QUEENSLAND MURRI COURT
LAW ASIA CONFERENCE 2008
FRIDAY 31 OCTOBER 2008
KUALA LUMPUR CONVENTION CENTRE

Judge Marshall Irwin
District Court Of Queensland

All Australian jurisdictions, with the exception of Tasmania, now operate an Indigenous sentencing court of some type. The procedures in these courts generally follow the tenets of restorative justice, such as, improving communication between parties, applying procedural justice (that is, treating people respectfully and fairly, using persuasion and support to encourage offenders to be law-abiding and to avoid incarceration. In addition, Indigenous sentencing courts endeavour to be culturally appropriate, being inclusive of both the Indigenous community and the offender (Marchetti & Daly 2007; Fitzgerald 2008).

In Queensland the Indigenous sentencing court is a Magistrates Court known as the Murri Court.

Queensland is Australia's second largest state, covering 1,730,650 square kilometres (668 207 square miles) with more than 4.2 million inhabitants. It occupies 22.5 percent of the continent in the North-east and has boundaries with New South Wales, South Australia and the Northern Territory. It is bounded by the Gulf of Carpentaria, Torres Strait and Coral Sea in the north, and the South Pacific Ocean in the east. The total coastline is 7400 km.

It is seven times the size of the UK with a population density of 2.4 per square kilometre. Brisbane, the capital, is located in the South-eastern corner of the state with a population of over 1.8 million.

It is not only a geographically large but also a highly decentralised state, as demonstrated by the fact that there are 87 magistrates appointed to 31 places and circuiting to 83 more.

In 2006, there were 127,581 usual residents of Queensland who identified themselves as being of Indigenous origin. This represented, 3.5% of the population. Far North Queensland contained the largest number of persons who were of Indigenous origin (33,122), while the North-west contained the largest percentage of Indigenous persons (22.7%). About one quarter of Queensland's Indigenous population lived in remote or very remote areas in 2001. Magistrates currently circuit to 24 places which are properly referred to as Indigenous communities.

It is difficult to know precisely when Aboriginal people first arrived in Queensland. The oral tradition of Aboriginal people, passed down through myths and legends of the dreaming, tells us that they lived in what we now know as Queensland for many thousands of years prior to European settlement. Archaeological sites in southern Australia have been firmly dated to around 40,000 years. In Queensland many sites 15,000 to 30,000 years old have been excavated (Queensland History).

Prior to non-Indigenous settlement, it is estimated that there were more than 90 Indigenous languages in Queensland (Queensland History). In 2006, other than English the language most spoken at home outside South-east Queensland was Australian Indigenous Languages.

The 1991 Royal Commission into Aboriginal Deaths in Custody concluded that the rate of such deaths was not disproportionate to that of non-Indigenous people in custody, but the rate of incarceration of Indigenous people was grossly disproportionate to their numbers in the general population. Unless that rate of incarceration was reduced it was inevitable that many more deaths in custody would occur. Central to the recommendations was the need to address the disadvantages in the lives of Indigenous people in areas such as health, education and employment opportunities (Eames 2008).

An aboriginal and Torres Strait Islander Justice Agreement was signed by the Premier and four Queensland government ministers on 19 December 2000 with a primary ambition of reducing the rate of incarceration of Indigenous people. The target was for a 50% reduction of the rate by 2011 (Eames 2008).

However Aboriginal and Torres Strait Islander people remain over-represented in the courts, in prison (27 percent of the Queensland prison population compared with 3.5 percent of the total Queensland population in 2006) and on all levels are more likely than non-Indigenous people to come in contact with the criminal justice system (O'Connor 2008).

The Australian Bureau of Statistics (ABS) estimates that in 2006 Indigenous people were 13 times more likely to be incarcerated than non-Indigenous people. Indigenous juveniles, aged 10 – 17 years, are 25 times more likely to be in detention than non-Indigenous young people. Over 55 percent of juveniles in detention centres in Queensland are Indigenous youths.

Indigenous women are imprisoned at a rate per head of population approximately 20 times that of non-Indigenous women, and this is increasing far more rapidly than for Indigenous men. Between 2002 and 2006, the imprisonment rate for Indigenous women increased by 34 percent and that for Indigenous men increased by over 20 percent. ABS statistics also show that almost one in five Indigenous people reported a family member who was currently in jail or going to jail (O'Connor 2008).

The Quarterly report on key indicators in Queensland's discrete Indigenous Communities (April to June 2008) shows that from July 2007 to June 2008 the overall rate of hospital admissions for assault on people from 19 Aboriginal and mainland Torres Strait Island communities was 23.7 per 1000 people. This compared to 1.3 per 1000 for all Queenslanders in 2006 – 2007.

The average rate of reported offences against the person from June 2007 to May 2008 was 84.4 per 1000 people in the combined communities. This compared to 8.1 per 1000 for all Queenslanders in 2006 – 2007.

Against this background the Federal Minister for Home Affairs has recently described the criminal and sentencing issues facing Indigenous communities as the “greatest national challenge facing this generation”. (Lawyers Weekly 2008).

It was also in the midst of this that the first Murri Court was implemented in Brisbane in August 2002 by my predecessor as Chief Magistrate, Diane Fingleton and Deputy Chief Magistrate Brian Hine. The Murri Courts continued to grow during my five year term as Chief Magistrate which ended recently. As a result there are now 13 Murri Courts – including both adult and youth courts; and courts in the Indigenous communities of Cherbourg and Coen.

Magistrates Courts are the courts of first instance in the Queensland judicial system. The District and Supreme Courts are the other Queensland Courts, with ultimate supervision by the High Court of Australia.

As the Chief Justice of Queensland said during the year:

> The reality is the Magistrates Court is a massively important court, and it is also the court where most people of Queensland from day-to-day see the Judiciary at work.

Approximately 96 percent of all criminal matters in Queensland are dealt with in the Magistrates Court.

The Murri Court developed because of the magistrates, in court every day, who said there is a way we can do better for Indigenous

people and reduce their level of overrepresentation in the prison population.

The court also aims to improve Indigenous attendance rates at court, to decrease their rate of re-offending, to reduce the number of court orders breached by them, and to strengthen the partnership between the Magistrates Court and Indigenous communities in dealing with Indigenous justice issues.

This has been achieved by the creative use by magistrates of a principle in our adult and juvenile sentencing legislation requiring the court to consider relevant submissions from local Indigenous Community Justice Groups, including elders and respected persons when sentencing or considering bail applications concerning Aboriginal and Torres Strait Islander persons, for example in relation to:

- the person's relationship to his or her community
- any cultural considerations
- any considerations relating to programs and services established for offenders in which Community Justice Groups participate.

The court found that the involvement of elders and respected persons in the court process:

- assists the offender to understand the process
- assists the magistrate to understand cultural issues
- assists the magistrate to decide on a sentence that is most appropriate

- acts as a connection between the court and the local community

The Murri Court adheres to the law of Queensland. It is the same law for everybody – but the Murri Court allows the magistrate to apply this in a culturally appropriate way.

The Australian Institute of Criminology (AIC) which has been evaluating five Murri Courts describes it as a collaborative problem solving court in which the key participants work together to determine the most appropriate solution to a defendant's offending behaviour.

Although it is the magistrate who decides on the sentence to impose, it is the advice and presence of the elders and respected persons that has made our Murri Courts so successful. They help get at the cause of criminal behaviour and break through the disengagement that Indigenous people have had with the courts. There is no doubt that defendants find their appearance before the elders a confronting, emotional and powerful experience.

The AIC has identified the benefits of their involvement to include:

- a much greater level of information before the court regarding the defendant's circumstances than would otherwise be available
- greater contribution from the defendant in determining sentencing outcomes and in developing strategies to address offending behaviour

- increase in the capacity of the court to reintegrate the defendant into the community by establishing (or repairing) relationships between the offender and respected members of the community
- improved perceptions of the authority of the court, and greater respect for decision making and sentences imposed by magistrates

Importantly as the Honourable Rob Hulls, Attorney-General of Victoria said in an article in *The Australian* (16 May 2008) with reference to the analogous Koori Court:

> "there is nowhere to hide under the gaze of the elders…. The elder's ability to shame, humble and help an indigenous offender, combined with a magistrate's sentence, has proven to be a hugely successful approach."

As he said "defendants have to speak for themselves and answer questions on why they committed an offence. They are forced to take accountability for their actions in a way that is more confronting than the mainstream court process."

There is no doubt that defendants find their appearance before the elders a confronting, emotional and powerful experience.

A person who appeared in the Murri Court has said of the experience:

> "Being spoken to by the elders. Them speaking to me made me realise that my life is going nowhere while I'm committing these crimes."

Feedback received about Murri Courts is that:

- The involvement of elders and respected persons in the court process helps the offender develop trust in the court
- The court's problem-solving focus helps offenders to undertake rehabilitation and stop their offending conduct
- The court is not regarded as lenient in its sentencing practises.

It is not a soft option. It is about effective sentencing of offenders who will be sentenced to imprisonment when appropriate. It is not a lighter sentence but one which is more meaningful to the offender. Where they are placed on community-based orders, onerous conditions aimed at their rehabilitation will be attached, including being subject to the requirements and directions of the local Community Justice Group.

No two Murri Courts operate in exactly the same way. This is because they have been developed with the advice of the elders and respected persons to reflect local conditions. It is essential that this continues.

As Magistrate Bevan Manthey who established the Mount Isa Murri Court in North-west Queensland has said:

> "As a Murri artist myself, I view the Murri Court like our art, we have come a long way since the rock paintings. Our art is contemporary, vibrant, and always changing. It is never stagnant. So too must our Murri Court be."

It is hoped that the AIC evaluation will determine whether the Murri Court is meeting its objective of reducing offending. A recent evaluation of the Indigenous Circle sentencing courts of New South Wales concluded that those courts did not achieve this (Fitzgerald 2008).

However there are differences in procedure and approach between circle sentencing and the Murri court, and as the circle sentencing evaluators observed:

> "It should not be concluded that circle sentencing has no value simply because it does not appear to have any short-term impact on reoffending. Reducing recidivism is just one of several objectives of the process. There is nothing in the analysis to suggest that circle sentencing is not meeting the other objectives. It if strengthens the informal social controls that exist in Aboriginal communities, circle sentencing may have a crime prevention value that cannot be quantified through immediate changes in the risk of reoffending for individuals."

Commenting on the findings, the Director of the New South Wales Bureau of Crime Statistics and Research which published the evaluation, Dr Don Weatherburn, said circle sentencing should be strengthened rather than abandoned.

He said:

> "Giving Aboriginal elders direct involvement in the sentencing of Aboriginal offenders encourages offenders to critically reflect upon their behaviour.

> Personal reflection on its own, however, is not enough to reduce the risk of offending. Offenders also need to be given opportunities to address the factors that get them involved in crime, particularly drug and alcohol abuse."

As indicated where the Murri Court places Indigenous offenders on community-based orders, onerous conditions aimed at their rehabilitation are attached.

In the Mount Isa Murri Court where offenders are managed through conditional bail orders, in the first 12 months only four of 61 people sentenced for domestic violence related offences, reoffended.

In Brisbane a proposal is being developed for offenders who will appear before the adult Murri court to be placed in building and construction and/or civil construction training programs and courses. Access to the program may be through a bail undertaking, or as an undertaking or as a condition of a community-based order. The projected outcome is to rehabilitate and reintegrate Murri Court offenders back into the community by instilling new skills to promote self-empowerment.

Literacy and numeracy training is an additional element of the program to meet identified needs.

Therefore there is cause for optimism that the AIC evaluation will support anecdotal evidence that the Murri court does reduce the risk of re-offending by Indigenous offenders.

As the Queensland Attorney-General has said:

> "The Queensland Government is committed to the expansion of the Murri Court, and supports the excellent work done by the elders and members of the community justice groups on the advice they give in developing innovative and productive sentencing options through the Murri Courts."

As one of the inaugural Murri Court elders, Uncle Albert Holt has said:

> "We have gone too far to go back where we came from."

Earlier this year the Australian Prime Minister apologised to Australia's Indigenous peoples. In his apology he spoke of "a future where we embrace the possibility of new solutions to enduring problems where old approaches have failed". He referred to this as "a future where all Australians, whatever their origins, are truly equal partners, and with an equal stake in shaping the next chapter in the history of this great country".

The innovative Murri court is one of these solutions. It is a solution which is working to close the gaps in Indigenous life expectancy, educational achievement and employment opportunities which the Prime Minister has committed to reducing.

References

http://www.about-australia.com/facts/queensland

http://www.about-australia.com/facts/queensland/history

http://www.localgovernment.qld.gov.au/?1d=3594
(The Indigenous population of Queensland, 2006 edition – reissued June 2007)

http://www.worldtravelguide.net/country/232/general_information/Australia-and-South-Pacific.html
(Queensland Travel Guide - Key Facts)

Eames, GM 2008, 'Questions from Aurukun,' a speech to National Indigenous Legal Conference, 12 September 2008

Fitzgerald, J 2008, 'Does circle sentencing reduce Aboriginal offending?', Crime and Justice Bulletin, no. 115, NSW Bureau of Crime Statistics and Research, Sydney

Lawyers Weekly 2008, 'Hulls seeks higher Indigenous presence', 19 September 2008, page 8

Marchetti, E & Daly, K 2007, 'Indigenous sentencing courts: towards a theoretical and jurisprudential model', *Sydney Law Review*, vol. 29, no. 3, pp. 415-443.

NSW Bureau of Crime Statistics and Research, Sydney 2008, 'Circle Sentencing Evaluation', 16 July 2008, http://www.lawlink.nsw.gov.au/lawlink/boscar//ll_bocsar.nsf/pages/bocsar_mr_cjb 115

O'Connor, DM, 2008, 'Improving Cape York Justice Services,' 30 June 2008, Department of Justice and Attorney-General Queensland

Office of Economic and Statistical Research Queensland 2008, 'Queensland Characteristics: A Statistical Division Comparison', May 2008