



PROBATION AND PAROLE SENIOR MANAGERS CONFERENCE

Level 6

Christie Corporate Centre
320 Adelaide Street, Brisbane
Monday, 16 October, 2006

Judge Marshall Irwin
Chief Magistrate

I take this opportunity to congratulate Queensland Corrective Services on the introduction of the new probation and parole service with the commencement of the *Corrective Services Act 2006* on 28 August 2006.

I have personal experience during my three years as Chief Magistrate of the significant work which has been undertaken by your Department under the guidance of the Director-General, Mr Rockett and his senior management team which has resulted in the biggest overhaul of the community corrections system in more than 15 years.

I would particularly like to recognise the extensive consultation which has been undertaken with the Magistrates Court to gain an

understanding of our concerns about the previous system, and for taking our views into account in developing the new system.

As you will be aware it emerged from those discussions that our court had lost confidence in the capacity of Queensland Corrective Services to provide services in many areas of the State, particularly in rural and remote communities. In the Gulf and Cape Regions for example, in many cases our courts had little alternative other than to use custodial orders as the only viable sentencing option. This view was supported by statistics, which contrary to community perceptions demonstrated the decreased use of community supervision as a sentencing option and an increase in short terms of imprisonment.

Accordingly our court appreciates that in addition to the new legislation, steps have been taken to establish a permanent presence of supervision and program staff at Thursday Island, Doomadgee, Normanton and Mornington Island. It is anticipated that this increased presence will improve rehabilitation services and develop local capacity for supervision and delivery of culturally appropriate programs for the local Indigenous communities; and as a result the Indigenous over-representation in the custodial corrections system will be addressed ¹ .

This will fit well into innovations which are being taken by the courts to use videolinks to conduct some cases in these communities. Therefore we have been pleased to provide some

¹ Rockett, F. (2006) *Prisoner Rehabilitation – The Role of the Custodial Institution*, International Society for the Reform of Criminal Law Conference, page 15.

space for your staff within our courthouses there. I hope that it will be the forerunner of a similar approach in Cape Communities. This will provide a real sentencing alternative for magistrates. Initial reports are positive.

I have been asked to speak to you about the expectations that magistrates have of the new service and how it will be effective in diverting low risk offenders from custody.

It is appropriate that you address this question to our court, because it is the court where approximately 96 percent of all criminal matters are dealt with. It is therefore the court where the largest number of community based orders and parole release orders will be made.

This is emphasised by unpublished research undertaken by your department showing that of all prisoners received into custody, that is both sentenced and remanded prisoners, approximately 70 percent are serving sentences of less than two years; and more than half serve sentences of less than six months.² Sentences of this length are most likely to be imposed by the Magistrates Court.

As indicated there has been an increase in short terms of imprisonment under the old system. This is despite the fact that research demonstrates that recidivism can be reduced by as much as 10 percent through rehabilitation programs.³ On the other hand

² Ibid, page 5.

³ Department of Corrective Services, *The Way ahead – Queensland Corrective Services future directions*, page 7.

there is no reliable evidence to show imprisonment reduces the likelihood of recidivism.⁴

It is important for the community to appreciate that under the *Penalties and Sentences Act 1992* (the PSA) Queensland Courts **must** have regard to principles that –

- a sentence of imprisonment should only be imposed as a last resort; and
- a sentence that allows the offender to stay in the community is preferable.⁵

The only exceptions are in the case of offences of violence against the person or an offence of a sexual nature committed in relation to a child under 16 years.⁶

Similarly under the *Juvenile Justice Act 1992* (the JJA) when a court sentences a child for an offence it **must** have regard to the juvenile justice principles⁷ which include that –

- a child should be detained in custody for an offence, whether on arrest or sentence, only as a last resort and for the least time that is justified in the circumstances.⁸

Further the purposes for which a sentence can be imposed on an adult or child offender are not only punishment, deterrence, denunciation and community protection, but also rehabilitation.⁹

⁴ Rockett, F., page 17.

⁵ PSA, section 9(2)(a).

⁶ PSA, sections 9(3) and 9(5).

⁷ JJA, section 150(1)(b).

⁸ Principle 17.

⁹ PSA, section 9(1); JJA, section 150(1)(a)

Accordingly, with few exceptions, offenders will return to live in the community following sentence. The majority of those who are sentenced to terms of imprisonment will return to the community after serving short terms of imprisonment. It is therefore important that these offenders have access to meaningful rehabilitation programs which are matched to their assessed risk; and that there is a capacity to properly supervise them while undertaking this program. On the evidence available this is most likely to reduce offender recidivism¹⁰ and enhance community safety.

In these circumstances if magistrates have confidence that Queensland Community Corrections is able to provide appropriate rehabilitation programs and supervision to address offending behaviour you are likely to see an increase in the use of community based orders.

There is also likely to be a decrease in the use of wholly and partially suspended sentences and an increase in the imposition of terms of imprisonment with a parole release date. In my opinion courts have used the suspended sentence option because this has provided more certainty that an offender will be released from prison at the time that the court considers appropriate, then has been the case under a post prison community based release order. However until recent decisions by the Court of Appeal there has been concern that the offenders were not able to be made subject to any supervised rehabilitative community based programs whilst the suspended part of the sentence remained

¹⁰ Rockett, F., page 17.

operational. Although as a result of these decisions this can now be achieved by means of a concurrent probation order, it is likely that provided the court develops the requisite degree of confidence in the new system, that it will rely upon supervision in the community under a parole order.

The question is what our court expects in order to develop this degree of confidence.

In answering this question I am expressing not only my own views but also the views of experienced magistrates whom I have canvassed. Therefore my observations on this issue reflect the position of the court. I am pleased to say that these views are consistent with the future directions which have been articulated by and on behalf of the Department.

I commence with the obvious proposition that the court expects that in reality there will be:

- better access to meaningful rehabilitation opportunities for all offenders;
- in the case of those offenders who are to serve a period of imprisonment, subject to release on parole, programs which support their reintegration into the community.
- increased supervision and surveillance of all offenders who are in the community, whether subject to a community based order (including an intensive correction order) or parole.

I am therefore pleased that your Director-General has publicly stated that this is the focus of the Department.¹¹

It is also essential that as stated in the *The way ahead – Queensland Corrective Services future directions* publication:

- Induction and Assessment staff will be available at court to provide court assessments, pre-sentence assessments and order suitability reports for courts.¹²

This is in keeping with the recognition by the Director-General that “A key to ensuring success of the new probation and parole model is increasing the quality of engagement with the courts” and that as part of this a system of Court Liaison Officers is proposed to provide a daily support function with a focus on Indigenous Offenders.¹³ Accordingly it is proposed that the successful Court Liaison Officer model which operates at the Brisbane Arrest Courts and Murri Court be replicated in Cairns and Townsville.¹⁴

As Mr Rockett has said “Assessing offenders in a reliable and valid manner is a prerequisite for the effective management of offenders and the targeted allocation of resources across the model.”¹⁵ Therefore it is always helpful for the court to have input from community corrections officers when consideration is being given to making a community based order.

¹¹ See for example, Rockett, F., at pages 1 and 4.

¹² See page 6 of the publication.

¹³ Rockett, F., page 15.

¹⁴ Ibid, page 16.

¹⁵ Ibid, page 10.

For this reason, while appreciating that a resourcing issue is involved, our court would like to see the Court Liaison Officer model rolled out to as many courts as possible. This is in your interests because it ensures that your time and resources are not diverted to supervise community based orders which would not have been made if the court had access to advice at the time it made the order.

Even in Brisbane, the officer is not available at the Arrest Courts on the day that the Murri Court is conducted each week. I know that other officers are available to attend court at short notice. However this can result in delays for a busy court. There are also other courts in Brisbane where offenders are sentenced. These courts would also be assisted by a readily available Court Liaison Officer.

The next issue is the form and content of probation orders. The court has been used to making orders containing detailed additional requirements under section 94 of the PSA,¹⁶ including that the defendants undertake specifically named programs. The court can understand why the Department's preference is that the court not make such requirements, but simply rely on the general requirement under section 93(1)(d) that the offender –

- must take part in counselling and satisfactorily attend other programs as directed by the court or an authorised corrective services officer during the period of the order.

¹⁶ See also PSA, section 115 which is a similar provision for intensive correction orders.

However you will find that a number of magistrates will request you to make submission to enable the imposition of a general condition to the effect that the offender –

- must take part in such programs as will address the issues of x.y.z. etc.

This is to ensure that the court is confident that the offender will receive the assistance that it considers is required and which it intends that the defendant receive.

The court must also feel confident that you have explained all the conditions of the proposed community based order to the offender during the course of your interview. I am advised by magistrates that it is not uncommon to find that the offender is unaware of what the actual requirements of the order will be. Clear communication of these requirements is essential.

Although the court must explain, or cause to be explained, to the offender, the purpose and effect of the order¹⁷ and may only make the order with the offender's consent,¹⁸ it is more likely that the order will be effective if the defendant returns to the court after your interview with a full understanding of what is expected of him/her, the seriousness of making the order and its consequences.

It would also assist the court if in addition to recommending that the offender is suitable for a community based order you make a

¹⁷ PSA, section 95(1)(a)

¹⁸ PSA, section 96

recommendation as to the duration of the order, or as to the number of hours in the case of a community service order. This is important because the Court of Appeal has decided that the offender must consent not only to the general proposition that a probation order or a community service order should be imposed but also as to the duration of a probation order or the number of hours of community service.

I appreciate that with busy callover courts you may feel that you have a limited time frame in which to conduct these interviews. However it is important that you take the time required to make an informed determination as to whether the offender is suitable for the making of such an order, is able to comply with it, and as to any specific issues which the court should address when making the order.

It is also considered important that case plans be developed for the purpose of offender management clearly outlining the expectations of the case manager and the offender and the responsibilities of the offender. This will address the complaint that is often made on breach of probation proceedings that the offender did not fully comprehend the responsibilities under the order and that the breach action has been a wake up call. Clear communication is again essential.

Case plans may include attendance at specific programs, individual counselling or treatment, restriction on movement or association with others or drug testing. They could also address matters such as the number of occasions on which appointments

can be undertaken by phone or whether any (and if so, how many) failures to report will be allowed before breach action is taken. This will avoid matters simply being allowed to drift on without specific action being taken, prior to breach action being commenced. Whereas if stricter guidance had been given in accordance with a clear case plan, the conduct which has resulted in the breach action, whether re-offending or some other breach of the requirements of the order would not have occurred.

Therefore again it is pleasing that case plans are intended to be part of the new model.

Mr Rockett has said with reference to those persons sentenced to imprisonment that the underlying philosophy of “through-care” is that recidivism can be reduced by giving offenders a “whole of sentence” plan that starts when they enter the correctional system and continues after they have been released into the community.¹⁹ He has also observed in relation to community based sentencing (Probation and Parole):

“Effective service delivery is based on translating offender needs into intervention objectives and then motivating and engaging offenders to comply with plans for meeting these objectives.”²⁰

As a corollary to case plans to ensure that the requirements and obligations imposed on the offender are clear, it is essential that

¹⁹ Rockett, F., page 9.

²⁰ Ibid, page 10.

there is expeditious action taken to ensure accountability for breaches.

Delays in dealing with breaches have caused the courts to lose confidence in community based orders in the past. Such delays undermine the deterrent value of non-compliance and also the court's authority.²¹

As Mr Rockett has said:

“Increasing positive reinforcement and strengthening the focus on intervening with offenders via supervision should not be done at the expense of swift, certain and appropriate responses for negative and unacceptable behaviour. Research indicates that strong support and supervision practices combined with exposure to clear and consistently enforced rules usually results in increased compliance.”²²

The courts have been assured that a tougher approach will be taken to ensuring offenders abide by the conditions of their orders by statements in *The way ahead* publication that:

- a key feature in the overhaul of the Community Corrections system is the increased focus on providing fast, appropriate and certain responses to the contravention of orders; and
- the Probation and Parole Service will have a dedicated Compliance Officer role to ensure that breaches of the

²¹ Ibid, page 15.

²² Ibid, page 12.

conditions of an order are responded to quickly and appropriately.²³

Further in the Department's *Community Corrections Model* (April 2006) there is reference to:

- quick and appropriate responses to breaches in order to deter further breaches and increase the credibility of correctional services with courts and the community.²⁴

I also understand that it is proposed to place a professional prosecutor in each of your regions to facilitate this.²⁵ This is also intended to improve the quality of court briefs.

This is a welcome development which I hope will result in greater assistance to our court than was possible under the previous model. I do not wish to be critical of the officers who have discharged this court compliance function in the past. I have found them particularly helpful in ensuring that magistrates do not make an order in breach proceedings which is inconsistent with legislation or a previous Court of Appeal decision.

However apart from this their function appears to be to hand up the relevant documents to the court and repeating the recommendation of the case officer. The magistrate is left to read the often voluminous documents, particularly when the submission

²³ See page 8 of the publication.

²⁴ See page 2 of the document.

²⁵ Rockett, F., page 15

is to re-sentence the offender for the original offence. This may involve reading many police QP9 forms.

One difficulty with this is that the magistrate does not know if the defendant was sentenced on the basis of the information in these forms. It is possible that some of the facts were not accepted by the offender at the time of sentence, and were not relied upon by the court in deciding on the appropriate sentence. The defendant will generally be represented by a different lawyer on breach proceedings, often a duty lawyer. This lawyer is unlikely to have instructions as to factual basis of the plea of guilty.

This problem is unlikely to arise in the Supreme and District Courts which will have access to a transcript of the trial judge's sentencing remarks. Generally the matter will come back before the judge who made the original order. This is less likely in Magistrates Courts, particularly where there are a number of magistrates at a centre, as is the case in Brisbane.

The situation is unsatisfactory. The best solution would be for a transcript of the original proceedings to be provided to the court. However as transcripts of most sentences in our court are not made at the time of the original proceedings, it may be difficult to obtain one without delay.

However, if it is inevitable that our court must rely on the QP9 forms to re-sentence for the original offence, it would be of some assistance if a summary of the essential facts was placed before the court (either in writing or orally), or at least those facts highlighted on the form which is provided.

I would also ask that care be taken to provide the court with the most up to date criminal history available so that any re-sentencing can be undertaken with a full knowledge of the offender's history. For example if the offender is being dealt with contemporaneously for a breach of a community based order, and offences which constitute the breach, it is important to know if those offences are in breach of any other order of the court, such as a suspended sentence. Any such sentence should be specifically brought to the attention of the court.

Our court would also consider that it is essential that as stated in *The way ahead* publication, the Department increase partnering with community organisations.²⁶

As Mr Rockett has said:

“Corrective Services can provide a place where rehabilitation efforts of many organisations and services can come together in a co-ordinated manner to address the needs of offenders and enhance community safety by assisting to prevent future criminal behaviour.”²⁷

He has referred to research that acknowledges the relevance of partnership models in correctional service delivery with a focus on integrated outcomes. As he stated:

“The delivery of public services is often not the sole responsibility of a single department. Increasingly there is a

²⁶ See page 15 of the publication.

²⁷ Rockett, F., page 1.

delivery chain of public, private and voluntary organisations who provide different but complimentary aspects of integrated, multi-agency partnerships.”²⁸

This is particularly important in remote areas where the providers of community service projects may have contacts with persons who work in the health and financial industries and who will have skills to assist offenders address the underlying causes of their offending. An example is that of a CDEP paper making project for women in Mount Isa to undertake their community service. There are health workers that attend on the organisation at times. These professionals are a resource which can be used to address the women’s health issues which may contribute to their offending.

The magistrate who brought this program to my attention (not the resident magistrate who was on leave) has also advised me that in Mount Isa and other northern centres, the cognitive skills program has ceased as intended, but no real alternatives are available. She has told me that while new programs are being developed, offenders are being referred to other agencies like Lifeline and Centrecare.

While this may be regarded as an example of strengthening partnerships with other community organisations, it does raise issues in magistrate’s minds as to whether the participation of offenders and outcomes are followed up by community corrections officers.

²⁸ Ibid, page 21.

It is accepted that it is important for you to revise rehabilitation programs like cognitive skills and to implement new evidence-based programs to improve rehabilitation effectiveness and delivery efficiency.²⁹ However the confidence of magistrates in the new system will be enhanced if the revised programs are rolled out in a way that ensures that there are no gaps left by the expiration of existing programs.

One area in which the development of multi-agency partnerships would be valuable is that of the incorporation of a program of indigenous driver licensing in north Queensland. This program operates effectively in some other parts of the state. However it is understood that there is no funding available to support it at present in the Gulf or the Cape. This is a significant gap for Indigenous offenders who are often trapped in the cycle of offending resulting from convictions for unlicensed and disqualified driving. These are offences which are often committed due to obstacles they confront in remote communities in obtaining driver licences. Although this is again a funding issue, anything that the Department can do to facilitate the delivery of the program for these offenders would significantly contribute to breaking the cycle of offending.

Conclusion

The establishment of the new probation and parole service and the model for providing this service is a significant achievement.

²⁹ Department of Corrective Services *The way ahead* publication, page 14.

One of its purposes is to give the courts confidence that the service is able to provide appropriate rehabilitation programs and supervision to address offending behaviour, with a view to increasing the use of community supervision as a sentencing option and to decrease the imposition of short terms of imprisonment.

As the paper argues in order to develop the requisite degree of confidence to achieve this aim it is essential that the new service:

- provides better access to meaningful rehabilitation options for all offenders;
- provides programs which will support the reintegration into the community of those offenders, who are to serve a period of imprisonment, subject to release on parole;
- increases supervision and surveillance of all offenders who are in the community, whether subject to a community based order (including an intensive correction order) or parole;
- ensures that Induction and Assessment staff are available at court to provide court assessments, presentence reports and order suitability reports to the court;
- Induction and Assessment staff:
 - take the time required to explain all the conditions of a community based order to the offender during their interview and ensure that the offender understands those conditions; and
 - advise the court not only that the offender is suitable for a community based order but also recommends the duration of

the order, or the number of hours in the case of a community based order.

- develops case plans clearly outlining the expectations of the case manager and the offender and the responsibilities of the offender;
- takes expeditious action to ensure accountability for breaches;
- improves the quality of briefs of evidence and of the assistance given to the court on breach proceedings; and
- develops partnerships with public, private and voluntary organisations to facilitate the administration of rehabilitation programs.

Our court looks forward to working closely with you in this endeavour, the successful implementation of which is in the community interest.