

Remarks of the Hon Marilyn Warren AC  
Chief Justice of Victoria

Australian Bar Association / Victorian Bar  
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We are privileged in this nation to have a system of justice predicated on the principle of access for all, a system that delivers rigorously fair and equitable outcomes and in a timely manner. A system of justice that strives for excellence at all points, always.

How the courts deliver justice is a first-rung priority for all of us.

It matters to your business as barristers. It is vitally important for your clients. But, more broadly, it matters to the community, to taxpayers and the government.

The delivery of the rule of law and the way it is done is a valuable commodity. It is one that is not only fundamental but highly marketable.

I will look at what we provide locally then at the national and international opportunities.

## **The local stage**

In the Victorian Supreme Court we are increasingly attracting large-scale litigation to our jurisdiction, including investor-based, consumer and personal injury class actions, and claims for disaster damages.

Our Common Law Division, has two particular class actions pending on behalf of asylum seekers on Manus Island and, separately, Christmas Island. Another case focuses on claims made by businesses affected by the closure of the federal government's Pink Batts installation program. This latter case may involve as many as 10,000 claimants.

Specialization is a hallmark of Victorian Supreme Court litigation, both in streaming and adjudication. The Commercial Court and the Common Law Division have extensive specialist lists.

Another hallmark is ADR, especially judicial mediation.

This year, the Court heard argument in a case brought by Victoria's volunteer firefighters against the Country Fire Authority. The legal dispute focused on the firefighters' opposition to an enterprise bargaining agreement, but there was a backdrop of a dispute between volunteer firefighters and union firefighters.

The Court drove mediation between the parties, and the case settled this week. A case of apparent acrimony and political sensitivity was resolved by judicial mediation. A significant service was provided to the community.

Mediation and other forms of resolving disputes outside the courtroom help to cut costs for parties and courts alike. So the CFA case ended through mediation conducted by Associate Justice Eftim. So did the *Oswal v ANZ*<sup>1</sup> case, which was one of the biggest

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<sup>1</sup> *Radhika Pankaj Oswal v Australia and New Zealand Banking Group & Ors*, SCI No. 2011/4653, also known as 'the duress case'; *Pankaj Oswal v Ian Menzies Carson & Ors*, SCI No. 2012/1995, the 'sale at an undervalue case'; and *Yara Pilbara Fertilisers Pty Ltd v Pankaj Oswal & Ors*, SCI 2015/804, 'the 'misappropriation case'.

and most complex commercial proceedings in recent years anywhere in Australia.

The other hallmark is technology.

Investment in IT does not have to be an expensive proposition. We have and will continue to harness the transformative qualities of technology. We started 'small' in the Commercial Court. Now almost all cases with judges of the Commercial Court are managed electronically. There is access to court documents 24 / 7.

Our plans for technological developments are expanding. There has been live-streaming of some court cases. The class action relating to the Kilmore bushfires case was a landmark in that regard. The trial of *Oswal v ANZ* earlier this year was live-streamed to lawyers and parties.

The Court of Appeal will soon have a great many of its hearings live-streamed and accessible via the internet to the entire community.

Speaking of 'hallmarks', preparation is a renowned hallmark of the Victorian Bar.

Consistently, the Court of Appeal is an exemplar in this. It imposes strict requirements on parties to have cases fully prepared for appeal before a leave hearing, and appeal judges urge cutting straight to the best points.

These simple but practical management techniques have driven big improvements in listing and disposition rates.

Civil appeals pending fell by more than half in the last 18 months. The average time from initiation to finalization of civil appeal cases has dropped to 6.7 months.<sup>2</sup>

Now taking the local level of excellence, of course it extends across the national superior courts. So what opportunities arise to market that collective excellence?

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<sup>2</sup> Supreme Court of Victoria,

## **The national and international stage**

An opportunity that lies before all of us as the collective superior courts of Australia is to contemplate a national appellate court. It seems that the High Court in *Farah v Saydee* required each of the intermediate appellate courts to acknowledge and follow other intermediate appellate courts absent clear error. Whether the High Court's statement was a statement of legal principle or a statement of legal policy, the latter probably more likely, is yet to be resolved. In the meantime, on average, well over 2000 intermediate appellate court judgments are delivered annually across the nation. From that proportion there are around 60 High Court appeals and around 500 special leave applications. When the raw numbers are looked at this way it throws up a phenomenon of a gulf between the intermediate appellate courts and the High Court. I am not suggesting that the High Court be confined to a constitutional role. However, in this national forum I raise the question, is it time to revisit the prospect of an Australian Court of Appeal? One advantage of such a court is that it would enable the development of national precedents and a national jurisprudence. Furthermore, it would

enable the hearing of many issues that the High Court declines to deal with because it must inevitably be selective. A Court of Appeal of Australia would be reflective of Australia's international standing in a globalized world.

Relevantly, most superior jurisdictions increasingly operate in an international legal environment. Chief Justice French reminded us of that in a speech in April 2016 and this morning. Alternative dispute resolution and arbitration cross international boundaries. When international conventions and agreements are brought into the picture, all Australian jurisdictions need to consider how we position ourselves to be the forum of choice internationally. Again, I highlight the opportunity to establish an international Commercial Court of Australia. The prime experiences of Singapore, Dubai, Abu Dhabi, Qatar and London demonstrate the opportunities that lie for international litigation

The opportunity of an Australian International Commercial Court is this: it provides an opportunity for the nation to present a

specialized, highly-skilled, independent and non-corrupt integrated commercial court to the Asia/Pacific region and to the wider world.

## **Conclusion**

Locally, courts and litigation are now about time and resource management, effective dispute resolution, innovation and technological reform.

Nationally and internationally we need to consistently refine and position ourselves.

