

“MY FIRST SIX MONTHS”

Marshall Irwin Address to Queensland Magistrates Conference 2004

“The Magistrates Court represents the coal face of the Queensland justice system. It handles more than 90% of all matters brought before the Queensland courts.....Magistrates and court staff play crucial role in maintaining the social fabric of our community by upholding the law and helping people resolve their disputes”

Hon. R.J. Welford MLA, Attorney-General and Minister for Justice

These were the words which commenced the second reading speech for the *Magistrates Amendment Bill 2003* (the Bill). They are a recognition of the importance of the Magistracy to the community.

The effective service that we provide to the community is demonstrated by the Report on Government Services published on 30 January 2004 which indicated that as at 1 July 2003, we had the second best result for finalising matters within 6 months (85.4%) and the third best result for finalising matters within 12 months (94.1%). This excellence is the result is highlighted by the fact that this has been achieved in a state with the lowest number of judicial officers per capita but with the largest number of matters going before all levels of the courts.

Not only is this the first annual conference of Queensland Magistrates that I have attended but it also it is close to marking my six month anniversary. During this period I have travelled as widely and met with as many of you as possible. I have now been to every centre where we are appointed to constitute a court, with the exception of Townsville and Bowen. And I will be in those two centres in about two weeks. I have also visited the court houses in many of the other places that we regularly travel to. Although there are many more to go.

I thank you for your goodwill and support and generosity to me throughout this learning period. I look forward to sharing the next three days with you gaining further from your collective knowledge and experience.

I particularly want to thank Brian Hine for his excellence as Acting Chief Magistrate during what was undoubtedly a difficult time. However as I quickly appreciated the media picture of the magistracy during this period was far from reality. I have been the beneficiary of Brian’s work together with Bill McKay and Donna MacCallum as his deputies I now have the real advantage of Brian’s daily advice and support as Deputy Marshall.

I place great value on team work. I would like this court to work as a team. This ultimately translates into a consultative, collegiate and open approach to the administration of the Court. On my appointment I undertook to discharge my responsibilities in this manner. However it is sometimes easy to overlook consulting with someone in making a decision. If you feel at any time that I have fallen below this standard, I invite you to get me back on track by bringing this to my attention. Consultation does not of course mean that we will always agree. However it does mean I will always give serious consideration to your views.

TRANSFER POLICY

In this spirit of consultation, open discussion has been included as the last session of this conference. One of the issues on which I seek your input during this session is the Transfer Policy, which is required under subsection 21(1) of the *Magistrates Act* 1991

These provisions of the Act and others which were also introduced by the Bill removing the Chief Magistrate's power of reprimand and introducing the new transfer system will contribute to a more collegiate approach to the court's administration.

I can readily appreciate that you may view changes in your transfer arrangements such as this with some trepidation. However the establishment of the Advisory Committee of which the Chief Magistrate is not a member should serve as an important check and balance on individual approaches which may be adopted by different Chief Magistrates with different styles and philosophies.

It is important that there be a just, equitable and open transfer system. It is for this reason that I encourage open discussion between you about transfers. I do not intend that transfers occur under a veil of secrecy.

I am committed to reducing the number of transfers to those which are absolutely necessary. Subsection 23(2) and (3) contemplates that a Magistrate may continue to constitute a Magistrate's Court at a particular place although the appointment period has expired, if the Magistrate does not ask for a transfer. There is no reason why, all other things being equal, a Magistrate who is happy in a place cannot remain there. This is not always possible, and I cannot hope that everyone will be happy with every transfer decision made. However I am optimistic that a transfer system which is flexible will provide greater justice and equality than one in which you are on transferred after an arbitrary period without regard to the circumstances of the case.

I am also optimistic that the flexibility will be enhanced by subsection 5(3) which will allow the specification of the first two locations where a newly appointed Magistrate is to constitute Magistrates Court. In general the initial appointment will be to a multi-Magistrate centre for an induction period of up to 12 months, before transfer to another centre which may be a regional centre for up to 5 years.

This will also enable a more strategic approach to be taken to transfers than has previously been possible. I am committed to taking such an approach to transfers. This is why with the co-operation of Alan Yorkston I have been able to seek expressions of interest for the future vacancy at Kingaroy over 6 months before it will occur. This will ensure that amongst other things the Magistrate who is appointed at that centre will have plenty of time to make the necessary arrangements, and for expressions of interest to be called for the consequential vacancy. This approach requires forward planning and foresight as to when vacancies may occur. Therefore as part of the collegiate approach I invite any of you who are intending to retire before 65 years of age to follow Yorky's lead and provide me with as much notice as the circumstances allow, of your expected retirement date. Ultimately this will be to the benefit of everyone.

I am also committed to supporting the continued internal appointment of Magistrates from the ranks of acting Magistrates. There is considerable experience and ability in the ranks and persons within the Court must be encouraged to study law. The Court will benefit from a proper mix of internal and external appointments.

ADDITIONAL INCENTIVES FOR REMOTE AREA TRANSFERS

I also make a commitment that I will do all in my power to provide additional incentives for you to work in the remote areas of Mount Isa, Charleville, and Emerald. In the second reading speech to the Bill Mr Welford recognised that this is desirable. This is part of my ultimate goal of improving you overall conditions so that they are as equivalent to other judicial officers as possible and sever the last vestiges of ties with public service terms and conditions. This is the thrust of the last round of submissions on your entitlements. These submissions together with those to the Salaries and Remunerations Tribunal remain under consideration.

While I will continue to promote this boarder issue my experience in working closely with the machinery of government while at the Criminal Justice Commission and the National Crime Authority is that change does not occur over night but is incremental. This change has to start somewhere, and I believe that it is most likely to start in the remote areas.

My short term goal therefore is to obtain entitlements for those of you who are posted in Mount Isa, Charleville and Emerald to:

- Better quality housing;
- Reunion visits to your home centre;
- Private motor vehicle use; and
- Additional leave

My aim is that the achievement of these entitlements will flow on to the long term overall goals.

STRATEGIC BUDGETARY APPROACH

Any gains in this area will require further funding to be made available to the magistracy. This will only be achieved by adopting a more strategic approach to the budget than has previously been possible.

I anticipate that in the 2004/2005 financial year as has generally been the case in the past the court system as a whole will be allocated a sum of money which will be split amongst the three tiers. This is unlikely to be allocated on a more strategic basis than providing an equivalent amount to that which was spent in the current financial year (or slightly more than this amount). It will have little relationship to the actual cost centres within the magistracy.

With the assistance of the Director and a senior member of Justice Finance staff, together with Beth Houston an attempt has been made to craft submissions for additional funding above this allocation. These submissions are targeted to specific projects. The projects are to have additional Magistrate days in Cape York and to hold a committal for 5 days in Pormpuraaw. The additional funding involved will not be great. However it is also a start. And the exercise has given us a template which will enable us to be more proactive in this area in the future. This is important because a number of my goals will only be achievable with additional funding.

For this reason it will be important to engage the budget committee to work with me to identify areas for which additional funding is required and to develop the supporting submissions.

EMPHASIS ON ROLE OF COMMITTEES

This is an example of the integral role that each of our committees should play in the operation of the Magistrates Court. For this reason it is essential that the committees meet regularly by teleconference and that members remain in regular contact about projects that are being developed both by email and telephone. I also encourage you to be active in the work of the committees. This will enhance the collegiate approach to the court's decision making.

This conference underlines the reason why additional funding for the court is required.

ENHANCED PROFESSIONAL DEVELOPMENT OPPORTUNITIES

The conference is part of a professional development opportunity. However for most of you it is the only such opportunity that is not engaged in at your own expense. This is not satisfactory in a court recognised as representing the coal face of our criminal justice system and handling over 90% of matters that come before all Queensland Courts. This is particularly so when the Court has to grapple with such a variety of legal issues, including those of significant complexity. Generally we do not sit regularly in specialist jurisdictions. And we are under constant pressure to keep up to date.

You do not have my advantage as a District Court Judge of receiving a specific jurisprudential allowance or an expenses of office allowance to undertake further education through means such as attending conferences. For this reason one of my aims is to increase the professional opportunities available to you.

An attempt to achieve this is to host what is described as a "Phoenix" conference at Broadbeach from 10-14 May 2004. The conference which will be run by the National Judicial College of Australia involved peer led professional development, reflection and workshops for a combination of new and experienced Magistrates. It is aimed at sharing knowledge and experience. Last year 2 of you were able to attend in Canberra. By hosting the conference in Queensland five or six Magistrates will be able to participate. This has been made possible by the new Director-General of the Department of Justice and Attorney-General agreeing to assist us with any overspending of our budget that occurs as a result.

In order to advance this goal I encourage you to contact me by email or otherwise with your suggestions for the type of professional development opportunities which you consider will be of value to you.

ENHANCED TECHNOLOGY

Mr Welford has recently announced that video conferencing plus CCTV which has recently been introduced into Brisbane Court 9 and will be installed in a number of courts in the new Brisbane Central Court will be installed in 12 Magistrates Courts this year. These courts will include Cairns, Townsville, Southport, Ipswich, Mackay, Maroochydore, Toowoomba and Hervey Bay.

Over a period of time I am confident that the establishment of video courts will create efficiencies by extending their use beyond prisoners in custody, affected child

witnesses and special witnesses to other witness and sentences coming before the courts.

In addition I aim to work towards enhancing the technology available to the courts including having electronic bench books on every bench. Again this is a long term goal which will require additional funding to be achieved.

This address cannot be exhaustive address about my goals for the courts during my time as Chief Magistrate. This is because I am still learning and I expect like all of you I will continue to gain knowledge everyday that I am here. In fact if you had asked me what my goals for the court were at the time of my appointment they would undoubtedly have been different from those I have today. This is because I have now had the advantage of visiting you throughout the state to experience at first hand your working conditions and the distances which many of you must regularly travel. This has helped me to form my goals. It has also taught me that "one size does not fit all" in the administration of the court. For example I have learnt that presiding at Cape York and in the Gulf of Carpentaria is totally different from presiding in the Brisbane Central Courts. I also better understand the issues that confront a Magistrate in a remote community or regular travelling by car or plane. It has highlighted the need to be flexible in the administration of the court throughout the state.

I will undoubtable refine my present goals and add new goals as I continue to travel the state as I intend to continue to do. When I do so I would like to preside more frequently in your courts than I have to date. This I because sitting in a court is the best way to appreciate the conditions under which you have to work daily. Therefore I hope that you will continue to invite me to hear cases when you have to disqualify yourself. I will do so whenever my schedule realistically permits.

SPECIALIST FAMILY LAW SERVICES NOT ENCOURAGED

On the day of my swearing in I had my first meeting with the Co-ordinators. Inevitably I simply "took on board" many of the issues that were raised. There are two which I have not addressed today, upon which I have come to decisions after further consultation with this group.

The first is the issue of whether we continue to offer a specialist family law service. My decision which is presently being implemented is that family law is not encouraged in the Magistrates Court. This does not mean that we should discourage the exercise of the family law jurisdiction when required. However I hope that by not pro-actively offering this service the demand for it will reduce. This aim is to enable more of your time to be available for the ever increasing number of matters which constitute our core jurisdiction. On the other hand family law is not our core jurisdiction but that of the Family Court and the Federal Magistracy.

FORM M'S ENCOURAGED

Secondly I have become a strong advocate of the "Form M's". In the absence of readily available statistics this is the most useful tool that is regularly available to me to demonstrate trends and patterns of work and therefore to make decisions about the administration of the courts. For example it assists to quickly determine which courts need more magistrate time to keep the list within the bounds of an earliest available hearing date of not more that twelve weeks. In using them in this way I appreciate that they can never be an absolutely precise measurement. I also accept

that they can be a nuisance to complete. However I encourage anyone who does not currently submit them, to do so in the future.

CONCLUSION

I trust that these observations clarify the goals that I have arrived at after my first six months as Chief Magistrate. I look forward to discussing them with you during this conference, I also look forward to working together with you as part of the team as our court continues to evolve in a way which will enhance the conditions under which we work and maintain out effectiveness in the administration of justice.

Judge MP Irwin
Chief Magistrate
8 March 2004