Opening address by the Chief Justice at the Australian Association of Crown Prosecutors conference

Thank you Magistrate Falla for acknowledging the country on which we meet.

I acknowledge that we gather on the land of the people of the Eastern Kulin nation. I pay my respects to their elders past and present. I also pay my respects to any First Nations people here today.

This morning I will speak about justice in the regions.

There was a time when Melbourne was but a region of the colony of New South Wales, and there was no capacity for trials of serious offences to be heard here. In the 1830s, trials of indictable offences alleged to have been committed in the Port Phillip district of NSW were heard in Sydney, with accused transported there under military or police escort.[1] The expense, time and inconvenience involved, as well as a growing sense of separation from NSW, meant that that arrangement did not last long. In 1841, the

[1] Chief Justice Marilyn Warren, 'Early History of the Victorian Legal System' (Speech, Royal Historical Society of Victoria, 28 April 2011).

first resident judge for the Port Phillip district arrived, and the Supreme Court of NSW started to sit at Melbourne.

The Supreme Court of Victoria now sits at Melbourne and at 12 regional locations in civil and criminal matters, namely Ballarat, Bendigo, Geelong, Hamilton, Horsham, Mildura, Morwell, Sale, Shepparton, Wangaratta, Warrnambool and Wodonga.

The County Court sits at Melbourne and 12 regional locations. The Magistrates' Court sits at 10 metropolitan locations and 41 regional locations across the State.

The sitting locations across Victoria reflect that regional justice services and circuit sittings are an integral part of the administration of justice. Circuit work is a very important and highly significant part of the Supreme Court's work, particularly when a circuit matter involves a jury because jury trials enable people in the regions to have proper contact with and participation in the justice system.[2]

Circuit sittings and a jury trial were at the centre of the High Court's 'strike' in May 1905. The High Court had made Rules of Court that provided for appeals to be heard in the capital city of the State from whose

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[2] *Butcher v Australian Tartaric Products Pty Ltd* [2010] VSC 286, [24].

court the appeal was brought. The Attorney-General considered the expenses of the Full Court travelling on circuit were too high, and that unless otherwise directed appeals should be heard in the principal seat of the High Court, being Melbourne at that time. In a letter to the Attorney-General, the three justices outlined the rationale for circuit sittings. They said:

- 'it was thought right…to give all litigants the full advantage of appeal to an Australian Court, by making it possible … to employ before the Court of Appeal the same counsel and advisers who had conducted the case in the Court below', without the additional expense of sending counsel to a hearing at the Principal Registry;
- 'it would be an advantage to litigants that the members of the Court should have that practical knowledge of the varied local conditions obtaining in different parts of Australia which could be so well gained by conducting the business of the Court from time to time in the capitals of the several States';
- 'periodical visits of the High Court … to the several State capitals would have the effect of fostering and, it was hoped, maintaining a

federal sentiment, especially in those States which are at a long distance from the present seat of Government'.[3]

The dispute about travel expenses led to the High Court sitting on a Saturday in Sydney to adjourn a civil jury trial scheduled to commence in Melbourne on the Tuesday, because there was no assurance that travel expenses would be met. And that was the so called strike.

As Gageler CJ noted in his paper on the strike, ultimately the High Court was victorious, the victory was permanent, and the 'practice of circuits established by the first three Justices … received … the ringing public endorsement of representatives of the legal profession in every state'.

Returning to the situation in Victoria, circuit sittings are underpinned by the law on the place of hearing.

Section 169 of the *Criminal Procedure Act 2009* provides that a 'criminal trial in the Supreme Court or the County Court is to be held in the court sitting at the place that is nearest to the place where the offence is alleged to have been committed, unless an order is made under section 192'. Section 192 allows the court to order that a trial be held 'at any other place

[3] Stephen Gageler, 'When the High Court went on strike', (2017_ 40(3) *Melbourne University Law Review* 1098, 1010-11.

that the court considers appropriate', if the court considers that a fair trial cannot otherwise be had, or for any other reason it is appropriate to do so.

The Supreme Court has explained the default position on several occasions. In *Re Ratten*, Lush J said that local interest in a matter was even more reason to conduct the trial in that locality, 'so that justice will be seen to be done by those who are interested in seeing it and so that no feeling can arise that justice is done in a distant place and community'.[4]

In *DPP v Bennett*, Cummins J said there were:

> powerful reasons of public policy why the venue of offence should be the venue of trial. The local community is the community in which the alleged crime took place; it is concerned to have the law administered within it; and to remove a circuit trial to Melbourne can lead the vacated community to feel disenfranchised, marginalised or alienated. All this is common experience. This basal requirement should not be watered down by mere administrative convenience. This is the Supreme Court of Victoria, not the Supreme Court of Melbourne.[5]

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[4] (Unreported, Supreme Court of Victoria, Lush J, 4 August 1970).
[5] (2004) 10 VR 355.

In *R v Vjestica*, Maxwell P added that 'However powerful the considerations favouring a local trial may be, they must give way to the paramount requirement that the defendant have a fair trial'.[6] An applicant for change of venue must show that the change of venue is necessary to secure a fair and impartial trial, and in practice, the test of necessity is a stringent test.[7]

The powerful reasons of public policy reflect that a criminal trial is a significant event and touches the lives of many people. The ability for victims and witnesses to attend a court in reasonable proximity to their homes and support systems during what can be a very stressful period is important. The Court hears applications for a trial to be moved to Melbourne from time to time. Applicants often rely on prejudicial pre-trial publicity in the local area as the basis for a change in venue. The Court rightfully places great faith in the jury system and its ability to protect against unfairness, through safeguards including excusing potential jurors who may have difficulty deciding the case impartially, and directions to the jury about deciding the case strictly on the evidence before the court. Because of the safeguards in the jury system, the Court

[6] [2008] VSCA 47, [3].
[7] Ibid [4]-[5].

said in *The Queen v Cardamone* that pre-trial publicity, by itself, is unlikely to warrant a change of venue. The Court said something more is required, such as reporting on a change of plea from guilty to not guilty.[8]

Another common basis for applications for change of venue is issues with regional facilities, for instance custody arrangements or courtrooms.

In *The Queen v Thomas*,[9] it was intended that during trial the accused would be held in a shared cell at a police station at the particular circuit location. The Court outlined minimum requirements for custody arrangements that facilitate a fair trial, and these included that:

- the accused be in their own cell;
- they have what they need to be well-presented before the court;
- there is opportunity for contact visits with their legal team;
- they have access to writing or computer facilities in order to give proper instructions.

Those requirements could not be met in *Thomas* so the trial was transferred to Melbourne.

[8] [2017] VSC 225, [31]-[32].
[9] [2014] VSC 677, [26].

A few years later, the custody arrangements at that same circuit location were again in issue, but pleasingly they had improved and the requirements outlined in *Thomas* could be met. Lasry J visited the facilities at the police station and at the court. He described the facilities as 'ample, clean and well supervised', and refused the application for change of venue.[10]

In *DPP v Clifford*,[11] it was the courtroom facilities in Geelong that were at issue. The accused submitted that the courtrooms were inadequate for a trial attracting extensive public interest, and there was an increased risk of jury interference because the jury needed to use the public entrance. The Court dismissed the application, and said measures could be put in place to keep the jury properly quarantined as they moved through the building.

Recalling that trials take place in the Supreme Court of Victoria or the County Court of Victoria, and not the Supreme Court of Melbourne or County Court of Melbourne, and reflecting on the importance of trials in the regions, it is a great shame when a fair trial can only be assured in Melbourne.

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[10] *The Queen v Cardamone* [2017] VSC 225, [37].
[11] [2025] VSC 115.

Our regional courts now provide some of the best examples of contemporary court design with a strong focus on the needs of court users, and provide a strong sense of calmness and security.

Our legal infrastructure is about more than buildings, the health of the legal profession is critical to the work of the courts and access to justice. The link between courts in the regions and maintaining a thriving regional legal profession that serves the people of that region is strong. I recently visited Colac and Warrnambool and spoke with a number of members of the profession based in those towns. The work they do and their connection to their community is exceedingly valuable. I plan to visit other locations across the State and hear from lawyers about their day to day experience of the courts.

As French CJ said in his speech 'Law and Justice Outside the CBD':

> Rural, regional and remote Australia, and its people, are important to us all in a variety of ways. They are embedded in our history, our culture and our national identity. … They are entitled to the same benefits of living in Australia so far as practicable … as those who live in cities. This entitlement is never higher than in relation to the

rule of law, the administration of justice and the provision of legal services.

In Victoria, those entitlements are to some extent reflected in the *Charter of Human Rights and Responsibilities Act 2006*. Under s 38 it is unlawful for a public authority to act in a way that is incompatible with a human right or, in making a decision, to fail to give proper consideration to a relevant right. Section 24 states that a 'person charged with a criminal offence … has the right to have the charge … decided by a competent, independent and impartial court or tribunal after a fair and public hearing'. Section 25 states that a person charged with a criminal offence is entitled without discrimination to certain minimum guarantees. Those include having adequate time and facilities to prepare their defence and to communicate with their lawyer ((2)(b)), which the Court of Appeal has said is a specific aspect of the common law right to a fair trial.[12] The minimum guarantees also include being tried without unreasonable delay ((2)(c)).

When issues arise with pre-trial publicity or the facilities in regional Victoria, for those of us in Melbourne it may seem easy simply to move the trial here, particularly given advances in technology allowing

[12] *Davies v The Queen* [2019] VSCA 66, [428].

witnesses to give evidence via audio-visual link, and the ability to provide remote viewing options to members of the public in regional Victoria. However those factors must not be allowed to diminish the resolve to ensure fair trials are possible in regional Victoria, so that justice is seen to be done by those who are interested in seeing it, and so that throughout Victoria there is public confidence in the courts. The technology we have introduced enables us to do many things, but we still need to exercise judgement in what is the right use of technology that serves the circumstances and when it remains the appropriate course that human beings are face to face in the same room for matters of significance and gravity.

Technology brings many benefits to the administration of justice. Advances in AI, and increasing skill among the legal profession in using AI tools, can be expected to bring yet more benefits in the coming years in terms of efficiency and access to justice. However the human element of the justice system must be front of mind, as must the role of the court in society. On many occasions, in the context of applications to change the venue of a trial, the Court has marked the importance of justice being 'seen to be done by those who are interested in seeing it and so that no feeling can arise that justice is done in a distant place and community'.

Part of seeing justice done must include an opportunity to see it in person, underscoring the importance of the Court's circuit sittings throughout Victoria.

As the Supreme Court has commented, the Court is for all Victorians, who should have access to justice wherever they live in the State.

I am pleased to be opening what promises to be a rich discussion of a range of contemporary issues in criminal trials. The program covers fitness to stand trial, modern technologies and familial DNA; these topics will no doubt generate discussion more broadly around the use of expert evidence, which is timely in Victoria given the Supreme Court and County Court amended their practice notes on 'Expert Evidence in Criminal Trials' last month. The program includes consideration of sexual offences, an area of the criminal justice system with growing complexity and case numbers. It also includes insights into the jury system, an area that has always captivated minds, as seen in the level of national and international interest in the Patterson trial in Morwell, Victoria.

I congratulate the organisers of the conference, in particular the president of the Association, Mr Gibson, and wish you a successful conference.