.
- Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.
- Abstinence is monitored by frequent alcohol and other drug testing.
- A coordinated strategy governs drug court responses to participants' compliance.
- Ongoing judicial interaction with each drug court participant is essential.
- Monitoring and evaluation measure the achievement of program goals and gauge program effectiveness.
- Continuing interdisciplinary education promotes effective drug court planning, implementation and operations.
- Forging partnerships among drug courts, public agencies and community-based organisations generates local support and enhances drug court program effectiveness.

The nexus between substance abuse and crime is well established: alcohol and other drugs are the fuel behind many offences. There are a number of reasons why it is important to understand the importance of co-occurring disorders — each can affect the onset of the other. For example, regular heavy use of marijuana has been linked to the onset of psychosis in teenage users. Substance abuse can affect the severity of the symptoms of mental illness and each can mask the other. Treatment outcomes for one disorder can be compromised if the other disorder is not concurrently addressed in an integrated treatment setting.

Best practices currently require an integrated approach. The Social Inclusion Action Plan for Mental Health Reform (2007-2012) recommends for a partnership between justice agencies, mental health services and other health agencies, the Social Inclusion Unit and Aboriginal Affairs and Reconciliation Division of the Department of the Premier and Cabinet. The difficult task of keeping this partnership functioning successfully is predicated on support at the highest levels in government agencies and non-government organisations, and on oversight by an inter-ministerial committee.

The level of cooperation required for successful coordination and integration requires cross-disciplinary and cross-agency education opportunities with the commitment of policy makers and service personnel to develop a shared understanding. These strategies can achieve the joint goals of health and well-being, crime prevention and recidivism reduction.

Treatment providers should be aware of criminal justice requirements, including the need for abstinence, and they must provide appropriate and timely interventions to address alcohol or drug use episodes and relapses. It is important that treatment providers understand that treatment needs to be evidence-based; the research is clear that treatment needs to target the criminal thinking that supports a criminal lifestyle and criminal behaviour. Treatment that provides specific cognitive skills training to help individuals recognise errors in judgment which lead to criminal behaviour has been demonstrated to improve outcomes for the criminal justice population. It is likewise important for criminal justice professionals to understand co-occurring disorders and basic treatment principles.

In 2009, 37% of drivers or riders killed in road crashes who were tested had a blood alcohol content of 0.05 or above.

Of the drivers and riders involved in fatal road crashes who were tested for cannabis, methamphetamine or ecstasy, 23% tested positive to one or more of these drugs. [55]

Criminal justice response to impaired driving in South Australia

Impaired driving can be a deadly crime and is totally preventable. The phrase 'driving while impaired' addresses alcohol, illicit drugs and prescription medication misuse that can affect divided attention tasks such as driving. This expression, 'driving while impaired', should replace 'drink driving' in the South Australian lexicon as it is more accurate and all encompassing.

Driving while impaired by prescription drugs and distracted driving through mobile phone use and texting is not currently being tracked. The fatality rate on South Australia's roads is about the same level as in the 1980s; this **must** be reduced.

Strict enforcement of impaired driving laws could save $0.94 billion nationally, according to the National Preventative Health Strategy. According to the US Institute for Highway Safety (www.iihs.org), the cause and effect relationship between 21-year-old minimum legal drinking age (MLDA) and reductions in highway crashes is clear — there are demonstrated public health benefits for MLDAs of 21. However, instead of raising the drinking age to 21, an unpalatable choice for South Australia, the state could adopt a zero tolerance approach and prohibit drinking and driving by anyone under 21, which would help reduce accident rates due to young people's impaired driving. Since there are already different classes of driver's licences, this could be easily incorporated for 18–21 year olds. The government could also increase taxes on alcohol and use the additional revenue for alcohol treatment. In my view increasing the cost of alcohol is the most effective way to prevent alcohol problems in the community. There should also be at least three hours of each day when alcohol is not available, as reduced hours lead to reduced crime in the community.

In 2008, 8409 people were convicted of driving while impaired in South Australia. Of those, more than a third (34%) had prior convictions for the same offence.

Obviously, people are not 'learning their lesson' after conviction, and more intensive responses must be developed to reduce driving while impaired recidivism.

Photo courtesy of South Australia Police

Driving while impaired testing

Over 660,000 South Australian drivers are stopped and tested for alcohol or other drugs each year (61% of licensed drivers). However, South Australia is sixth out of the states and territories in testing only 41% of the population: Tasmania, for example, tests 139.8% (a Tasmanian citizen is likely to be pulled over and tested more than once a year) and Victoria 70.1%. These stops provide not only the opportunity for detecting impaired driving, but such actions are a general deterrence to the entire population. Well-publicised information about the number of alcohol checks leads the public to believe that if you drive while impaired you will be caught. This leads to fewer people driving impaired. SAPOL should continue to conduct and increase the number of well-publicised DWI detection checkpoints. Studies show that alcohol-related crashes are **reduced by 10–20%** when checkpoints are used, and $7.90 is saved for every $1.00 spent.

Driving while impaired deterrents

Current impaired driving sentencing laws are confusing and counterproductive. What is very clear, based on over 30 years of studies, is that the surety of the sanction of even two days of gaol, for instance, is much more effective than a longer sentence that may or may not be imposed. Imprisonment does have a specific deterrent effect on driving while impaired offenders as it temporarily keeps them from driving. But unless it is combined with a strong treatment program, jail time does not reduce the likelihood of impaired driving after the offender is released, and lengthy incarceration is too costly to the community. Coupled with high cost and jail overcrowding issues, increasing jail time for impaired driving would not be a good idea.

The serendipitous timing of the end of my residency and the beginning of Fred Wegman's, a road safety expert, gives two Thinkers the opportunity to make recommendations about 'drink driving' in South Australia.

I have a plethora of suggestions to deter and address drink driving and road safety:

- Improve detection of impairment caused by prescription and illicit drugs.
- Prohibit driving with any amount of a controlled substance.
- Using a verified instrument, assess all persons convicted of impaired driving and develop a treatment plan as a condition of release.
- Licence suspension should be related to factors such as recidivism rather than whether the person is diagnosed with a substance use disorder.
- A restricted licence should be available if the defendant is following the treatment plan and installs an ignition interlock device in all vehicles to be driven.
- Mandate a short gaol sentence which cannot be waived (e.g. 48 hours).
- Failure to attend and participate in treatment should result in a breach of bail.
- Ensure that all prior convictions for impaired driving — that is, any blood alcohol content of .05 or above — are taken into account in subsequent charging and sentencing.
- Expand the history of prior convictions to be considered from three to 10 years.
- Make impaired driving arrests mandatory.
- Consider establishing a Driving While Impaired Court in conjunction with the Drug Court for hardcore, repeat high risk offenders.
- Require drivers to carry a licence as is the law in New South Wales.
- Consider impoundment of vehicles of drivers who are not properly licensed, who are driving while impaired, driving outside of their licence class, or without an ignition interlock device if previously ordered.
- Consider confiscation of mobile phones upon arrest for distracted driving, or at sentencing if the crime is an infraction.

However my formal recommendations are:

- Replace the terms 'drink driving' and 'drug driving' with the term 'driving while impaired', which can indicate one or the other or both.
- Review current policy, practices and legislation in relation to 'driving while impaired' to prohibit driving with any amount of controlled substance, make arrest mandatory for impaired driving, mandate a short jail sentence that cannot be waived and develop a treatment plan as a condition of release.
- Impose ignition interlock for all cars being driven by persons with a prior conviction.
- Enact laws prohibiting mobile phone use while driving, whether hands free or not, and prohibit texting while driving.

Criminal justice response to domestic and family violence

The Intervention Orders (Prevention of Abuse) Act 2009 defines domestic abuse as an act committed against a person with whom the perpetrator is or was formerly in a relationship, and it recognises that abuse may take many forms, including physical, sexual, emotional, psychological and economic.

It is difficult to quantify the extent of domestic violence in South Australia. Nationally, it has been estimated that more than a third of women (34%) who had an intimate partner experienced at least one form of violence from a current or former partner over their lifetime (12% experienced sexual violence and 31% physical violence. This does not reflect emotional or financial abuse.)[56]

In South Australia, 21.5% of perpetrators convicted of domestic violence had at least one prior conviction for the same offence. While it is encouraging that 80% of perpetrators have not been previously convicted, the fact that one in five have points to the need for better strategies for these high risk offenders.

Nationally and within South Australia a number of initiatives currently under way focus on domestic and family violence. The National Council to Reduce Violence Against Women and their Children has produced a 2009-2021 report, which focuses on six 'outcome areas'; it seeks to ensure that:

- we build strong, safe communities that are free from violence
- from an early age children build respectful, non-violent relationships
- services support women and their children
- responses to violence are just
- perpetrators stop their violence
- both government and service systems work together effectively.

In South Australia, the Women's Safety Strategy 2005 outlines four key directions for addressing violence against women and children:

- prevention
- the provision of services to those who need them
- protection of women from experiencing violence
- monitoring and evaluation of performance.[58]

One key piece of work undertaken under the auspices of this strategy is the development of a Family Safety Framework to provide action-based, integrated service responses to families who are at high risk of serious injury or death from domestic violence. This model was first trialled in 2007 and, following a positive evaluation,[59] was expanded to additional geographical regions in 2009.

Changing community attitudes to family violence

On 1 December 2009 South Australia passed new legislation to give the police and courts greater powers to prevent and address family abuse. Accompanying this reform, the four-year 'Don't Cross the Line' campaign aims to change community attitudes towards violence and encourage respectful relationships.[60] More recently, the state government announced that, commencing in 2010–11, it would fund a dedicated new position to assist the Coroner to investigate deaths arising from domestic violence.[61]

Family violence and homelessness

Domestic and family violence is a key cause of homelessness for women.[62] The National Affordable Housing Agreement is a joint Commonwealth–State funded support program to assist people who are homeless or at risk of homelessness, including women and/or their children escaping domestic and family violence.[63] To further support victims, in January 2010 the Australian and South Australian governments announced that 120 new safety houses for victims of domestic violence would be built in South Australia as part of the Nation Building Economic Stimulus Package.[64]

Failure to prosecute

Although South Australia has an excellent history of giving victims 'voice,' about half of domestic violence charges are dropped for want of prosecution. If this is primarily due to the inability of the prosecution to admit pre-trial victim statements, then the evidence laws should be changed to allow such an exception to the hearsay rule. A key principle of domestic violence policies, such as the South Australia Police Domestic Violence Strategy, is to hold offenders accountable for their behaviour and to ensure the safety of women and their children.

Violence Intervention Programs for offenders and victims

Designated Family Violence Courts (FVCs) operate at the Elizabeth, Port Adelaide and Adelaide Magistrates Courts to hear criminal charges against men who have allegedly assaulted a family member.[65] Violence Intervention Programs (VIPs) are linked to these courts, and men appearing in these courts can be referred by the magistrate (as part of a condition of bail or a bond) to attend a 26-week 'Stopping Violence' group, provided by the VIPs. The Department of Correctional Services locates staff within the VIPs to assist with the service provision and SAPOL actively refers perpetrators to these programs.

The VIPs also enhance the safety of women and children by providing them with support and information and ongoing risk monitoring. The Central Violence Intervention Program is operated by the Salvation Army and takes referrals from the FVC at Adelaide and Port Adelaide. The Northern Violence Intervention Program is operated by the Central Northern Adelaide Health Services and takes referrals from the FVC at Elizabeth. However, neither of these programs has been evaluated so their efficacy and cost-effectiveness are unknown. An evaluation should be undertaken to make these determinations.

Other programs — but not available to all

South Australia also offers programs for the perpetrators of family violence in correctional facilities. However, these are limited to sentenced prisoners so approximately one-third of prisoners may not avail themselves of these programs. Domestic violence is one of six core offender development programs offered by the Department for Correctional Services, and the department can refer men to the VIP.[66] Correctional Services is also the lead agency for the Indigenous Family Violence Program, a cross-borders project which aims to develop and deliver culturally and linguistically appropriate programs to address issues of family violence, anger management and substance misuse in the Pitjantjatjara-, Yankunytjatjara- and Ngaanyatjarra-speaking communities in the NPY Lands of Central Australia. An evaluation found that this program had been highly successful in achieving its key objectives, including reducing re-offending.[67]

Lack of coordination — federal, state, departmental and non-government

While not comprehensive, the above list of reforms highlights that there is a strong government commitment to address domestic and family violence, both within South Australia and nationally. However, there is a lack of coordination in the approach to this issue. A range of non-government, Commonwealth and state government agencies fund and offer services, including the South Australian Attorney-General's Department (particularly the Office for Women), Courts Administration Authority, Department for Correctional Services, SAPOL, Department for Families and Communities and Department of Health. A mapping exercise would help to better understand what is occurring and where there are gaps and duplications in service delivery. The current scattered approach may be addressed by the appointment of a national coordinator, with wide-ranging directive powers.

The Intervention Orders (Prevention of Abuse) Act 2009 SA, once implemented, will enable the courts to require that a defendant undertake an intervention program. The limited number of domestic violence-related interventions currently available for perpetrators needs to be addressed as part of the implementation strategy. This includes determining what interventions are suitable for perpetrators, based on the level of risk they pose to the safety of victims. Additionally, interventions must include screening and assessment for substance abuse, especially alcohol; according to the World Health Organization, more than a third of intimate partner homicide offenders in Australia were under the influence of alcohol at the time of the incident. Substance abuse and family violence must be addressed concurrently to enhance good outcomes. It will also be critical to ensure consistency in ongoing risk assessment across the justice, health and welfare systems. Finally, it is important for interventions to be evidence-based and evaluated.

Victims of crime and restorative justice

Victims have a huge stake in the issue of community safety as they have experienced, first hand, harm and loss as a result of criminal acts against themselves or their loved ones. Their experiences can often have long-lasting detrimental effects on their lives. The South Australian Government has recognised victims as legitimate stakeholders in the criminal justice system through the introduction of the Victims of Crime Act 2001 and the appointment of a Commissioner for Victims’ Rights. There are a range of services in South Australia for victims, including the Victim Support Service in the Office of the Director of Public Prosecutions; the Victim Register that is maintained by the Department for Correctional Services; and funding support for the Victim Support Service Inc.

SAPOL has victim contact officers who advise and support victims of crimes and their families, either immediately at the time the crime is reported to police or shortly after. More than ever before, victims’ concerns can be voiced in the courtroom and to policy makers and this represents a significant reform of the criminal justice process. I congratulate the government and the individuals involved in making these changes, and I encourage the government and the criminal justice system to continue listening to the needs of victims and to include their concerns in criminal justice reform agendas.

However, one instance in which this is not true is when a victim needs an interpreter to express his or her victim impact statement. **Interpreters are only provided during a victim’s testimony and this must be changed.**

Considering the victim at sentencing and the need for compensation

The Victims of Crime Ministerial Advisory Committee has been exploring the role of the victim in sentencing. A recent amendment to law that was due to become operative late in September 2010 recognises that victims can comment on the sentence but does not require the court to take that comment into account. This is the equivalent of having a right without a remedy.

I urge the adoption of an amendment that would require judges to consider victim’s comments when sentencing.

During my time on the bench I was particularly concerned with the need to ensure adequate restitution (as it is called in the US) or compensation for victims. I understand that in South Australia the prosecutor, at the time of sentencing of an offender, may make an application to the court on the victim’s behalf for an order requiring

compensation for mental or physical injury but not property loss. However, the court has the discretion to refuse to order compensation.

The fact that victims can pursue compensation through the Victims Compensation Scheme should not be regarded as a reason for the court not to order compensation, especially since the scheme does not extend to property loss and a large amount of crime is property theft or destruction. Nor should the fact that an offender is levied to fund the 'Victims of Crime Fund'[68] be a reason for the court not to order compensation, because the payment of a levy is indirect and not linked to the harm and loss caused. Direct victim restitution should be ordered against every perpetrator.

Orders for compensation are an important sentencing tool that holds offenders responsible for their actions. One study found that victims preferred a sentence of four months plus restitution to a sentence of four years without restitution.[69] Court-ordered financial restitution is a form of restorative justice and can be coupled with face-to-face meetings among all parties connected to a crime if the victim so desires.[70]

A more rigorous approach to compensation orders would send a message to victims that their needs and interests are equally as important to the court as sentencing the offender. Perpetrators should not benefit from their crime in any way and judges should not waive compensation based upon a person's current inability to pay. The Commonwealth should allow government benefit to be subject to attachment by a victim with a compensation order, and only child support should have precedence over a victim compensation order when marshalling claims. Victims should be able to attach a prisoner's account while he or she is incarcerated and be able to divert any wages earned in custody.

Compensation orders should not only be a condition of every probation or parole order, but defendants should also be required to fill out a financial statement at the time the order is given to assist the victim in executing the order. In addition to collection actions by the fines payment unit, compensation orders should be converted to civil judgments immediately upon finalisation, allowing the victim to pursue civil remedies if they wish to do so.

The healing power of an apology

'...[S]imply saying that you're sorry is such a powerful symbol. Powerful not because it represents some expiation of guilt. Powerful not because it represents any form of legal requirement. But powerful simply because it restores respect.'
Former Prime Minister Kevin Rudd

Across the board, most victims want a sincere apology. The role of apology cannot be overstated, in either civil or criminal matters. This has been learned by governments such as Canada, in offering a Day of Apology for the wrongs done to aboriginal people, and Australia, in creating National Sorry Day.

South Australia was at the forefront of incorporating restorative justice practices into the criminal justice system with the introduction of Family Conferencing in the Youth Court. More recent initiatives include the Adult Restorative Justice Conferencing Pilot in 2004 and the Port Lincoln Aboriginal Conferencing Pilot.[71] Restorative justice is described in the evaluation of the Adult Restorative Justice Conferencing Pilot as 'a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future.' The report noted that one of the benefits of this process 'is the opportunity presented to victims to meet offenders, to establish a dialogue with them in which issues of harm caused and ways of making good the harm done can be explored, and to reach an agreement about reparation.[72]

There is some evidence to suggest that investing more in restorative justice programs will contribute to reducing crime and rehabilitating offenders, as well as to improving the well-being of victims.[73] However, adult restorative justice conferencing has not become a mainstream pre- or post-sentence strategy in South Australia and this is clearly an area that should be further developed.

Southern Community Justice Court

In the lead-up to the 2010 state election, the government committed to developing a $13 million Southern Community Justice Court, modelled on similar community courts operating in New York, Liverpool and Victoria.[74] Key elements of this approach will include greater community engagement in sentencing, a focus on achieving swift justice, and requiring offenders to repair damage caused — all good restorative justice practices. The focus will be on anti-social behavioural offences such as property damage (including graffiti and vandalism), hoon driving, drug offences, trespass and disorderly behaviour.

Planning for this initiative was very much in its infancy during my residency and that provided a unique opportunity for me to contribute to the development of the model. My knowledge in this area was partly informed by a visit to the Neighbourhood Justice Centre in Collingwood, Victoria, the first such centre in Australia, as well as my US experience with community courts. A recent evaluation of the Collingwood centre undertaken by a multi-agency team, including researchers from Flinders University, found positive results in terms of reduced re-offending, increased completion rates for community-based orders, value for money, improved experience of the justice system by users and reduced crime within the local area.[75]

Implementation of a Community Justice Court is a major initiative, requiring considerable planning, and it was not possible to consider all the facets of this project during my time in South Australia.

In determining the location of a Community Justice Court it is important to ascertain the types of services clients might need to access, and to establish what services already exist and where these are located. Community courts in some jurisdictions have been accommodated in dedicated buildings, as is the case in Victoria. Others have been located in existing courthouses, with community-based facilities located nearby. I believe resources are best directed toward investment in programs for victims and offenders rather than 'bricks and mortar' and therefore recommend that the government locate the Southern Community Justice Court within the existing Christies Beach Magistrates Court.

I took a field trip to the Southern Adelaide area, which included a tour of the Christies Beach courthouse. This courthouse is a beautiful, friendly and well-appointed new building in close proximity to the Noarlunga Centre, the Police Station and other services. Many community-based organisations are located within one kilometre of the courthouse. While a more in-depth investigation is required, from my preliminary enquiries I believe that the Christies Beach courthouse would be an ideal location for a Community Justice Court and

would require only a minimal expenditure on fit-out. This would free up the majority of the committed funds to programming and services, an outcome much preferred over the erection of yet another government building.

The other suggestion I have, other than those about evaluations discussed elsewhere, is that one magistrate or judge, with knowledge of therapeutic jurisprudence, should be appointed to preside over the community court. The concept of one magistrate is central to the Victorian Neighbourhood Justice Centre model and has been identified as a feature of successful therapeutic jurisprudence courts worldwide. The supervising magistrate of the Community Justice Centre should be a qualified, enthusiastic and knowledgeable bench officer with experience in problem-solving courts. This magistrate should be chosen after consultation with the community and should serve for a minimum of two years.

Restorative justice in schools

I was interested to learn that restorative justice conferences are being used in some South Australian Government schools to deal with student disciplinary matters. This was an area I asked the A-Team to explore further for me. The A-Team made a number of recommendations in relation to the benefits of this approach and I urge the government to consider them. (See appendix for more information about the A-Team.)

Building Safer Communities by being smart on crime – Recommendations

Incarceration, rehabilitation and re-integration

1. Further embrace alternatives to incarceration for non-violent offenders by developing a range of evidence-based intervention programs.
2. Adopt discharge planning that focuses on rehabilitating and reintegrating prisoners in order to reduce recidivism and improve community safety.
3. Create a compulsory Drug Treatment Correctional Centre (like the one in NSW) within the existing prisons, and include such a centre in the design of any new correctional institution.
4. Restructure bail and bond legislation so that the court has more options and can respond to breaches, consistent with evidence-based practice.
5. Ensure that rehabilitative services are evidence-based, evaluated and communicated to the Bench to inform sentencing.
6. Make prognostic risks and needs assessments available to judicial officers at bail hearings and sentencing, and to the Parole Board to enable informed release decisions.

Mental health and addiction

7. Create a forensic mental health and addiction service team for persons involved with the criminal justice system to create an integrated response to alcohol and other drug abuse and mental health.
8. Undertake an audit of the Drug Court using the internationally accepted key components of drug courts and expand the eligibility criteria for the Drug Court to include those diagnosed with alcohol use disorders and multiple driving while impaired offenders.[76]
9. Enact legislation to provide a statutory basis for all specialist courts, to include case management of defendants with major indictable charges, and to provide sentencing incentives for successful completion of intervention and rehabilitation programs.

Driving while impaired

10. Replace the terms ‘drink driving‘ and ‘drug driving‘ with the term ‘driving while impaired’, which can indicate one or the other or both.
11. Review current policy, practices and legislation in relation to ‘driving while impaired‘ to prohibit driving with any amount of controlled substance, make arrest mandatory for impaired driving, mandate a short jail sentence that cannot be waived, and develop a treatment plan as a condition of release.
12. Impose ignition interlocks for cars being driven by persons with a prior conviction.
13. Enact laws prohibiting mobile phone use while driving, ‘hands free’ or not, and prohibit texting; consider confiscation of mobile phones on arrest for distracted driving.

Family violence and restorative justice

14. Appoint a lead agency to oversee and coordinate family violence initiatives, including services for victims of family violence and perpetrator interventions.
15. Involve victims and their advocates in the planning and delivery of programs, including restorative justice programs.
16. Mandate direct perpetrator restitution to the victim for claims not covered by the state and allow the seizure of all property to satisfy a restitution order. Require perpetrators to reimburse the state for payments to their victims.
17. Locate the proposed Southern Community Court at Christies Beach Courthouse in order to maximise resources for programs and services.
18. Adopt the A-Team recommendations about the use of restorative justice practices in school discipline.

‘We are what we repeatedly do. Excellence, then, is not an act, but a habit.’

Aristotle

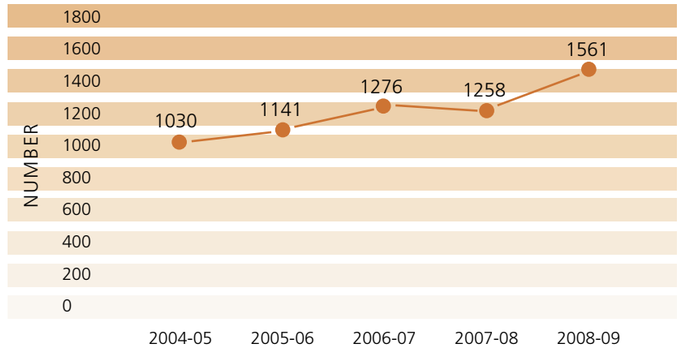
Photo courtesy of Courts Administration Authority of South Australia

Fair, Timely and Economical Justice

Reducing court delays

One challenge currently facing the South Australian criminal justice system is that of trial delays and criminal case backlogs, particularly in the District Court. At 30 June 2009 the pending criminal caseload or ‘backlog’ in the District Court was 1561 cases.

Figure 1 South Australian District Court: Pending caseload (at end of financial year)[77]



Court delays impact negatively upon victims, the accused and the broader community.

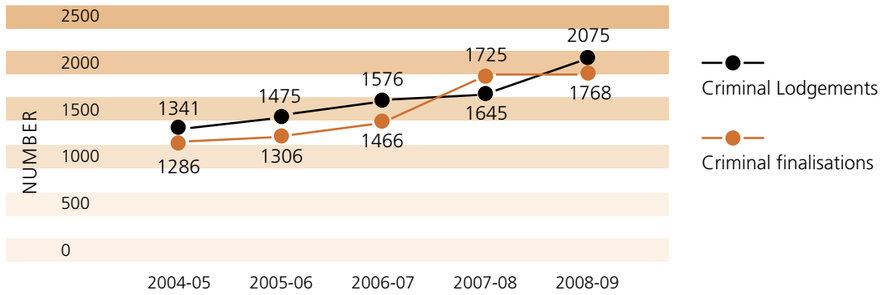
- Victims may suffer unnecessary frustration and distress while waiting for matters to be finalised.
- Defendants on remand while awaiting trial in the South Australian District Court spend an average of 116 days in custody, during which time they have no access to rehabilitation programs that could improve their lives and the safety of the community.
- Almost a third (30%) of those on remand will not be found guilty of the crime for which they are incarcerated.

Delays in case processing also contribute to a loss of public trust and confidence in the courts and the justice system. A 2007 Australian survey of social attitudes found that 78% of respondents had little or no confidence in the courts’ ability to deal with matters quickly.[78]

District Court backlog and delays

The increase in the District Court criminal case backlog is partly explained by an increase in the number of matters lodged. Although the number of finalisations has likewise increased, lodgements have typically exceeded finalisations, resulting in an increase in the total number of matters waiting to be heard. Recent legislative reforms have contributed to this trend, as matters that would previously have been dealt with in the Magistrates Court are now committed to the District Court.[79]

Figure 2 District Court: Criminal lodgements and finalisations[80]



The average length of criminal trials in the District Court has also increased slightly (to 6.0 days in 2008-09 after remaining stable at 5.6 to 5.7 days from 2005-06 to 2007-08).[81] While this increase may impact upon court backlogs, this measure does not capture the entire duration of the court process. Matters that fail to proceed as scheduled on the first listed trial date also contribute to backlogs. One of the main reasons for listed trials not proceeding is defendants changing their plea from 'not guilty' to 'guilty' at a late stage in the process. Of the total number of District Court trials listed in 2008–09 and finalised that same year, less than a third were disposed of by trial, while 70% were disposed of by other means, including guilty pleas.[82]

Court staff try to allow for this possibility by scheduling more trials than the courtroom can handle, a practice known as 'over-listing'. Nevertheless, as it is difficult to accurately predict which trials will go ahead as planned, there continue to be instances where more scheduled cases than anticipated are resolved on or close to the first day of trial, leaving the assigned courtroom empty and the allocated judge with no cases to hear. Conversely, over-listing also inevitably means that there are some trials 'not reached' by the court, because no judge or courtroom is available, resulting in substantial inconvenience to the parties, witnesses and the court.

In summary, there are numerous causes of trial delay and court backlogs. This situation requires a raft of strategies to address the factors that affect court workload, including reducing the number of matters lodged in the District Court, reducing the number of adjournments per matter with tight case management by the judiciary, and providing incentives to encourage defendants to plead guilty at the earliest possible stage in the process.

Hon. Judge Paul Rice reforms

The problem of criminal court delays and backlogs is not unique to South Australia[83] and I am not the first to identify this as an issue in this state. In 2006 the Hon. Judge Paul Rice considered this topic and recommended a number of reforms. The Criminal Justice Ministerial Taskforce (chaired by the Solicitor-General, with representatives from relevant government and non-government agencies) was formed to progress Judge Rice's recommendations and to develop additional strategies to address delays.

A number of measures, but not all, have already been implemented, including the allocation of additional funding to:

- appoint three more District Court judges
- open two extra courtrooms
- augment the services provided by Forensic Services SA, the Office of the Director of Public Prosecutions, the Legal Services Commission and the Courts Administration Authority.

Below are other possible areas for reform.

Expanding the range of offences able to be heard in the Magistrates Court rather than the District Court

Legislating an increase in the criminal jurisdiction of the Magistrates Court would enable that jurisdiction to hear matters that would otherwise be committed to the District Court. Such a change would need to be accompanied by an increase in the maximum period of imprisonment able to be imposed by a magistrate. This increase in jurisdiction would not only enable more relatively minor offences to be adjudicated in the Magistrates Court, but would have the added benefit of eliminating the need for a committal hearing in those cases.

Moving to a two-tiered court system

While the majority of Australian jurisdictions, including South Australia, have a three-tiered court system, Tasmania, the ACT and NT have a two-tiered court system.[84] These jurisdictions have a Magistrates and Supreme Court, but no equivalent to the South Australian District Court level.

Under South Australia's three-tiered criminal court system, the least serious criminal offences are heard in the Magistrates Court; more serious offences are heard in the District or Supreme Courts. There is also a specialist Youth Court, which hears matters involving young offenders (10–17 years). In 2008–09 there were 75,159 matters lodged in South Australian criminal courts. The majority of these were in the Magistrates (87%, or 65,466) and Youth (10%, or 7291) courts. The District Court had 2075 lodgements (3% of the total), while the Supreme Court had 327 (less than 1% of all matters).[85]

Photo courtesy of Courts Administration Authority of South Australia

Calling again on my California experience, we used to have five levels of courts: Justice (with very limited jurisdiction); Municipal (similar to Magistrates Court but with jury trial jurisdiction); Superior (unlimited jurisdiction and a general trial court, juvenile, family and probate sections); the Court of Appeal (an intermediate appellate court with no trial jurisdiction); and the Supreme Court (appellate jurisdiction only and original jurisdiction for death penalty appeals and attorney disbarment). In the 1980s justice courts were merged with municipal courts and in 1998 the trial courts throughout the state (Municipal and Superior) consolidated into one general jurisdiction trial court. While it was a painful change in many respects, as major changes often are, after the fact it made sense to have one trial court in a county such as mine, which is the same size and with a similar number of judicial officers as the state of South Australia. A more radical reform would be for this state to consider moving to a consolidated trial court, while retaining the Supreme Court appellate jurisdiction. This option should be studied and considered for a future direction.

Formalising sentencing discounts for guilty pleas

Sentence discount schemes specify the reduction in sentence an offender will receive for pleading guilty and are intended to provide an incentive for defendants to enter a plea at the earliest opportunity. However, another barrier not addressed by sentencing discounts is late decision making by legal representatives, either because they do not get the file in a timely way or because of cultural factors addressed elsewhere in this report.

In South Australia, judicial officers currently have discretion to consider a wide range of factors when determining sentence, including if the defendant pleaded guilty to the charge.[86] South Australian appellate courts have ruled on the range of reductions that might be offered.[87] To clarify the legitimacy of sentencing discounts, it would be preferable, and would enhance consistency, if sentencing reductions were legislatively prescribed, should this route be pursued.

Sentencing discounts are controversial; however, they have been described as:

…[a] plea bargain in its crudest form. It puts an inappropriate burden on the accused's choice to plead guilty, undermines proper sentencing principles, risks inducing a guilty plea from the innocent, undermines judicial neutrality and independence, and does not directly address the problems of time and delay which motivated its introduction by the courts.[88]

Providing a sentence indication scheme

A less controversial proposal is sentencing indication, where a judicial officer, having received a summary of the facts agreed to by the prosecution and defence, provides information on the sentence likely to be imposed if a defendant enters a guilty plea during the pre-trial process.[89] It is intended to reduce ambiguity, therefore encouraging earlier negotiation and guilty pleas. While the results of a NSW sentence indication scheme for indictable offences piloted in the mid-1990s were disappointing,[90] a more recent Victorian higher court pilot suggests that this approach is worth pursuing.[91] Despite the relatively small number of cases included in the one year pilot period, the Victoria Sentencing Advisory Council review recommended the continuation of the scheme on the basis that it had the potential to resolve cases earlier in the process, thereby reducing delays.[92] The experiences of NSW and Victoria could be of use in considering such a scheme for South Australia.

Providing judicial leadership in case flow management

South Australia already has criminal case flow management rules, 'made for the purposes of establishing orderly procedures for the conduct of the business of the Court in its criminal jurisdiction and of promoting the just and efficient determination of such business.'[93] The Criminal Justice Ministerial Taskforce is also overseeing a criminal case conferencing pilot program in the Adelaide Magistrates Court which aims to encourage negotiations between prosecution and defence at an earlier stage in the process to reduce the number and length of trials in the District Court. This should be pursued rigorously.

Despite the foundational elements of case flow management, a major impediment to effective systems is the local legal culture.[94] High Court Justice Heydon once described the lack of effective case management as '…one hand washing the drowsy procrastination of the other.' Changing the existing culture, where multiple adjournments appear to be accepted as the norm, requires more sweeping changes. This could include:

- applying monetary sanctions for lawyers who do not comply with deadlines
- publishing a 'scorecard' of which courts are within the guidelines and which are not
- adopting rules with more teeth in them.

In California, lawyers who do not comply with the rules or do not attend court accompanied by the client or the relevant settlement authority can be sanctioned and, unless the court has waived the defendant's presence, the court may issue a bench warrant for the defendant's arrest. Adjournments should only be granted for good cause and should be requested in writing, with notice to the other side, and managed by the court. 'Motions to continue the trial of a criminal case are disfavored and will be denied unless the moving party…presents affirmative proof in open court that the ends of justice require a continuance,' is the standard in the California Criminal Rules.[95]

Judicial leadership means moving away from the traditional notion of the judge as the uninvolved neutral, to a much more hands-on approach where the judge controls the case flow.[96]

This does not imply management of the content of the case, only the mechanics of its movement through the court process.

Fair, Timely, Economical Justice, a report prepared by the US National Judicial College, serves as a blueprint for achieving an effective case flow management system.[97] The document defines case flow management as:

…the process through which courts move all cases from filing to disposition. Judicial branch supervision and management is imperative to manage the time and events involved in the life of a case. This process includes all pre-trial phases, trials, and all events that follow disposition, regardless of the disposition type. Effective case flow management makes justice possible both in individual cases and across court systems and seeks to ensure that every litigant receives procedural due process and equal protection.

The report identifies six key concepts in case management:

- Provide leadership, demonstrate judicial commitment, and use administrative skills to own and lead the process.
- Document the existing caseload and identify available resources to ensure the timely disposition of cases.
- Involve the court administrator and court staff in actively supporting, executing, and improving the case flow management system.
- Consult and collaborate with the bar, citizens, and court users to ensure that case management is addressing their needs.
- Develop a case flow management plan that balances access to justice and fair treatment of all parties.
- Monitor the status of cases to institutionalise the case flow management plan and promote ongoing analysis and improvement of the system.

Restructuring lawyers' fees

A recently published report investigating criminal trial delays across Australia recognised that some defendants may be advised not to plead guilty until the last minute because of the fee structure for legal aid matters.[98] South Australian stakeholders raised similar concerns during my residency. The legal aid payment to a lawyer for a trial day is approximately $1500, compared with approximately $500 for a routine court appearance. While it is logical that the fee paid is commensurate with the amount of work required, this payment scale also encourages lawyers to take matters to trial rather than resolve them at an earlier opportunity.

Adopting rules of reciprocal discovery and disclosure

A trial should not be a game of 'gotcha', where defence or prosecution lawyers are surprised by witnesses or evidence produced by the other party. 'Discovery should promote the orderly ascertainment of truth and should not be a one-way street,' according to a California Supreme Court case. Instead, both the prosecution and defence should turn over all the evidence which they intend to rely upon at trial in a timely manner. 'Reciprocal discovery' enables both the prosecution and the defence to take a realistic look at the evidence short of trial, and this promotes both earlier pleas by defendants and earlier dismissals by the prosecution if they are unable to prove their case. It also narrows the disputed facts so that, through stipulations of counsel, trial time may be reduced because only contested facts need be decided by the judge or jury.

California's reciprocal discovery statute, Penal Code Section 1054, which was part of the Crime Victims Justice Reform Act, has a number of purposes:

a) to promote the ascertainment of truth in trials by requiring timely pre-trial discovery
b) to save court time by requiring that discovery be conducted informally between and among the parties before judicial enforcement is requested
c) to save court time in trial and avoid the necessity for frequent interruptions and postponements
d) to protect victims and witnesses from danger, harassment, and undue delay of the proceedings
e) to provide that no discovery shall occur in criminal cases except as provided by this chapter, other express statutory provisions, or as mandated by the Constitution of the United States.

It requires the prosecution to disclose:

f) the names and addresses of persons the prosecutor intends to call as witnesses at trial
g) statements of all defendants
h) all relevant real evidence seized or obtained as a part of the investigation of the offences charged
i) the existence of a felony conviction of any material witness whose credibility is likely to be critical to the outcome of the trial
j) any exculpatory evidence
k) relevant written or recorded statements of witnesses or reports of the statements of witnesses whom the prosecutor intends to call at the trial, including any reports or statements of experts made in conjunction with the case, and including the results of physical or mental examinations, scientific tests, experiments, or comparisons which the prosecutor intends to offer in evidence at the trial.

It requires the defence to disclose:

l) the names and addresses of persons, other than the defendant, he or she intends to call as witnesses at trial, together with any relevant written or recorded statements of those persons, or reports of the statements of those persons, including any reports or statements of experts made in connection with the case, and including the results of physical or mental examinations, scientific tests, experiments, or comparisons which the defendant intends to offer in evidence at the trial.
m) any real evidence which the defendant intends to offer in evidence at the trial.

These disclosures must be made 30 days before trial, and late-discovered evidence must be turned over to opposing counsel 'immediately.' Enforcement of the rule can include time for the opposing counsel to prepare a rebuttal of the evidence and/or a jury instruction that says there is a duty to disclose evidence, it was breached without good cause, and the jury may take that into account in making their decision. It may also include the ultimate sanction — exclusion from trial. This sanction would be used only in the most egregious of cases and when all other actions had been considered. I never found a basis for excluding non-disclosed evidence, although I took a short break in the trial to allow time for opposing counsel to prepare to meet the evidence and more than once gave the jury instruction.

When the law went into effect 20 years ago there was initial angst on the part of defence counsel, and public defenders personally went to jail for contempt of court to test the statute. After a variety of appeals the Supreme Court of California upheld the statute saying, 'We conclude that, properly construed and applied, the discovery provisions of Proposition 115 are valid under the state and federal Constitutions, and that Proposition 115 effectively reopened the two-way street of reciprocal discovery in criminal cases in California.'[99] 'Moreover,' the Court said, 'Section 1054 does not violate the right against self-incrimination, the right to due process, the right to effective assistance of counsel, or equal protection.' The statute passed Constitutional muster in every way.

Reciprocal discovery is now accepted practice among trial attorneys and hardly anyone bats an eye while complying with the law.

Continued advanced training of police prosecutors

The police are responsible for prosecuting most matters in the Magistrates Court, while lawyers from the Office of the Director of Public Prosecutions handle matters in the higher courts. Advanced training has recently been introduced to improve the skill level of police prosecutors and I support this initiative as it will positively contribute to the timely administration of justice. There must be a balance between the need for a speedy arrest and the proper preparation of a case.

A review of all cases by a senior prosecutor from the Director of Public Prosecutions at the Magistrates Court level

As noted earlier, criminal trials do not proceed as scheduled in the District Court for a range of reasons, including defendants' pleas and prosecutors' decisions to drop the charges. A senior prosecutor from the Director of Public Prosecutions could review all major indictable cases while they were still in the Magistrates Court and implement a range of strategies to improve the efficiency and effectiveness of the prosecution process. For example, direct more investigation be done, make a reasonable offer to the defendant, identify evidentiary issues, decide to abandon the prosecution, frame the contested issues and have the case be better prepared for trial in the District Court. This occurred some years ago: a senior prosecutor from the Director of Public Prosecutions was placed in the Adelaide Magistrates Court to clear a backlog of cases and I recommend that this become an ongoing practice.[100]

Speedy trial rights

The right of an accused to a speedy trial is specified in the Sixth Amendment of the United States Constitution, and in California these rights are also contained in the State Constitution (Proposition 115, Article I, Section 29). In addition, the California Penal Code indicates that:

1050. (a) The welfare of the people of the State of California requires that all proceedings in criminal cases shall be set for trial and heard and determined at the earliest possible time. To this end, the Legislature finds that the criminal courts are becoming increasingly congested with resulting adverse consequences to the welfare of the people and the defendant. Excessive continuances contribute substantially to this congestion and cause substantial hardship to victims and other witnesses. Continuances also lead to longer periods of presentence confinement for those defendants in custody and the concomitant overcrowding and increased expenses of local jails. It is therefore recognised that ***the people, the defendant, and the victims and other witnesses have the right to an expeditious disposition, and to that end it shall be the duty of all courts and judicial officers and of all counsel, both for the prosecution and the defense, to expedite these proceedings to the greatest degree that is consistent with the ends of justice.*** *(emphasis added)*

A Californian defendant must be brought to trial within 60 days if charged with an indictable offence, 45 days if charged with a misdemeanour while out of custody, and 30 days if charged with a misdemeanour while in custody.[101] However, this right can be waived to enable the defendant additional time to prepare a defence. If the speedy trial rule is violated the defendant may have the case dismissed, unless there is good cause shown for the delay by the prosecution. Additionally, both the prosecution and the defence have a right to a speedy preliminary examination (committal procedure) at which witnesses are called to establish probable cause within 10 court days, or 60 calendar days from the day the defendant enters a plea.[102]

If the other measures I am recommending are effective in addressing delays, there may be no need to enshrine speedy trial rights in legislation. However, if these other measures do not result in a significant shift in culture and practice, I would recommend a right to a speedy trial be added to the statutes, which, as per the Californian approach, allows the right to be waived, but where it is not, ensures that the trial must take place in a timely manner or the charges are dismissed and may be refiled for indictable offences. If dismissal is not palatable, then at the very least the defendant should be released from custody with appropriate bail conditions.

Selected civil law issues and self-representation

Although not a focus of my activities during my visit, issues such as access to fair, timely and affordable civil dispute resolution processes is an essential foundation for a modern society like South Australia. Much more investigation and research into these areas need to be done.

Small claims

Currently where there is a dispute involving a large sum of money (over $5000), only the wealthy or corporate bodies can afford to have it resolved in a court of law. While there is a relatively inexpensive process for small claims to be lodged in the Magistrates Court, the amount is too low for many people to use this option. Small claims jurisdiction should be raised to $10,000 and this amount should be adjusted periodically to reflect economic realities.

Community dispute resolution or mediation centres also provide a cost effective alternative for people who cannot afford to take their dispute to court. However, for most people disputes involving sums over $5000 pose many difficulties.

Self-representation

Realistically, someone with a claim under $50,000 is unlikely to find private counsel to represent him or her. This may mean that people have to represent themselves or reduce their claim in order to fit within the small claims limits. Making the process open and understandable could better support self-represented litigants.

- There should be easy-to-understand information on the Courts Administration Authority's web site to enable people to pursue their own claims eg. form pleadings and DVDs which explain the process.
- Law schools could also consider instituting a program whereby law students provide assistance for self-represented litigants in the District Court, similar to the program offered in the Magistrates Court, and lawyers could consider offering pro bono support for self-represented litigants.

Appropriate dispute resolution

However, the starting point in any civil dispute should be to assist the parties to select the most 'appropriate dispute resolution' process, as pointed out by Chief Justice John Doyle some years ago. Appropriate dispute resolution must be an integral part of the court system, not just an ancillary appendage. This would serve as both a preventative measure to keep cases out of the courtroom, and an early intervention measure so that cases which do come to court can be more narrowly adjudicated.

Under the current arrangements in the District Court only some matters are triaged into mediation with a deputy registrar (personal injury matters, dust disease actions and de facto relationship disputes). All other matters are referred to status hearings before a master. There appears to be a significant difference in settlement rates between the two processes which suggests that all matters could be referred for mediation and only unsuccessful mediation conferences should be allowed to go to trial.

A robust dispute resolution outlook should be adopted for appropriate cases and civil masters should be nationally certified if not already so qualified.

Experienced trial judges make excellent settlement judges. Since a judge, not a jury, hears all civil cases it would probably be a best practice to have settlements handled by a judge other than the one who would be assigned to preside over the case.

For both civil and criminal cases the courts should consider whether to designate expert witnesses as the court's versus the parties' witness. This would promote more neutral evidence and discourage the image of experts being 'hired guns.'

Courts should review their cost scales to ensure that they do not provide incentives for delay and over servicing. Fixed rate cost scales, such as apply in the Magistrates Court, should be considered by the District Court.

Judicial independence

Judicial independence is a cornerstone of a democratic society and is a basic principle in the Rule of Law. Judicial independence means making impartial decisions based on the law and the particular facts of a case; it also means that no judge's decision is affected by pressure from either of the other two branches of government (the Executive and the Legislative — see page 67), or by public opinion. An unbiased judiciary promotes public confidence. Former High Court Justice Michael Kirby captures this sentiment in the following statement:

If the law is to be applied to all people equally, the people must have confidence that the judiciary applies the law neutrally against the government and is not afraid of making unpopular decisions against powerful interests. If the people are to have faith that legal decisions are based upon their legal and factual merits rather than political interests or popular clamour, judicial independence is essential.[103]

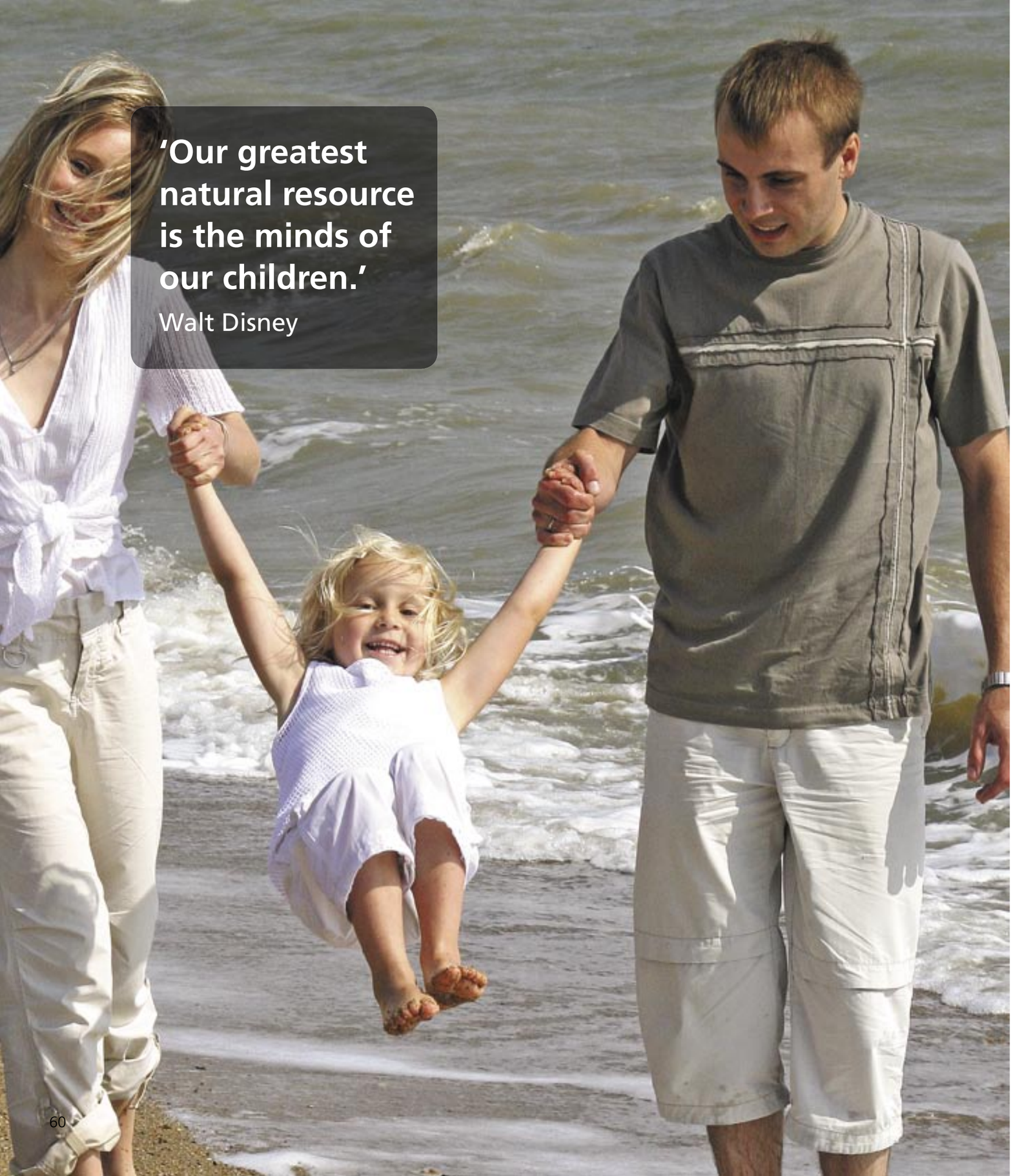
However, judicial independence does not mean, according to Justice Anthony Kennedy of the United States Supreme Court, '…that judges can do anything they want; it means judges can do what they must.'[104] A similar view has been expressed by former Chief Justice of the Australian High Court, the Hon. Sir Anthony Mason AC KBE, who observed that, '…there is a lot to be said for the view that judges have devalued judicial independence in the public estimation by relying upon it in order to protect their own position and privileges.'[105]

Judicial leadership is required to meet the challenges currently facing the courts, including case backlogs and delays. Chief Justice Mason recognised that 'if the judges do not voluntarily participate in the shaping of an appropriate regime of regulation, they could end up at some time in the future, in a very unfavourable climate, with a scheme thrust upon them which contains inadequate safeguards.'[106]

The judiciary should take a leadership role, in partnership with the other two branches of government in the provision of fair, timely and economical justice processes. This, in turn, is likely to contribute to increased public trust and confidence in the justice system. I do not consider the elimination of court inefficiencies and the streamlining of case management systems to be inconsistent with judicial independence.

Fair, timely and economical justice — Recommendations

1. In consultation with the judiciary, pursue the establishment of a formal, legislative scheme of sentencing discounts, and explore the merits of introducing a legislatively based sentence indication scheme.
2. Reduce the number of matters heard in the District Court (and therefore the court backlog) by allowing the Magistrates Court, with an appropriate increase in resources, to hear more of the offences that would currently be committed to the District Court.
3. Adhere to and strengthen existing case management rules in the District Court Rules of Court and, building upon the experiences of other jurisdictions, adopt measures and judicial attitudes to improve existing practices.
4. Legally underpin the right to a speedy trial by setting a reasonable time frame for the filing of charges, and ensure that practices which unreasonably delay trials are eliminated; require reciprocal discovery, proper notice and good cause for all adjournments.
5. Consider legal aid funding of cases which rewards early disposition rather than encourages pleas on the first day of trial.
6. Continue advanced training for SAPOL prosecutors by the Director of Public Prosecutions in evidence, court procedures and the conduct of hearings.
7. Have an experienced prosecutor review all charging decisions before complaints are lodged, and review cases involving serious offences to consider whether and how the matter can be disposed of at an early stage.
8. In the long term, explore court consolidation by moving to one trial court and one appellate/supreme court, rather than the current arrangement of the Magistrates, District and Supreme Courts.
9. Raise the small claims limit, and encourage the court to take a stronger lead in appropriate dispute resolution to expedite early settlement.



Protecting the Next Generation and Building a Better Future

Child protection — healing families

Although the removal of children is the intervention of last resort and reunification of the child with their natural parents is the primary service goal, the number of children in alternative care has increased steadily in Australia in the past 10 years and family reunification rates are low.

The outcomes for children and their families could be improved if the courts became more actively involved in healing families. The Youth Court has jurisdiction under the Child Protection Act 1993 (SA) to make orders for the care and protection of children, which can result in an order giving custody or guardianship of a child to a person who is not a parent of the child. The judicial officers in the Youth Court recognise a number of truths about the factors that contribute to the failure of parents to adequately care for their children. These include:

- the high proportion of child abuse and neglect that is related to alcohol and other drugs (70%–90%)[107]
- the number of children exposed to domestic violence
- the fact that an Aboriginal child is nine times more likely to end up in care.

The vast majority of children who are removed from their parents never leave the foster care system through adoption. This perpetuates the cycle of poverty and problems encountered by Aboriginal and Torres Strait Islander people.

Extensive research has established links between drug and alcohol abuse and child maltreatment; alcohol abuse in particular has been noted as a principal factor contributing to child abuse and neglect of Aboriginal children.[108] Too few children are reuniting with their families: only half are ever returned after being removed from their homes. My sources have advised that there have only been four to six adoptions per year since 1996 and all of the children were under a year old. Also no child over the age of 12 months has been adopted in almost 15 years.

Unified Family Wellness Courts

Family reunification rates could be increased and the length of stays in foster care reduced if courts became more involved in supervising and supporting families to address underlying problems such as substance abuse, mental illness and domestic violence.

A number of family courts across the United States are successfully applying the drug court model to child protection cases that involve an allegation of child abuse or neglect related to substance abuse. They have a variety of names such as Unified Family Wellness Courts (UFWCs) or Family Drug Treatment Courts. The UFWC approach has resulted in better collaboration between agencies and better compliance with treatment and other family court orders necessary to improve child protection case outcomes.[109] The goals of UFWCs are to protect children and to reunite families by providing substance-abusing parents (and those experiencing mental illness or exposing their children to family violence) with support, treatment, and access to services. Evaluations have shown that UFWCs have enhanced the ability of the court, child protection agencies, and treatment systems to respond to families in crisis.

Divided responsibilities

While child protection is the responsibility of the states and territories in Australia, the Australian Government has jurisdiction over marriages, divorce and child custody issues arising from the dissolution of marriage or de facto relationships. Having two separate systems responsible for adjudicating issues concerning the welfare of children does not always result in the best outcomes for them. This bifurcation between the Commonwealth and the state can result in conflicting orders and uncoordinated responses to families who are in trouble.

The Australian Law Reform Commission is to examine the integration of family violence, child protection and federal family law. Their research should be used in plans for a Unified Family Wellness Court in South Australia, operating from the Youth Court. A UFWC would address families who have cases in both systems and who also have alcohol or other drug, mental health or family violence issues. Their cases would be sent to the Youth Court, which would have jurisdiction over all of their related cases, both federal and state, including those in the Magistrates or District Court. The Commonwealth has indicated interest in developing such a pilot project with South Australia, which is very exciting. Part of the pilot project may require identifying gaps in the existing legislative framework to support the operation of a UFWC and recommendations for legislative reform. The Commonwealth is confident that this could be accomplished in short order as it has a model for transferring jurisdiction on family law cases to the state in Western Australia.

Need for speedier long-term solutions

Even with better intervention and support there will be some parents who will never be able to reunite with their children. There is also research available which has identified the risk factors that point to the likelihood of unsuccessful reunification. It is important to try and quickly identify children who are unlikely to be returned to their parents. Ultimately, the goal for such children should be adoption; birth parents should be encouraged to relinquish custody under such circumstances so their child can have the opportunity for a stable long-term placement. It is important therefore to develop reunification plans simultaneously with permanency plans so that, if a child is not returned to his or her family, there is a seamless transition to a stable placement.

Court Appointed Special Advocates

In the United States, volunteer Court Appointed Special Advocates (CASA) are appointed by judges to watch over and advocate for abused and neglected children; they make sure that children don't get lost in the overburdened legal and social service system, or languish in an inappropriate group or foster home. The CASA volunteer stays with each child until his or her case is closed and the child is placed in a safe, permanent home. For many abused children, their CASA volunteer will be 'the one constant adult presence — the one adult who cares only for them.' [110]

Juvenile justice – Planning for a new detention centre

The Magill Training Centre will be closed by 2011. Planning for the new $67 million facility should be undertaken with an eye toward restorative justice and rehabilitation of the child; it should also be culturally appropriate since 80% of the children in custody are Aboriginal. The design and philosophy of the centre should be rehabilitative rather than retributive, and should involve parents and/or guardians and families of the children incarcerated there. From facility design to training of personnel, a new look at what works best with children should be kept in mind, and the public should review the plans for the new centre, as well as the programming that is to take place inside it, before they are finalised. Using knowledge about child development and recognising that the cognitive development of children, particularly when it comes to executive functioning, is not complete until age 25, juveniles in custody should be learning good decision-making as well as impulse control. Incentives, rather than sanctions, should be emphasised to effect behavioural change.

Release and Innovative Community Action Networks

When children are released from custody, Innovative Community Action Networks should offer wrap-around services as part of the discharge planning.

- Educational programs that teach respectful relationships with parents, elders, teachers, intimate partners, and peers should be provided.
- Teen dating violence, both from the perspective of perpetrators and survivors, should be addressed.
- Completing one's education and vocational pathways should be a priority.
- The current system of cash assistance without any other responsibility should be reviewed as it does not encourage completion of the child's education or training.

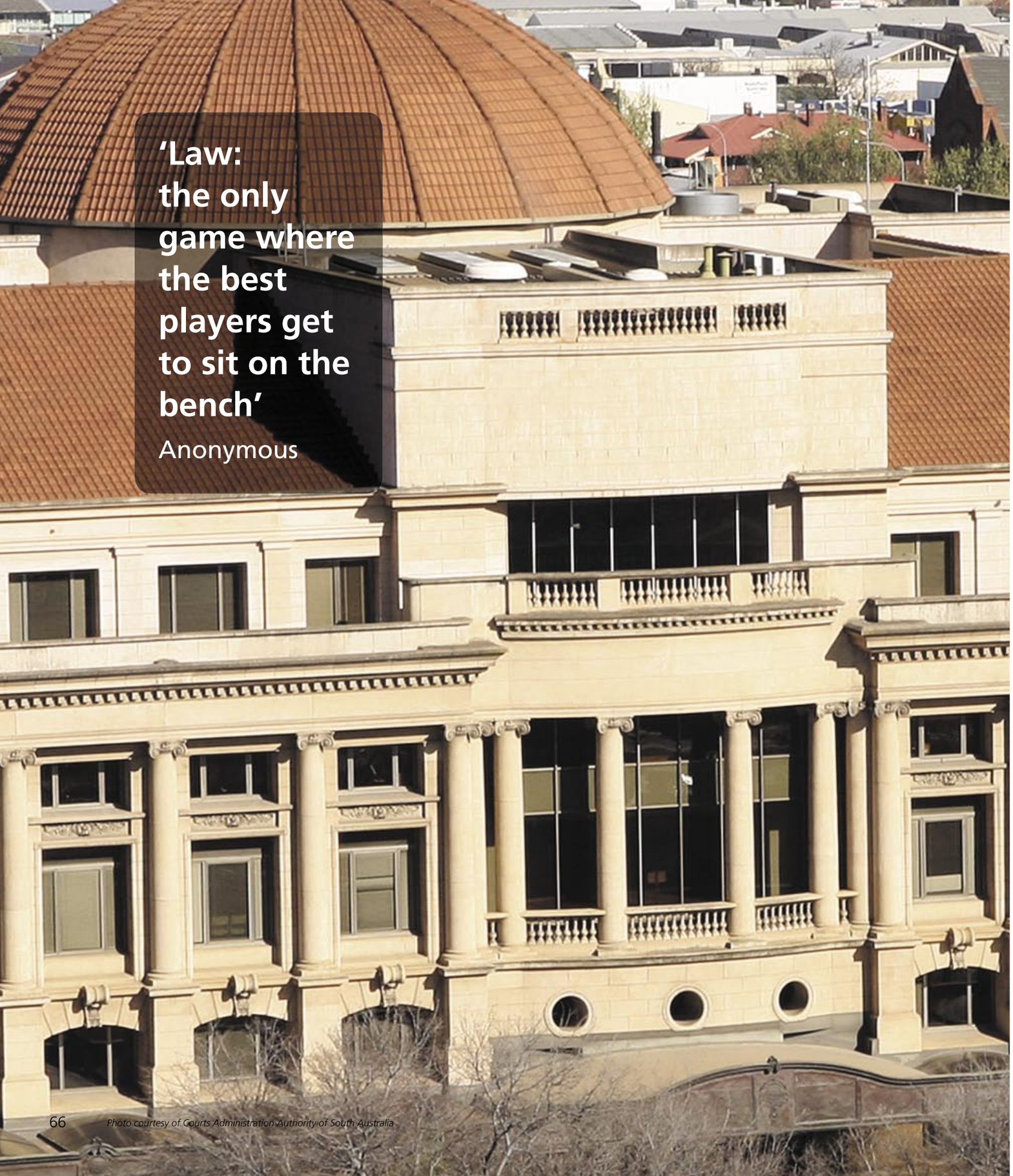
Alternatives to detention

The youth justice system in South Australia provides a number of diversion options to be considered by the police and the Youth Court for eligible young offenders. This approach keeps many first-time or low-level offenders out of the criminal justice system and provides opportunities for treatment and restorative justice for victims. However, large numbers of young offenders are still ending up incarcerated, and whether or not this occurs in a new prison shouldn't distract us from the need to vigorously explore alternative responses for young offenders. While this hasn't been a particular area of focus during my residency, I think there are opportunities to explore other interventions, including court and community supervised treatment options, for more serious young offenders.

There is a belief that there are more strenuous bail conditions for Aboriginal offenders than for others in the Youth Court. This allegation should be investigated in order to either address the disparity if one is found or dispel the myth, so that trust and confidence in the Youth Court may increase.

Protecting the next generation and building a better future — Recommendations

1. Strengthen the prospect of family reunification, where appropriate, through addressing underlying problems in the family.
2. Partner with the Australian Government to develop a Unified Family Wellness Court where issues of alcohol and other drugs, mental illness and family violence are heard in the Youth Court.
3. Create reunification and permanency plans simultaneously, so that children who cannot be reunited with their parents can be placed quickly in permanent homes.
4. Permanency planning should encourage adoption earlier in the process and adoption of children over one year of age should be encouraged.
5. Adopt a volunteer Court Appointed Special Advocate program to ensure that every child has at least one adult consistently with him or her through the protection process.
6. Create additional intermediate sanctions between family conference and prison for youthful offenders to reduce detention rates.
7. Ensure that the new Youth Training Centre is architecturally and philosophically designed consistent with principles of restorative justice, rehabilitation, and age, gender and cultural appropriateness.
8. Adopt Youth Court performance measures to ensure the safety of children, timeliness and due process.



‘Law: the only game where the best players get to sit on the bench’

Anonymous

Photo courtesy of Courts Administration Authority of South Australia

Understanding the Third Branch of Government

Many members of the public have incomplete or faulty knowledge about the justice system. An American survey found that more people could name the Three Stooges (Larry, Moe and Curly) than could name the three branches of government (Executive, Legislative and Judicial). I suspect the results would be similar in South Australia. There is little understanding of how judges are appointed, the scope of judicial duties, or the factors that must be taken into account in sentencing.[111] This lack of knowledge impacts upon public confidence in the justice system. A recent survey found that 70% of South Australians have little or no confidence in the courts.[112] This is tragic.

The three branches of government:

Executive	—	the Premier, Cabinet and the public sector agencies that administer and enforce the law
Legislative	—	the Parliament that makes the law
Judicial	—	the Judiciary that interprets the law and adjudicates disputes

Civics education

Strategies to increase public knowledge of the justice system should commence in schools. One approach is civics education, which aims to increase knowledge about the process and the structure of government. This is particularly important in a country that has compulsory voting from 18 years of age.

A ‘media judge’

The judiciary and other parts of the justice sector also need to do a better job of communicating with the public. As outlined earlier, my A-Team considered how one part of the justice system, the courts, could communicate more effectively with the public in order to improve trust and confidence. They recommended three initiatives that could enhance two-way dialogue between the courts and the public:

- the creation of a media judge who would act as a spokesperson for the courts and engage and educate the community and the media
- the establishment of a partnership between the courts and the three South Australian law schools, to include the provision of a student-run education service in the Magistrates and District courts; administrative support to the Media Judge; and assistance to the court to undertake community engagement activities, such as mock trials and community forums
- the research and redesign of the Courts Administration Authority website to better reflect the needs of court users.

I endorse these recommendations and am optimistic that they will be adopted.

Educating the media

The media is the most common source of information about crime and the justice system. It is therefore important that media reports are as complete and accurate as possible. Unfortunately, the reduction of complex legal issues to headlines and sound bites can often undermine this intent. I formed a productive relationship with the media during my residency and hope that this can be further built upon. The Australian Judicial College may wish to explore development of courses for journalists so they may be better able to understand court processes and judicial responsibilities.[113]

Sentencing decisions can be complex and legal terminology difficult to understand. It is important for judgements to explain in simple terms the evidentiary basis for the judicial officer’s sentencing choice, including factors in aggravation and mitigation. The use of reliable instruments such as risk and needs assessments in determining outcomes can also provide the public with confidence that there is a fair and reasonable basis for the sentencing decision.

Transparency in the court’s business will increase trust and confidence in the justice system.

[A] shift toward increased transparency in the court system is occurring, forcing courts to become more accountable, and this shift should not be viewed as a threat to judicial independence, but rather as a means to secure it.[114]

Judge for yourself: A guide to sentencing in Australia, produced by the Judicial Conference of Australia, is one example of a positive initiative to educate the public about how offenders are sentenced in Australia.[115] To improve the transparency of the court process, consideration could be given to podcasts and Web 2.0 applications such as Twitter and Facebook in cases of special interest to the public, with streaming of cases and with the use of cameras in courtrooms at the discretion of the judicial officer. I am convinced that if the public had factual information about the courts and its processes, high levels of trust and confidence in the justice system would be forthcoming.

Understanding the third branch of government — Recommendations

1. Improve civics education in schools to increase knowledge about the process and structure of government (particularly the Judicial Branch).
2. Establish a ‘Media Judge’ (A-Team recommendation).
3. Research, redesign and refresh the Courts Administration Authority’s website to make it more informative and user friendly and allow it to better meet the needs of court users (A-Team recommendation).

Acknowledgements and Conclusion

I was invited to South Australia as the first Justice Thinker in Residence to cast a fresh and insightful eye over South Australia's justice system, to look at ways to build safer communities for South Australians, to improve access to justice for all and to reduce crime.

During my residency and in this report I have focused on four principles which are brought together by an overarching vision. These are:

- building safer communities by being 'smart on crime'
- providing fair, timely and economical justice
- protecting the next generation and building a better future.
- understanding the third branch of government

My residency involved substantial interface with literally hundreds of inspiring people who were connected to and working in the justice system. During my 12-week stay since August 2009, I had over 75 meetings, both one-on-one and with groups of people – from government agencies, non-government organisations, university and community groups. I gave 20 keynote speaker presentations. I visited the South Australian specialist courts and two prisons. I visited justice departments in Canberra and Victoria. I had many media interviews and articles in print and on the radio.

Personally, I connected with well over 500 South Australians. I met and engaged with other Thinkers in Residence: Professor Ilona Kickbusch, Professor Laura Lee, Roseanne Haggerty, Geoff Mulgan and Andrew Fearne. I spoke with many South Australian ministers of the government and a number of chief executives. I had extensive and repeated contacts with the judiciary and other members of the legal community.

I greatly appreciate the guidance and leadership of the partner organisations who invested in this complex residency. I'd like to say thank you to the Courts Administration Authority, the Attorney-General's Department, South Australia Police, the Department of Education and Children's Services, the Social Inclusion Unit, Adelaide Law School, The University of Adelaide, Flinders University Law School, the Commissioner for Victim's Rights, the Department for Correctional Services, the City of Playford, and the Legal Services Commission.

I would also like to thank the hard-working group of young people in the A-team who so enthusiastically worked alongside my residency and looked in depth at issues that particularly affect youth in the community.

The content of this report owes much to the contributions of my 'catalysts', Sue King from the Courts Administration Authority and Nichole Hunter from the Attorney-General's Department, who worked feverishly with senior project officer, Pamela James-Martin, to support the intellectual and strategic journey of this residency. Without them I would have never understood the legal system in South Australia and its players. Finally, I'd like to acknowledge the members of the Courts' Community Reference Group who first planted the seeds of the idea of a Thinker in the field of justice. Their vision gave me this wonderful opportunity to know and love South Australia.

I have done my very best to give careful consideration to the issues I know you care about, to be respectful of your legal culture, and to be mindful of our differences and our similarities.

In conclusion I urge you, collectively, to rise to the occasion and to accept and embrace the recommendations I have made. This is the challenge for all of us who care about justice, mercy, children and a safe society. I hope this report is seen as a living document and not another 'doorstop' gathering dust on an office shelf. I stand ready to help in its implementation in any way I can.

The challenge of delivering 'smart justice' for South Australia is before us all.

Appendix

Summary of consultations

During my 12-week residency I met with many individuals and groups involved in a wide range of fields including justice, education, social inclusion, welfare and health. All these meetings gave me the opportunity to learn about how things are done in South Australia and what some of the issues of concern are for people working in these areas. Below is a comprehensive but by no means exhaustive list of the individuals and groups with whom I met. Although not every individual is acknowledged in the list below I wish to thank everyone for their time and their contribution to my residency.

Government Ministers

- Premier Mike Rann
- Attorney-General Michael Atkinson
- Attorney-General John Rau
- Ministers Gail Gago (Status for Women), Tom Koutsantonis (Correctional Services), Jennifer Rankine (Families and Communities), John Hill (Health) and Jane Lomax-Smith (Education)

The Judiciary

- Chief Justice John Doyle, Chief Judge Terry Worthington, Chief Magistrate Elizabeth Bolton
- Judge Christine Trenordan, SA Judicial Development Committee
- Judicial Officers from the Supreme and District Courts, the Youth Court and Magistrates Court

Courts Administration Authority

- State Courts Administrator Gary Thompson
- Courts Administration Authority Council
- Community Reference Committee
- Aboriginal Justice Officers
- Drug Court Operations Group

Senior office holders in government

- Chief Executive of the Attorney-General's Department, Jerome McGuire
- Chief Executive of the Department of Premier and Cabinet, Chris Eccles
- Chief Executive of the Department for Correctional Services, Peter Severin
- Commissioner for Police, Mal Hyde
- Assistant Commissioner, Operations Support Service, Bronwyn Killmier
- Commissioner for Social Inclusion, Monsignor Cappo
- Director of Public Prosecutions, Stephen Pallaras QC
- Solicitor General, Martin Hinton QC
- Chair of the Parole Board, Francis Nelson QC
- President of the Guardianship Board, Jeremy Moore
- Executive Director, Policy and Legislation, Attorney-General's Department, Ingrid Haythorpe
- Executive Director, Safety and Regulation Division, Department of Transport, Energy and Infrastructure, Phil Allan
- Director, Mental Health Operations, Derek Wright
- Executive Director, Drug and Alcohol Services SA, Keith Evans
- Director of James Nash House, Dr Ken O'Brien
- Commissioner for Victims' Rights, Michael O'Connell

Representatives from government departments

- Attorney-General's Department
- Department for Correctional Services
- South Australia Police
- Department of the Premier and Cabinet
- Cabinet Office, DPC
- Office of the Director of Public Prosecutions
- Department of Education and Children's Services
- Department for Families and Communities
- Department of Health, James Nash House
- Department of Treasury and Finance
- Department of Transport, Energy and Infrastructure, Safety and Regulation Division.
- Department for Environment and Heritage
- Office for Youth
- Social Inclusion Unit and Board

Government committees and advisory bodies

- Justice Portfolio Leadership Council
- Criminal Justice Ministerial Taskforce
- Victims of Crime Ministerial Advisory Committee
- Senior Management Council, DPC

Meeting with representatives from other organisations

- Adelaide Law School, The University of Adelaide Dean of Law, Professor Rosemary Owens and other senior academics
- Flinders University Law School Dean of Law School Professor David Bamford, Professors Kathy Mack and Sharyn Roach Anleu and other academics
- City of Playford, Ken Daniel, Life Long Learning Manager and Council members
- National Judicial College of Australia, Deputy Director Anne O'Connell
- Magistrates Association of South Australia
- Australian Law Reform Commission
- Legal Educators Teachers Association
- Legal Services Commission Director Hamish Gilmore and other senior staff and lawyers
- South Australian Council of Social Service (SACOSS), Justice sub-committee
- Law Society of South Australia President John Goldberg
- SA Council for Civil Liberties Chair George Mancini
- Institute of Arbitrators & Mediators Australia
- Australian Court Administrators Group
- Aboriginal Legal Rights Movement, Chief Executive Neil Gillespie and senior counsel
- Editor, The Advertiser, Mel Mansell
- Aboriginal Prisoners and Offenders Support Services, Executive Director Frank Lampard OAM
- Australian and New Zealand Association of Psychiatry, Psychology and the Law

Members of Parliament

- Hon. Bob Such, MP
- Hon. Francis Bedford, MP
- Hon. Steven Marshall, MP

The A-Team

The A-Team is an initiative of the Office for Youth in partnership with the Adelaide Thinkers in Residence program. It is a way to bring the voices of young people, aged between 16 and 25 years, to community, business, arts, education and government organisations and to value the contribution of youth to public debate. See the website for more information and the full report www.officeforyouth.sa.gov.au

Judge Hora's A-Team came together to explore two justice issues relating to her residency and to contribute a 'youth perspective':

1. public confidence in the courts
2. restorative justice in schools.

A-Team participants are drawn from a wide range of backgrounds and work or study areas. This A-Team involved 20 young people, including policy officers, university students, young people with experience in the dependency and justice system, the community sector and students with a strong interest in justice issues.

The A-Team met with Judge Hora, experts in the field of justice and senior public servants. They presented their recommendations to Judge Hora, the Minister for Youth and other key government decision makers in April 2010.

A-Team recommendations: Public confidence in the courts

The A-Team believes public confidence in the courts can be developed by increasing public understanding of the work of the courts. This will be achieved through a broad community engagement strategy comprising the following:

1. The creation of a Media Judge to act as a spokesperson for the courts and to engage and educate the community
2. Establishing a partnership between the courts and the three South Australian law schools to provide law students with the opportunity to:
   - run an education service in the magistrates court
   - support the Media Judge in an administrative capacity; and
   - actively engage in assisting the court to run community events: mock trials, mock sentencing, community forums and similar engagement activities
3. A new Courts Administration Authority website that is researched, redesigned and refreshed to reflect the needs of court users and to engage with the public.

These recommendations involve more than just a one way provision of information from the courts to the community. They are community facing and promote the establishment of a two way dialogue where the courts invite the public to participate in and influence the justice system.

A-Team recommendations: Restorative justice in schools

Having considered the benefits of using restorative practices in schools, the A-Team recommends that South Australian schools adopt restorative approaches as a way of reducing the number of behavioural issues within schools. This will be achieved by teaching students how to effectively resolve conflict and communicate about disputes.

The A-Team acknowledges that each school must decide whether they wish to take this approach and also decide on the approach that is most appropriate for them.

The A-Team recommends the following:

1. Mentoring partnerships be established between principals from schools who are successfully using restorative approaches with schools who would like to use a restorative approach.
2. Teachers, parents, students and the wider community to receive more education about the benefits of restorative approaches and how they can be used. This includes:
   - restorative justice experts being invited to visit and speak to teachers, students, principals and parents to promote and inform on the benefits of this approach
   - principals, teachers, parents, students and support staff be trained in restorative justice approaches
   - information packs about restorative practices to be distributed to school principals, teachers, other staff, students and parents.

3. University courses for teachers should include modules teaching restorative approaches. This could be linked to practical placements in schools which use restorative justice principles to assist in teaching students about the approach.

4. The Department for Education and Children's Services should consider implementing a long-term multi-site pilot project to evaluate the effectiveness of restorative approaches in regards to the impact on bullying, school yard conflict and school suspensions.

5. Through the group's investigations, it also became clear that a full-time school counsellor was very important to the successful implementation of restorative practices in schools. In the long term, the A-Team recommends that more counsellors be placed in South Australian schools to facilitate restorative practices, support students and take pressure off teachers as the main facilitators this process.

Judge Hora Residency

Presentations by Judge Hora during the residency

The American Drug Court Movement: A Personal Journey — Monash University, 24 August 2009

Why Do Problem Solving Courts Work? — Monash University Faculty, 25 August 2009

Smart Justice: Problem Solving Courts and the US Experience – Judicial Development Twilight Session, Adelaide, 26 August 2009

Smart Justice: Why problem solving courts work — Introductory lecture 27 August 2009

Problem Solving Courts: Non-Adversarial Justice in an Adversarial Courtroom — Flinders University, 2 September 2009

Responding to offenders with drug and alcohol problems — the US perspective — DUMA Conference, Adelaide, 11 September 2009

Drugs, crime and their impact on the community — DUMA Conference, Adelaide, 11 September 2009

Educating Judicial Officers about Mental Health and Co-morbidity — Australian and New Zealand Association of Psychiatry, Psychology and Law, Tanunda, South Australia, 12 September 2009

Why Drug Courts Work — Australian Government Attorney-General's Department, Canberra, 15 September 2009

Working in problem-solving courts — Flinders University Law School, 17 September 2009

The American Drug Court Movement: A Personal Journey — City of Playford Community Think Tank, 19 September 2009

Therapeutic Jurisprudence and the Aboriginal Court Experience — 4th National Indigenous Legal Conference, Adelaide, 24 and 25 September 2009

Drug Courts and Child Protection, Smart Justice: building on what we have — Criminal Law Committee and the Law Society of South Australia, 26 March 2010

Smart Justice – Criminal Law Committee and the Law Society of South Australia, 27 March 2010

Think Again! Time to recover or time to change? — The Thinkers Return Series, Convention Centre, 13 April 2010

It Pays to Deliver Smart Justice — Public Lecture, Adelaide Town Hall, 20 April 2010

Jury Charges in the Land Down Under — Twilight Education Program, SA Courts, the Hon. John Doyle AC, Chief Justice of South Australia, and His Honour Judge Boylan, Supreme Court, 21 April 2010

Therapeutic Jurisprudence — Continuing Legal Education for Magistrates, 23 April 2010

Justice Thinker in Residence — Judges and Masters Seminar, Supreme and District Courts, Tanunda, 30 April 2010

'Problem-Solving Courts', Australasian Institute of Judicial Administration and Monash University Non-Adversarial Law Conference, Melbourne, 4–7 May 2010

Criminal justice response to drug use and offending: A continuum of strategies — Compulsory Drug Treatment Program NSW 12 May 2010

- Judge Peggy Fulton Hora (Ret)
- Dr Astrid Birgden, NSW Compulsory Drug Treatment Correctional Centre
- Judge Roger Dive, NSW Drug Court

Summary of media

2008

National Association of Drug Court Professionals News, Autumn 2008 - Announcement of Residency in USA

2009

Media Release, Issued by Attorney-General, Tuesday 18 August - SA Welcomes New Thinker in Residence

The Advertiser, General news, Wednesday 19 August -'17th Thinker Crime in Focus' – arrival announcement

891 ABC Radio, News, Wednesday 19 August - Thinker arrival, residency general

ABC News Online, News Online, Wednesday 19 August -'New thinker to focus on justice system' – residency general

The Australian, Politics briefing, Wednesday 19 August -Thinker arrival

The Advertiser, General news, Thursday 20 August -'If we're mad, treat 'em. If we're scared, jail 'em. How to deal with crime' – profile piece

Radio National, Drive Time, Thursday 20 August - Residency general

891 ABC Radio, Grant Cameron – Drive 4:30pm Thursday 20 August Live interview – residency, smart justice general

Adelaide Now, Sean Fewster, Thursday 20 August - 'Judge Peggy Fulton Hora (Ret) says courts must embrace treatment'

FIVEaa Radio, Breakfast – 8.09 am, Thursday 27 August -Live interview – residency, smart justice general

The Advertiser, Opinion, Wednesday 2 September - 'It pays to deliver smart justice'

Adelaide Now, Opinion, Wednesday 2 September - 'It pays to deliver smart justice'

The Advertiser, General news, Thursday 9 September - 'Expert trip head for Playford' – Playford Community Conference

ABC Radio National, Law Report – Damian Carrick, Wednesday 23 September - Studio interview – residency, smart justice general

The Advertiser, Jordanna Schriever, Monday 28 September - 'Send parolees back to court, says thinker'

The Advertiser, Opinion, Monday 28 December -'Rehabilitation is good for community'

2010

The Advertiser, Interview – Tory Shepherd 25 March -'Punishment may not fit all the time'

The Advertiser, Interview – Tory Shepherd, 30 March 'Mindless' tough on law and order' mantras won't bring the paradigm shift the justice system sorely needs'

Amanda Blair, FIVEaa, Interview / talkback, 1 April

ABC Dave and Matt, Interview / talkback, 6 April

Radio Adelaide, Interview, 21 April

The Advertiser, Issues – Tory Shepherd, 28 April - 'Let justice prevail'

Stateline Interview – Patrick Emmett, 30 April

Visits to:

- Drug Court
- Nunga Court
- Women's Prison
- Adelaide Pre-Release Centre
- James Nash House
- Christies Beach Magistrates Court
- City of Playford

Interstate meetings with:

- Representatives from Commonwealth Government Attorney-General's Department, Canberra
- Department of Justice representatives, Melbourne
- Neighbourhood Justice Centre, Victoria
- Chief Magistrate Michael Hill and Magistrate Michael Davey, Tasmania
- Attorney-General Simon Corbell, ACT
- Dr Astrid Birgden, Director, Compulsory Drug Treatment Correctional Centre, NSW

Abbreviations

APY
Anangu Pitjantjatjara Yankunytjatjara

CAA
Courts Administration Authority

CASA
Court Appointed Special Advocates

DPC
Department of the Premier and Cabinet

FVC
Family Violence Court

ICT
Information Communication Technology

JDC
Judicial Development Committee

MLDA
Minimum legal drinking age

NJCA
National Judicial College of Australia

SACOSS
South Australian Council of Social Service

SAPOL
South Australia Police

UFWC
Unified Family Wellness Courts

Endnotes

INTRODUCTION

[1] Innovation in 360 Degrees: Promoting Social Innovation in South Australia, Geoff Mulgan, Thinker in Residence 2008

[2] <www.therapeuticjurisprudence.org>

[3] <www.safestartcenter.org>

A 2020 VISION FOR THE JUSTICE SYSTEM

[4] Standing Committee of Attorneys-General Working Group on Indigenous Justice draft report can be found at: <www.scag.gov.au/lawlink/SCAG/ll_scag.nsf/vwFiles/NationalIndigenousJusticeFramework-Draft.pdf/$file/NationalIndigenousJusticeFramework-Draft.pdf>

[5] News release, the Hon. Michael Wright, Minister for Police, '$13 million upgrade of SAPOL computer system', 3 February 2010; <www.ministers.sa.gov.au/images/stories/mediareleasesFEB10/new%20it%20system.pdf>

[6] Corlett, E, Skrzypiec, G and Hunter, N 2005, Offending profiles of South Australian Drug Court Pilot Program 'completers', Office of Crime Statistics and Research, Adelaide; <www.ocsar.sa.gov.au/docs/evaluation_reports/DrugCourt1.pdf>; Skrzypiec, G 2006, The South Australian Drug Court: A profile of participants during its first thirty eight months of operation, Office of Crime Statistics and Research, Adelaide; <www.ocsar.sa.gov.au/docs/research_reports/DC38.pdf>

[7] O'Brien, B, Bruce, F and Hudson, N 2008, Police Drug Diversion Initiative Final Evaluation Report, Office of Crime Statistics and Research, Adelaide; <www.ocsar.sa.gov.au/docs/evaluation_reports/PDDIFinalEvaluationReport2008.pdf>

[8] Howells, K, Day, A, Bubner, S, Jauncey, S, Williamson, P, Parker, A and Heseltine, K 2002, 'Anger management and violence prevention: Improving effectiveness', Trends and issues in crime and criminology #227, Australian Institute of Criminology, Canberra; <www.aic.gov.au/documents/7/1/E/%7B71E31581-3564-44E1-B392-B3BA69801247%7Dti227.pdf>

[9] Anleu, SR and Mack, K, 'The Work of the Australian Judiciary: Public and Social Attitudes', 2010, 20 Journal of Judicial Administration 3

[10] Victorian Department of Justice (2010) Evaluating the Neighbourhood Justice Centre in Yarra, 2007–2009, Melbourne; <www.neighbourhoodjustice.vic.gov.au/webdata/resources/files/NJC_evaluation_main_document.pdf>

[11] Roper, C 2006, A National Standard for Professional Development for Australian Judicial Officers, National Judicial College of Australia, 28; <http://njca.anu.edu.au/Projects/national%20standards/NATIONAL%20STANDARD%20final%20Apr%2006.doc>

[12] Not included in this total are 72 Special Justices and 29 Sessional Commissioners who sit in the Environmental, Resources and Development Court on a casual basis. Judicial officers from the Industrial Court are also excluded.

[13] Roper, C 2006, A National Standard for Professional Development for Australian Judicial Officers, National Judicial College of Australia, 28; <http://njca.anu.edu.au/Projects/national%20standards/NATIONAL%20STANDARD%20final%20Apr%2006.doc>

[14] An excellent example of a new judge orientation delivered by a court may be found at: <www.courtinfo.ca.gov/programs/innovations/documents/KlepsBrief_NJO.pdf>

[15] <www.courtinfo.ca.gov/rules/index.cfm?title=ten&linkid=rule10_462>

[16] Roper, C 2007, A Curriculum for Professional Development for Australian Judicial Officers, National Judicial College of Australia; <http://njca.anu.edu.au/Projects/Curriculum/National%20Curriculum%20final.doc>

[17] <www.aija.org.au/home.html>

[18] <www.jca.asn.au/>

[19] <www.judicialcollege.vic.edu.au/judicial-education>

[20] ABS, Prisoners in Australia, 2009 (cat no 4517.0) report released on 10 December 2009; <www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0A570D4363D75FE30CA2576870010D5128/$File/45170_2009.pdf>

[21] Child Protection Australia, 2008–09 released by AIHW in Jan 2010; <www.aihw.gov.au/publications/cws/35/10859.pdf>

[22] Bridges and barriers – addressing Aboriginal incarceration and health, Australian National Council on Drugs National Indigenous Drug and Alcohol Committee, 2009 ACT, p.6

[23] Bridges and barriers – addressing Aboriginal incarceration and health, Australian National Council on Drugs National Indigenous Drug and Alcohol Committee, 2009 ACT, p.6

[24] Bridges and barriers – addressing Aboriginal incarceration and health, Australian National Council on Drugs, National Indigenous Drug and Alcohol Committee, 2009 ACT, p 1

[25] Principles of Drug Abuse Treatment for Criminal Justice Populations – A Research-Based Guide, National Institute on Drug Abuse, 2006

[26] Principles of Drug Abuse Treatment for Criminal Justice Populations – A Research-Based Guide, National Institute on Drug Abuse, 2006

[27] Bridges and barriers – addressing Aboriginal incarceration and health, Australian National Council on Drugs National Indigenous Drug and Alcohol Committee, 2009 ACT, p.6

[28] Stafford, J and Burns, L 2010, Australian Drug Trends 2009 – Findings from the Illicit Drug Reporting System (IDRS), Australian Drug Trend Series No. 37, Sydney, National Drug and Alcohol Research Centre, University of New South Wales, 2009

[29] Key Findings from the Drug Use Careers of Offenders (DUCO) Study in Crime and Criminal Justice, Toni Makkai and Jason Payne, Australian Institute of Criminology, Canberra 2003, p. 8

[30] Aquilina H, Sweeting J, Liedel H, Hovane V, Williams V, Somerville, C, Evaluation of the Aboriginal Sentencing Court of Kalgoorlie; <www.courts.dotag.wa.gov.au>

BUILDING SAFER COMMUNITIES BY BEING SMART ON CRIME

[31] Roberts, L, Indermaur, D 2007, What Australians Think About Crime and Justice: results from the 2007 Survey of Social Attitudes, Australian Institute of Crime

[32] ibid

[33] 2010 Report on Government Services (ROGS)

[34] ABS, Prisoners in Australia, 2009 report (cat no 4517.0)

[35] Productivity Commission 2009

[36] Bridges and barriers – addressing Aboriginal incarceration and health, Australian National Council on Drugs National Indigenous Drug and Alcohol Committee, 2009 ACT, quoting Moore et al 2007, p 10

[37] The Advertiser article

[38] Mercado, CC, & Ogloff, JR 2007, Risk and the preventive detention of sex offenders in Australia and the United States, International Journal of Law and Psychiatry, 30, 49-59

[39] Bridges and barriers – addressing Aboriginal incarceration and health, Australian National Council on Drugs National Indigenous Drug and Alcohol Committee, 2009 ACT, p 1; see generally: Travis, J and Waul, M, eds., Smart Justice: Why Problem Solving Courts Work, Introductory Lecture, Mercury Cinema, 27 August 2009 .

[40] Do Better Do Less – The report of the Commission on English Prisons Today; <www.restorativejustice.org>

[41] ibid

[42] Australia's Health 2008, Australian Institute of Health and Welfare, Canberra, p 87

[43] Sarre, W, King, S, & Bamford, DN 2006, 'Remand in custody: critical factors and key issues', Trends and Issues in Crime and Criminal Justice, Number 310. See also: Zwaans, L, 'Fears over crowded jail system'; <http://adelaidenow.com>, 22 March 2010

[44] Department of Correctional Services, Annual Report 2008–2009

[45] Willis, M, Moore, J 2008, Reintegration of Indigenous Prisoners, AIC; <www.aic.gov.au/publications/rpp/90/rpp90.pdf>

[46] Cunningham, A, and Baker, L 2004, 'Invisible Victims: The Children of Women in Prison', Centre for Children & Families in the Justice System.

[47] Drug use monitoring in Australia: 2005 annual report on drug use among police detainees by Jenny Mouzos, Lance Smith, Natalie Hind Australian Institute of Criminology Research and Public Policy Series No. 70, 2006, page 29.

[48] E.g., Marlowe, DB, 2006, 'Judicial supervision of drug-abusing offenders', Journal of Psychoactive Drugs, SARC Supplement 3, 323-331

[49] For a full explanation of these principles, see: <www.nadcp.org/learn/positions-policy-statements-and-resolutions/principles-evidence-based-sentencing-other-court-d>. See also, Wolff, Hon. MA, 'Evidence-based Judicial Discretion: Promoting Public Safety Through State Sentencing Reform,' 83 NYULR 5, Nov 2008

[50] See, e.g., South Australian Social Inclusion Board, 'Stepping Up: A Social Inclusion Action Plan for Mental Health Reform 2007–2012', Adelaide, 2008

[51] South Australian Social Inclusion Board, 'Stepping Up: A Social Inclusion Action Plan for Mental Health Reform 2007–2012', Adelaide 2008

[52] <www.corrections.sa.gov.au>

[53] South Australian Office of the Public Advocate, Annual Report 2009, page 67

[54] Carey, SM, Ph.D. et al., 'Exploring the Key Components of Drug Courts: A Comparative Study of 18 Adult Drug Courts on Practices, Outcomes and Costs,' NPC Research, March 2008; <www.ncjrs.gov/pdffiles1/nij/grants/223853.pdf>

[55] Dept. for Transport, Energy and Infrastructure, Road Safety Progress Report – March 2010

[56] Mouzos, J and Makkai, T 2004, Women's experiences of male violence: findings from the Australian component of the International Violence Against Women Survey, Australian Institute of Criminology Research and Public Policy, Series number 56, Canberra; <www.aic.gov.au/documents/5/8/D/{58D8592E-CEF7-4005-AB11-B7A8B8482399}RPP56.pdf>

[57] KPMG 2009, The cost of violence against women and their children, Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), Australian Government; <www.facs.gov.au/sa/women/pubs/violence/np_time_for_action/economic_costs/Documents/VAWC_Economic_Report.PDF>

[58] Women's Safety Strategy; <www.officeforwomen.sa.gov.au/index.php?section=970>

[59] Marshall, J, Ziersch, E and Hudson, N 2008, Family Safety Framework: Final Evaluation Report, Office of Crime Statistics and Research, Adelaide; <www.officeforwomen.sa.gov.au/siteFiles/OFW/FSFEvaluationFinalReport.doc>

[60] <www.dontcrosstheline.com.au>

[61] Press release, the Hon. Gail Gago, 'Further step to help stamp out domestic violence in SA', 9 April 2010; <www.ministers.sa.gov.au/images/stories/mediareleasesAPR10/9-4%20coroner%20dv%20initiative.pdf>

[62] Tually, S, Faulkner, D, Cutler, C and Slatter, M 2008, Women, domestic violence and homelessness: A synthesis report, Prepared for the Office for Women, Department of Families, Housing, Community Services and Indigenous Affairs by Flinders Institute for Housing, Urban and Regional Research, Flinders University; <www.fahcsia.gov.au/sa/women/pubs/violence/synthesis_report08/Documents/synthesis_report2008.pdf>

[63] <www.fahcsia.gov.au/sa/housing/progserv/affordability/affordablehousing/Pages/default.aspx>

[64] Media Release by Jenny Macklin and Tanya Plibersek, 'Support for family violence victims in SA', 20 January 2010; <www.alp.org.au/news/support-family-violence-victims-sa>

[65] <www.courts.sa.gov.au/courts/magistrates/index_cvip.html#family_violence_courts>

[66] Department for Correctional Services 2009, Annual report 2008–09; <www.corrections.sa.gov.au/annual%5Freport/>

[67] Shaw, G and Brooks, D, Evaluation of the Cross-Border Remote Area Program, Bowchung Consulting

[68] Victims Of Crime Act 2001, section 32

[69] See: Umbreit, MS, The Handbook of Victim Offender Mediation; <http://media.wiley.com/product_data/excerpt/18/07879549/0787954918.pdf>

[70] Sherman, LW, Strang, H 2007, Restorative justice: the evidence, The Smith Institute; <www.smith-institute.org.uk>

[71] Young Offenders Act 1993, Part 2, Division 3; Professor A Goldsmith, Dr M Halsey, Mr D Bamford, Adult Restorative Justice Conferencing Pilot, Final Report, Flinders University 2005; Jane Marshall, Pt Lincoln Aboriginal Conference Pilot Evaluation Report, Office of Crime Statistics and Research 2008; <www.ocsar.sa.gov.au>

[72] Goldsmith, A, Halsey, M & Bamford, D 2005, Adult Restorative Justice Conferencing Pilot: Final Report, prepared for South Australian Courts Administration Authority

[73] King, M et al. 2009, Non-Adversarial Justice, Ch. 3, 'Restorative Justice,' The Federation Press; see also: Walker, L et al. 2009, Pono Kaulike: Reducing Violence with Restorative Justice and Solution-Focused Approaches, Federal Probation 73:1

[74] <www.sa.alp.org.au/images/stories/LatestNews/safer%20streets.pdf>

[75] <www.neighbourhoodjustice.vic.gov.au/webdata/resources/files/NJC_evaluation_main_document.pdf>

[76] Carey, SM, Ph.D. et al., 'Exploring the Key Components of Drug Courts: A Comparative Study of 18 Adult Drug Courts on Practices, Outcomes and Costs,' NPC Research, March 2008; <www.ncjrs.gov/pdffiles1/nij/grants/223853.pdf>

FAIR, TIMELY AND ECONOMICAL JUSTICE

[77] Steering Committee for the Review of Government Service Provision 2010, Report on Government Services <www.pc.gov.au/gsp/reports/rogs/2010>

[78] Anleu, SR and Mack, K 2010, 'The Work of the Australian Judiciary: Public and Social Attitudes', 20 Journal of Judicial Administration 3

[79] Lizard Drinking 2005, Review of the Office of the Director of Public Prosecutions – final report; <www.dpp.sa.gov.au/03/Final%20Report%20with%20addendum.pdf>

[80] Steering Committee for the Review of Government Service Provision 2010, Report on Government Services <www.pc.gov.au/gsp/reports/rogs/2010>

[81] Courts Administration Authority, Annual report 2008–09 <www.courts.sa.gov.au/pdf/annual_reports/CAA_Annual_Report_2008-2009.pdf>

[82] Courts Administration Authority, Annual report 2008–09 <www.courts.sa.gov.au/pdf/annual_reports/CAA_Annual_Report_2008-2009.pdf>

[83] For example: Payne, J 2007, Criminal trial delays in Australia: trial listing outcomes, Research and Public Policy Series no 74, Canberra, Australian Institute of Criminology; Weatherburn, D, Matka, E and Lind, B 1995, Sentence indication scheme evaluation: Final report, Sydney: NSW Bureau of Crime Statistics and Research

[84] Steering Committee for the Review of Government Service Provision 2010, Report on Government Services <www.pc.gov.au/gsp/reports/rogs/2010 p.727>

[85] Steering Committee for the Review of Government Service Provision 2010, Report on Government Services <www.pc.gov.au/gsp/reports/rogs/2010>

[86] Refer s.10(1)(g) of the Criminal Law (Sentencing) Act 1988

[87] Two recent cases that were somewhat critical of sentencing discounts given for other than an expression of remorse by the defendant are Cameron v R [2002] HCA 6 and R v Thomson; R v Houlton (2000) 115 A Crim R 104

[88] Mack, K and Anleu, SR 1997, 'Sentence Discount for a Guilty Plea: Time for a New Look,' 1 Flinders Journal of Law Reform 123–143, 124

[89] Freiberg, A and Willis, J 2003, 'Sentencing indication' Criminal Law Journal 27: 246

[90] Weatherburn, D, Matka, E and Lind, B 1995, Sentence indication scheme evaluation: Final report, Sydney: NSW Bureau of Crime Statistics and Research <www.lawlink.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/l10.pdf/$file/l10.pdf>

[91] Victorian Sentencing Advisory Council 2010, Sentence indication: A report on the pilot scheme, Melbourne: Sentencing Advisory Council <www.sentencingcouncil.vic.gov.au/wps/wcm/connect/eedb66804056a601a0b8bae505682c73/Sentence_Indication_Report_On_The_Pilot_Scheme.pdf?MOD=AJPERES>

[92] <www.sentencingcouncil.vic.gov.au/wps/wcm/connect/Sentencing+Council/Home/SENTENCING+-+Sentence+Indication+and+Specified+Sentence+Discounts+Review>

[93] District Court (Criminal and Miscellaneous) Rules 1992, Part 4, Chapter 5

[94] Freiberg, A and Willis, J 2003, 'Sentencing indication' Criminal Law Journal 27: 246

[95] California Criminal Rules (Rev. July 1, 2010) 4.113

[96] The Home Office has also developed a step-by-step guide for participants in the criminal justice process that sets out best practice in case management (the Criminal Case Management Framework); <http://ccmf.cjsonline.gov.uk/>

[97] Available on line at: <www.ojp.usdoj.gov/BJA/pdf/NJC_CaseflowManagement.pdf>

[98] Payne p.26; <www.aic.gov.au/documents/C/6/7/%7BC6708A1E-A29D-45D9-B8D7-0003A3EE379E%7Drpp74.pdf>

[99] Izazaga v. Superior Court of Tulare County, 54 Cal. 3d 356 (1991)

[100] <www.courts.sa.gov.au/courts/magistrates/index_cvip.html#family_violence_courts>

[101] California Penal Code Section 1382(a)

[102] California Penal Code Section 859b

[103] Law Council of Australia, Presidents of Law Associations In Asia Conference, Gold Coast Convention & Exhibition Centre, Broadbeach, Queensland, Australia, Sunday, 20 March 2005, 'Independence of the Legal Profession: Global and Regional Challenges', The Hon. Justice Michael Kirby AC CMG, 'The Principle of Independence'; <www.hcourt.gov.au/speeches/kirbyj/kirbyj_20mar05.html>

[104] 'Justice Kennedy: Lawyers must Defend Judiciary from Attacks', Mike Schneider, Tallahassee Democrat, Associated Press, 24 June 2005

[105] The Senate Legal and Constitutional Affairs References Committee 2009, 'Australia's Judicial System and the Role of Judges', p.92; <www.aph.gov.au/senate/committee/legcon_ctte/judicial_system/report/report.pdf>

[106] Ibid, p. 114.

PROTECTING THE NEXT GENERATION AND BUILDING A BETTER FUTURE

[107] Of the 70% of cases in which substance abuse is a factor, the most common substances were alcohol (70%); marijuana (53%); and, amphetamines (50%). Many parents are poly drug users.

[108] Dawe, Harnett, & Frye 2008; Aboriginal Child Sexual Assault Taskforce 2006; Anderson & Wild 2007; Gordon et al. 2002; Robertson 2000

[109] Meghan M, Wheeler, MS and Carson, L, Fox Jr, JD, 'Family dependency treatment court: applying the drug court model in child maltreatment', National Drug Court Institute, June 2006, Vol 5 No 1

UNDERSTANDING THE THIRD BRANCH OF GOVERNMENT

[110] The CASA website may be accessed at: <www.casaforchildren.org/site/c.mtJSJ7MPIsE/b.5301295/k.BE9A/Home.htm >

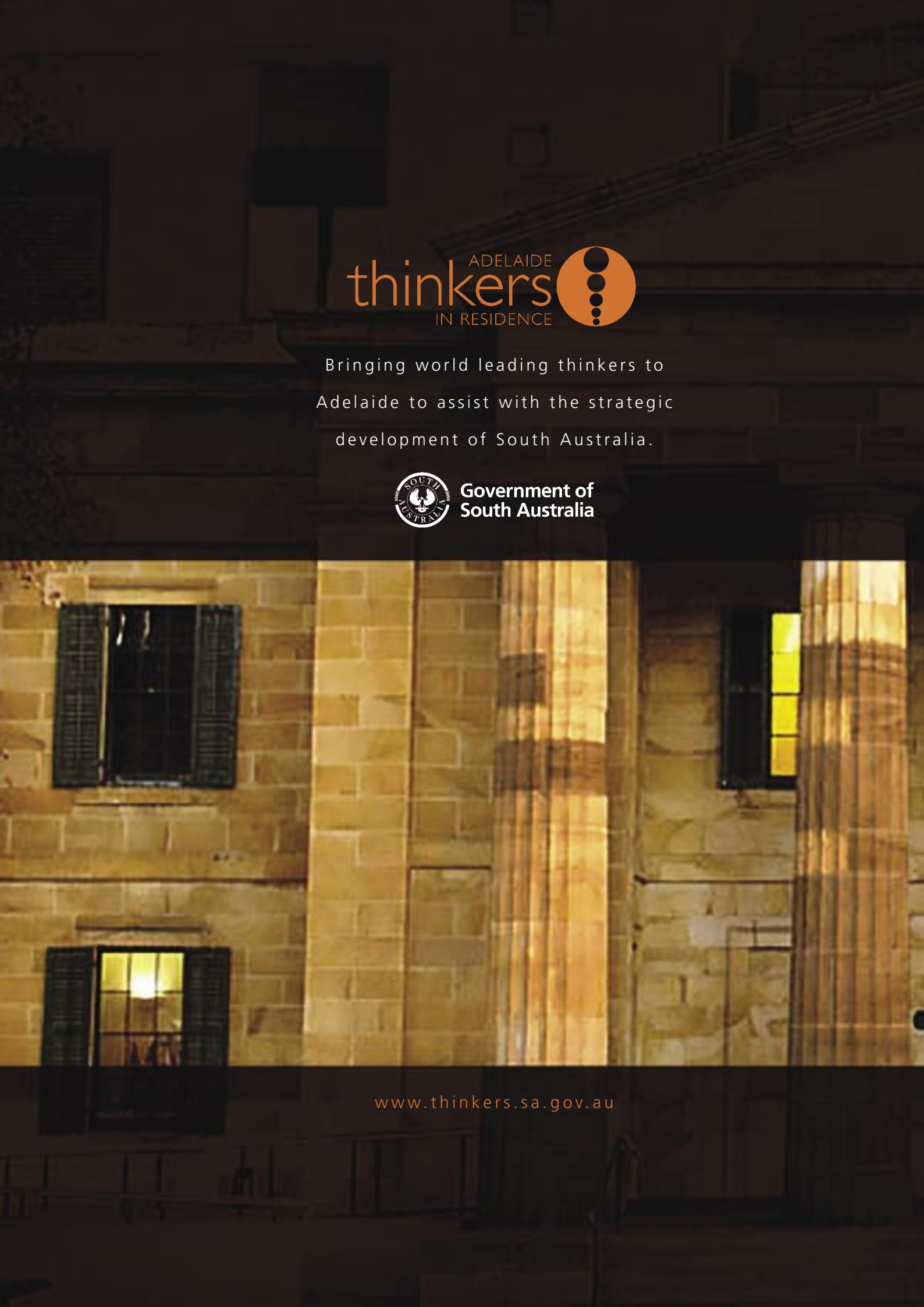
[111] Schultz, P, 'Rougher than Usual Media Treatment: A Discourse Analysis of Media Reporting and Justice on Trial', 2008, 17 Journal of Judicial Administration

[112] Anleu, SR and Mack, K 2010, 'The Work of the Australian Judiciary: Public and Social Attitudes', 20 Journal of Judicial Administration 3

[113] See, e.g., the Reynolds National Center for Courts and the Media at: <http://courtsandmedia.org/>

[114] Slayton, D, 'Using performance measures to enhance fair and impartial courts: a practitioner's view', Future Trends in State Courts, 2008

[115] <www.sentencingcouncil.vic.gov.au/wps/wcm/connect/f46b89004056a5cea02cbae505682c73/Judge_For_Yourself.pdf?MOD=AJPERES>


ADELAIDE
thinkers
IN RESIDENCE
Bringing world leading thinkers to
Adelaide to assist with the strategic
development of South Australia.
Government of
South Australia
www.thinkers.sa.gov.au