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MAGISTRATES COURT OF QUEENSLAND

SUMMARISING COURT ALTERNATIVES

QLS CRIMINAL LAW SEMINAR

Tuesday 9 September 2008 at 11:55am

QLS Auditorium

179 Ann Street, Brisbane

Judge Marshall Irwin
Chief Magistrate

This is my last week as Queensland's Chief Magistrate. It is a time of reflection for me. In doing so I am proud and privileged to have had the opportunity to be involved with my colleagues in reaching out to the people of Queensland – in particular to those living remotely and those who are disadvantaged – through our many innovative programs which treat people appearing before us as individuals.

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 their over-representation in the criminal justice system.

This is not because magistrates are becoming social workers but because they 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 programs includes the:

- Murri Courts
- Drug Courts
- Illicit Drugs Court Diversion Program
- Queensland Magistrates Early Referral into Treatment Program (QMERIT)
- Homeless Persons Court Diversion Program
- Special Circumstances List

Today I have been asked to look at the circumstances which may warrant referral to these programs.

Murri Court

Murri Courts were implemented because magistrates concluded that they could do more to address the issue of over representation of Indigenous Australians in the prison system.

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. These courts also aim 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 the Magistrates Court and Indigenous communities in dealing with Indigenous justice issues.

This has been achieved by our judiciary's creative use of a principle in the *Penalties and Sentences Act 1992* and the *Juvenile Justice Act 1992* that requires the court to consider relevant submissions from local Community Justice Groups, including respected persons when sentencing or considering bail applications concerning Aboriginal or Torres Strait Islander persons, for example in relation to:

- the person's relationship to his or her community
- any cultural considerations
- any considerations relating to programs and services established for offenders in which the Community Justice Group participates.

As we have found, the involvement of elders and respected persons in the court process:

- assists the offender to understand the process
- assists the magistrate to understand cultural issues
- assists the magistrate to decide on a sentence that is most appropriate
- acts as a connection between the court and the local community.

The elders and respected persons are the “networks” to the community who give the options to the court. The court and the community can work cooperatively to develop innovative and productive sentencing options which are appropriate to the community. However, it is important to recognise that it is the magistrate who ultimately determines the sentence.

The Murri Courts are not about soft options but about effective sentencing. Offenders are often sentenced to community based orders with onerous conditions attached, including being subject to the directions and requirements of the local Community Justice Group.

The Murri Court adheres to the law of Queensland. It is the same law for everybody – but the Murri Court applies this in a culturally appropriate way.

From the original Brisbane Murri Court, a further 12 Murri Courts have developed – at the Brisbane Childrens Court, Rockhampton, Townsville, Mount Isa and Caboolture, Cherbourg (the first to be convened in an

Indigenous community), Coen, Cleveland, Caloundra, Cairns, Ipswich and St George.

It is likely that Murri Courts will also be opened at Mackay and Richlands in the near future.

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 them. The five evaluation courts are at Brisbane, Rockhampton, Townsville, Mount Isa and Caboolture.

There are differences between these Murri Courts which reflect the local circumstances which give rise to them.

For example in the Brisbane Murri Court at 363 George Street eligibility requires that:

- the matter is from the Central Division of the Brisbane Magistrates Court District
- the offender is an adult
- the offender is an Aboriginal or Torres Strait Islander person
- a plea of guilty is entered
- the offence/s fall within the jurisdiction of the Magistrates Courts of Queensland i.e. can be dealt with summarily
- there is a reasonable possibility of imprisonment for the offender.

Offenders must elect to be dealt with by the Murri Court. Their legal representatives then request a transfer to the Murri Court where they are sentenced.

Of course, for the Brisbane Childrens Murri Court it is essential that the offender must be a child.

On the other hand the Mount Isa Murri Court utilises bail programs which run for a minimum of three months and up to six months, depending on the response of the defendant. Conditions of the bail program include:

- reporting to the Community Justice Group and complying with directions of the group.
- Attending ATODS
- Attending the weekly Murri Men's or Murri Women's support group meetings

It is important that this flexibility be retained to reflect local conditions because there is no "one sized fits all" solution which can be applied uniformally throughout the state.

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".

It has been described as a collaborative problem solving court, in which participants work together to determine the most appropriate solution to a defendant's offending behaviour.

Although it is the magistrate who decides upon the sentence to impose, it is the presence of the elders and respected persons that has made our Murri Courts so successful. They help get at the cause of criminal behaviour and break down the disengagement that Indigenous people have had with the courts. There is no doubt that defendants find their appearance before the elders a confronting, emotional and powerful experience.

A person who has appeared in the Murri Court has said of the elders:

> "Being spoken to by the Elders. Them speaking to me made me realise that my life is going nowhere while I'm committing these crimes".

Although the Murri Courts are under evaluation, as one of the foundation elders Uncle Albert Holt has said:

> "Let us all agree, we have gone too far to go back where we came from".

Drug Courts

The Drug Court is an example of a court which became permanent after a six year pilot phase. This happened on 3 July 2006 with the passage of the Drug

Court Act 2000. It operates from our Beenleigh, Cairns, Ipswich, Southport and Townsville Courts.

The offenders dealt with in the Drug Court are at the high end of the offending population, not those just embarking on a criminal career. After going through an assessment process by officers from the Health and Corrective Service Departments as to suitability and eligibility, the offender is sentenced by the Drug Court in the usual way; however, the sentence of imprisonment is immediately suspended and an Intensive Drug Rehabilitation Order (IDRO) is made. The order includes the obligation to refrain from committing further offences; undertake a program tailored for the offender which will oblige him/her where necessary, to live in a residential rehabilitation facility; avoid alcohol; have no contact with drug associates and, in some cases, specified people; be available for random urine analysis; not use drugs (including prescribed drugs unless disclosed); and other conditions.

After “an emotional roller coaster of hope and disappointment for all involved” as Magistrate Stephanie Tonkin of Townsville aptly describes it, those who graduate after an average period of 18 months are generally re-sentenced to be released on probation or given a wholly suspended sentence.
As the Attorney-General has recently recognised, the Drug Court program is not a soft option and offenders who refuse to take part in or fail it face the very real prospect of going to prison.

These programs aim to reduce drug dependency in the community, reduce criminal activity associated with drug dependency and reduce pressure on the court, health and prison systems.

A recent Australian Institute of Criminology report has found that the program is working. The study looked at the recidivist patterns of the first 100 graduates from the program for the first two years after their graduation. It found that graduates had a 17 percent better outcome for recidivism when compared with an offender group sentenced to prison for similar offences.

Illicit Drugs Court Diversion Program

The illicit Drugs Court Diversion Program which began as a pilot in March 2003, and became state-wide on 1 July 2005, allows adult and juvenile offenders, charged with minor dug offences (consistent with the amounts generally associated with personal use), the option of rehabilitation through being placed on a recognisance with a condition of counselling through a Drug Assessment and Education Session. Before this diversionary program was introduced, the most common penalty was a fine. Over the years, this penalty has proved ineffective in reducing the use of illegal drugs.

Initially, the program was offered to eligible offenders charged with minor drug offences under section 9 (Possession of a dangerous drug) and section 10(2) (possession of a drug utensil) of the Drugs Misuse Act 1986. However, the scope was expanded when legislation was passed in September 2007, which allowed offenders charged under section 10(4) of the Act (fail to dispose of a

syringe and fail to take reasonable care with a syringe) to be included on the program.

A qualified health service provider then conducts the combined assessment, education and counselling session with the offender, which is usually of about two hours duration. The offender is also provided with information and advice on the health effects of illicit drug use and the legal consequences of continued use.

The compliance rate for counselling session attendance has consistently averaged above 90%.

A detailed review of recidivism patterns of program completers was undertaken in November 2007. An analysis of all age groups, including juveniles, was examined for the period 2003 to 2007. The results indicate that the re-offending rate for program completers is significantly lower (30%) for first-time offenders compared with program completers with a history of court appearances (67%). These figures indicate that program participation, at least in the short term, could be a factor in reducing or delaying further illicit drug use and criminal drug activity.

Queensland Magistrates Early Referral into Treatment Program

The Queensland Magistrates Early Referral into Treatment Program (QMERIT) is another bail-based diversion program which has been operating as a pilot at Redcliffe and Maroochydore Magistrates Courts since August

2006. Its focus is to help suitably motivated offenders to overcome their problematic drug use and end their associated criminal behaviour through court-enforced and supervised treatment programs which are incorporated as part of their bail conditions.

It is an intensive and personalised program which usually runs for a period of 12 to 16 weeks in partnership with Queensland Health, with reviews by the court during this period and, if required, there is an after-care program.

It is governed by Practice Direction 4 of 2006 (31 July 2006)

QMERIT is for offenders with moderate drug offending histories. It encourages individuals who are charged with drug-related offences to take responsibility for their drug-related behaviour and undertake treatment for their illicit drug-use problems while they are on bail and before they are sentenced.

The QMERIT program is based on legislative amendments (s11) made to the *Bail Act 1980* which allows magistrates to impose on a defendant, as a condition of bail, participation in a treatment program.

While on bail, the offender is obliged to engage in a drug treatment program, abide by any other conditions of bail and comply with the QMERIT Court Liaison and Case Management Service Agreement. Participants have the support and guidance of a caseworker and are required to appear before the

magistrate throughout the bail period during which time the magistrate receives reports on the progress of the treatment.

The Successful completion of the program must be considered in mitigation of penalty by the court on sentence. Although, again, a plea of guilty is not a prerequisite for participation in the program.

Homeless Persons Court Diversion Program and Special Circumstances List

The Homeless Persons Court Diversion Program (HPCDP) came about through the Magistrates Courts' involvement with a Legal Aid Queensland program to represent homeless defendants who appeared before the Brisbane Arrest Courts for street and public order offences. Because of the obvious special needs of many homeless people, the court made plans, within its existing budget, to initiate a weekly sitting at the Arrest Courts, to deal with homeless defendants who had impaired decision-making capacity. The intention was to launch this as a Special Circumstances Court.

At the time that the Magistrates Court was discussing the establishment of the Special Circumstances Court with its court partners, the Department of Justice and Attorney-General made provision to fund a two-year HPCDP by appointing a Homeless Persons Court Liaison Officer (HPCLO).

The HPCDP commenced operating on a daily basis at the Arrest Courts on 2 May 2006.

The HPCDP is based on a multi-disciplinary problem-solving approach and fosters partnerships with those who provide relevant services, such as accommodation and mental health and welfare support, to homeless people in inner-city Brisbane.

The HPCLO works inside and outside the courtroom to assist magistrates with identifying defendants charged with offences of public order violations who meet the classification of “homeless” and who can be dealt with summarily to divert them from the mainstream criminal justice system through means such as special bail programs, recognisances to be a good behaviour, and community-based orders.

To be eligible the charge must not be subject to contest, whether indicated through a plea of guilty or otherwise.

The HPCLO engages with these defendants to assist the court in making suitable assessment and referrals to public and private health, housing and social service resources to help the offender in identifying and addressing problems that lead to their offending.

As the court had no funding to operate the proposed Special Circumstances Court with its emphasis on homeless defendants with impaired decision-making capacity, it was incorporated as the Special Circumstances List into the criminal jurisdiction, one day each week, as part of the HPCDP. This

enables the List to rely on the funded resource of the HPCLO. Otherwise, the program operates within the Court's current budget and resources. In addition to being eligible for the HPCDP, for referral to the List the defendant must suffer from impaired decision-making capacity either as a result of mental health issues (including where drug and alcohol induced), intellectual disability or brain/neurological disorders.

Following referral to the List, defendants are assessed by the HPCLO. Those who are eligible may be ordered by the court to undertake a conditional bail program or they may be sentenced by the court. In either case, arrangements include assessment, participation in medical treatment, practical social assistance, and counselling to address the underlying cause of their offending.

The List aims to prevent further entrenchment of homeless people in a cycle of offending and punishment which results in increasing numbers of fines and the risk of imprisonment. Each case is unique and managed by the presiding magistrate, with the assistance of the HPCLO, over a series of court adjournments until positive steps have been taken to help the defendant address the offending behaviour.

As with QMERIT the successful completion of any conditional bail program must be considered in mitigation of penalty by the court on sentence.

Conclusion

Although programs such as these can lengthen court process and use more court time, they present defendants with supportive opportunities to turn their lives around and can lead to reduced offending and fewer social problems within the community.

They are part of a future in which to adopt the words of the Prime Minister in his 13 February 2008 apology to Australia's Indigenous people, we embrace the possibility of new solutions to enduring problems where old approaches have failed.