

**Comments on paper presented by the Hon.  
Chief Justice Paul de Jersey AC at the Annual  
Conference 2003: Queensland Magistracy 7  
April 2003.**

**Commentary by Judge Michael Forde, a Judge  
of the District Court of Queensland**

### **Introduction**

1. May I congratulate the Chief Justice on his informative and contemporary paper. It is a nice change to review some of his reasoning. I do not intend to cover the field of the paper but to concentrate more on the local issues. This is not meant to undervalue the important historical experiences from other countries referred to by the Chief Justice. Those who fail to appreciate the lessons of history may suffer the consequences.

### **Role of the Media**

2. Recently, a member of the court of appeal remarked in the course of a hearing that the press should not be seen to be influencing the court of appeal in its decision making. The Courier Mail had published an article about the victim of a crime. The Attorney General had appealed the decision of the sentencing judge. The Courier Mail on the morning of the hearing published details of the effects on the victim and

the need for a more severe sentence. Mr. Justice Williams, correctly in my view, made it clear that the Court of Appeal would not be affected by such publicity on the morning of the hearing. It was not the first time that such publicity had been given on the day before or the day of the hearing. Both cases involved violence in public places. The theme of law and order is promoted by the news media. That is its right to do so. However, the timing of such publicity on more than one occasion may allow one to infer that such publicity is either orchestrated or that the journalist involved is particularly astute. Obviously, Justice Williams was not impressed with either scenario.

3. In an article entitled “Judges get heavy on lengthier sentences” in the Weekend Australian March 29-30 (P.16), there was criticism of so called “soft judges”. Hon. George Hampel Q.C. a retired Supreme Court justice commented that “there is competition between political parties vying for public favour between elections”. He agreed that the trend to heavier sentences was caused partly by pressure on judges to conform to public attitudes.
4. The reporter quoted Mr. Arie Freiberg, who is to give a paper at this month’s Commonwealth Law Conference in Melbourne. He is the Dean of Arts at Melbourne and is described as a sentencing expert:

“Judges and magistrates are now regarded as being too lenient and therefore failing in their role

in keeping society safe from crime. The unstated assumption ...is that more severe sentences will lead to less crime”.

5. The research does not prove that longer sentences leads to less crime. Zero tolerance is another issue. Therefore, should the judiciary be responsive to public attitudes which call for longer terms of imprisonment?

### **To Whom are the Judiciary accountable?**

6. Who determines what are community values - is it the local news media or something broader. To say that the judiciary must “keep a weather eye on basic community values” seems to imply that the judiciary should be accountable in some way to the community.
7. In any discussion of court governance, it is necessary to look at the stakeholders of the entity or court. For example, are the courts and moreover the judges accountable to the community? The judiciary are not responsible to the electorate under the system of responsible government. The public for the purposes of judicial accountability cannot be said to be represented by the Parliament or the executive government as the judiciary is accountable to neither (Hon. Justice Susan Kenny, “Maintaining Public Confidence in the Judiciary: A Precarious Equilibrium” (1999) 25 Monash University Law Review 209). Justice Kenny says that the

public is the whole community, which may not be represented at all times by the majority or the media. The Judiciary often makes difficult decisions which are not popular. The Mabo case was such an example. One only has to look at the negative response by the government of the day, parts of the media and a large section of the community to realise that. Chief Justice Gleeson when speaking to the Australian Bar Association Conference in July, 2000 in New York, commented:

“Like parliamentarians, judges make decisions which, in the interests of civil order, have to be accepted, even if they are not popular. Since court cases usually have at least one losing party, almost all judicial decisions adversely affect somebody. Some offend large sections of the community, or powerful and vocal interest groups. What ultimately secures their acceptance is not their wisdom, as to which there may be strong disagreement, but their legitimacy”.

8. There is now a broader concept of accountability recognised by the judiciary. That is, in order to maintain public confidence in the court the judiciary and court administrators have to be responsive to criticism where that criticism is justified. Very often, this can be achieved if all of the facts of a particular case are placed before the public. The media often concentrate on the sensational aspects in order to create more public interest. In Queensland, the Chief Justice speaks out on various issues. He would be assisted on a

day t.o day basis if the courts had their own public information officer.

### **The need for a public information officer**

9. The Queensland Court system does not have a public information or media officer. The appointment of such an officer would, I suggest, help to develop better communications with the public and the media. An advertisement in July 2000 for a media officer for the courts in Queensland is a good case study which evidences the confused thinking on this issue. It was advertised that the media officer would be responsible to the Director-General of the Department of Justice and Attorney General, the Chief Justice, the Chief Judge and the Director of Public Prosecutions. These entities or people may have different interests in the justice system. In fact, from time to time, they are in conflict. A particular court decision may criticise the role of the Director of Prosecutions or lack of resources being provided by the Department. How would the media officer deal with such conflicting interests? If the Chief Justice wanted to raise an issue in a speech about the lack of resources for information technology in the courts, would the media officer who is being paid by the Department of Justice be inclined to criticise his or her employer?
  
10. Media officers have been appointed to courts throughout Australia to assist the judiciary in dealing with community issues and to provide timely information in

relation to cases or related matters. A media officer who is responsible to the judiciary may allow the media to report more accurately on court cases and issues. The judiciary would present their views directly to the public and so encourage the perception that the judges are being more responsive or accountable to community needs. The candidate chosen as the media officer for the courts did not take up the position. The position remains unfilled.

11. The attempted appointment of the media officer is a good example of the traditional system of court governance which we have in Queensland failing to adapt to the changing expectations of the community. By allowing the heads of court better access to the media outlets, the community could be provided in a more direct way with information about how the courts arrive at their decisions.

12. It also allows the judiciary to be more accountable to the people whom they serve. As the Chief Justice says in his paper (p.14):

“Public comment and criticism can be powerful forces for enhancement of the quality of judicial performance.”