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RYDGES CAPRICORN RESORT, YEPPOON

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The Queensland Magistracy: On the Road Again

**Judge Marshall Irwin
Chief Magistrate**

I thank the Association for extending a third invitation in four years to address this conference. The title of my presentation follows from the themes of my previous papers which referred to the “The Road Ahead” and the “Journey so Far.”

It also reflects the “I’ve been everywhere man” nature of the Magistrates Court which services this geographically vast and decentralised state through 85 magistrates sitting in more than 100 centres. Some of these circuits cover very large areas. The magistrates at Charleville, Emerald and Mount Isa are each responsible for circuits that cover court districts larger in area than the state of Victoria. In all regional centres, including in Central Queensland our magistrates are on call for out-of-hours and urgent orders, 24 hours a day, seven days a week, unless on leave.

Our court is divided into 6 regions for administrative purposes. Each region has a co-ordinating magistrate who is my delegate for the exercise of administrative functions to ensure the orderly and expeditious exercise of the court's jurisdiction, for example the allocation of work. In addition to these regional co-ordinators there is a co-ordinating magistrate in each court centre with two or more magistrates.

The Central Region of our court extends from Bowen in the north to Bundaberg in the South and from here at Yeppoon to Winton in the West. The 23 courts in the area are serviced by 7 magistrates including the regional co-ordinator, Annette Hennessy and Bronwyn Springer in Rockhampton. There are magistrates appointed to Bowen, Mackay, Gladstone, Bundaberg and Emerald.

Some magistrates in the region spend countless hours in road travel, to hold court in wide-spaced centres. Not surprisingly, the Emerald Magistrate has the largest patch geographically, facing almost 2500 kilometres return travel to reach all his courts. In fact in the 6 months from January to June 2006, Magistrate Kennedy spent only 8 weeks court time in Emerald itself.

In his speech to mark the opening of the new Brisbane Magistrates Court on 16 November 2004 the Premier of Queensland, the Honourable Peter Beattie described our court as "the people's court." The Attorney-General and Minister for Justice, the Honourable Ms Linda Lavarch MP has said:

"The Magistrates Court is a local court and is by far the busiest court in the state."

It is here that approximately 96 percent of all criminal matters are dealt with.

This is well illustrated by reference to the Central Region where there was an increase in the work across all jurisdictions in 2005/2006, except small claims where there was a minor reduction of 71 claims. (see appendix)

When I addressed this conference soon after my appointment in September 2003 I spoke about the significant changes to the process for making decisions about the transfer of magistrates which had been made in the *Magistrates Amendment Bill 2003*. This introduced a court governance advisory committee to make recommendations to the Chief Magistrate in making transfer decisions. The purpose was to make these decisions transparent and more inclusive. The Bill also confirmed the principle that magistrates are expected to serve in regional areas.

In the first 18 months of its existence the committee had recommended twenty-nine transfers, all of which have been accepted by me. Each of these transfers has been based on voluntary expressions of interest. This has continued to the present date. The implementation of this system has resulted in a degree of certainty and has enabled magistrates to carry out their regional service obligations at a time suitable to their personal circumstances and obligations. The aims of the amending legislation have been achieved.

In that address I also referred to my philosophy that there should be no policy that a magistrate should be transferred from any centre after any arbitrarily selected period of time, whether it be two, five or seven years. It has been possible to achieve this in regional Queensland with Magistrate Manthey to remain in Mount Isa for approximately 4½ years and Magistrate Coates being appointed to Cairns for five years. Importantly in this region Magistrates Hennessy and Risson are approaching the seventh anniversary of their appointments to Rockhampton and Mackay respectively.

In addition appointments have been made of regional practitioners to regional areas. Magistrate Springer was living in Rockhampton at the time of her appointment there. Magistrate Dwyer was a Mackay Barrister at the time of his appointment to Cairns. He now constitutes the Magistrates Court at Bowen, and his next appointment will be to Emerald in January 2007. And last Monday Magistrate Osborne was appointed to the court in Townsville where he was in charge of the Legal Aid Office.

It is hoped that appointments such as this will reduce the need to transfer magistrates from south-east Queensland to undertake regional appointments and vice versa. This will also allow our magistrates greater certainty of remaining close to family and friends. This is particularly important in an age where partners of magistrates are also likely to pursue careers which make it difficult for them to transfer.

There have been significant developments in court infrastructure in the Central Region this year. The Sarina Courthouse is being restructured and refurbished in conjunction with the construction of a new Police Station in order to provide a more appropriate facility for the town. It is expected to be completed later this year. The upgrade of the historic Bowen Courthouse in keeping with the historic value of the property has almost been completed. And the Yeppoon Courthouse has been earmarked for the addition of facilities to assist those affected by domestic and family violence when they come to court.

Technological upgrades have included the installation of video conferencing facilities in Rockhampton and Mackay, CCTV facilities, improved technology for magistrates, and in the court room for the profession at large with the addition of Wi Fi in Rockhampton and Mackay.

Wi Fi allows court users with a wireless capable device, such as a notebook computer, to access the internet for free over the courts broadband wireless service. Parties before the court are able to access legislation and browse other research materials in real time during a hearing. They also have email access and the ability to connect to remote databases or systems.

Technology is the future of all Queensland Courts. In keeping with this each magistrate has been given a laptop computer and a docking station. The magistrate can unclip the laptop from the docking station to take it to use elsewhere. This enables magistrates to work offline. They are able to take laptops on

circuit, to take them home to do legal research, and into the courtroom to access current legislation or cases. This access has recently been extended to the Queensland Sentencing Information Service (Q SIS) which contains a comprehensive sentencing database with an aim of increasing consistency and predictability in this important area ¹. Accordingly magistrates now have a mobile office to use throughout Queensland, or for that matter, anywhere in the world to do their work.

Our courts will also increasingly use their videolink technology to reduce the requirements for witnesses and prisoners to personally attend court proceedings.

The appearance of persons in custody on videolink facilities at Magistrates Courts is facilitated by s178C of the *Justices Act 1886* which provides:

“(2) If the person is in custody at a correctional institution and the proceeding is for the person’s bail or remand, the proceeding **must** be conducted using the video link facilities, unless the [Magistrates Court conducting the proceeding], in the interests of justice, otherwise orders.

(3) In a proceeding, other than a proceeding to which subsection (2) applies, the [Magistrates Court conducting the proceeding] may order the proceeding be conducted using video link facilities only if all parties consent.”

¹ de Jersey, P *Address to North Queensland Law Association Annual Conference 2006*, 17 June 2006, p9.

On this basis a number of Practice Directions have been issued requiring that on all proceedings for bail or remand in relation to a person held in custody at a correctional institution, the person will appear on videolink at Brisbane Central Courts and Beenleigh, Ipswich, Richlands, Southport and Maryborough Magistrates Courts unless videolink appearance is excused. Having regard to amendments to the legislation, Practice Direction No 5 of 2006 (which took effect on 9 August 2006) is in the most up-to-date terminology.

Because the court is anxious to ensure that its videolink technology is used to the greatest extent, consideration is being given to issuing a practice direction which will apply where ever the technology is available. Even in the absence of this, the mandatory requirements for the conduct of proceedings using the technology apply when the correctional institution where the person is in custody has videolink facilities linking it to the Magistrates Court, subject to the interests of justice.

The use of this technology plays an important role in enhancing community safety by allowing prisoners to remain in secure facilities for short court appearances, removing the need for significant numbers of escorts to and from Queensland Courts. It also reduces delays that are sometimes experienced while courts wait for prisoners to arrive. The time of legal practitioners is saved as a result.

Section 178C (2) also allows a videolink appearance by consent of all parties in other proceedings involving persons in custody at correctional institutions that have video link facilities linking them to the Magistrates Court, eg. sentence proceedings or even hearings.

The power to conduct proceedings by videolink with consent of all parties also extends to cases where a person represented by a lawyer is present at a place appointed for the holding of a Magistrates Court that has videolink facilities linking it to the primary court being constituted by the magistrate.

In keeping with the court's philosophy supporting uptake of videolink technology, work is progressing on the development of legislation which will enable the conduct of proceedings to occur in this way when a person is at any place that has videolink facilities linking it to the Magistrates Court.

In fact by consent sentences have already been conducted in this manner between the court at Thursday Island and represented defendants at institutions that have videolink facilities at Mer Island in the Torres Strait. This is convenient to defendants at Mer Island who wish to plead guilty in circumstances in which a prison sentence is unlikely because, otherwise air travel involving significant cost is required to attend court, or in the alternative a less expensive but perilous sea journey is involved.

Videolink facilities have also been trialled on the western circuit from Townsville, where defendants at Hughenden and Richmond

have been represented by legal aid lawyers appearing by videolink from Townsville.

There will also be videolink court pilots on the Dalby and Gulf circuits. This does not mean that our court will stop circuiting to the more remote centres, but it will mean that appropriate matters will be able to be dealt with more expeditiously, than waiting for the passage of three or four months before a magistrate again arrives in some circuit towns.

Amendments are also being considered to the *Bail Act 1980* to expressly recognise the power to conduct unopposed bail applications by phone. In remote areas this ensures that long road journeys are not required to bring persons charged with offences before the court for this purpose.

In addition a number of court centres now have facilities available for the electronic filing of claims and default judgements. This system is known as CLAIMS. In 2004/2005 the number of claims and minor debts filed electronically was 7 percent of the total lodged.

Therefore we are now progressing in the journey to e-courts. I am sure that as we travel further down this road there will be significant benefits for regional practitioners.

There are of course also benefits to magistrates through the routine use of email to reduce isolation and to enable committee meetings by telephone link, and progressively videolink. This was

also recognised by the Chief Justice in his address to the North Queensland Law Association earlier this year.

The Chief Justice also said on that occasion that he favoured regional Judges sitting more in Brisbane. Similarly I am in favour of Brisbane based magistrates swapping with regional magistrates, and regional magistrates swapping with each other in order to broaden their experience at a time when there will hopefully be less regular transfers. Although being a manager of a court budget my aim is to achieve this in a cost neutral manner.

Another issue addressed by the Chief Justice on that occasion was the problem of direct briefing. This has recently been the subject of consistent Practice Directions issued by the Supreme, District and Magistrates Courts. The Magistrates Court Practice Direction is No 7 of 2006 (effective from 18 August 2006). This sets out the obligations expected of a Barrister who accepts a direct brief, including complying with the requirements of s83 of the *Legal Profession (Barristers) Rule 2004* and causing a document addressing and certifying specified matters to be prepared and filed in the Registry before the Barrister appears in court in relation to the matter. A copy of this document must also be delivered to the Chief Executive of the Bar Association of Queensland.

As you know, the Central Region is experiencing a boom period with significant growth on the back of the resources and tourism sectors. Increasing populations translate to increasing levels of work for our court in all areas of law. Magistrates are striving to provide regular, reliable and quality services to the communities of

the Region, including continuing to improve access to justice for all people.

I am privileged and proud to have the opportunity to be part of our team, and will continue to travel the state to meet magistrates, members of the local profession and other community members. This is because I appreciate that there is no “one size fits all solution” to the issue of access to justice in Queensland, and the best way to ensure that the needs of regional areas are met is to continue to listen, look and learn from those of you who have experience in those areas.

For that reason I thank you again for the opportunity to meet with you during this conference and to speak with you today.

	Crime (Count of Defendants)		Childrens Court (Count of Defendants)		Civil Claims		Minor Debt		Small Claims		DV Lodgements	
	2004/05	2005/06	2004/05	2005/06	2004/05	2005/06	2004/05	2005/06	2004/05	2005/06	2004/05	2005/06
	Central											
Alpha	22	14	0	0	0	0	0	0	0	0	3	2
Barcaldine	71	80	0	1	8	3	12	2	1	0	6	3
Biloela	584	513	24	40	45	46	27	20	31	30	101	109
Blackall	56	50	2	4	0	0	0	0	0	0	8	6
Blackwater	225	470	4	8	47	25	4	13	14	42	48	37
Bowen	616	722	18	13	51	57	23	22	39	33	70	97
Bundaberg	3,440	3,531	244	163	269	454	176	199	216	234	692	636
Childers	217	204	4	10	10	15	48	42	7	9	21	31
Clermont	44	119	0	6	15	7	8	13	2	3	16	8
Duaringa	51	40	4	0	0	0	0	0	0	0	2	2
Emerald	723	854	16	33	39	40	63	46	34	37	94	129
Gladstone	2,667	2,424	158	127	124	104	190	566	158	155	353	331
Longreach	268	308	19	17	16	24	11	11	9	5	20	34
Mackay	4,240	4,766	305	403	357	484	349	371	373	351	617	580
Monto	9	54	0	3	0	0	0	0	0	0	0	2
Moranbah	227	261	9	12	15	27	18	16	20	9	23	29
Proserpine	989	1,306	6	14	136	90	138	115	128	74	80	124
Rockhampton	5,039	5,496	631	666	259	293	427	307	353	354	716	733
Sarina	285	328	4	12	31	12	19	45	26	21	16	37
Springsure	0	21	0	0	0	0	0	0	0	0	0	0
Winton	56	39	4	2	4	7	7	4	2	5	11	11
Woorabinda	459	477	136	216	0	0	0	0	0	0	60	42
Yeppoon	716	718	54	37	42	48	25	25	96	76	138	136
TOTAL	21,004	22,795	1,642	1,787	1,468	1,736	1,545	1,817	1,509	1,438	3,095	3,119

