

**OPENING ADDRESS TO THE QUEENSLAND MAGISTRATES
CONFERENCE 2000, 6-9 JUNE 2000, MERCURE HOTEL,
BRISBANE.**

9.10am-9.30am

Thank you, Chief Stipendiary Magistrate. Associate Professor Preston, fellow judicial officers, over the next few days you will be challenged in this conference by practical issues such as sentencing, communication skills and the operation of the Small Claims, Coroner's and Drugs Courts; intellectual concepts like the right to silence, and new legislation; topical issues such as children as witnesses; cutting-edge concepts including cultural awareness and internet and computer training; and the ethical issues to be raised by the Keynote Speaker, Associate Professor Preston.

Today's magistrates have both differences and similarities to those who first dispensed summary justice in the penal colony Moreton Bay, and in the early days of the State of Queensland. The magistrates of Queensland have a rich and colourful history that is worth remembering, especially today, Queensland Day.

It is, of course, also worth remembering that justice was meted out in what is now Queensland for 60,000 years or so before Oxley had breakfast on the banks of the confluence of the Brisbane River and Breakfast Creek.

It was the proud boast of British imperialism that with colonial rule came an organised system of British justice based, at least in the eyes of most of the colonisers, on principles of fairness and impartiality. The early history of the Magistrates Courts demonstrates the development of a basic and inexpensive justice system which established a system for ownership of property and British law and order for the small but prolifically sprouting white settlements.

My colleague, Mr Justice McPherson, delivered a paper to this conference ten years ago titled "Early Development of the Queensland Magistracy" and noted that the concept of stipendiary or police magistrates was imported into the Moreton Bay district with police magistrates at Brisbane, Ipswich and Maryborough, as well as water police magistrates in Brisbane and Wide Bay, and Clerks of Petty Sessions at some nine other centres.

When the first resident judge at Moreton Bay, Mr Justice Milford, arrived in 1856, he was pleased to see the local magistrates had considerably vacated the court room in Queen Street; he was not so pleased to realise they had taken with them the only bench table in town! Magistrates are well known for their practical bent; today we would call it effective strategic planning! I like to think these days we have more a more cooperative relationship between the Courts!

Relations between the police magistrates and the water police magistrates were not always cordial. The Chief Constable of Maryborough complained to Executive Council in 1862 that he and his constable had been suspended from duty by the police magistrate for refusing to physically eject the water police magistrate from the bench and court. Both magistrates were suspended from duty and a bench of Maryborough justices were directed to investigate the matter and to reinstate the police officers if their version of events was substantially correct.

The system of stipendiary or police magistrates survived separation in 1859 and operated simultaneously with a system of justices of the peace. After separation, criminal offences were tried in 13 police districts, scattered over south and central Queensland at Brisbane, Ipswich, Drayton, Toowoomba, Callandoon, Dalby, Condamine, Gayndah, Maryborough, Gladstone,

Rockhampton and Nanango. The courts were staffed by laymen, but brought to pioneer communities a veneer of civilisation.

Appointments were often thought to be made for political affiliations rather than ability. In 1861, three of the colonies leading lawyers, including Charles Lilley, expressed grave reservations about the ability of justices of the peace, who were poorly educated, sometimes with obvious conflicts of interest, to carry out important judicial functions. As a result, the government in 1863 reduced the magistrates' power of imprisonment from 3 years to 6 months.

The *Justices Act* of 1886 was introduced in parliament by Samuel Griffith but, as he acknowledged, it owed much to Queensland's first Chief Justice, Sir James Cockle. Although much amended, it is now in its second century and remains the primary source of jurisdiction for the Magistrates Courts. The jurisdiction of the Small Debts Court was originally limited to a maximum claim of 10 Pounds. The jurisdiction of the Magistrates Courts has grown consistently since then and now covers civil claims up to \$50,000 exclusive of interest.

In Queensland's colourful gold rush days, stipendiary magistrates played a powerful and important role in deciding miners' claims, sometimes involving millions of Pounds. The wild and woolly mining towns, where money came and went easily and where fist fights, the carrying of weapons, prostitution and drunkenness were common, must have been a busy and fascinating source of work for the magistrates. Litigants in areas such as Charters Towers, Gympie and Croydon in the 1890s were not just trigger happy, they

were litigation happy; those courts were then amongst the busiest in the State, only surpassed by Brisbane and Townsville.¹

In 1885, the magistrate at Sandgate had to fine a fully clothed bather within view of a public street the princely sum of 1 shilling!

During the 1880s, the police courts grew rapidly and a rationalisation followed in the 1890s with many smaller country courts closing. By 1900 there were still 155 different benches able to hear criminal cases in Queensland, a decentralised and apparently very wicked place!

At that time, the summary courts were not administered by the Department of Justice but by the Colonial Secretary's Office and then the Home Secretary's Office because magistrates were not regarded as only, or even primarily, judicial agents.²

Since their inception, the courts of summary justice in Queensland have heard and continue to hear the majority of disputes between Queensland citizens.

In 1990, Mr Justice McPherson suggested to this conference that the golden age of the Magistrates Courts was the period between World War I and World War II, following the abolition of District Courts in 1921. Between 1935 and 1936, the Magistrates Courts heard more than 20,000 civil actions but by 1945 to 1946, as post-World War Queensland got back to a peaceful life, that figure dropped to 2,211.

¹ W R Johnston LLB, MA, PhD "The Growth of the Lower Courts" 3 Queensland Heritage No 9, at 14-17.

² Ibid.

I beg to differ. Much has happened to magistrates and their Courts since 1990. I think that the golden age of the Magistrates Courts is the present. Up until 1991, magistrates were not recognised as truly independent judicial officers for they were structurally part of the public service. Your salaries are now determined by the independent Salaries and Allowances Tribunal. You are no longer public servants, but true servants of the public.

With independence comes accountability. It has always been especially difficult for magistrates living in small communities who inevitably get to know local police and others who are regular witnesses in the courts. As magistrates, you must fiercely maintain your independence, even though this may mean difficult decisions or adverse findings as to credibility in respect of those with whom you move regularly in the community. The public now at least has some appreciation of these difficulties, if only because of television series like "Seachange" and the attractions of Sigrid Thornton and Diver Dan.

Since 1990, the jurisdiction of the Magistrates Courts has grown enormously. You now have an amazingly broad and significant jurisdiction. I have already mentioned your important civil jurisdiction; in the criminal jurisdiction you have the onerous duty of exercising a discretion as to whether or not to deprive a citizen of his or her liberty for up to 3 years. Your wide jurisdiction includes, for example, the emotional, sensitive and important areas governed by the *Family Law Act (Cth)*, *Child Protection Act* and *Domestic Violence (Family Protection) Act*, some of which will be covered in sessions at this conference.

This Court has embraced mediation and alternative dispute resolution. Last year, Magistrates Courts held 1,989 pre-trial conferences, 45 per cent of

which were successful and a further 16 per cent of which successfully resulted in a narrowing of the issues for determination.

The Queensland Magistrates Courts have long had a reputation for delivering justice efficiently. Last year, 97 per cent of criminal matters and 92 per cent of defended matters and committals were disposed of within 6 months, compared to the national average of 85 per cent. It is because of your industry and good management that you have been able to maintain the speedy disposition of justice despite your recent substantial increase in jurisdiction and the significant population growth, especially in the southeast and coastal areas of this diverse State.

In 1990, many magistrates were not qualified lawyers, but now only legally qualified people are appointed to the magistracy. This is appropriate to the Courts' important jurisdiction and the complexity of cases with which it must deal.

Magistrates have shown themselves to be forward thinking and have embraced technology; you have been equipped with computers, a computer network and office automation. Magistrates Courts have also increased the use of self-enforcing ticketable offence notifications systems dealing with 187,928 such matters last year.

Your Courts are sensitive to the needs of consumers and regularly revise your domestic violence protocols; provide professional interpreters where appropriate; publish forms in Spanish, Vietnamese, Japanese, Turkish and Filipino and have made provision for the training of community facilitators to assist Aborigines and Torres Strait Islanders in court.

Last year, 46,178 criminal cases were disposed of in Brisbane alone and a further 35,314 in Southport, 20,249 in Townsville, 19,623 in Cairns, 19,093 in Beenleigh, 14,442 in Ipswich and 12,916 in Maroochydore. The Courts in their civil jurisdiction last year conducted 7,702 oral examinations, heard 4,482 chamber applications and 1,106 civil trials. Far more cases are commenced in the Magistrates Court but do not proceed to completion; a staggering 39,688 plaint and summonses were issued; 28,901 small debts claims and 17,145 small claims during 1998-1999.³ Feeling tired?

Magnificent new arrest courts have been built in Brisbane which combine functionality and good design with recommendations such as those in the Black Deaths in Custody Report.

The modern, efficient, highly regarded Queensland Magistrates Courts of 2000 have come a long way since the Brisbane magistrates spirited away the bench table from the Supreme Court judge or the Sandgate magistrate fined fully clothed bathers for swimming within view of a public road.

We all know we can learn from the past; it is worth recording your Court's rich history as you move into the 21st century. That brings me to the pamphlets in front of you from the State Library Foundation inviting your support. The Library is building a fund to locate and buy important items relevant to Queensland's history and heritage. Many interesting documents and items must exist relating to the colourful history of the Magistrates Courts. How wonderful it would be, for example, to locate and display that table the early magistrates spirited away. It is fitting that the pamphlets contain Sir James Cockle's portrait, permanently lent to the Supreme Court by the State Library; Sir James Cockle, as I have mentioned, was a prime mover behind the *Justices Act* 1886 and thus has a special place in the

³ Department of Justice and Attorney-General Annual Report 1998-1999, 29, Appendix 3.

history of the Magistrates Courts. I commend the State Library's cause to you in this the Magistrates Courts' golden age.

Your future remains golden. Surely the Brisbane magistrates must soon have their long awaited new court building. The District Court and the Supreme Court also have accommodation complaints but realise that the immediate priority is that of the Magistrates Courts. This in itself demonstrates how we have learnt from the past and entered a new spirit of cooperation between the Courts. How wonderful if, in that new building, some of the rich history of the Magistrates Courts can be publicly displayed, perhaps with the help of the State Library.

The Magistrates Courts of the 21st century will not only be suitably accommodated and staffed by well qualified professionals exercising a wide and important jurisdiction, delivering cost-effective timely justice; they will also be courts involved in the development and refining of a strategic plan, performance standards and a court charter. They will continue to improve their capacity to exercise their crucial community role as part of the important judicial arm of government with the speedy and just disposition of work in a professional, independent and accountable manner.

The breadth of the topics to be covered in Conference 2000 and the quality of the presenters of these sessions is a positive affirmation of the Magistrates Courts' commitment to its golden present and future.

I think the Conference can now be said to be open!