Childrens Court of Queensland
Annual Report
2001-2002

Childrens Court of Queensland

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The Honourable R.J. Welford M.P.
Attorney-General and Minister for Justice
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Dear Attorney

In accordance with s.22 of the *Childrens Court Act* 1992, and for and on behalf of the President of the Court, I am pleased to present the Ninth Annual Report of the Childrens Court of Queensland for 2001-2002.

With the approval of the President, I have prepared the report which covers a period during which I was the President of the Court.

Yours sincerely,

Judge John Robertson

Judge Kerry O'Brien
President of the Childrens Court of Queensland

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Introduction

As this will be my last report, it is appropriate that I record my thanks to the Honourable the Attorney-General Mr Rod Welford MLA and the Honourable Judy Spence MLA, Minister for Family Services for their support and encouragement during my time as President. I am also very grateful to Mr Steve Armitage, Acting Director-General Department of Families for his support and assistance to me since January 1999. Soon after the tabling of my last report (in April 2002) the Attorney wrote to me assuring me that the delay in providing statistical information which has been a serious problem for me would not be repeated. The report from the Office of Economic and Statistical Research was received in October 2002 which enables me to comment meaningfully on the Court during the year under review.

This year saw the introduction of the *Juvenile Justice Bill* 2002 which is now passed and awaiting proclamation. The Act contains a number of important changes to the law to which I will refer later in more detail. It represents the culmination of a very lengthy process of community consultation and, in my opinion, is a significant step forward in the administration of juvenile justice in Queensland.

As can be seen from the statistical information, the use of community conferencing both as a diversionary process and an indefinite or pre-sentence Court referral, has increased significantly. The infrastructure for community conferencing (to be called youth justice conferences under the 2002 Act) is now being introduced throughout the State. Recently, I spoke at the launch of community conferencing on the Sunshine Coast, where its efficacy and utility were noted by the Minister and senior police as well as the officers from the Department.

It has been a privilege and honour to serve the community as President since January 1999. I am delighted that His Honour Judge Kerry O'Brien has been appointed as my successor. I wish him well in his new office.

Juvenile Justice Trends - Summary

- There was an overall decrease of 3.2% in the number of juveniles whose cases were disposed of in all Queensland from 7,726 in 2000-01 to 7,479 in 2001-02. Although there was a 20% increase in the number of young people coming before the Childrens Court of Queensland, this was more than offset by a decrease in the

number appearing before the District Court, resulting in an overall decrease across the higher courts of 13%.

- There was an overall decrease in the number of charges against young people from 19,265 to 17,450 or 9%.
- Males accounted for 81% of all defendants; while 60% were aged between 15 and 17. Young people appearing before the Childrens Court of Queensland were aged 16 years or older in 62% of cases.
- Theft and related offences and unlawful entry offences accounted for almost half (49%) of all charges against juveniles.
- Detention orders decreased from 150 in 2000-01 to 130 in 2001-02, a decrease of 13%, while detention orders with immediate release orders also decreased from 172 to 144. These most serious of penalties were awarded in only 4.2% of cases. Detention orders in the Childrens Court of Queensland increased from 7 to 19 probably as a reflection of the increase in numbers.
- Cautions administered by police decreased again, from 14,918 to 14,010 or 6% following a 3% decrease in the previous year.
- The Magistrates Court disposed of 92.7% of juvenile cases in 2001-02.
- Community service and probation orders have had a high compliance rate of over 70%. Immediate release orders experienced the highest non-compliance rate of 42%.
- As in previous years, the victims of juvenile offenders are predominantly under 20 years of age (69% of those where age was recorded) and only 2.6% were aged 55 years or over.
- There was a 78% increase in the number of community conferences held during 2001-02. 65% of conferences were as a result of police referral, 15% were indefinite court referrals, and 20% were pre-sentence court referrals.

Commentary on Juvenile Justice Trends

The figures suggest an encouraging downward trend in the number of young people coming before the courts. Consequently, there has been a decrease overall of the number of detention orders made. These trends suggest that our imperfect system is at least in a number of important respects achieving the objectives of the *Juvenile Justice Act* 1992.

The relatively high non-compliance with immediate release orders must be understood in context. These orders are very intensive, and often young people have difficulty early on in complying. The very act of breaching a child often has the desired effect of ensuring compliance for the balance of the order; but such instances do tend to distort the statistical picture. Also, courts very frequently permit the child a further opportunity to comply pursuant to s.184(3), and this usually results in subsequent compliance.

The increase in community conferencing is a trend that is likely to continue into the future. The process is constantly evaluated and there is noted a continued very high level of participant satisfaction. For example, results from victims of crime who participated in conferences in 2001-02 indicate that 96% believed the conference was fair, and 94% were satisfied with the agreement reached.

There is still no method of recording statistical details of bail applications and sentence reviews in the Childrens Court of Queensland. The power to review a sentence of a Magistrate is a power uniquely reserved to a Childrens Court Judge. Throughout Queensland there may be as many as 50 sentence reviews and 50 bail applications a year. A Childrens Court Judge has power to grant bail to a child even for Supreme Court offences such as murder: s.46(3), and I think the community at least has the right to be informed of trends in these important areas. The utility of the sentence review is that it is likely to produce more consistency in sentencing juveniles in the Magistrates Court. As I have done in the past, I recommend that these statistics be recorded and available for report in the usual way.

Restorative Justice

I have continued to champion the use of restorative justice methods in the administration of juvenile justice. A number of my papers on the subject are available on the Queensland Courts web page: www.courts.qld.gov.au. It is encouraging to see that the use of restorative justice principles has been recognised as appropriate in relation to adult offenders. The trial judge (Judge Richards, who is also a Childrens Court Judge) in *R v. Tran; Ex parte Attorney-General* [2002] QCA 21 had recognised as a significant mitigating factor the offender's remorse expressed by way of face to face apology to the victim, which was accepted by the victim, and by payment of compensation. The Attorney appealed but the appeal was dismissed, a majority of the Court of Appeal (McMurdo P and Douglas J, Thomas JA agreeing with the order but not commenting on this point) held that although restorative justice principles are not directly mentioned in the sentencing guidelines in the *Penalties and Sentencing Act* 1992, they can be invoked consistently with those guidelines.

The Juvenile Justice Act 2002

As I have noted, the Act has proceeded through Parliament and is awaiting assent. There are a number of important changes to the law, and I wish to comment on some only. I have read the extensive parliamentary debate in Hansard during the second reading. It is reassuring to note that the Bill received bi-partisan support.

The right of election

The late Judge Fred Maguire A.M. was a passionate advocate of the abolition of the right of election, and I continued his trend. The Act now recognises the central role of the specialist court, the Childrens Court of Queensland, in the juvenile justice system. Importantly, a child will have a right to trial before a Childrens Court Judge or a Childrens Court Judge sitting with a jury at the child's election. The District Court will no longer have jurisdiction to deal with children, except in very limited circumstances. To allow for cases of young offenders in remote districts which do not have a resident Childrens Court Judge, but do receive circuits for the District Court, a consequential amendment to the *Childrens Court Act* 1992 provides that if a Childrens Court Judge is not available, a District Court Judge can constitute the Childrens Court of Queensland. Section 5(2)(b) of the *Childrens Court Act* 1992 provides examples and s.5(5) defines "available" as "available having regard to the orderly and expeditious exercise of the jurisdiction of the District Court and Childrens Court". To avoid confusion, a Practice Direction may be necessary but I will leave that to the Chief Judge and the President.

Publication of identifying information

These changes have received a great deal of media attention, and indeed the topic was frequently mentioned in the parliamentary debate. Any impression that the change in the law will lead to a significant increase in the publication of names of juvenile offenders is wrong. Firstly, the new provision s.191C does not apply to a Childrens Court constituted by a Childrens Court Magistrate. In statistical terms that means that for the current year 92% of young offenders will be unaffected by the provision. Secondly, a Court may only allow publication if the child is found guilty of a serious offence that is a life offence, involving the commission of violence against a person, and which in the Court's opinion is a particularly heinous offence. This expression has been judicially considered by the Court of Appeal. In *R v. G*, CA No 414 of 1996, 31.10.97, McPherson JA considered that heinous means "odious, highly criminal, infamous". It can be seen therefore that the section will apply to only a very small number of offenders. Even if all these preconditions are satisfied, the Court retains an overriding discretion based on the "interests of justice".

Community conferencing

Amendments to the Act have removed the right of victim veto, so that a youth justice conference may still be held even though the victim has not consented. The new provision (s.119A) places a positive responsibility (s.119A(2)) on the Court that if a child has been found guilty the Court must consider referring the offence to a co-ordinator for a conference. As I have noted, the necessary infra-structure for conferencing is now being extended Statewide, and I anticipate a significant increase in this option by the Courts.

I sound one note of caution. I have followed closely the family group conferencing system used in New Zealand now since 1989. The very strong message from Judges and expert commentators is that a high degree of professionalism on the part of the conference co-ordinator is absolutely vital to ensure the integrity of the conference. The New Zealand experience has shown that out-sourcing of conference responsibility to well-meaning but inadequately trained co-ordinators leads to serious community concern. This is really a resourcing and policy issue, but is a lesson we can take from the New Zealand experience which is based on many years of using conferencing as a central plank in juvenile justice.

Miscellaneous

The decision to remove children from the operation of the *Bail Act* 1980 is in line with earlier recommendations made by me, and recommendations of various Bail Workshops which were set up following public controversy about detaining very young children in watchhouses. The widening of the sentencing armoury for Childrens Court Judges and Magistrates is also a very good step.

Activities of the President

During the year under review, I spoke at a number of fora, including the Childrens Legal Issues Forum at the Queensland Law Society in October 2001 and on the same day to a conference of legal studies teachers at the Parliamentary Annex. I was also honoured to deliver the annual Dignan-Stephens Oration at the Royal Childrens Hospital at Herston on the topic "Restorative Justice – A quiet revolution in criminal justice". In addition to these public speaking engagements, I continued to speak at schools and to students visiting the Court complex. I never cease to be amazed at the ability of our young people, and despite the more difficult aspects of my job, my contact with young people gives me great hope for the future of our State. I often remark that in speaking to young

people I believe I receive much more than I give. From time to time I receive letters of thanks from students, and it is encouraging to read that some of them intend to become lawyers, and some even intend to become judges! I retain my Childrens Court commission, so I will continue to have contact with young people as much as my duties permit.

Throughout the year, I regularly consulted with the Chief Judge and provided advice to her regarding the operation of the Childrens Court of Queensland. I also consulted widely with the other specialist Judges throughout Queensland who do such a fine job on behalf of the Court. I had a number of meetings with both Ministers and senior public servants in the Department of Families.

Treatment of Juvenile Sex Offenders

The Griffiths Adolescent Forensic Assessment and Treatment Centre is now operating from the Mt Gravatt campus of Griffith University. From April 2001 – September 2002, the Centre has received 48 referrals. The interaction between the Court system and a specialist centre such as GAFATC is complex. At this early stage of operation, and in the context of the *Juvenile Justice Act* 1992 and the sentencing options therein contained, the Centre reports difficulties in establishing appropriate therapeutic frameworks for young offenders in custody. Detention orders cannot be conditioned on the offender having treatment, although the Court can so recommend. However, other forms of disposition, such as long term probation can contain conditions as to treatment. In a recent paper presented in Montreal, the director of the Centre, Ian Nisbett reported on his research into juvenile sex offenders in New South Wales. It indicates that although sexual recidivism rates as adults for juvenile sex offenders is surprisingly low – about 10%, non-sexual recidivism is high – about 61%. It follows that a treatment programme, properly resourced, is likely in the long term to reduce crime, and I congratulate the Government for its on-going support for this very important initiative.

40 Quay Street

In 1999 I commenced hearing cases in the purpose-built Childrens Court building at 40 Quay Street. My reasons for so doing are stated in earlier reports. At the time, considerable resources were expended in equipping the Court with recording systems

and providing facilities for the State Reporting Bureau. Over the years since, only a few of the other Childrens Court Judges have conducted sittings at 40 Quay Street, with most preferring to sit at the District Court building in George Street. One of the reasons I moved to 40 Quay Street was as a result of the urging of a number of user groups including Youth Legal Aid.

The building has a number of advantages. Its architecture is much more suitable to cases involving children, e.g. there is no dock, and the Childrens Court Magistrate, Mr Tony Pascoe, sits in the same building, thus facilitating exchanges of views and advice. He has assisted me on many occasions. The courtroom itself is much smaller than the District Court rooms, thus ensuring a less intimidating atmosphere for all concerned. The Judges' chambers are quite pleasant with a magnificent view of the river. There are disadvantages. The courtroom does not have direct access to the cells, so young people in custody have to be escorted in handcuffs through public areas to the courtroom. If the Childrens Court Magistrate is having a busy day, this factor leads to major pressures on Corrective Services officers and significant delays. The problem may be overcome by making physical changes but that will have to be considered by others. There have also been problems with the management of court files. Initially, the registry was established at 40 Quay Street, but this proved to be inefficient, particularly as for long periods there was not a Judge sitting there, rather the sittings were being held in George Street. As a result, the system was changed so that the registry is conducted at the District Court Registry. This has worked reasonably well, although it is administratively inefficient for the associate to have to physically collect all the files in the morning and transport them over to 40 Quay Street for court. Another disadvantage that has emerged is that because of the size of the courtroom, it is just not possible to have visiting school children in the back of the Court.

I am strongly of the view that the Court should be physically separate from the adult courts. This is in line with the specialist courts (where the President is also a Judge) in Victoria, South Australia and Western Australia. The Victorian Childrens Court building is state of the art with the added bonus of a Childrens Court Clinic conducted on the same premises to provide reports for the Court and ongoing treatment and counselling for young offenders.

The present state of affairs is entirely unsatisfactory. The President has no power to compel other Judges to use the specialist building, nor should he or she, however the users of the Court are confused when the location of the Court changes from sittings to sittings depending on the Judge.

Some Reflections

My 3½ years as President of the Court have been professionally and personally very satisfying. As from the proclamation of the 2002 Act, the Court will assume its rightful role as the specialist court for dealing with young offenders charged with serious offences. I think that the Court has continued to become more accessible to users, and the move to 40 Quay Street was an important factor in this regard. At a surprise farewell for me on my last day as President, a number of representatives of the user groups spoke and I responded. As I said then, I am deeply impressed by the commitment of the professional people who are moved to work in this difficult area. Above all, I am amazed at the resilience and fortitude of some young people who, despite all the odds, manage with professional help and guidance to become worthwhile members of the community. Of course, there are also a small number of young offenders who commit horrendous crimes and for whom only one form of punishment is justified. However, any reasonable fair-minded person would not therefore see any justification for demonising our young people because of the deeds of a few. Unfortunately, that does occur from time to time, but in my time as President, I saw no basis for having other than great hopes for the future of our State, based on the quality of its young people.