**PAPER TO THE QUEENSLAND POLICE UNION OF EMPLOYEES**

**ANNUAL CONFERENCE – APRIL 18, 2002**

**THE POLICE AND THE COURTS – WORKING TOGETHER**

**FOR THE BEST OUTCOMES**

Thank you very much for the opportunity to speak to you today. I consider such exchanges of ideas an extremely important part of my job as Chief Magistrate of Queensland. Firstly, I would like to acknowledge the traditional owners of the land on which we meet.

My paper has as its theme the necessity for the Police and the Courts to work together for the best outcomes. By "the courts", I mean the magistrates who sit as judicial officers to impartially deliver just outcomes; the defence lawyers representing the persons brought before our courts – it is not for nothing that solicitors and barristers are "officers of the court" (which brings with it an expected high standard of ethical behaviour) and the administrative structure of the courts, the system of court registries (becoming more and more based on information technology) and of course the QPS and the DPP>

The Queensland Police and Queensland magistrates have a long history. It is not so long ago that the Magistrates Courts in Queensland were called the "Police Courts", which suggests a symbiosis between being arrested for an offence and being convicted of it!! Neither is it so long ago that magistrates were well known for summing up at the end of a criminal prosecution thus – "I have heard the evidence of the Prosecution and the Defence and I prefer that of the Prosecution – the defendant is convicted!". No reasons, no findings of fact with the law applied thereon – that was

it. One of the reasons I am told that changed was that appeal courts began to overturn the decisions of magistrates in these circumstances, by concluding if that reasons were not given, the conclusion must therefore be wrong!!

This is not to say that the Queensland Magistracy does not have a proud history. It is undoubtedly the busiest court in Queensland, dealing, as it does, with up to 96% of criminal matters dealt with in Queensland courts. The jurisdiction of the Magistrates Court is, however, much broader than criminal law. It includes civil matters up to $50,000, Small Claims and Minor Debts up to $7,500.00, Industrial matters, Coroner's matters, Family Law and Domestic Violence matters and Commonwealth Offences.

We are also the most regionalised of the courts, having magistrates sitting at over 100 courts throughout Queensland, with several courts having more than one magistrate. Magistrates regularly travel on circuit by car and by plane, for instance, to the remote indigenous communities in the Gulf and on the Cape. The Queensland Magistracy is a growingly diverse group – with 14 magistrates being women and 4 being of Aboriginal or Torres Strait Islander descent. Now, solicitors and barristers from the private profession and from government departments are appointed as Magistrates, as well as clerks of courts who are legally qualified.

Our ongoing challenges are to cope with heavy workloads – this Monday at Court 5 in Brisbane, the Deputy Chief Magistrate dealt with 138 defendants at a Committal Mention day. Out arrest courts at Roma Street, continually see our magistrates sitting all day. Because of better case management of criminal matters through the courts,

more matters are proceeding to hearing in a timely manner and we find ourselves busier than ever in Brisbane Central Courts, a pattern repeating itself in some other major centres. We await with some trepidation, the increase in jurisdiction which will happen when the new amendments to the domestic violence legislation are proclaimed, which, some predict, will almost double the number of persons applying for protection orders in our courts, for instance, in relation to abuse by carers of the elderly and the intellectually and physically disabled, as well as people in "intimate personal relationships" and intra-family disputes.

There is also some indication that the summary jurisdiction of the Magistrates Court is to be enlarged, with many more matters which now go up to the District Court to be dealt with, being dealt with by us. For instance, our court, and many other indictable matters will now deal with charges of Assault Occasioning Bodily Harm, where the injury to the complainant may be quite minor. The practice over the years, driven by the way in which legal aid was granted for indictable matters, has seen many matters go up which could be more easily, quickly and cheaply dealt with in our courts. A study of comparative sentencing between the Magistrates and District Courts, has shown only slight variations in penalty. Also, because of reforms of the ways in which our courts are managed, more time is allocated to dealing with lengthy pleas, which need some consideration of lengthy submissions and written reports, which results in better practice in sentencing.

How this transition in increasing jurisdiction in the Magistrates Court is to occur, is still being debated. The issues include - who should be responsible for the election - the Magistrates, the prosecution or the defence, given that the defendant's right to trial

by jury will be, in many cases, taken away from him/her. It remains to be seen, whether or not this puts an extra strain on our resources. For instance, will a plea of guilty on indictable offences, take more time than a hand-up committal? Will a summary hearing take as long or longer than a hand-up committal with cross-examinaiton? I suggest more of our time will be required as, for instances, more of the pleas will fall into the "lengthy plea" category. A committal hearing being without the defence's witnesses is shorter and does not require, mostly, a decision on the behalf of the magistrate. So, we face possible further resource issues, both for magistrates, court staff and court resources. In relation to the issue of preparation time for arresting officers and others, we cannot be sure whether the savings in preparation time for committals of matters which will, early on, be indicated to be, instead, pleas in our court, will be negated by the preparation time for more summary trials. We await further debate on this important issue with considerable interest.

It is not enough, in these times, of budgetary restraint, however, to merely put one's hand up and say, in our case. that "more magistrates are needed". I believe we have to show that our courts are running as efficiently as possible before we can ask for more personnel (setting aside obvious increases in jurisdiction, such as the domestic violence legislative amendments) and any other obvious demographic changes. To that end, we are working towards developing a Strategic Plan for our courts – the aim being –

. to provide for a plan that would facilitate the timely and cost effective resolution of civil and criminal disputes; and

. to provide for a mechanism to monitor, report and advise on any matter relevant to achieving the Court's primary objective.

The Best Practice Guidelines aim to set out best practice standards in court and case management, through the issuing of relevant Practice Directions to facilitate the application of those standards. The draft document states that the principles behind the process of efficient case flow management do not change. These principles are as follows:

1. The court should take early control of the case.
2. The court should maintain continuous control.
3. The Magistrates Court's time standards should be observed and applied.
4. The performance of Magistrates Courts throughout the State should be consistently monitored against those standards, both as regards individual cases and all cases in the Court's mention list.

Given their publication, throughout Queensland, then, police prosecutors and officers preparing briefs for the prosecution, will begin to notice that certain practice directions will require adherence to certain deadlines in the preparation and provision of briefs to the defence. For instance, the new "Review Mention Date" system in the central courts in Brisbane, means that, for the first time, the process leading up to the date set for hearing, means that the defendant, represented or not (an increasing number), has received the brief of evidence, had any submissions considered, discussed a possible plea of guilty as a result of any outcomes arising from those procedures and is ready to proceed to trial on the original date set for hearing. The beauty of the arrangement, which seems to be working well in its early stages, is that

matters may fall to pleas earlier than on the date of hearing, or that on the date of hearing, the matters proceed to hearing rather than needing to be adjourned, thus meaning valuable magistrates time is not wasted. Our lists are such and the demands of our jurisdiction so great, that we need total co-operation from both the prosecution and the defence in this process and I thank the QPS in this regard, for the success of this process in central courts and other courts throughout the State to date. Whether it will need a Commissioner's direction to ensure that briefs are, indeed, prepared within the six weeks' deadline, remains to be seen!

In terms of both the Strategic Plan and Best Practice Guidelines, we hope to open the documents up to consultation in the near future and the QPS will be an important stakeholder in this process. We hope that the documents will be able to be adopted and published by the middle to end of 2002. Such processes are essential as we find ourselves confronted with the challenge of continuing to keep our courts relevant and keeping abreast of the changes in society brought about by the dual menaces of the abuse of drugs and alcohol. We are asked to deal with persons coming before our courts with mental illnesses, exacerbated sometimes by the abuse of drugs and alcohol; the breakdown in standards of behaviour occurring on indigenous communities and the subsequent horrors of the resultant attacks upon indigenous women and children; an increase in the reporting of the sexual and other abuse of children and the increasing nature of a multi-cultural and multi-lingual Australia. We are expected to be excellent lawyers, good listeners, compassionate but not too light on some offences, be assisted by interpreters, guided by the principles of natural justice, and be efficient and as speedy as possible. To achieve all of this, we need to

more and more work as “teams” in the courts – the Bench, the prosecution and the defence.

A great example of this is the Pilot Program Court under the *Drugs (Rehabilitation of Offenders) Act 1999*, colloquially known as “the Drug Court”, operating out of the Beenleigh, Southport and Ipswich magistrates courts. This court is based on the model of the NSW Drug Court at Parramatta, a model of “therapeutic jurisprudence”. This term, (which I just like saying), means that the courts, in exercising their jurisdiction in relation to offenders with a history of drug addiction and drug-related offending, treat defendants differently in the court. Instead of being sentenced to prison, as our Drug Court deals with people involved in more serious drug-related offending, the defendant is diverted to an intensive drug rehabilitation program, which will see the defendant progress, sometimes falling off the wagon occasionally as he or she goes, through an intense drug rehabilitation program over a period of up to 18 months.

The system only works because of a very close relationship between the members of the drug court “team”, the magistrate, the police prosecutor, the defence lawyers, representatives of the departments of corrective services and health, the latter of whom report on the progress of the defendant through the drug rehabilitation program. While remaining a part of the team, it is the magistrate who is the pivotal person in the courtroom, the link between the offender and the justice system. He or she must listen to the drug addict’s story, perceptive to nuances of a genuine desire for rehabilitation on behalf of the offender; patient as the person makes their way, erringly at times, through the detailed process, thrilled, or as the case may be,

disheartened, at the outcome. We have had, sadly, two deaths of participants on the program. We have had, also, the birth of a baby drug-free, to a participant. Being in and around the drug court is something of an emotional roller coaster!

Sanctions and rewards are offered to offenders throughout their program. A relationship with the authority of the courts and the police can be achieved at a level never believed possible by the offender – they are treated, simply, humanely. The Drug Court has had its share of difficulties, with funding problems and systemic issues, but we are proud of it in the Queensland Magistracy and ever grateful to the QPS and the Legal Aid Office, as well as the Departments of Corrective Services and Health for their ongoing co-operation. As we face the "rolling-out" of the drug court to two other courts in the north, Townsville and Cairns, later in the year, we will need that continued co-operation more than ever.

I raise the issue of the drug court for an important reason. I believe the bench and the police will be asked more and more to use their powers (which are considerable), in a more inventive way – to *divert* people from the courts, in the first place. For example, the current Police Diversion Scheme in relation to small amounts of marijuana is considered to be working well. The proposed Court Diversion Program being considered in relation to more extensive, but yet minor, drug use will see defendans coming before the courts for the first time, *diverted* to some counselling, so that the attractions of drug experimentation can be balanced against some plain realities of the effects of such experimentation. The Police Diversion Scheme is really a modern version of the "kick up the backside", "get home to your mother" approach which used to mark the practice of the police, especially in country towns, where the local

cop was as popular as the local doctor or principal of the school. Of course, nine year olds being offered marijuana in the local school toilet, means that the issues of today are more serious than they used to be.

The Court Diversion Program will require co-operation, again, from all stakeholders in the courts – the bench, the police, the defence. Again, not the quick processing through of defendants in the arrest court – but a planned process to attempt to divert defendants from their offending behaviour.

In other states, there are in existence, Mental Health Courts, where defendants are mentally ill and, say, off their course of drugs and offending, rather than conscious offenders. They can be diverted, by a condition in their bail provisions, on the advice of a trained professional health worker assisting the court, to treatment or the resumption of treatment, say, through a community health centre. Their case on review can take account of their success or otherwise and their behaviour since their original offence and should they plead or be found guilty, their efforts to restore order in their lives, taken into account on sentencing. The police prosecutor's co-operation would be essential in relation to options for sentencing and bail conditions – another example of the need to work together with the bench and the defence.

Other types of specialist courts, include Murri Courts, where defendants are

> Aboriginal and where magistrates either sit on the bench with murri elders or are otherwise there to assist the bench, can see more culturally appropriate sentencing being handed down from the bench. To a certain extent, on ATSI communities now in Queensland, and, indeed, in any court, we are obliged

(under the *Penalties and Sentences* Act) to listen to the submissions of local elders or members of Community Justice Groups, on sentence. Again, the co-operation of police prosecutors and defence lawyers are integral to allow this new system to succeed.

Again, in some states, there are specialist domestic violence courts, which deal not only with applications for protection orders, but breaches of them. Again, offenders are diverted into treatment for their aggressive and inappropriate behaviour, which leads to the further breakdown of relationships. Programs available for perpetrators, not only allow offenders to address their offending behaviour but also gives them an opportunity to reassess their attitudes to relationships in general. This is already done in Queensland courts, where perpetrator programs exist locally for the diversion of offenders to them; the success of such initiatives is in the process of being evaluated.

Another area of our jurisdiction where I believe the QPS and the courts need to work more closely and aim for total professionalism, is that of Coroner's matters. Every magistrate in Queensland is, as you know, a Coroner. We rely on the investigation by police of reportable deaths, so that we can efficiently deal with the large number of matters in this jurisdiction. If a report is unduly delayed and hence, a decision in whether or not to hold an inquest is delayed, families of the deceased suffer stress and are prevented from final closure on the death of their family member With more publicity in this area lately, some families are more inclined to write to the Attorney-General asking for an inquest and neither the coroners nor the QPS like to be caught short if a matter

has not been diligently progressed.

With the creation of a State Coroner's office currently being mooted, it will be more necessary than ever to ensure that the local police swiftly investigate causes of death. One of the thrusts of the new proposed State Coroner's legislation is that further deaths may be able to be prevented, as the result of swift conclusions of inquests. We are already contributing to a national database, the aim of which is to collect data from around the country to be used to prevent deaths in certain areas. Recent reforms in the way in which investigations are carried out by police at local level, sees the involvement of the local District Inspector's Office, I believe and the results are correspondingly more efficient. We look forward to continue to closely co-operate with the QPS in developing strategies and protocols in coroner's matters.

I suggest that the courts and its primary stakeholders – the QPS and defence lawyers, have a unique opportunity in Queensland in the next several years, to work together to achieve more efficient and lasting outcomes through the courts and I, as Chief Magistrate, look forward to continuing the debate!

Please be assured that Magistrates, as judicial officers, are well aware of the difficult and dangerous jobs police officers do in Queensland. You are all at the front line of what is an increasingly dangerous and dysfunctional society. We attempt in our sentencing to balance those risks with the rehabilitation of the offender, where possible, as we must. In return, we ask you to respect our

judicial independence – the appeal system is there for discontent with magistrates' decisions – not the newspapers!! I can assure that Magistrates fear much more the possibly scathing comments of an appeal court judge much more than a newspaper article. Our training needs to be continual to cope with an ever-increasing jurisdiction. Our recent conference saw us with many speakers covering such issues as court craft, judgment writing, interpreters in court, evidence in computer-related crime, updates on the new domestic violence legislation, to name but a few topics. Our job is a tough one, but an immensely satisfying one. We look forward to the continued good relationships and co-operation of the QPS in the years to come.

Thank you again for the opportunity to speak to you today. I wish you well in your conference and your deliberations. I am happy to take any questions.

D.M. Fingleton,

Chief Magistrate