



BUNDABERG LAW ASSOCIATION CONFERENCE

HYATT REGENCY, COOLUM

Saturday, 4 November 2006

9.30 am

The Queensland Magistracy: Some Reflections

Judge Marshall Irwin
Chief Magistrate

I thank the Association for extending me an invitation to address this conference.

I will take this opportunity to reflect on our Magistrates Court which services this geographically vast and decentralised state through 84 magistrates sitting in over 100 centres – from the islands that dot the Torres Strait to Goondiwindi on the state’s southern border and from, the beach cities of the east coast, westward to the outback town of Camooweal near the Northern Territory border.

The Magistrates Court, as the court of first instance in the judicial system of Queensland, has a broad jurisdiction. As the Honourable Linda Lavarch observed as Attorney-General and Minister for Justice:

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

In keeping with this our 2005 – 2006 Annual Report is titled -
“..... *your local court.*”

Ms Lavarch also said that it is *‘the peoples court – it is in the forum of the Magistrates Court that the Australian notion of fairness is often played out.’* She described magistrates as *‘the frontline of justice administration in this state.’*

It is the court where approximately 96 percent of all criminal matters are dealt with. The extent and complexity of the jurisdiction is emphasised by an Appendix to that report which lists over 200 statutes which are commonly dealt with by magistrates.

A High Court decision noted that in 2002 there were 78 statutes in Queensland which conferred on a magistrate the power to issue a search warrant.

As a consequence of the breadth of the court’s jurisdiction, it is the court with which most members of the public will have contact and frequently these people will be unrepresented. Accordingly the work of the magistracy is important to the public confidence in the justice system.

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 Yeppoon to Winton in the West. The 23 courts in the area are serviced by 7 magistrates including Leanne O'Shea in Bundaberg. The regional co-ordinator, Annette Hennessy and Bronwyn Springer are in Rockhampton. There are also magistrates appointed to Bowen, Mackay, Gladstone, 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 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.

There has been an increase in the work across all aspects of the court's jurisdiction in the Central Region in 2005 – 2006, except for a minor reduction in small claims (see attached Appendix 1).

In Bundaberg, during this period there was an increase in adult criminal defendants, civil claims, minor debts and small claims;

and there were slight decreases in child defendants and domestic violence lodgements.

The Bundaberg Magistrates Court is responsible for 1.99 percent of the state total of work in the criminal jurisdiction. Of the 3694 defendants, 4 percent are children. The percentage of child defendants can be compared with Woorabinda where sadly they make up 31 percent of the defendants in the criminal jurisdiction.

The magistrate at Bundaberg also circuits to Childers where the workload remained steady over the last two financial years.

Transfer system

The *Magistrates Amendment Act 2003* made significant changes to the process of making decisions about the transfer of magistrates. The Act introduced a court governance advisory committee to make recommendations to the Chief Magistrate about transfer decisions. The purpose was to make these decisions transparent and more inclusive. It also confirmed the principle that magistrates are expected to serve in regional areas.

In the first 18 months of its existence the committee recommended twenty-nine transfers, all of which were accepted by me. This was also the case with the fourteen transfer recommendations in 2005 -2006. All of these transfers have been based on voluntary expressions of interest.

The operation of the transfer system is illustrated by the series of movements within the court which resulted from the retirement of Magistrate Rose of Dalby on 7 July 2006. There were 7 transfers of magistrates – from Beenleigh to Dalby; from Gladstone to Beenleigh; from Maroochydore to Gladstone; from Bundaberg (Magistrate O’Shea) to Maroochydore; from Beenleigh (Magistrate Jennifer Batts) to Bundaberg; from Innisfail to Beenleigh; and from Southport to Innisfail. We are now pausing to take a breath by asking that a new magistrate be appointed to Southport from 15 January 2007, when the last of these transfers take effect.

This indicates that the aims of the Act have been achieved. The transfer system is working because the implementation of this system has resulted in a degree of certainty and is enabling magistrates to carry out their regional service obligations at a time suitable to their personal circumstances.

This system is implemented in conjunction with my philosophy that no magistrate 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 Magistrate Osborne was recently 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.

Court technology

New technology that has been installed and is operating at Magistrates Courts in Queensland is making justice more responsive while protecting victims and vulnerable witnesses. State-of-the-art technology such as digital recording, online transcription, closed circuit television (CCTV) and video conferencing can all help deliver better justice services.

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 court's 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.

Another important IT development is the comprehensive sentencing database known as QGIS (Queensland Sentencing Information Service) which will be available to all Queensland Courts in the next year. It uses technology created by the New South Wales Judicial Commission.

Our Chief Justice has described this as the most significant development in recent years in streamlining processes in the

criminal justice system to achieve the object of increased consistency and predictability in this important area.¹

As the Chief Justice of the High Court observed recently, the Judicial Commission of New South Wales was established in the 1980's not because of complaints about leniency in sentencing, but because of complaints about inconsistency, and this is why the Sentencing Information System was designed. He said:

“Unpredictability of judicial decision-making is demoralising. People resent insecurity. Episodic complaints about undue leniency, or severity, sometimes based on misunderstandings and misrepresentations, are fairly easy to answer. What would be more worrying would be complaints of wide spread inconsistency.”²

Our court is increasingly using videolink technology to reduce the requirements of witnesses and prisoners to personally attend court proceedings.

It provides cost and time saving benefits for the court and our community through reduced witness travel costs and less disruption and inconvenience for witnesses, including expert witnesses, who can give evidence from their home base rather than waiting in court witness rooms to give evidence.

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

² Gleeson, M, *A Core Value*, Address to Judicial Conference of Australia Colloquium 2006, Canberra, 6 October 2006

The court also uses this technology to allow prison detainees to be dealt with remotely, for bail and remand matters, without being conveyed to and from court in prison vans.

This approach has increased public safety by reducing the number of prisoners being transported in prison vans and has enabled more police and corrections officers to return to their core duties.

This is done in accordance with the mandatory provisions of section 178C of the *Justices Act 1886* and has been supported by a number of Practice Directions for the George Street Brisbane Magistrates Court, the Roma Street Magistrates Court (commonly referred to as the Arrest Courts) and the Beenleigh, Ipswich, Southport, Maryborough and Hervey Bay Courts.

Our court will continue to work with the Department of Corrective Services to increase the use of this technology.

Because our court is anxious to ensure that videolink technology is used to the greatest extent, consideration is being given to issuing a general practice direction which will apply wherever the technology is available.

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

Importantly, during the year the Justices Act was amended to expand the use of videolink 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 and all parties consent.

In keeping with the court's philosophy supporting the uptake of videolink technology, work is progressing on the development of further amendments to expand its use to cases where the defendant is at a place other than a court.

In fact sentences have already been conducted by consent in this manner between the court at Thursday Island and represented defendants at places that have videolink facilities at Mer, Yam and Saibai Islands in the Torres Strait. This is aimed at alleviating costs and danger experienced by defendants from remote islands travelling either by air or in open dinghies to Thursday Island courthouse for minor court matters. 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 dealt with more expeditiously, than waiting for the passage of three or four months before a magistrate again arrives in some

circuit towns, or where the magistrate is prevented from travelling to some communities during the wet season.

I am committed to enhancing the technology available to magistrates and the expanded use of video conferencing which is essential to the efficient operation of our court and providing the community with access to justice in the world of today.

Amendments are also being considered to the *Bail Act 1980* to expressly recognise the power to conduct opposed 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 (Civil Listing and Information Management System). In 2005 – 2006 CLAIMS was connected to an additional 58 locations. It is now used in 77 Magistrates Courts and Queensland Government Agency Program (QGAP) offices across the state, including Bundaberg and Childers. This extended coverage improves access to courts by solicitors, local governments and other approved entities. Electronic filings have now reached 8.25% of total lodgements.

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 has also said that he favours 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.

Direct Access Briefing

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 (Amended), effective from 12 September 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. It does not apply where a barrister has accepted a

brief from a government legal officer as defined in the *Legal Profession Act 2004*

Identifying Particulars

Magistrates Court Practice Direction No 8 of 2006 was issued on 2 November 2006 (Appendix 2). It is also similar to a Supreme Court Practice Direction and is aimed to facilitate the accurate transcription by the State Reporting Bureau of Magistrates Court proceedings by ensuring the sufficient identification of:

- the proceeding being recorded;
- the persons appearing, including legal representatives and parties appearing in person; and
- the name of witnesses giving evidence.

In future the person requesting that a matter be dealt with must announce the title of the proceeding in sufficient detail to identify the proceeding.

Anyone appearing in a proceeding, including a person who appears without legal representation must at the outset clearly announce their appearance, including his or her surname and initials; the capacity, including the professional capacity, if any, in which he or she appears, the party or parties whom he or she represents; the name of the instructing solicitor, or the solicitor with whom, the person is connected (including the name of any legal firm; and the name of any solicitor (including the name of any legal firm) for whom he or she is acting as town agent.

However this will be subject to matters at a callover or bulk review sitting, where the court elects to consecutively deal with multiple matters involving one legal representative, in which case it is only necessary to announce his or her appearance at the commencement of the first of those matters.

Finally when a witness is called to give evidence, the person calling the witness must spell the given and surname of the witness.

Blueprint for the future

As you all 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 communities of the Region including continuing to provide access to justice to all people.

However Magistrates Courts and their human resources, including magistrates, need to be recognised and developed as part of the infrastructure of our state along with education, health, police and other services. This requires developing a formula that can be applied as part of a blueprint for the future development of our courts and the judiciary, so as to predict and plan for the court facilities and magistrate numbers required in the state's areas of future growth. In this way we can "keep ahead of the game" so as

to provide timely access to justice for our community, rather than playing “catch up.”

Courts in Indigenous Communities

Our court is committed to improving and increasing the services that are necessary to provide access to justice for Indigenous communities. To advance this, we will continue to make submissions to government for improved facilities where this is necessary and appropriate.

A high priority is to ensure we constitute Magistrates Courts in Indigenous communities at venues other than police stations which is the current situation at Lockhart River, Aurukun, Yarrabah and Woorabinda.

This is not only an issue for courts in these Indigenous communities but also for other Magistrates Courts in which a large number of indigenous Australians appear. The courts at Duinga, Burketown, and Dirranbandi are also in or attached to police stations. This situation is detrimental to the development and maintenance of trust in judicial independence by the residents of these communities.

The court will continue to actively support proposals to improve court services in these communities by providing vulnerable witness rooms and voice enhancers to compensate for poor acoustics; funding qualified interpreters so that people, for whom English may not be their first language, can understand court proceedings and the orders made by magistrates; appointing

Indigenous liaison officers; enhancing the resourcing and training of Community Justice Groups (including to provide mediation services); and training of magistrates to operate even more effectively in those communities.

We would like the Magistrates Court to spend more time in these communities to remove any perception of fly in/fly out justice.

We understand the increasing cost of air travel associated with rising fuel costs; however, we would like to spend more time than is currently available to meet with Community Justice Groups and to address sentencing issues. This would provide the opportunity to consider more innovative sentencing practices that are likely to reduce offending and lead to better reintegration of offenders to their communities.

Specialist Domestic Violence Court

The experience of magistrates in the emotionally demanding Domestic and Family Violence jurisdiction is that making protection orders cannot be considered in isolation from rehabilitative outcomes. This is emphasised by the fact that making a protection order is often the initial step in an on-going saga played out before the courts.

Simply making a protection order does not address the key issues as to why respondents have chosen, or are likely to continue to choose, to use violence, or why they breach orders through being violent – not only using physical abuse, but also using emotional abuse and controlling behaviour. In these circumstances, it is

essential to tackle the causes of domestic and family violence, rather than to only deal with the outcomes. We must look at ways of intervening to prevent such violence from occurring in the first instance, or re-occurring subsequently – and thereby breaking the cycle of violence.

To achieve this, I have raised a proposal in conference papers³ that a long term integrated response be adopted to this issue by establishing a specialist domestic and family violence jurisdiction with a problem-solving or therapeutic jurisprudence approach. These papers are available on the Queensland Courts website <http://www.courts.qld.gov.au/publications/articles/articlesmag.htm>.

This could become a ‘one-stop shop’ to deal with all matters arising from domestic violence and would enable access to intervention programs where the causes of the violent behaviour can be identified and addressed rather than just dealing with the outcome.

While this would be another innovation by the Magistrates Court in this state, it is not a novel concept. A pilot project proposal of such a nature has been advanced by the Gold Coast Domestic Violence Service. Also, the concept has been introduced in various forms into some other Australian jurisdictions, including South Australia, Western Australia, the Australian Capital Territory and most recently, through specific legislation in Victoria.

³ (a) Response to Domestic and Family Violence – New Directions – Cairns – 11 November 2005
(b) Domestic Violence: Implications of the New Legislation – Sunshine Coast – 19 August 2006

Conclusion

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

PRACTICE DIRECTION NUMBER 8 OF 2006

MAGISTRATES COURT OF QUEENSLAND

MEANS OF IDENTIFYING PROCEEDING, THOSE APPEARING, AND WITNESSES

- 1 To facilitate the accurate transcription by the State Reporting Bureau (SRB) of Magistrates Court proceedings, measures must be taken to ensure the sufficient identification of:
- (a) the proceeding being recorded;
 - (b) the persons appearing, including legal representatives and parties appearing in person.
 - (c) the names of witnesses giving evidence.

Announcing a proceeding

- 2 The person requesting that the matter be dealt with, must announce the title of the proceeding in sufficient detail to identify the proceeding – by stating the full name of the matter before the court, and specifying the file number if known.

Announcing appearances

- 3 Subject to paragraph 5, anyone appearing in a proceeding including a person who appears without legal representation will at the outset clearly state:
- (a) his or her surname and initials (spelling the surname, save where the spelling is obvious);
 - (b) the capacity, including the professional capacity, if any, in which he or she appears;
 - (c) the party or parties whom he or she represents, if that be the case;
 - (d) the name of the instructing solicitor, or the solicitor with whom, the person is connected (including the name of any legal firm) as the case may be;

- (e) the name of any solicitor (including the name of any legal firm) for whom the legal representative is acting as town agent; and
 - (f) when the legal representation is a barrister and paragraph (d) does not apply, whether he or she has accepted a direct access brief.
- 4 To make it clear the requirement in paragraph 3 applies to the prosecution, whether represented by a legal practitioner or not.
- 5 If a person is appearing at a callover or a bulk review sitting and the court elects to consecutively deal with multiple matters involving that person, he or she need only comply with paragraph 3 at the commencement of the first of those matters.

Calling witnesses

- 6 When a witness is called to give evidence, the person calling the witness will spell the given and surname of the witness (save where the spelling is obvious).
- 7 This Practice Direction is effective immediately.

Marshall Irwin
Chief Magistrate
2 November 2006