



ENJOYING THE JOURNEY
REFLECTIONS ON FIVE YEARS AS CHIEF MAGISTRATE
NORTH QUEENSLAND LAW ASSOCIATION CONFERENCE

Saturday 31 May 2008 at 9.30 am

Mackay Grand Mercure Hotel

Gregory Street, Mackay

Judge Marshall Irwin
Chief Magistrate

I acknowledge the traditional owners and custodians of the land on which we gather. I respect and am grateful for the wisdom of the elders – past, present and future – and their dedication to their communities, and in preserving the knowledge and rich cultural heritage of Queensland for all.

I adopt these words from the Murri Court DVD which was unveiled at a successful and stimulating Murri Court Conference last week.

My first speech as Chief Magistrate, almost five years ago was titled *The Queensland Magistracy: The Road Ahead*.

It therefore seems appropriate that as I approach the final three months of the term of my appointment I return to the travelling analogy. In doing so I have adopted the words of Australian foreign minister, Stephen Smith who was quoted in *The Weekend Australian*, of 19 – 20 January 2008 as saying:

“I will work hard, do good deeds and I will enjoy the journey.”

The phrase ‘enjoy the journey’ was the mantra of the coach of former Australian opening batsman, Justin Langer of whom Mr Smith was said to be an unabashed admirer. As a cricket tragic and a fellow admirer of the gritty cricketer I could not think of a better way to reflect on my term and on the future of the Queensland magistracy.

It is for others to judge whether I have worked hard and done good deeds. But I can assure you that I have enjoyed the journey – well, most of the time!

That first speech focussed on the removal of the Chief Magistrate's powers to discipline magistrates and significant changes to the process of making transfer decisions by establishing an Advisory Committee to make transfer recommendations to the Chief Magistrate. This followed from the *Magistrates Amendment Bill 2003* which had been read for a second time on 16 October 2003.

The purpose of those amendments to the *Magistrates Act 1991* was to reinforce the judicial independence of the magistracy and the principle that the head of jurisdiction is to be regarded as the first among equals; and also the adoption of a more collegiate approach to transfer decisions and to the administration of the Magistrates Court in general.

I would like to think that what has emerged as a result of this step along what I then called *the long and winding road of the evolution of the Magistrates Court* is a fair, equitable and more transparent transfer system.

I was speaking in the context that the previous 12 months had been a difficult period for the magistracy. It was the transfer system that had been at the centre of many of those difficulties – and in particular the issue of involuntary transfer.

While the issue of transfer will never be an easy one for magistrates in this geographically large, diverse and decentralised state it is of importance that since that time all transfers have been based on voluntary expressions of interest or willingness to constitute vacancies within the court.

As a result our court has been able to focus on being forward looking and innovative.

Over the past five years there have been three Attorneys-General and four Directors-General of the Department of Justice and Attorney-General. I have enjoyed the opportunity to work with each of them. I have particularly appreciated the Department's growing and progressive client service focus over that period.

Importantly over that period there has been no change in the heads of jurisdiction. The Chief Justice and the Chief Judge have promoted the concept of Queensland Courts – the concept of “one court” for Queensland without references to “higher courts,” “lower courts,” “superior courts” or “inferior courts.” This has reinforced the Magistrates Court as being simply the court of first instance in the judicial system which is entitled to the same level of respect and quality of submissions from legal practitioners as expected by the Supreme and District Courts. This will be reinforced and maintained in the future.

As the Chief Justice has recently said:

“The reality is the Magistrates Court is a massively important court, and it's also the court where most people of Queensland, from day to day see the judiciary at work.”

Because Australians are more likely to have direct or indirect experience of magistrates than of other courts it is in Magistrates Courts that Australians will form their views of the courts as a whole.

With six new magistrates positions created in the last 3½ years there are now 87 magistrates (of whom two are part-time) appointed to 31 different places and circuiting to 83 more.

There are 27 female magistrates (approximately 31%); 64 magistrates (approximately 74%) have been appointed from outside the Magistrates Court Service. Four of our magistrates are Indigenous. In addition, there are 25 acting magistrates (of whom seven are retired magistrates) and five judicial registrars (of whom two are part-time). The percentage of female magistrates will continue to grow as those retiring from the court for the foreseeable future will continue to be men.

The creation of the additional positions and retirements since my appointment together with other retirements and appointments in the future will result in a 50% change in the constitution of our Bench during my five year term.

The judicial registrars were appointed on 1 January 2008 as part of a two year pilot.

The Attorney-General is already reported as declaring the project a success. It has made a measurable impact by freeing up magistrates to focus on more complex and contested cases.

He has also said:

“The workload of the Magistrates Court continues to grow. The need for additional magistrates and resources is understood by Executive Government.”

Another important milestone in the past 12 months has been the legislation which allows retired magistrates to be appointed as acting magistrates.

I hope that this will ultimately be the catalyst for creating parity with the Supreme and District Courts by increasing our court's statutory retirement age from 65 years to 70 years. The opportunity to prove that a magistrate's skills do not disappear on attaining 65 years is available as Jim Barbeler who has been reappointed at 67 years, and Acting Magistrates Jim Herlihy and Bob Quinlan who will both soon turn 65 pass through the grey ceiling. As they circuit through the state they will be our court's first grey nomads.

This year has also seen the creation of three new coroner's positions, bringing the total number of specialist coroners to five.¹ One of those positions which has been established in Brisbane is an additional one.

¹ Each coroner is a magistrate. The total of 87 magistrates therefore includes each coroner.

The other new coronial positions have been created by a reorganisation of the court's resources. These positions are in Cairns and Southport.

The North Queensland position was created from the previous Northern (Relieving) Magistrate position in Cairns. The Southport position derives from transferring a Brisbane vacancy there following the retirement of a magistrate.

Delegates will be interested in the Northern position to which Magistrate Kevin Priestly of the Cairns legal profession was appointed on 6 March 2008.

The area in which Magistrate Priestly provides coronial services extends from Bowen north to the Papua New Guinea border, and west to the Northern Territory border. And, as those of you will undoubtedly be familiar with that region will appreciate, it contains an incredibly diverse range of communities, with almost limitless opportunity for sudden and unnatural death. It includes the large urban centres of Cairns and Townsville, with a high concentration of visitors engaging in adventure tourism. It also includes Mount Isa, with its hazardous industries, and the communities on Cape York and in the Torres Strait, where light aircraft and boat are a common form of transport.

So it will be a truly diverse and challenging catchment. He will travel widely to service the needs of these communities and, on past records, he can expect to receive over 500 reportable deaths each year – so he will be very busy.

The Southport coroner who will also service Beenleigh can expect to receive a similar number of reportable deaths.

The final piece of this jigsaw will be to appoint a Central Queensland coroner based in either Rockhampton or Mackay. However government funding for an additional magistrate position will be required to achieve this.

Another important development in the past 12 months was the appointment of Magistrate Joe Pinder, a former Queensland Law Society President, as an additional magistrate based in Cairns to circuit to eight additional Torres Strait Islands and also to provide an enhanced Cape Circuit, although this role will be rotated amongst all Cairns-based magistrates.

As a result we will no longer be *fly in / fly out* magistrates for Cape communities and much sought after "access to justice" is at last being achieved for the deserving people of Queensland's remote Torres Strait Islands. There are only three populated islands which are not circuited to. This is because of difficulties with aircraft access. The residents of these islands have access to a court in the immediate cluster group.

The opening ceremonies for the new island courts in community halls and sports stadiums have been warm and welcoming, with the Island leaders expressing their sincere thanks on behalf of their people for the extension of the Court's processes. An example is the welcoming speech on the occasion of the opening of the Yam (Iama) Island Court which was in the following terms:

“The Yam community gives you all the warmest welcome. It has been a long time since we have seen justice administered here on the island. We know that this is the best way for our people. It worked well in the past, so we are confident that it will work well here today.

.....
By the 80's, court moved to Thursday Island. This was a very difficult process for us islanders. Plane fares were expensive and we couldn't afford them. This meant travelling to TI in a dinghy. Of course if the weather was rough, or we couldn't get fuel, we couldn't get to court in time. For many of us, this meant we had a charge of failing to appear in court put on top of the original charge.

Now we see Magistrates Court back here on the island. The community is excited and enthusiastic about this. Very few of our visitors receive a cultural welcome. It is a mark of our great respect for the court, the due process of law and the return of justice to the island, that the Yam Community offers you this welcome today.”

On this occasion Magistrate Trevor Black and I who participated in the opening ceremony received the symbol of justice and peace – a bu shell.

I am proud and privileged to have the opportunity to be involved in *reaching out* to these island communities and also to have had a close association with the Murri Courts and all the wonderful persons who have made them the integral part of the fabric of the Queensland criminal justice system that they are today.

The first Murri Court was implemented in Brisbane in August 2002 by my predecessor as Chief Magistrate, Diane Fingleton and Deputy Chief Magistrate Brian Hine to address the issue of over-representation of Indigenous Australians in the prison system. It also aimed to improve Indigenous attendance rates in court, to decrease their rate of re-offending, to reduce the number of court orders breached by them, and to strengthen the partnership between Magistrates Courts and Indigenous communities in dealing with Indigenous justice issues.

As the Kevin Carmody – Paul Kelly songs says, *from little things, big things grow*. On 18 June 2008 our 13th Murri Court will be launched at St. George.

In North Queensland there are Murri Courts at Cairns, Coen and Townsville; and one is to be trialled in Mackay next month.

The success of the Murri Courts has been recognised by the government which has provided \$5.2 million over three years from 1 January 2007 to evaluate the Brisbane, Rockhampton, Townsville, Mount Isa and Caboolture Courts.

Magistrate Bevan Manthey who established the Mount Isa Murri Court has said:

“As a Murri artist myself, I view the Murri Court like our Art, we have come a long way since the rock paintings. Our art is contemporary, vibrant, and always changing. It is never stagnant. So must our Murri Courts be.”

As one of the foundation elders of the inaugural Murri Court – Uncle Albert Holt has said:

“Let us all agree, that we have gone too far to go back where we came from.”

I believe the same can be said of our other innovative programs which it has also been my privilege to be associated with:

- the Drug Court
- the Illicit Drugs Court Diversion Program
- the Cairns Alcohol Remand and Rehabilitation Program (CARRP)
- the Queensland Indigenous Alcohol Diversion Program (QIADP)
- the Queensland Magistrates Early Referral into Treatment Program
- the Homeless Persons Court Diversion Program (HPCDP).

The first four of these programs all operate in North Queensland – the Drug Court in Cairns and Townsville; CARRP in Cairns and Mareeba, QIADP in Cairns (with outreach to Yarrabah) and Townsville (with outreach to Great Palm Island); and the Illicit Drugs Court Diversion Program throughout the region.

For two years we have conducted the HPCDP at the Brisbane Arrest Courts together with a Special Circumstances List for homeless defendants who have impaired decision making capacity. We have done this out of our own resources other than funding for a court liaison officer.

My hope was that from 1 July 2008 this program would be funded to operate five days a week, including funding for a magistrate to conduct it. This has not been forthcoming to date. Therefore the program's future is under review.

However there may be light at the end of the tunnel. The “Which Way Home” options paper which was launched by the Prime Minister last week criticised mainstream services, such as health, education and justice for washing their hands of the issue.

This has not been the case with our court or its partners in this holistic approach to addressing the causes of offending by disadvantaged persons who come before our court.

There is hope that what has been achieved with limited resources will be recognised and appropriately funded in the future, because as the Prime Minister said:

“Homelessness is a national obscenity. We can do better, we must do better. Put simply, our homelessness policies aren’t sufficient to deal with the scale of the problem.”

In keeping with this vision the Crime and Misconduct Commission’s Public Nuisance Review which was also released last week has recommended that the Department of Justice and Attorney-General continue to work with other agencies to develop and evaluate programs such as the pilot HPCDP in Brisbane and the CARRP in order to identify and implement effective programs.

The theme of our 2006 – 2007 Annual Report was:

The Magistrates Court – the court of innovation

This was a reference not only to our innovative programs but also to the increasing technological sophistication of our court environment. Our court has moved well beyond the position of March 1991 when in the Queensland Court Administration publication *Just Us* the Director-General proudly proclaimed:

“It is hoped that every office will be supplied with at least one personal computer by the end of the year.”

Our courts now have 34 in-court video-conferencing systems and 27 vulnerable witness rooms that link to courtroom systems and are also used for remote witness video-conferencing into our courts.

The court continues to place an emphasis on the use of video-conferencing technology. It saves time and cost for the court and the community through reduced witness travel costs and less disruption and inconvenience for witnesses who give evidence from their home base rather than travelling to and waiting at court to give evidence.

In a recent case, a key witness who was incapacitated and unable to attend court was able to give evidence without leaving home by establishing a secure network combining the Justice Department’s video-conferencing and Telstra Next G technology. Vision of the witness was transferred to the court via a laptop and a high definition camera.

The court continues to use video-conferencing for defendants in custody. This allows bail and remand matters to be heard without the need to transport detainees to and from court. This increases public safety and enables more police and corrections officers to devote their time to their core duties.

A pilot was conducted at the Richlands Magistrates Court for six months using video-conferencing in as many situations as possible. During the pilot, the physical transfer of prisoners was reduced by over 40%.

It is our courts’ intention to continue to increase the use of this technology. This is the way of the future. It will ensure that we deal with matters more expeditiously.

The successful use of the laptop to transmit the evidence of a witness from home to court allows access to courts without the need to have a video-conferencing facility at the point where the evidence is given. With Telstra advising that the Next G network will be available to 98% of Australia, the technology has a wide application in both rural and remote areas of the state.

The ability of our court to rely upon technology to link witnesses, lawyers and defendants to the court from throughout Australia and the world will increase over time. It will be an integral aspect of our court for the future.

Our aim has been to enable all magistrates to use laptop computers to access cases, legislation, court forms and other legal materials such as the Queensland Sentencing Information Service from wherever they are. Under this model, the laptops become a portable office which can be taken onto the bench, on circuit or home to conduct research and work on decisions.

It is not surprising, in a state as geographically large as Queensland and with the number of remote circuit centres, that some teething problems have been experienced with access. However steps have been taken to remove, or at least reduce these difficulties. As a result we commenced a rollout of new laptops, which we are confident will fulfil this vision, to all circuit magistrates.

In reflecting over the past five years I would like to mention two other important developments for the way in which our court is perceived:

- the change in the mode of address to “Your Honour” in 2004.
- the protocol with the Bar Association for barristers to wear robes in some cases in our court.

It is for these reasons that I have enjoyed the journey.

However professionally and personally it is time for a change. It is the right time for a new Chief Magistrate to bring in fresh ideas and energy, and to build on what has been achieved so far. It is also the right time for me to rejuvenate myself with new challenges.

However before concluding I would also like to reflect on the future of the Queensland Magistrates Court as I did in a paper I delivered at QUT earlier this year:

“A vision for the future of the Queensland Magistrates Court.”

I wish to share with you my optimistic vision.

It is a future which will see an expanded number of magistrates and judicial registrars addressing an increasing jurisdiction in keeping with Queensland's continued growth.

Although the court will continue to be a grassroots people's court, in a number of respects, it will look more like the Supreme and District Courts with robed

barristers and harmonious practices and procedures. It will truly be the court of first instance in the judicial system of Queensland Courts.

Although there will be an increase in magistrates and no decrease in the number of places where it is essential to hold court in this geographically large and diverse state, I believe the future will see more magistrates appointed to hub centres and visiting satellite courts on circuit. This will in no way reduce the extent of services given to the satellite court centres.

The ability to rely upon technology to link witnesses, lawyers and defendants to the court throughout Australia and the world will increase over time. It will be an integral aspect of the court for the future.

The courts' innovation programs will also continue to extend to supporting initiatives to provide diversionary options for people early in their offending history, to provide alternative sentencing options for people whose offences are the result of drug or alcohol addiction, homelessness or impaired decision-making capacity, and to co-ordinate strategies to reduce over-representation in the criminal justice system.

This is not because magistrates are becoming social workers but because magistrates are the front line of the administration of justice and see first-hand that *there is always a story behind offending*. The fact is that Magistrates Courts serve by default as front-line response to problems of substance abuse, family breakdown, intellectual disability, personality disorders and mental health.

These initiatives will include not only a continued role for the Drug Court, but a Murri Court supported by legislation which is sufficiently flexible to adopt procedures suitable to the local court environment and local issues – contemporary, vibrant and always changing; and programs which strike at the heart of the causes contributing to the gaps in Indigenous life expectancy, educational achievement and employment opportunities – the use and abuse of alcohol.

This is a future in which we will embrace the possibility of new solutions to enduring problems where old approaches have failed.

These solutions will extend to specialist courts for people who are homeless or suffer from impaired decision-making capacity and to address the causes of domestic and family violence, rather than just dealing with the outcomes.

Therefore these or similar programs which focus on the causes of offending behaviour and attempts to break the cycle of offending will continue to be part of the future of the Queensland Magistrates Courts.

There is also reason to believe that a suitable adaptation of the New York Redhook Community Justice Centre model within the court – as has happened in Victoria – will be implemented to allow the magistrate to make use of on-site social services to address the underlying problems of the

people who appear before the court. I hope that this would include a strategy of offenders immediately undertaking community service obligations. The immediacy and visibility involved would send a powerful message to offenders and the community.

The court will continue to increase the number and range of services that it provides for Indigenous communities. We will spend more time there – reducing perceptions of fly in / fly out justice.

Our court will be seen as an accessible and vital part of these communities – a court which makes a visible difference to the day-to-day lives of everyone who lives there, including offenders.

In this way, the court will be an effective mechanism for increasing participation and ownership by the communities in the criminal justice process.

The court will be assisted by an Indigenous Interpreter service and courtrooms will be removed from within police stations or from the geographical proximity to police stations. This will increase the trust by the residents of these communities in the justice system.

The public perception of the independence of our courts will be further enhanced by prosecutions being undertaken by independent prosecutors in place of police prosecutors.

These developments will not occur overnight. They will be implemented incrementally, wisely, carefully and with full regard to the likely issues which may obstruct their ultimate implementation and success.

At the end of it all just as it is being suggested with Federal Magistrates, Queensland Magistrates may have taken the next step in their journey – and emerge as Judges.