



**WORKING TOGETHER:
AN HOLISTIC APPROACH TO THERAPEUTIC JURISPRUDENCE
AUSTRALIAN WINTER SCHOOL**

**PRESENTED BY MR B P HINE, DEPUTY CHIEF MAGISTRATE
ON BEHALF OF JUDGE MARSHALL IRWIN, CHIEF MAGISTRATE**

Wednesday 14 May 2008 at 3.05 pm

**The Sebel and Citigate King George Square Hotel
Brisbane, Australia**

**Judge Marshall Irwin
Chief Magistrate**

Thank you for the opportunity to introduce this multi-disciplinary presentation by representatives of the Department of Justice and Attorney-general, the Queensland Police Service and Queensland Health on the theme of government and non-government Agencies working together to deliver better therapeutic jurisprudential outcomes.

I regret that I am unable to personally introduce this topic because of commitments to a Mount Isa Court circuit. However the Deputy Chief Magistrate, Brian Hine, had stepped into the breach. He is able to deliver this paper from a background of many years of experience with the introduction of innovative programs by our court in partnership with government and non-government agencies.

Although our court is separate and independent from these agencies it is essential to the effective delivery of these programs.

In many cases the programs develop from magistrates who see that there is a way that we can do better for those appearing before us everyday and for the community which is affected by their criminal activity.

And so it was that magistrates concluded that they could do more to address the issue of over-representation of Indigenous Australians in the prison system. As a result, the first Murri Court was implemented in Brisbane in

August 2002 by my predecessor as Chief Magistrate, Diane Fingleton and Deputy Chief Magistrate Hine.

As the Kevin Carmody - Paul Kelly song says, *from little things, big things grow*. From the original Brisbane Murri Court, a further 11 Murri Courts have developed, with more on the way.

The success of the Murri Courts has been recognized by the government which has provided \$5.2M over three years from 1 January 2007 to evaluate five of the courts.

The Murri Courts are an example of persons from different backgrounds and experience working together to achieve therapeutic results which are in the public interest - members of the judiciary, Community Justice Groups including elders and respected persons, police officers, probation and parole officers and youth justice officers who reach out to link offenders with rehabilitative programs which are generally the initiative of non-government organizations.

Other multi-disciplinary innovative courts and programs which have been developed either from the initiative of or with the support of our court are:

- the Drug Court
- the Illicit Drugs Court Diversion Program
- the Cairns Alcohol Remand and Rehabilitation Program (CARRP)
- the Queensland Indigenous Alcohol Diversion Program (QIADP)
- the Queensland Magistrates Early Referral into Treatment Program (QMERIT)
- the Homeless Persons Court Diversion Program.

These programs extend to supporting initiatives to provide diversionary options for people early in their offending history, to provide alternative sentencing options for people whose offending is the result of drug or alcohol addiction, homelessness or impaired decision-making capacity, and to co-ordinate strategies to reduce over-representation in the criminal justice system.

This is not because magistrates are becoming social workers but because as the grass roots people's court we are the front line of the administration of justice and see first hand that there is *always a story behind offending*.

To adopt the words of Mr Dan Toombs of The Advocacy and Support Centre, the fact is that the Magistrates Courts serve by default as front-line response to problems of substance abuse, family breakdown, intellectual disability, personality disorders and mental health.

The first of these courts in which magistrates worked with a multi-disciplinary team of other professionals, including program providers from the non-government sector was the Drug Court which was established in 2000.

During a six year pilot phase our court worked closely with Police prosecutors, Legal Aid lawyers and officers from the Department of Health and Queensland Corrective Services to deal with offenders at the high end of the offending population, not those just embarking on a criminal career.

During this journey magistrates and the agencies involved had to make adjustments and accommodations to operate effectively as team members. Judicial officers and lawyers generally do not work in teams and none of the participants were used to working so closely together. It also required practical and pragmatic solutions to sharing information in circumstances in which principles of privilege and confidentiality would normally inhibit this.

The extent to which this has been achieved is illustrated by a recent Australian Institute of Criminology report that found the program is working. The study looked at the recidivist patterns of the first 100 graduates from the program for the first two years after their graduation. It found that graduates had a 17 per cent better outcome for recidivism when compared with an offender group sentenced to prison for similar offences.

It is therefore not surprising that it became a permanent court on 3 July 2006 - operating from Beenleigh, Cairns, Ipswich, Southport and Townsville. And as of March 2008, there have been 278 graduates from the program.

Such positive outcomes should ensure that the Drug Court program will remain a part of the fabric of the Queensland Magistrates Court for the future. There is reason to believe that, over time, it will be expanded beyond the places where it is currently available.

However, a lesson to be learnt for other innovative programs which may become a legislatively permanent part of the court is to ensure that the funding provided for the programs is specifically quarantined for the exclusive purpose of that program. This removes the risk that the funding will be dispersed to support the general operations of partner agencies.

Another example of positive results which are beginning to emerge from our court working in close co-operation with other agencies is the Queensland Indigenous Alcohol Diversion Program (QIADP). This program which began as a three-year pilot in July 2007 in Townsville (with outreach to Great Palm Island), Cairns (with outreach to Yarrabah) and Rockhampton (with outreach to Woorabinda) is already achieving graduations from an intensive five month program.

The program has two streams - one a bail-based program for Indigenous people charged with offences where alcohol is a factor in their offending behaviour (the criminal justice stream) and the other operating through case plans for Indigenous parents involved in the child protection system where alcohol misuse affects their parenting ability (the family intervention stream).

An important component are the health professions who develop and manage a tailor-made program to meet the needs of each individual. The local

treatment teams are made up of professionals from up to eight different government departments and agencies. Other agencies involved in the program include the Police Service and the Aboriginal and Torres Strait Island Legal Service. The Department of Child Safety is involved in the family intervention stream.

The Queensland Magistrates Early Referral into Treatment Program (QMERIT) is another bail-based diversion program. It has been operating as a pilot at Redcliffe and Maroochydore Magistrates Courts since August 2006. Its focus is to help suitably motivated offenders to overcome their problematic drug use and end their associated criminal behaviour through court-enforced and supervised treatment programs which are incorporated as part of their bail conditions.

It is an intensive and personalised program which usually runs for a period of 12 to 16 weeks in partnership with Queensland Health, with reviews by the court during this period and, if required, there is an after-care program.

As at March 2008, 58 defendants have graduated, with 38 currently receiving treatment on the program. Evaluation of the program has commenced.

The Homeless Persons Court Diversion Program (HPCDP) and a Special Circumstances List for homeless persons with impaired decision-making capacity has been operating at the Brisbane Arrest Courts since 2 May 2006.

It is based on a multi-disciplinary problem-solving approach for homeless persons charged with street, public order and related offences. The aim is to divert these persons from the mainstream criminal justice system through means such as special bail programs, recognisances to be of good behaviour and community-based orders.

A Homeless Persons Court Liaison Officer (HPCLO) engages with these defendants to assist the court in making suitable assessment and referrals to public and private health, housing and social service resources to help offenders in identifying and addressing problems that lead to their offending.

The List aims to prevent further entrenchment of homeless people in a cycle of offending and punishment which results in increasing numbers of fines and the risk of imprisonment. Each case is unique and managed by the presiding magistrate, with the assistance of the HPCLO, over a series of court adjournments until positive steps have been taken to help the defendant address their offending.

As at March 2008, 351 referrals to the program have been assessed as eligible, with 295 referrals to services to address accommodation, health and other needs of homeless people which may be contributing to their offending behaviour.

The success of this approach depends on the court, the Department of Justice and Attorney-General, Health, Housing, Corrective and Community Services,

the Queensland Police Service, Legal Aid Queensland and non-government organizations working together. It is also currently the subject of evaluation.

Although programs such as QIADP, QMERIT and the HPCDP (including the Special Circumstances List) can lengthen court processes and use more court time, they present defendants with supportive opportunities to turn their lives around and can lead to reduced offending and fewer social problems within the community.

As has been stated by the Public Advocate, Ms Michelle Howard, “the implementation of these programs should result in decreased numbers of prisoners in the full-time care of the state; the ultimate aim is that those people diverted have an optimised experience of life and participation in community and accordingly become as productive and self-reliant as possible. This is likely to reduce funding which would otherwise be required for government support and emergency services in future.”

This is not about soft options but about effective sentencing.

This is about a future in which to adopt the words of the Prime Minister's apology to Australia's Indigenous people, we will embrace the possibility of new solutions to enduring problems where old approaches have failed.

These solutions will extend to an holistic multi-agency approach through specialist domestic and family violence courts which focus on the causes of violence and not just the outcomes, with the aim of breaking the cycle of violence.

There is also reason to believe that a suitable adaptation of the New York Redhook Community Justice Centre model within the court – as has happened in Victoria – will be implemented to allow the magistrate to make use of on-site social services to address the underlying problems of the people who appear before the court.

However, it will be essential that the court (judicial officers and court co-ordinating staff) and all other agencies involved, including Legal Aid and Police Prosecutions, be adequately resourced to ensure the effectiveness of these programs. Currently this is not the case for all the participants in QIADP, QMERIT and the HPCDP.

It will not be possible to continue to maintain and develop them out of existing budget resources, including the judicial resources of the court.

While the court, government and non-government agencies remain committed to working together to effectively deliver these programs, their future will only be assured by adopting an holistic approach to their funding.

However if this approach is adopted the community will continue to reap the very real benefits which have been gained from the delivery of these programs to date.

I would just add two thoughts of my own to the paper prepared by the Chief Magistrate.

Firstly that we have learnt from experience in a number of the courts where there are a number of Government agencies and NGOs assisting the court that unless there is one agency taking overall responsibility for each particular defendant and co-ordinating the treatments and other responses then it is doomed invariably to failure. If each particular agency is trying to do their part but there is no co-ordinated plan then the defendant does not know if he/she is supposed to be at one place or another or receiving one treatment or another and particularly in the case of homeless persons they tend to give up very easily.

Secondly the use of Court Liaison Officers attached to the Murri Court and the Homeless persons Court has been of immense benefit to us. It is much more effective that the magistrate trying to co-ordinate matters when they are trying to run a busy court. I endorse what the Chief Magistrate said about the need for all agencies to be funded to ensure that the court has the necessary backup both in court with the Prosecution and Legal Aid and before and after court with Corrective Services, Health, Housing and the other agencies that assist the court in achieving the therapeutic results we all seek.