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Introduction

On 5 January 1999 I was appointed President of the Childrens Court of Queensland. As part of my statutory responsibilities, I am required to report annually to the Parliament on the operation of the Court in the preceding financial year. The report should be presented within three calendar months of the end of the financial year. This requirement contained in s.22 of the *Childrens Court Act* 1992 is unrealistic, given the diversity of sources of statistical information which must be gathered and assessed after 30 June each year. This my first report, is the sixth presented; all others being the responsibility of my predecessor in office, Judge Fred McGuire. Readers of the report will note a distinct difference in style and emphasis, and, in length. I am sure many will miss the in-depth analysis of what Judge McGuire referred to as *Athe moral dimension*. As he knows, I do not consider that I am qualified to comment on areas and issues that are more appropriately within the province of the theologian and philosopher.

Vale Judge Fred McGuire

I recognized from the outset that I was required to fill big shoes. Through his reports, his extensive public speaking and writing activities, and high public profile, Judge Fred McGuire put the Childrens Court of Queensland *Aon the map*. People are still surprised to hear from me that my role as President of the Court is very much part-time - in fact in the 1999 calendar year, I will sit for only eight weeks in the jurisdiction in Brisbane, while two other Judges with commissions sat for a total of four weeks. Many people in the community are surprised to hear that this Court deals with only a tiny minority of young people convicted of crimes. The public perception still is to some extent that most of the work in this area is conducted by this Court. To some extent, this perception arises because of the unstinting efforts of Judge McGuire to raise public consciousness about issues relating to juvenile crime and the family; and to his genuine commitment to juvenile justice issues. His efforts have already been recognised on a number of public occasions, not the least impressive of which was his ceremonial farewell from the Court in December 1998. He and I are good friends. I know he strongly supported me in my appointment to this position, and that he supports me still. I know he will be disappointed in the rather bland prose of this my first Report, and he will note with regret the complete absence of biblical allusion. His warmth, his wisdom and intelligence, were valuable commodities, both for this Court and the District Court. I acknowledge his enormous contribution to juvenile justice over many years.

Juvenile Crime Trends

- ❖ 7,988 juveniles had their cases disposed in Queensland in 1998-1999, an increase of 7.9% over 1997-1998.
- ❖ There was a reduction in the number of young people being dealt with for more serious offences in both the Childrens Court of Queensland (down 11%) and the District Court (down 4%).
- ❖ The number of charges against juveniles decreased by 8.3% from 24, 652 in 1997 – 1998, to 22,598 in 1998-1999. There was a small increase in the Magistrates Court (1.3%) but a decrease in the District and Supreme Courts of 36.2%. The number of charges disposed of by the Childrens Court of Queensland remained static.
- ❖ The Magistrates Court dealt with 87.9% of juvenile offenders in 1998-1999; the District Court dealt with 10.5% and the Childrens Court of Queensland only 1.5%.
- ❖ The number of juveniles sentenced to actual terms of detention decreased from 327 in 1997-1998 to 289 in 1998-99 (11.3%); while the number of immediate release orders (suspended sentences of detention) increased by 15.9% from 207 to 240. Community Service and probation orders made up 38.5% of penalties imposed as compared with 39.1% in 1997-1998.
- ❖ Although non-compliance rates for immediate release orders increased from 29% in 1997-1998 to 39% in 1998-1999, there was a large decrease in breaches for re-offending from 56.8% to 24.2%.
- ❖ There were 11,266 cautions administered in 1998-1999, a 17.8% drop from 13,698 in 1997-1998.
- ❖ The number of young people referred to a conference as a diversionary or sentencing option increased slightly in 1998-9 from 120 to 123.
- ❖ The rate of disposal in the Magistrates Court up to three months was 82.4%, in the Childrens Court of Queensland 94.1%, and in the District and Supreme Courts 53%.

- ❖ The most common offence type remains theft and break and entering (including car theft) with 11,852 charges down from 14,315 in 1997-1998.
- ❖ There was an increase in assaults (including sexual assault) from 1,764 in 1997-1998 to 2,020 in 1998-1999. Robbery offences increased from 271 to 306, while property damage decreased from 2,186 to 1,548.
- ❖ Drug offences decreased slightly from 1,177 to 1,126, whilst cautioning for drug offences decreased by 26% from 2,321 in 1997-1998 to 1,715 in 1998-1999.
- ❖ There was one juvenile dealt with for murder in 1998-1999 as compared with 5 in the previous year. Two children were dealt with for dangerous driving causing death, and five for manslaughter, up from three in the previous year.
- ❖ The proportion of boys to girls before the courts in 1998-1999 was 83% boys to 17% girls. The number of girls increased from 1,031 to 1,169 (13.4%).
- ❖ 15 and 16 year olds make up the largest offending group (386 out of 846) while 17+ year olds (dealt with as juveniles) comprises 234 out of 846.
- ❖ There was a general increase in the number of younger children (10 to 13) coming before the Courts (from 52 to 75).
- ❖ Of the victims of juvenile crime the majority (67.6%) were under 20 years of age. Only 1.9% of victims was aged 55 or older.

Executive Summary

A. Comment of Crime Trends

The statistical trends do not support any suggestion that we are in the midst of a juvenile crime explosion. There was a slight increase in the number of juveniles appearing before the courts, however the number of charges against juveniles dropped by 8.3% from the previous year. Significantly, there has been a substantial decrease in the number of serious charges being dealt with by the higher Courts. In the District Court there was a drop of 36% from 6,250 to 3,994. In the same period there has been a significant drop of 17.8% in the number of cautions administered by police officers. There was a decrease in offences of theft and break and enter (including car theft) from 14,315 to 11,852 whilst there was an

increase in assaults (including sexual assault) from 1,764 in 1997-1998 to 2,020 in the year under review. The Childrens Court of Queensland has the highest disposal rate of all Courts (94.1% within three months) as compared with the Magistrates Courts (82%) and the District Court and the Supreme Court combined (53%). The Magistrates Courts deal with the bulk of juvenile offenders (87.9%) whilst the Childrens Court of Queensland deals with only 1.5% of all juvenile offenders.

B. Move to Childrens Court

In May 1999 the Childrens Court of Queensland commenced sitting at the Childrens Court complex at 30-40 Quay Street. The Court continues to hear urgent bail applications and sentence reviews and some other matters as required in the main District Court complex, outside gazetted hearings of the Childrens Court.

C. Right of Election

Despite a strong commitment to the Court by Youth Legal Aid and the specialist youth advocacy groups during 1999, use of the Court continues to decline. The majority of young people charged with serious offences continue to elect the District Court as the court of final disposal. This is so despite the many advantages of the specialist court as discussed in this report. The workload of the Court at present does not justify its separate existence as a specialist court, and unless the trend is reversed, the Court should be disbanded, and the workload merged with the District Court.

D. Restorative Justice

Queensland continues to cautiously adopt community conferencing as both a diversionary and sentencing option. Other states such as New South Wales and South Australia have enthusiastically embraced restorative justice principles, particularly by the use of community conferencing and other diversionary methods. These processes are designed to confront the young offender very soon after the commission of the offence with the consequences of his or her behaviour and to make the young person accountable for his or her conduct; and are intended to provide restoration, and where appropriate, restitution for the victim of the offence. An essential requirement of community conferencing in Queensland is the consent of the victim. Community conferencing pilot projects in Logan, Beenleigh and Palm Island have been in operation since 1997 and have been evaluated and the results suggest positive outcomes. In 1999 community conferencing was extended to Cairns.

E. Judge McGuire

The report contains a farewell to Judge McGuire who was President of the Court

from its inception in 1993 until 5 January 1999.

F. Childrens Court Magistrate

For the first time the Annual Report contains a report from the Childrens Court Magistrate Mr Tony Pascoe.

G. Aboriginal Issues

The Report discusses the application of restorative justice principles in remote Aboriginal communities, in light of the circuits to some of these communities by Judges Robertson and Bradley.

H. Young Sex Offenders

The report recommends that a sex offender's treatment programme for juveniles be developed as a matter of urgency.

<h2 style="text-align: center;">Some Changes</h2>
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With the co-operation of the Chief Judge of the District Court, the proceedings of the Childrens Court of Queensland were transferred in May 1999 from the District Court complex in George Street to the Childrens Court complex at 30 - 40 Quay Street. The Court building in Quay Street is purpose built for Childrens Court matters. The courtrooms are designed more appropriately for hearings involving young people than the drab and austere criminal courts in the main District Court complex. The move was undertaken after wide consultation with both Departments, other judges, specialist youth advocacy groups including Youth Legal Aid and the Childrens Court Magistrate Mr Tony Pascoe. Mr Pascoe is permanently based in the Childrens Court complex.

There were a number of good reasons why I believed the change of venue was necessary.

I was aware that on a number of occasions where juveniles were required to appear initially in the Childrens Court complex and then later in the District Court, confusion arose as to the correct venue and delays often resulted. I took the view that it was inappropriate for young people to be dealt with in courtrooms designed for adults. The move has freed up a criminal court in the old complex for adult work for 12 weeks of the year.

I record here my thanks to the Court Administrator and the State Court Reporting

Bureau and the staff of the Childrens Court for facilitating the move.

From time to time it is still necessary for young people to appear before the Court in the George Street complex. These appearances arise outside the gazetted hearing weeks for the Court and are usually occasioned by a degree of urgency such as a warrant arrest, a bail application or urgent sentence review. Sometimes sentences are conducted in the old building for the convenience of the parties and legal representatives.

The move has lead to a real spirit of co-operation between myself and the Childrens Court Magistrate Mr Tony Pascoe. His advice and assistance have been invaluable to me in my inaugural year in this position. He has a wealth of knowledge about the law including the development of legislation and he is always willing to give me the benefit of his long experience in the jurisdiction.

At my invitation and for the first time, he has provided a report which I have incorporated into this report.

His role, and indeed the role of Magistrates throughout Queensland, is essential to the proper administration of juvenile justice in our state. He and I are developing strategies, including continuing legal education for other members of our Courts, to encourage consistency of approach particularly in sentencing.

The Department of Families, Youth And Community Care

Since my appointment, I have set out positively to develop an appropriate and professional relationship with the Department and its relevant officers. Some argue that as President of the Childrens Court of Queensland, I should have little or no contact with Departmental officers outside the actual Court processes, for the reason that such people are part of the process whereby facts are placed before the Court and sentencing options determined. It is argued that any contact beyond the courtroom has potential to compromise the independence of the Court.

The role of the Department in the preparation of pre-sentence reports is enshrined in the Act (s.110). The reports are an essential tool for the Court in determining the appropriate sentence particularly in the more serious cases. The reports are made available to the parties prior to the final determination. The recommendation

of the report writer is important but not binding on the court. If the facts set out in the report are challenged by any party, the dispute can be determined in accordance with s.111 of the *Juvenile Justice Act*.

Since my appointment I have met frequently with Departmental officers and particularly those involved in the Youth Justice program under the able leadership of Mr Steve Armitage. I have also taken part in a number of community forums organised by the Department on issues such as bail for children and children in watchhouses, and the 1999 review of the *Juvenile Justice Act*. I have frequently been consulted on a range of issues, and at times I have made submissions concerning proposed legislative changes.

Never, at any time, has there been the slightest suggestion in these many contacts, that thereby my independence could be compromised. Because of the role of the Court in the juvenile justice process, it is essential that lines of communication through me as President and the Department be maintained. Unlike any other jurisdiction, the proper disposition of juvenile justice cannot be the province of one person or a group of people. The whole spirit and philosophy of the relevant legislation requires a multi-disciplinary approach, and the Court is simply one unit in the whole. I intend to continue such contacts as and when required.

In court, I have been ably assisted by the representatives of the Department. It is unfair to single out particular officers. It is suffice for me to say that their contribution throughout 1999 has been of a consistently high professional standard. I confess that I was a little apprehensive at the changes proposed in 1998 to the practice standards for the content and format of pre-sentence reports. For my part, I can say unequivocally that the revision of the standards in October 1998, has lead to the pre-sentence reports being more relevant and therefore more helpful than hitherto was the case. On no occasion in 1999 has the factual accuracy of a report been challenged, which is testimony to the professionalism and competence of the officers involved.

The Future of the Childrens Court

Judge McGuire was outspoken about this issue, in all of his reports. He was consistently critical of the right of election. A juvenile committed for trial or sentence for a serious offence has the right to elect the jurisdiction of the Childrens Court of Queensland or the District Court, except if the offence is a Supreme court offence. Judge McGuire's criticisms have frequently been misrepresented as a call to abolish the right to be tried by a judge with a jury. At present, a young person

who wishes to have a trial can elect trial by judge and jury in the District court, or trial by judge alone in the Childrens Court of Queensland. In 1997 and 1998 as far as I can ascertain no trials were held in Brisbane before a Childrens Court Judge sitting alone. In 1999 I have conducted four trials however only one proceeded through to a verdict.

As far as I am aware, Judge McGuire never advocated the abolition of the right to trial by jury; rather he argued that as the Childrens Court of Queensland is said to be a specialist Court, if a young person elects to have a trial, the trial should be held before a specialist Childrens Court Judge with a jury or without a jury at the child's election.

The vast majority of young people who elect to be dealt with either by the District Court or the Children's Court of Queensland plead guilty. In his fifth annual Report Judge McGuire did not mince his words:

“The public perception is that the Children's Court of Queensland deals with all indictable offences committed by magistrates to higher courts. It would, I suspect, come as a great surprise to the trusting public to learn that in fact the new Court deals with a minority of such offences and that the great majority is spread over a large amorphous system beyond the control of the head of the Childrens Court of Queensland.

I think the time is long overdue for the removal of this grave misapprehension, nay, deception (albeit unintended).

The proper administration of juvenile justice will suffer, and suffer irretrievably, if the right of election continues unabated.

I am completely perplexed by the inaction of governments, past and present, to abolish the right of election. The argument that is sometimes put forward that there is a resource implication in the abolition of the right of election is utter and complete nonsense. The volume of juvenile cases in higher courts remains constant no matter what court they are dealt in. If the Childrens Court of Queensland is to be a specialist court, as it is trumpeted to be, then there can be no reason in logic or commonsense why all matters within the court's jurisdiction are not channeled to it.

As head of the Childrens Court of Queensland I absolutely refuse to accept responsibility for something over which I have no control. I trust steps will be taken to remedy this most unsatisfactory situation without further delay.” (page 17 Childrens Court of Queensland Annual Report 1997-1998)

My concern is that the Court is becoming irrelevant because it is simply not being sufficiently used by those for whom it was established in the first place.

Judge McGuire reported last year that in 1997-98 there was a 32.8% reduction from the previous year in the number of defendants coming before the Childrens Court of Queensland (from 201 to 135). The same trend has continued in 1998-1999, although not at such an alarming rate. As can be seen from the statistical tables, the number of young people selecting the court has dropped by 11.1% (from 135 to 120). The decline must also be viewed in light of a slight drop in referrals to the District Court (from 876 to 839).

The reality is that a significant number of young people are not selecting the Court as the court of final disposal. I think that everyone recognizes that the vast majority of young defendants make this election on legal advice. Judge McGuire offered his own views as to why the referrals to the Court were declining at such an alarming rate:

“The problem has been compounded by the attitude adopted by a small subversive element within the bureaucracy who took advantage of the absurd right of election rule to divert cases properly the responsibility of the new court away from it to the District Court for the ostensible reason that the new court was setting standards and imposing sentences which were considered by this small but influential element to be “too hard”. I utterly refute any such suggestion.”

In my brief time in this position, I have not had the same experience. In 1999, I'm aware that the specialist youth advocacy groups such as the Youth Advocacy Centre and the lawyers within Youth Legal Aid have made much greater use of the Court than in the past.

I think the explanation for the decline is quite simple. Unless and until the private firms who specialise in criminal legal aid work, and the wider profession who occasionally act for young people charged with criminal offences, advise their clients to elect the jurisdiction of the Court, the trend will continue. In my view, the problem can be addressed to some extent by constantly educating the profession about the Court and its particular advantages to young people.

There has been a growing recognition of the need to have lawyers in this area who are trained specialists in the jurisdiction. A credible specialist court encourages this development. The need to treat juvenile crime as a specialist area has been recognised for many years in other States and other countries such as Canada and New Zealand. The Legal Aid Office has responded very positively and now has a

number of highly trained specialists youth advocates in the Youth Legal Aid Unit under the able leadership of Mrs Sue Ganersan. The Director of Public Prosecutions has been slower to respond, with a very high turnover of prosecutors appearing in the Court, most of whom do not have specialist training in the jurisdiction. This is not to challenge their competency which is adequate, rather to emphasise that a change in culture and attitude is overdue across the profession, both public and private.

The Department has played an important role in encouraging the development of specialist advocates to the Childrens Courts. Recently Mr Pascoe and I spoke at a joint training seminar for Youth Advocates organised co-operatively by the Department and the Legal Aid Office of Queensland. The seminar was extremely well attended. The Department has also recently issued the Third Edition of "Juvenile Justice – A Legal Practitioner's Guide" a joint publication of the Department and the Legal Aid Office of Queensland.

The profession has a responsibility to understand the advantages of advising clients to use the specialist Court. At present, there are three judges (including myself) who hold commissions in Brisbane. We are all very familiar with the relevant legislation and the associated jurisprudence concerning children, emanating particularly from the Court of Appeal. As a result there is hopefully more consistency in sentencing outcomes. I have adopted a practice of regularly communicating with all Childrens Court Judges throughout the State; informing them of particular decisions and developments in the law. I believe this has encouraged a healthy exchange of views and ideas, which is ultimately for the benefit of young people before the Court and the community. At present, the Judges plan to have a one day conference prior to the commencement of the Annual District Court Conference in 2000, to focus on specialist issues. A number of Judges of the District Court have complained to me that it is inappropriate that they are required to sentence young people often, in the midst of a busy sentencing day, along with adults, with the need therefore to apply the quite different sentencing regimes contained in the *Juvenile Justice Act* and the *Penalties and Sentencing Act*.

The other major advantage of the court relates to speed of disposition and access. It is axiomatic that the sooner a young person is punished for an offence the more effective the punishment is likely to be. I have adopted a practice, well known now by the specialist lawyers who regularly appear in the court, of hearing bail applications and sentence reviews and indeed sentences at any time, provided that I am not on circuit or otherwise away from Brisbane. The procedures for bringing

such matters to court are less formal than adult matters and are flexible. As a consequence, I frequently hear such matters at 9:15am or 2:15pm irrespective of my commitment to the adult Courts. By way of example in a recent week in which I conducted two civil trials, I was able to hear five bail applications, a sentence review and a number of urgent sentences. Judges O'Brien and Trafford-Walker have a similar flexible attitude. The Director of Public Prosecutions office and in particular Mr Glen Cash of counsel and Ms Kerrie Miles, has been extremely co-operative in facilitating this process in the interests of justice. Youth Legal Aid has established a system whereby its trained youth advocates will take referrals from anywhere in Queensland for the purposes of undertaking a bail application or urgent sentence review. ATSILS has adopted a similar programme for young Aboriginal or Torres Strait Islander offenders. The young person's solicitor will continue to act for the client in relation to the matters before the Court. As a result, I have heard a number of bail applications in relation to young people who were before the Childrens Court in Mt Isa, and other regional centres.

All Judges have had the frustrating experience of being required to sentence a young person who has already effectively served his or her sentence in a detention centre on remand. Such incidents are sometimes examples of justice delayed justice denied, and are a blight on our system. Of course, some young people, by their conduct, do forfeit the right to bail; however it is simply unacceptable that young people spend more time in detention centres than is justified by the criminality of their behaviour, or indeed, as in some cases, which is not justified at all because the defendant is ultimately acquitted, or the charges are dropped or greatly reduced. In a recent case in my District Court capacity I was called on to sentence a 16 year old boy for wilful damage to a shop front window. He had a lengthy criminal record and had served previous periods of juvenile detention. He was initially charged with Robbery whilst in company and was refused bail. By the time the case had proceeded through the system, he had served almost a year in detention (equivalent to a two year sentence); for an offence that objectively called for either a short custodial or a non-custodial sentence.

Disposition of cases through the Childrens Court of Queensland is generally much faster than the District Court. In 1998-1999, 94% of all indictments presented in the Childrens Court of Queensland were disposed of in three months, whereas in the District Court the figure was 53%. By six months all matters in the Childrens Court of Queensland had been disposed of as compared to 12 months in the District Court of Queensland.

Judge McGuire was critical of successful governments for not abolishing the right of election. In my submission to the Government, as part of the 1999 review of the operation of the *Juvenile Justice Act*, I have argued that young people committed to a higher Court should have the right to elect trial by Childrens Court Judge with or without a jury and no other right. I recognise the arguments for and against, particularly in relation to some remote areas of Queensland which do not have a specialist Childrens Court Judge. However these problems can be readily overcome by establishing Childrens Courts circuits in the same way as District Court Circuits are presently conducted by that Court.

I acknowledge that the decision is a policy decision and entirely a matter for Government.

The fact remains, that if there is no change, and the profession continues to fail to recognise the advantages of the specialist Court, the Court will simply become irrelevant.

The cold hard reality is that if there is no work, then the Court should be disbanded. When I commenced my first sittings in 1999 as the President of the Childrens Court of Queensland, there were nine matters on the list, involving about half a days work. Since then the work load has grown steadily, but still no where near the rate capable of justifying 12 weeks in the calendar.

If there is no change to the right of election and the same trends emerge in the next financial year, then in my opinion the Court should be disbanded and the work load merged with the District Court.

Restorative Justice

Those with an interest in the statistical content of this report, will note a slight increase in the number of community conferences. Conferences can be used as a diversionary method by reference by a police officer, or as a sentencing option either by way of indefinite referral (s.119B) or by way of pre-sentence referral (s.119D) by a Court. In Queensland either option is subject to the consent of the victim if there is a victim.

Community conferencing is an aspect of a restorative justice.

Conferencing has been a central plank of juvenile justice policy in New Zealand since 1989 and since 1986 in Canada. New South Wales in 1998 has embraced the

process as a central aspect of juvenile justice policy. In South Australia conferencing has been extensively used as a diversionary method for young offenders since 1993.

Restorative justice principles essentially recognise the utility of dealing with criminal behaviour by young people in a way which:

- (a) causes the young person and his or her family to recognize and understand the real effects on other people of their criminal conduct;
- (b) involves the victim and the victim's family and supporters in the conference in a manner designed to achieve restoration reconciliation and restitution;
- (c) allows the victim to be involved in the resolution of the matter and provides a means whereby a child offender can apologise to the victim.

In 1997 three conferencing pilot programs were commenced in Queensland located at Ipswich, Logan City and Palm Island.

In 1998-99 there were 123 young people conferenced in Queensland. Ten young people were referred to community conference at Palm Island (seven indefinite court referrals, and three police referrals). The Logan and Ipswich programmes each conferenced 55 matters. These included five indefinite court referrals and four pre-sentence referrals. The majority of referrals were police diversionary referrals. Of young people conferenced in South East Queensland, 81% were males, and 12% were identified as being of Aboriginal or Torres Strait Islander descent.

Conference outcomes during the 1998-99 year included verbal apologies (77%), written apologies (45%), commitments not to re-offend (30%), direct restitution (22%), work for the victim (14%) and voluntary community work (16%).

For those interested in the theoretical underpinning of restorative justice I recommend a paper presented by Professor John Braithwaite of the Australian National University at the Caxton Legal Centre Restorative Justice Conference in Brisbane on 22 and 23 July 1999.

The community conferencing provisions were proclaimed in 1996. The Government has been understandably cautious in embracing what seems to some

to be a radical departure from conventional methods of dealing with crime. Conferencing is now available in Cairns; which means that 25% of the State's youth offending population, now have access to this facility.

The Queensland scheme involves the conferencing co-ordinator as part of the Department. In other jurisdictions, e.g. South Australia and New Zealand, the conferencing coordinators are independent of the relevant Families Department, and form part of the Courts Division. This is seen in those jurisdictions as very important in convincing users of the independence of those involved. It is an important policy issue that requires further public debate.

I have made two pre-sentence referrals in 1999 and Judge Bradley in Cairns has also made a number of referrals. The difficulty for the Childrens Court of Queensland is that often many months have elapsed since the offence was committed, and the effectiveness and or utility of a conference at that stage is greatly diminished. Indeed my first referral pursuant to s.119A was unsuccessful because the convenor was unable to locate the victims of the crimes which had been committed by the young person some nine months previously. The second did not proceed because of the victim's wishes; however the outcome produced a positive response from all concerned, including the victim who indicated that he was prepared to receive a written apology from the offender.

In a paper entitled "Restorative Justice – A Judges Response" delivered at the Caxton Legal Centre Conference, I recommended a continued cautious adoption of principles of restorative justice as an additional method of dealing with juvenile offenders. In my paper I highlighted some of the problems that have arisen in New Zealand over the decade since 1989, which were set out by the Chief Judge of the District Court, His Honour Judge Ron Young in a paper delivered to an International conference on the Youth Justice in Focus held in Wellington, New Zealand in 1998. In my paper I said this:

"I think the integration of principles of restorative justice into the community response to juvenile crime should proceed cautiously. Most of you know, better than I, that the problem is extremely complex; there is no panacea. If the overall aim of juvenile justice policy is to reduce or prevent crime then the reality is that the present system is not working; and, as a community, we need to develop a much more creative and sophisticated response. This has got nothing to do with "going soft" on juvenile crime, it is simply to recognise that the present system of dealing with young offenders, which essentially is retributive in nature, is not working as well as it should and could be."

I favour a cautious approach for a number of reasons. Despite frequent criticisms, some justified, some not, the judicial system is respected by the public. Judicial decision making is conducted openly; and reasons for decisions are exposed for criticism either in the public domain, or in appellate courts. The public has confidence in this form of justice. Diversionary methods, such as conferencing and cautioning involve discretion exercised by police officers; and although there are safeguards; the process is not as exposed as the judicial method. There is also the problem of perceived inequality before the law. A basic principle of a criminal justice system in a democracy is that persons are to be treated equally. Again, there are safeguards built into the process; but we must be vigilant to avoid any suggestion of unequal treatment of persons whose criminality and personal circumstances are basically the same. Ironically, because conferencing is not presently available throughout the State some young people will go through the traditional court process, whereas others, for similar offences, will be conferenced in areas where the infrastructure is in place. In South Australia the diversionary option is available only for “minor offences”; however there is some interpretative latitude applied in this regard. In New Zealand the family group conference procedure for more serious offences is, in effect, supervised by the Youth Court. I encourage more public debate on these measures, which I think hold much promise for a more effective juvenile justice system.

Western Australia and Northern Territory have adopted mandatory sentencing for certain juvenile offenders. The essential features of the legislation in these States is referred to in the Fifth Annual Report of the Childrens Court of Queensland at page 28.

In the United States specialist Childrens Courts have, to a large extent, been scaled back in favor of treating child offenders as young adult offenders. The criminological and sociological evidence of the effectiveness of such methods is not encouraging if such methods are designed to reduce juvenile crime and reduce the community’s fear of crime. A number of States in the U.S. have reverted to Victorian English models of shaming and humiliation.

The cost to the community of such measures is astronomical. In most U.S. states in 1999 more public money is spent on corrections than on education. In the Northern Territory 15 or 16 year old offenders are receiving mandatory jail sentences of 28 days at enormous financial cost to the community, and with the somewhat dubious expectation that thereby they and others will be deterred from re-offending. In Queensland, New South Wales and South Australia these

juveniles could be referred to a conference where the offender must come face to face with his or her victims. At the conference they will undoubtedly hear of the distress they have caused, and as I have noted, the outcome may be unpaid community work for the victim or within the community. The cost to the community is miniscule compared with the cost of jailing that person for 28 days, and early evaluation suggests the outcome for the community may be better.

These issues are emotive as I well recognise. Very few people are untouched by the problem of juvenile crime

In my view, conferencing and other practical applications of restorative justice principles present a more equitable and effective response to the problem, than the punitive models adopted elsewhere. In my experience, particularly as I talk to parents and citizens groups about these issues, most people in our community recognise that the problem of juvenile offending has a very complex genesis, calling for a sophisticated and mature response. I find that most people are prepared to acknowledge that many of the young people who commit serious offences are almost doomed to such behaviour by a dysfunctional and abusive upbringing. All of us are guilty of judging others by our own standards and on the basis of our own experience. In my case I had a relatively stress free upbringing in a country town. My parents cared about me. If I had been sexually or physically abused; or denied even a basic education; if I'd witnessed alcoholism and drug abuse and domestic violence in my home; would it be surprising if at 15 or 16 I was angry and anti-social?

I recognise that there are some children who must be jailed, even if only to protect the community from their activities. In the Fifth Annual Report Judge McGuire said:

“So far as juvenile offenders are concerned, a sentence of detention will be reserved for those guilty of serious crimes, and for those repeat, incorrigible and intractable offenders who have proved to be impervious to community-service orders and who treat the courts with defiance and contempt.”

I agree with his comments. The evidence from New Zealand and Canada does suggest that at least some of these young people may not embark on a destructive cycle of criminal activity; if they are diverted early by constructive and creative approaches such as conferencing.

It was refreshing to see a bipartisan approach to this issue at the Caxton Legal Centre Conference in July 1999. As well as a number of Ministers and Government

members who spoke positively about the issue, the Shadow Attorney General the Honourable Lawrence Springborg delivered a thoughtful paper supporting the concepts and encouraging the community to look for more creative responses to the juvenile crime issue.

I think that sentencing and diversionary options based on restorative justice principles will become mainstream in most Australian jurisdictions within the next 10 years. In New Zealand the results are positive, as are the results from the intensive research of the scheme in South Australia, as indeed is the early evaluation of our own pilot scheme. If this is so, certainly one outcome will be a lot less money being spent on building more juvenile detention centres. As a barrister observed recently in another context “only time will tell”.

Some Issues

(a) The Role of the Independent Person

In my submission to the *Juvenile Justice Act* Review Committee I have suggested that consideration be given to setting out in s.9E of the Act a detailed description of the role and responsibilities of the independent person. Consistently with the general principle stated in s.4(b):

“Because a child tends to be vulnerable in dealings with a person in authority a child should be given the special protection allowed by this Act during an investigation or proceeding in relation to an offence committed, or allegedly committed, by the child;”

s.9E provides that:

“the court must not admit into evidence against the “child” a statement made or given to a police officer by the ... child, unless the court is satisfied that there was present at the time and place the statement was made or given a person mentioned in subsection (2).”

Section 9E(2) sets out the categories of persons who may be present in satisfaction of this requirement. They include the parent of the child or a legal practitioner acting for the child or an adult nominated by the child. The role and the responsibilities of this independent person are not stated in the Act. It has been left to the Courts to define the role by reference to the particular facts and circumstances of individual cases. Since the enactment of the *Police Powers and Responsibilities Act 1997*, police officers are also required to comply with s.103

and 104 in particular relating to interviews with children. These sections introduce the concept of an “interview friend” which presumably is a similar role to that of the independent person. The responsibilities of the independent person have been set out in a number of publications by the Department. In *R v W* (Ind. No. 2708 of 1995, unreported judgment of the District Court) Judge Pratt QC referred to one such Departmental publication which set out the independent person’s role in these terms:

“It should be noted that your role as an independent person is to ensure as far as possible that the person being interviewed is treated fairly, and that any statement he makes is made voluntary. He should be and remain at all times impartial to the officers concerned as well as the person being interviewed.”

There have been a number of decisions of the Court of Appeal dealing with the role of the independent person. Mere formal compliance with the section is not sufficient. In *R v C* (unreported judgment of the Court of Appeal, No. 437 of 1996; 22 April 1997), the statements made by the child in the presence of the independent person, who was an adult chosen by the child, were held to be inadmissible because the person was found to be in an unfit physical and mental condition to act in the role, and was an unwilling and disinterested participant in the process. In *R v C and O 15 Queensland Lawyer Reports 45*, by reference to the predecessor in the Act to s.9E, Judge Pratt QC noted that a clear legislative intent of (s.9E) was to “ensure that a child was informed of the right to be accompanied by an adult from a prescribed category who is seen by the child as providing comfort and support”. I recommend that consideration be given to defining more precisely the role and the responsibilities of the independent person in s.9E.

(b) Sentence Reviews

Part 4 division 6 of the Act provides a young person sentenced in the Magistrates Court with the option of applying to review the sentence before a Childrens Court Judge. In addition to the child, other persons, including the Chief Executive, the complainant or arresting officer for the charge for which the sentence order was made, can apply to review a sentence order made by a Childrens Court Magistrate.

The option provides an inexpensive and expeditious way to review a sentence and is particularly appropriate in relation to short sentences of detention. A Childrens Court Judge may review the sentence irrespective of whether or not there has been any error in principle including a mistake of fact or law. If the sentence is reviewed the Judge is limited to the sentencing options open to the Magistrate. The option is now frequently used by children

represented by the specialist youth advocates from Youth Legal Aid and the other community youth advocacy groups. It is infrequently used by the wider profession, which is surprising given its utility. It does not affect the young person's right of appeal in the usual way.

(c) Juvenile Sex Offenders

The statistical tables record a significant increase in the number of sexual offences (including rape) involving juveniles from 119 to 248. These figures may be misleading as a number of these offences were disposed of in a Magistrates Court by way of dismissal, and therefore do not constitute the commission of a proved offence. Commentators should therefore be very careful about over reacting to these apparent trends.

However, in 1999, I have sentenced three juveniles for serious violent rape; and the problem of juvenile sex offending must be confronted. C was sentenced by me for the violent rape and grievous bodily harm of a five year old child after a trial in the District Court with a jury. His appeal against conviction was dismissed. C was just 14 at the time of the offence; with a substantial criminal history for property offences. H pleaded guilty to the rape of a 12 year old child who he abducted and attacked whilst she was on her way home from school, in the middle of the day. He also pleaded guilty to sexual assaults on two older girls in the same area. He had no previous convictions and was 16 at the time of the commission of the offences. K pleaded guilty to the violent rape of two adult women in their own homes. He was 16. He has appealed against sentence. In all cases the victims were strangers to the juvenile offenders. The offences were serious and disturbing and characterised by extreme violence.

Unlike South Australia and Victoria, Queensland does not have a sex offenders treatment program specifically developed to deal with juvenile offenders. The extensive literature on the issue of sex offender treatment programs, suggests that early intervention is an important factor in achieving successful outcomes. The South Australian Mary Street programme has received strong support from the Courts and other stake holders. 35% of referrals come from the Court or Police or the conferencing co-ordinator. The majority of referrals are from the relevant Families Department. The programme does not have a presence in the juvenile detention centres. The Victorian programme is the subject of a paper delivered at the Australian Institute of Criminology "Children and Crime" conference in Brisbane in June 1999. This programme has been positively evaluated, and it is highly regarded by the Childrens Court Magistrates. The programme is available for young people in detention centres. I would urge the Government to consider

the development of a programme specifically designed to treat juvenile sex offenders in detention centres and in the community.

(d) Aboriginal Issues

Like most Queensland communities many aboriginal communities encounter major difficulties with juvenile offending. In such communities the problem is often exacerbated because of the relatively small size of the community, and because of the close ties of kinship which require adults to take responsibility for young relatives. As is well recognised, many of the communities have serious social problems relating to boredom, high youth unemployment, alcoholism and drug and substance abuse and alienation. For some time aboriginal community elders and leaders have highlighted these problems, and a number of reports have been made to Government.

In April 1999, I conducted the first ever circuit of the District Court of Queensland to the remote Gulf communities of Mornington Island, Normanton and Domagdee. Since then Judge Sarah Bradley of Cairns has conducted a circuit to Kowanyama on Cape York, and another circuit to the Gulf communities. These circuits will be repeated in 2000. The circuits dealt only with adult offenders. They were not circuits of the Childrens Court of Queensland, however at each community both Judge Bradley and I met with the community elders and leaders to discuss with them their developing community justice groups, and ways and means whereby the community could become more involved in an active way with assisting the Court in formulating sentencing orders and in administering those orders. It was apparent to both of us that these communities were in a very good position to deal with their young people involved in crime, provided that their involvement was facilitated by the law. In her earlier life as a Magistrate in Townsville, Judge Bradley had extensive experience in the application of restorative justice principles, such as community conferencing and mediation, to Aboriginal people in the pilot project conducted on Palm Island.

The experience of visiting the three communities has convinced me of the importance of appropriately involving the community in the pre-Court and sentencing process, and also in the administration of sentencing orders. Community conferencing, in a form acceptable to the various communities and community justice groups, may provide an avenue whereby these ideas can be put into practice, provided that appropriate resources are made available. My views find strong support in the remarks of a highly respected aboriginal elder recorded at page 87 of the Fifth Annual Report:

“I hold strongly to the view that elders of communities should be given

greater authority to administer justice or direct how justice should be administered... I support Judge McGuire's proposal that Aboriginal elders and other respected persons be given statutory recognition as supervisors of probation and community based orders... It is plain that the strength of Aboriginal culture is the key factor in the success of this proposal (involvement of elders and community leaders). We elders can communicate with young offenders in ways that are more readily understood; we can exert the authority of standing in the community, pass on our own life experience, and pass on our knowledge of what is acceptable behaviour in Aboriginal society. These are potentially very powerful resources for the juvenile justice system."

In my lengthy meeting with the elders and community leaders at Mornington Island on the first morning of the circuit, I was deeply impressed by the contribution by one of the male elders who had spoken little during the meeting. He told me that his son was in Stuart Creek (a correction facility outside Townsville almost 900 km from Mornington Island) serving a sentence. His only contact with his son was by telephone. The young man was separated from his family and community; but was quite happy with the facilities and conditions. The elder's point was that jail did not seem to be much of a deterrent, nor was it corrective in its effect – he said that the elders could provide a form of punishment and or correction that would be much more effective and much more relevant to his son than a period in jail; an involvement of community in the process would carry powerful elements of shame, deterrence, reformation and reconciliation.

I do not advocate unequal justice for our citizens; however, it is well recognised that the Aboriginal members of our community have suffered disproportionately to most other members of the community under our criminal justice system. This is why I favour close consideration of the proposals in the Fifth Annual Report and the proposals that I am now making concerning community conferencing and application of restorative justice principles in this area; and empowering the elders and leaders of these communities to be able to assist the Courts and authorities in dealing with young offenders within their own communities.

(e) Schools and Crime

At the conference in Wellington, New Zealand, in 1998 on Youth Justice in Focus, I was surprised to learn that Queensland has a very high rate of suspension and expulsions from its schools. Certainly, my experience is that most of the young offenders who come before my Court, are not in school. Many have been expelled or suspended from school. My experience also informs me of the immense difficulties facing teachers and school staff in dealing with disturbed and disruptive children in the school environment. Recently I attended a meeting of the Australasian Heads of Youth Courts in Adelaide. One of the speakers referred to

some interesting research; which suggested that schools which are able to afford counsellors; both for children and parents and caregivers; achieve a much lower rate of school evictions, than for schools without such people. This is not surprising. In my second year, in this position, I hope to have more dialogue with education professionals, with a view to formulating strategies designed to reduce the number of children being evicted from the school system. In a number of meetings I have had with the Childrens Commissioner, Robyn Sullivan, I have been encouraged by her recognition of this problem, and her determination to do something about it.

A Report from the Brisbane Childrens Court Magistrate

I would like to thank the President for the opportunity to add a few words to his Annual Report.

The *Childrens Court Act 1992* provides that a Stipendiary Magistrate may be appointed a **Childrens Court magistrate** by the Governor in Council on the recommendation of the Attorney General.

A Childrens Court magistrate has the power and authority and jurisdiction of a Magistrates Court under the provisions of the *Justices Act 1886*. If a Childrens Court magistrate is not available, any stipendiary magistrate may constitute a Childrens Court.

JURISDICTION

Criminal

The Childrens Court magistrate has jurisdiction:

1. to hear and determine all simple offences.
2. Upon the defendant's election, to hear and determine an indictable offence (other than a serious offence as defined in s.8 of the *Juvenile Justice Act 1992* (the Act)) in a summary way.
3. To conduct committal proceedings in relation to indictable offences.

Child Protection

Applications for care and protection or care and control under the *Children's Services Act 1965* are heard before a Childrens Court magistrate. The new *Child Protection Act 1999* which is expected to commence within the near future will

extend the role of the magistrate in this important jurisdiction.

Miscellaneous

The Childrens Court also has jurisdiction to:

1. dispense with consent in limited circumstances under the *Adoption of Children Act 1964*.
2. dispense with consent to change of surname under the *Registration of Births, Deaths and Marriages Act 1962*.

General

The Childrens Court is conducted in a less formal manner than the traditional Magistrates Court. The proceedings are conducted in private and reporting of identifying particulars is prohibited. The Act requires the court to ensure that the child offender and his/her parent understand the nature of the proceedings as well as providing them with the opportunity to be heard and to participate. A parent is expected to attend the court hearing when a plea is entered or committal proceedings are conducted. My practice is to address the child and parent and encourage them to discuss the circumstances behind the offending behaviour and their expectations for the future. The defendant is required to indicate if he/she understands the nature of the sentence imposed and the consequences that will flow from a breach of the order. This inclusive process appears to have a favourable impact on those involved.

Child Offenders and the Bail Act 1980

Part 3 of the Act applies the provisions of the Bail Act 1980 to child offenders. Section 16(3) can have the effect of placing a child as young as 10 years in a position where bail will be refused unless sufficient **cause** is shown to justify the child's release on bail. A conditional Bail Program is usually prepared by the officers of the Department of Families, Youth and Community Care which will normally secure the release of the child. However, depending on the circumstances of the offence and the child's history, where the program does not identify the availability of a secure residence for the child with acceptable supervision being exercised, bail may be refused as **cause** has not been shown. This results in the child being held on remand in detention because of lack of support within the community. The "**show cause**" provisions of the Bail Act are worthy matters for review.

Jurisdiction – expansion

I have briefly referred to the general criminal jurisdiction of the Childrens Court

(Magistrates).

At present the child offender has a right of election for an indictable offence (other than a serious offence). In circumstances where the defendant has elected the jurisdiction of the District Court and has been refused bail he/she may spend a lengthy period in detention on remand. If the same child had elected to have the matter dealt with in a summary way by the Childrens Court magistrate the time on remand would be reduced considerable. While there are a number of factors which may influence how the child's election is exercised (including the funding policies of the Legal Aid Office) there are a number of "non-serious" indictable offences which could be adequately dealt with in the Childrens Court (Magistrates).

The Childrens Court is considered to be a specialist court for child offenders. The right of election to the District court ensures that a large number of cases are removed from this jurisdiction. It may now be appropriate to consider the consequences flowing from existing jurisdictional divisions.

Child protection issues

Care and Protection applications are mentioned each day at this court. Upon an application being lodged the court is required to consider issues of temporary custody, family assessment and medical assessment. If after the necessary reports are compiled and considered the application is not resolved I will order a pre-hearing conference which enables the issues in dispute to be clearly identified. The conference also allows the parties the opportunity to resolve those matters. At the conclusion of the conference a report is put before the court which will then make a final order or list the application for hearing.

During 1998-1999 this process has proved to be most successful with all applications being finalised without the need for a formal court hearing. Criticism has been leveled at the delay caused by this process, however I am satisfied that the welfare and best interests of the child are best served by allowing all matters to be fully and frankly discussed with the assistance of the Conference Convenor. The court retains the responsibility to make the final determination in all cases taking into account where possible the report of the conference convenor.