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\*\* Topic: Justices of the Peace & Mediation \*\*

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JUSTICES OF THE PEACE AND MEDIATION

Dean Wells  
Minister for Justice, Attorney-General  
and Minister for the Arts

Very quickly, the Community Justice Program's mediation service has established a wide number of applications which go well beyond the originally intended mechanism for resolving neighbourhood disputes.

Family law mediations, work place disputes, multi-party and organisational conflict management, mediations on Aboriginal Communities, and planning and environmental dispute resolution is by no means an exhaustive list of where ADR is currently being applied by the Community Justice Program and others.

The widened scope of ADR signals very clearly a certain dissatisfaction with the traditional criminal justice system. The problems are systemic. Indeed, Kevin Anderson, a former Deputy Chief Stipendiary Magistrate in Sydney best summed up the inadequacies in this way:

"Adjudication is typically concerned with questions of right and wrong, winner and loser, guilt and innocence. The conventional justice system rarely even claims to be dealing with the underlying continuing tension and conflict."

These sentiments reflect a realistic appraisal of our criminal justice system. I don't see that there is any fatal inconsistency in holding the view - which I do - that our system of law is one of the finest and fairest ever devised but, at the same time, conclude that different forums and mechanisms may be more appropriate and useful for some kinds of disputes.

As a consequence, ADR in Queensland is becoming established as the key alternative to the adversarial and confrontational style of court determined dispute resolution.

The success and scope of ADR clearly illustrates that certain kinds of disputes are better resolved outside the normal parameters which constitute the court system. The empowerment given to parties, and the shared ownership of decisions will always be the main feature of ADR, and may explain in part, why ADR can be a preferable alternative to Court.

Michael Kirby, President of the NSW Court of Appeal, and one of Australia's finest jurists has said:

".... We should constantly scrutinise our justice system by measuring it against systems operating overseas. .... There are aspects that are praise-worthy.

They include the judiciary which is independent and aspires to neutrality, fairness and the observance of the rule of law. But ... there are many for whom these ideals seem a distant mirage. For them, access to justice is but a pipe dream. And when they gain access, they often find its ways curious, its language odd, and its substance perplexing, old-fashioned and sometimes alien."

Those imperfections, he argued, could be remedied by the pursuit of a "just legal order .... (in which) the notion of civic law, reconciliation, forgiveness and tolerance" are its basic tenets.

However, it would be quite short sighted to place ADR completely outside the Court system - in effect, leaving the Court system and ADR processes to operate in isolation from each other. The end goal of both ADR and the Court systems must surely be the resolution of dissension, hence both must work juxtapositionally.

While it is important to identify new niches and applications for ADR, it is also important to enmesh the philosophy behind ADR into the traditional court systems where ever possible.

The first real example of this in Queensland is the Community Justice Program's victim-offender mediation initiative - the Crime-Reparation Project. The success of the Pilot Project in the Beenleigh Magistrate's Court has led to the service being offered in all Magistrates Courts in the greater Brisbane area.

Kevin Anderson, to whom I referred before, further observed that "Magistrates recognise from experience the inappropriateness of conventional legal procedures in [certain] disputes."

Depending on the success of this expanded project, it is possible that Crime-Reparation will be offered in all towns in Queensland where there is a Magistrates Court and a regional Community Justice Program branch.

No doubt we will all eagerly watch the outcomes of the expanded project, and I would expect the project assessment and feasibility of extending the service even further will be discussed in this forum. I will watch with interest the ensuing debate among the practitioners in the field.

It would be remiss not to seek out further areas where ADR can be introduced into the Court system. Hence, I have decided that mediation training will form a component part of the training regime given to those people seeking to become a Justice of the Peace of the Magistrates Court.

The "ancient and honourable office" of Justice of the Peace (JP) dates back to the 14th Century when local peace officers assisted travelling judges who dispensed the King's justice. JPs continue to act today as a symbol of the Crown, the State and the legal process. They provide a wide range of community services and

have considerable power over the lives of ordinary citizens. As modern law is now a very complex creature, it is no longer appropriate for only one class of JP to perform so many functions.

Most of Queensland's 55,000 JPs perform the simple function of witnessing signatures and signing affidavits or statutory declarations.

However, JPs do have the power to issue warrants, authorise arrests, search premises and seize properties, even to constitute a Magistrates Court. These are powers dealing with people's very liberties. Until now, the JP exercising these powers was not required to undertake any formal training. Clearly, the whole JP system needed an overhaul, so that JPs would be made aware of the legality of their actions and the correct procedures for the responsibility they hold.

In September 1991, the Justices of the Peace and Commissioners for Declaration Bill was passed, paving the way for the first major overhaul of the office of JP. One of the numerous features of this Act is the requirement that a JP must undertake specific training to ensure they fully appreciate the responsibilities of their office.

As a result, Queensland now has three levels of Justices of the Peace. The Commissioners for Declarations are authorised to witness documents. As the next rung up the ladder, the Justice of the Peace (Qualified) can also witness documents, as well as issue search warrants, remand defendants, adjourn a court and grant bail. A JP(Qual) must sit and pass (at 80%) a training course approved by the Justices of the Peace Council, before being admitted to this level.

The third and most senior rank of JP is the Justice of the Peace (Magistrates Court). People trained and examined to this level have all of those powers identified previously, but have the added responsibility of constituting a court, where they may hear and determine a charge of a simple offence or an indictable offence which might be dealt with summarily where there is a plea of guilty. A JP (Mags Crt) can also conduct committal proceedings.

In a State as diverse and vast as ours, it is simply impossible to have a Magistrate available in every centre where the need arises. It is therefore important to have a "lay" judicial member ready to assume these responsibilities. I am confident that the new training regime will see these JP (Mags Crt) office holders well skilled.

As well as the necessary legal training, prospective JP (Mags Crt) applicants will receive training in mediation. The rationale for this inclusion is fairly simple. Many of the matters which will come before a JP sitting on the Bench will be matters which are well suited to mediation.

While it is acknowledged that mediation from the bench is no substitute for the real thing, the skills gained from mediation training will nevertheless be very useful to JPs (Mags Crt) when

they are dealing with the matters before them

These JPs will be trained to realise the value of mediation, as well as its limitations. Consequently, they will know when to refer a matter to the Community Justice Program, and when a matter should remain within the traditional legal model.

Realistically, it will be some time before the JP (Mags Crt) are fully trained and consequently constitute a lesser Court. Similarly, the mediation skills which will form part of their education will not be put into immediate practice. Nonetheless JPs (Mags Crt) will be provided with an alternative philosophy and dispute resolution schema which it is expected will ultimately impact positively on the administration of justice in this State.

I will endeavour to use the ADR Review to keep you informed of this important initiative, which has the potential to take ADR directly into the traditional justice system.  
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