



Judicial Conference of Australia

2005 Colloquium Papers

Innovations in Western Australian Magistrates  
Courts

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3 September 2005

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1. Currently, in Western Australian, there appears to be a greater level of innovation occurring in Magistrates Courts rather than the Superior Courts.
2. This paper explores specific areas of innovation which are occurring independent of any legislation. In particular those areas of innovations include Aboriginal Sentencing, Therapeutic Jurisprudence, Intellectual Disability and Drug Addiction.
3. The Western Australian Drug Court, Family Violence Court and Cross Border Initiatives are matters introduced as a result of Departmental policy although not supported by legislation and are therefore not covered in this paper.

## Aboriginal Sentencing

4. In Western Australia there is no legislation to establish Aboriginal courts or any court such as South Australia's Nunga Court operating within a metropolitan court. We do however have one of the highest rates of imprisonment generally and for indigenous Australians in particular.
5. The resident Magistrate in the Kimberly region of Western Australia, Antoine Bloeman, has increased his circuit to sit at a number of Aboriginal communities. When sitting at those communities he has adopted a number of approaches different to his "ordinary" courts.
6. Sitting in community buildings rather than in a court not only places the accused in a familiar environment but also enables the Magistrate and the accused to sit at the same level. Elders from the community either sit with the Magistrate or at the back of the court. Their presence is always acknowledged. The involvement of the community is stressed particularly when dealing with offences against the community by-laws. The most common penalty is an order for community work to be undertaken at the community.
7. Without the benefit of any additional court resources the Magistrate has been able to impart a large degree of community ownership of the process. In addition the decision to hold the sittings of the court at the Aboriginal communities has increased court attendance rates and saved the accused living at those communities the need to travel long distances to traditional court locations. The success of these moves could not have been achieved without spending considerable time communicating and building trust with the communities concerned.
8. In the Pilbara Magistrate Steve Sharratt had the unique situation of a community approaching the court to ask the court to sit at the community.
9. As a result the Magistrates Court at Port Hedland now sits on a regular basis at the remote dry community of Yandeyarra. The court sits in the community meeting room with tables set in a 'T' formation rather than the traditional line formation. Two Elders from the community sit with the Magistrate and participate in the sentencing process. This court has had a large impact upon members of the community who would find

themselves in conflict with the police when visiting Port Hedland. The ability to bail offenders back to their community has had a positive impact on preventing re-offending between the commission of the first offence and the first court appearance. The community have expressed the view that they are able to look after the accused pending the court appearance.

10. Magistrate Steve Wilson noted the vast majority of accused appearing in the Wiluna Court were members of the local Aboriginal community. He, in cooperation with members of the local community invited senior members of the community to sit with him. He ceased the practice of sitting at the elevated bench and instead moved to a table in the body of the court. The tables are set out in a triangle formation with the accused at the apex, prosecution and defence counsel at the sides and the Magistrate and Elders at the base. He arranged for a number of Aboriginal paintings to decorate the courtroom. Although the Elders address the accused as to the impact of the offending on the community the sentencing is done by the Magistrate. Unfortunately a plan to develop a sentencing regime involving participation in a course of traditional skills and values run by Elders lapsed for want of funding.

## Therapeutic Jurisprudence

11. Perhaps the most innovative of developments in Western Australia has been the work of Dr Michael King in Geraldton. A devotee and contributor to the academic works on therapeutic jurisprudence Dr King wasted no time in putting these principles into practice in the regional city of Geraldton.

12. Dr King first established the Geraldton Alternative Sentencing Regime. This involved a selected group of those pleading guilty being case managed. It involves a holistic and team based approach to offenders using community resources to address a range of offending related problems such as alcohol and drug abuse, domestic violence and gambling. The stress management component of the program, supported by American research, was transcendental meditation. Unfortunately it was this component, which caught the attention of the media, and the Department of Justice. The resulting publicity or, more particularly, the fear of publicity lead the Department to distance itself from the program and notwithstanding some outstanding examples of success and a supportive external assessment the project continues to struggle due to a lack of resources.

13. Dr King also introduced a therapeutic stream for parties involved in Restraining Order applications. Noticing that a large number of applicants resumed co-habitation often without cancelling an existing Order he developed a program where, following the making of an interim Order, parties could consent to participate in counselling programs prior to determining the application by way of a final hearing. The interim orders made specific provision for participation in the program and care was taken to ensure there were adequate safeguards for the safety of the protected person. Following counselling many applications were

withdrawn where the parties agreed to resume co-habitation or orders were made by consent where co-habitation had not resumed but other issues such as contact with children had been resolved.

14. A further stream of therapeutic jurisprudence was developed for child welfare cases. In Western Australia Care and Protection applications are taken by the Department for Community Development where there are concerns for the welfare of children. The therapeutic program encouraged the parents to address those issues of concern to the Department so that in a number of cases children could be returned to the care of their parents rather than being placed in the care of the Department.

15. These initiatives have all occurred in country areas, however, there have been some significant developments in Perth.

## Intellectual Disability

16. At Central Law Courts in Perth the Intellectual Disability Diversion Program has been introduced for accused suffering intellectual disability. Those accused who plead guilty and satisfy the Disability Services Commission criteria for services return on a regular basis to report their progress to a Magistrate. A coordinator liaises between the service providers and the court to develop programs and provide progress reports. The program has been successful in providing appropriate services and punishments to the intellectually disabled reducing their re-offending and diverting them from prison.

17. In conjunction with the Intellectual Disability Program the court also conducts a Mental Health list. This deals with accused where there is an issue in relation to their mental health, in particular their fitness to plead or the availability of a defence by reason of unsoundness of mind. These matters are listed at noon on Tuesdays and are simply referred to as the 12 o'clock list. This is an endeavour to avoid any stigma attaching to the list. The later time was selected at the request of the Legal Aid Commission given the experience of these accused having difficulty getting to court in the morning and the usual need for their counsel to take further instructions on the day.

## Drug Addiction

18. In Perth the introduction of the Drug Court meant that there were no resources for persons who did not qualify or were not prepared to attend Drug Court. In co-operation with the Drug and Alcohol Authority a pre-sentence opportunity program (POP) was implemented. This is not dependent upon a plea of guilty and is a treatment-based program. The Drug and Alcohol Authority provide an assessor who is available in the main arrest court. A person indicating interest is referred and if suitable an adjournment is arranged on that day. The coordinator then directs the

participant to the appropriate treatment provider. At the end of the remand period a report is provided from the treatment provider. This can then be taken into account should the participant plead guilty. Although initiated in response to the lack of services for those using illicit drugs a significant number of referrals are now in relation to alcohol abuse.

19. It is difficult to determine why more innovation occurs in Magistrates Court than in the superior courts but two factors that should be taken into consideration are ownership and volume.

## Ownership

20. The Magistrates Court provides resident Magistrates in regional areas who reside and become part of the local community. This appears to produce a greater feeling of ownership and participation in the Magistrates Court compared to superior courts, which attend only on circuit and usually with a different judicial officer on each occasion.

21. Magistrates might also regard themselves as having a greater degree of ownership in regional and country courts. They are usually responsible for the management of their lists, their circuit and the court. Certainly in Western Australia they are usually the only or one of only two Magistrates for the region. Therefore a Magistrate such as Dr King has the ability and the freedom to structure proceedings within his court. He does not need to face the criticism and non-cooperation of other Magistrates who might not share his views. Superior courts lack this individual control. Even in large centres supervising Magistrates and Chief Magistrates face difficulties in implementing any initiative because of the diverse but strong views of the members of the court. I assume there is little difference in superior courts. Thus in the large Courts the innovations generally occur in particular courts adjudicated over by a small group of Magistrates who share the desired outcome and who are rostered accordingly by the chief or supervising magistrate. Experience has shown that when for some reason a variety of Magistrates find their way through a particular court the number of referrals to special programmes reduces dramatically.

## Volume

22. It appears that the high volume through Magistrates Court is also conducive to innovation. If you have a hundred charges against prostitutes in a month it is far easier and more efficient to establish a special prostitute's list than if you only deal with ten per month.

23. In addition charges before the Magistrates Court tend to be less serious. Therefore the opportunities for diversion and penalties other than imprisonment are more readily available. The possibility of avoiding imprisonment is a powerful motivator. If prison is inevitable the best motivator is missing. Proceedings in the Magistrates Court are less formal

even in sentencing matters. Certainly where trial innovation is concerned there is not the difficulty of a jury and it is far easier to adjourn matters back to the court on different days. In addition because the matters being dealt with are less serious the media take far less interest in the day-to-day business of the court and to that extent the court is perhaps subject to less scrutiny. Thus when one of my Magistrates suffered a bout of laryngitis but soldiered on using a series of placards that were held up to show the outcome or her comments, including one which said 'Do you think I came down in the last shower?', it went unnoticed. I suspect that if a Supreme or District Court Judge tried to do the same it would not escape media attention.

24. Therefore whilst it is acknowledged that there has been innovation in superior courts it remains much easier at the Magistrate's level.



