

Address by

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to the

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Queensland Magistrates

at

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BROADBEACH

on

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ACKNOWLEDGMENTS:

Diane Fingleton, Chief Magistrate
 Brian Hine, Deputy Chief Magistrate
 Ladies and gentleman,

I have been asked to come and speak with you today about safeguarding children's rights.

As a non-lawyer, I can empathise with children appearing before the legal system - presenting at a conference of Magistrates is quite daunting! One of my officers suggested that if I'm asked about anything too legal, I should just say *non compos mentis*. I'm not sure about that . . . so I'll just reiterate my right to remain silent.

As many of you will be aware, the Act I administer is the Commission for Children and Young People Act 2000:

- It specifically acknowledges the "rights" of children and young people and its principles embody aspects of the United Nations' Convention on the Rights of the Child,
- It allows the Commission to pro-actively advocate for individual children or groups of children and respond to complaints and their grievances, and
- It empowers the Commission to make a difference in the lives of Queensland children and young people, particularly those who are most disadvantaged.

The Commission's overarching principles acknowledge that:

- Every child and young person is a valued member of society; and
- In decisions involving a child or young person, their best interests are the paramount concern, and their views and wishes should be taken into account with regard to their age and maturity;

In addition, we believe that every child and young person is entitled to:

- have their dignity and privacy respected.
- They should be cared for in ways that protect them from harm and promote their wellbeing

They should be able to:

- express concerns and grievances and have them dealt with in a way that is fair, timely, and promotes their participation,
- receive information and help to exercise their entitlements, and
- access services necessary to meet their needs.

I'm sure you'll agree, the family has primary responsibility for a child's upbringing and development, and should be supported in that role.

The Commission is an independent statutory body attached to the Department of Premier and Cabinet.

The Commission's core functions and powers include advocating for the rights, interests and well being of children and young people:

- It administers a state-wide community visitor program to provide advocacy and support services to children and young people in youth detention centres, authorised mental health services and out-of-home residential care.
- Our officers receive, seek to resolve, and investigate complaints about the delivery of services to children and young people who are subject to orders or intervention of the Department of Families, Youth and Community Care.
- ;
- The Commission establishes youth and other expert advisory committees to advise me about specific issues related to children and young people
- It monitors and reviews laws, policies and practices relating to the delivery of services to children and young people or that otherwise impact on them;
- administers employment screening for child-related employment; and
- conducts and coordinates research into issues impacting on children and young people.

PRIORITIES

However, in carrying out its functions, the Commission is required by law to prioritise the needs and interests of children and young people:

- who can't protect their own rights, interests or well being;
- for whom there is no-one appropriate to act on their behalf;
- who are disadvantaged because of a disability, geographic isolation, homelessness or poverty, or
- are in, or may enter, out-of-home care or detention.

One of the more interesting features of my role as Commissioner for Children and Young People, is the fact that I've been given the functions of both children's ombudsman and advocate.

I'm required to act in the best interests of children, as well as ensuring their views and wishes are heard by decision makers. This means I'm responsible for promoting and protecting children's rights.

EVIDENCE OF CHILDREN

Over the last couple of years, the Commission has played a key role in this regard in the area of law and justice. For example, the Commission provided a major submission to the Queensland Law Reform Commission on the *Evidence of Children* before the courts.

Many of our recommendations were reflected that Commission's final report and are being considered by the Department of Justice and the Attorney-General in proposed legislative reforms due for consideration by Cabinet this year.

It's heartening to see the Attorney-General aiming to make court experiences for victims of child sex abuse less traumatic by providing better protection for children who have to give evidence in court.

JUVENILE JUSTICE

In addition to these roles, the Commission has played a major part in consultations on the proposed amendments to the Juvenile Justice Act.

In particular, I'm concerned about a clause allowing the court to order publication of identifying information about a young person for certain serious offences.

The Commission does not support this, as we believe:

- the interest of the victim or the victim's family is not advanced by publishing the offender's identity, as the victim already has a right to know who the offender is;
- publication is unlikely to have a deterrent effect, as publication of the offender's identity may actually elevate them to "hero status" among their peers in detention,
- the young person may be adversely affected by the publicity of their identity and crime on release, and may even be subject to vigilante action outside the legal framework - this was recently highlighted by the Bolger case in the UK,
- publication may breach the Juvenile Justice Principles in the consultation draft of the Bill that state a child should be dealt with in a way that allows them to be reintegrated into the community; and
- innocent parties such as the young person's family and friends, or siblings who are children, may be subject to vilification and victimisation.

If the legislation is passed, and the court is given the discretion to publish the identity of young people, I appeal to the judiciary to consider these issues before deciding to allow publication of identifying information about a young offender.

Design of Brisbane Youth Detention Centre

Sometimes our advocacy work in the area of youth justice can be quite creative.

Our officers recently used their 'youth friendly design skills' in our submission to the Department of Families on the design of the new Brisbane Youth Detention Centre.

It was heartening to see most of our suggestions included in the design of the centre, including more space, colour and recreation areas.

Education about Child Rights

Underpinning all our functions at the Commission are the key principles in the United Nations Convention on the Rights of the Child.

We 'live' these principles in our submissions and policy positions, the way we consult with and interact with children and young people, and through our strategic directions and priorities.

A couple of years ago, we invited children and young people to take part in a hypothetical at Parliament House to mark the 10th anniversary of Australia's ratification of the United Nations Convention on the Rights of the Child. Our young panellists were given the opportunity to research their human rights and voice their opinions on a range of children's rights issues to an audience of key

government bureaucrats, non-government service providers and other children and young people.

Many in the audience commented on how informative the children and young people on the panel were.

As one executive of a peak education body remarked:

When the UN Convention was ratified 10 years ago, our organisation opposed it because we thought it abrogated the rights of parents...In light of what I've learnt today, I think we need to reassess our views about the Convention and children's rights in general...

And this comment came from a key bureaucrat in the environment portfolio:

We need to engage young people more in the work of our department... I'm going to talk to the boss about it...

Both agencies have since progressed key initiatives which promote children's rights.

Representation of Children

Sometimes the Commission's advocacy work can result in positive outcomes through less formal representations.

For example, I was recently told that under Legal Aid policy, children appearing before the courts for non-indictable offences don't necessarily get legal representation. Under the policy, they're subject to a merits test.

Legal Aid is only granted for a child's court trial where:

- the applicant has reasonable prospects of success, and
- conviction would be likely to result in imprisonment.

Or:

- a conviction would be likely to have a detrimental effect on the defendant's livelihood or employment, or
- the defendant has a disability or is disadvantaged; preventing self representation.

I raised this with the Chief Executive of Legal Aid. As a result, there's a proposed policy change which will provide representation in all cases, and allocated funds to do this.

While the Commission plays a significant role in advocating on behalf individuals and groups of children and young people, I increasingly see my role as one of enabling the empowerment of children and young people in making decisions that affect them.

While I don't have the authority to speak as the voice of children and young people; by virtue of my public position, I do have the capacity to ensure their voices are heard.

COMMONWEALTH PEOPLE'S FESTIVAL

Probably the most significant example of this can be seen in the part we played in the Commonwealth People's Festival which was to accompany CHOGM last October.

Although CHOGM was postponed until this month, the Festival went ahead as planned. Part of it was dedicated to the theme of a 'Child and Youth Friendly Commonwealth'. In cooperation with children and young people, and government and non-government agencies, the Commission coordinated a program of children's activities and events.

One-fifth of the floor space at the Commonwealth People's Centre was devoted to a Children's Activities Area which housed fun and interactive activities and exhibits for children and young people.

One of the activities we organised was the 'Dare to Care' electronic workshop, where children and young people could send us messages or draw pictures on a computer about what they would value in a child and youth friendly Commonwealth.

We engaged media students from various Brisbane high schools as roving reporters to find out from children and young people what they thought a child and youth friendly Commonwealth would be like.

Combined with comments made in other workshops run by 'Hands on Art' at Southbank, and interviews by our 'roving reporters', we learnt a lot about what children and young people care about. Their views and wishes, verbal, written and pictorial, were collated into a report which was presented to the Commonwealth leaders attending CHOGM last month.

At the very least, I hope the ideas expressed in it will raise awareness of the rights, interests and wellbeing of children and young people.

On a more practical level, I like to envisage a Commonwealth leader sitting in his or her private jet scanning the report and thinking "a Child Friendly Britain" or "a Zimbabwe for Children" – prompting them to include a children's strategy in their next election campaign.

TALKING TO OUR PARLIAMENTARIANS

On a more local level, the Commission is currently identifying ways in which children and young people can take their views and concerns to our Queensland politicians.

The bureaucracy of government can be daunting even for those of us who work for it, and is even more frustrating for children and young people who have an issue to voice.

Through the proposed regional Parliament in Townsville later this year, the Commission will help young people meet directly with Members of Parliament in a casual, non-threatening environment.

PARTICIPATION IN DECISION MAKING

Allowing children and young people to take part in decision making is fundamental to the creation of a child-rights oriented society. The concept of “consultation” by governments has been in place for many years, and has been used to develop laws, policies and practices.

The recognition of children as stakeholders in society is the first step in the move towards a more democratic and responsive society.

The challenge for parents, government and the community is to develop appropriate and effective mechanisms to allow children to participate in matters affecting them.

Issues as diverse as pollution control, traffic laws, transport standards, employment, social security, community development and planning, mining leases and public housing may impact on the rights, interests and well being of children.

To be effective, children must have input into the mechanisms developed for their participation. A growing trend across Australia is the use of youth advisory committees to give children the opportunity to make suggestions and comments on government and community decision-making processes.

This input is instrumental in building social capital and enriching our decision making processes. It informs adults’ views of what is in children’s best interests and prompts them to question traditionally held beliefs.

The challenge for us as decision makers is to develop ways in which children’s views and wishes can be heard, taken into account, and influence the decision making process.

This calls for a willingness to step outside the adult construct and understand the lexicon of children. Listening is usually a good starting point.

In this day and age I don’t think it’s enough for us to protect children and young people’s rights by being their voice. We have to “promote” their rights by helping them express their views and wishes in an environment where they feel safe and empowered so decision-makers hear their voices.

As Magistrates, you would be well aware of the challenge of achieving this in a courtroom setting, particularly where:

- a child or young person has suffered abuse or trauma;
- you are dealing with evidence of young children;
- the child has a disability; or
- the child’s culture, religion or language are different from your own.

As a former teacher and school principal, I can do no better than refer you to the words of Mem Fox, an internationally renowned author of books for children:

“...if we allowed children to show us what they can do rather than merely accepting what they usually do, I feel certain we would be in for some grand surprises. As adults our feeble expectation of children’s capabilities puts brakes on their potential.”

CAPE YORK JUSTICE STUDY

I am continually being challenged to look at more creative ways of improving children and young people's participation so they can get involved in serious issues affecting them.

This was the case last year when the Commission had to work out how to reflect the voice of children and young people in our submission to the Cape York Justice Study headed by Justice Fitzgerald.

The Commission determined very early on that our submission should include the direct views of children and young people in the Cape – especially since around 50% of people living in indigenous communities there are under 18.

We liaised with principals at Cape York schools by asking if they would help organise consultations with their students. We thought it was appropriate for teachers to consult students on our behalf, believing the students would probably feel more comfortable expressing their views to people they were familiar with.

Students were asked:

- *What do you like about living in your community?*
- *What do you think are the biggest problems in your community?*
- *What could the Government do to solve these problems?*
- *What could adults in the community do?*
- *What could you do to help?*
- *What should be done to make your community safe and happy for children?*

The students gave us a wealth of practical solutions to some of the problems facing their communities.

Their comments appeared in full in the report of the Cape York Justice Study, and their suggested solutions were reflected in its recommendations.

The most interesting thing about this exercise is that it was the first time children and young people were consulted about problems in remote indigenous communities in Queensland.

Subsequent articles by Tony Koch for the Courier Mail and Kate Legge for The Australian noted and praised this development.

VOLATILE SUBSTANCE ABUSE

The Commission is currently working on a project on Volatile Substance Abuse by Young People, and we hope to identify practical solutions to this problem. Again, we have asked children and young people - particularly those involved in this practice - to provide us with ideas about how the problem can be addressed.

Increasingly, I find that practical solutions aren't found in the wealth of research and literature on the issue, but rather in comments by young people such as 'spray paint should be behind the counter so it's harder to steal'.

WORK EXPERIENCE FOR COMMISSION STAFF

Last year, I established a program for staff at the Commission to do two weeks work experience with children. Through this program, I hope my staff will interact with disadvantaged children and young people and learn about their concerns.

I see this as a “reality check” to ensure the Commission is truly representative of, and in touch with, the issues facing its core clients.

CONCLUSION

In conclusion, as Commissioner for Children and Young People I have learnt much from the younger members of our society. They have taught me, and are continuing to teach me, how to promote and protect children and young people’s rights. They are also teaching me that solutions to difficult problems are sometimes quite simple.

As I become more chronologically challenged, they are teaching me what is and isn’t important in their lives. I’m sure those who read our submission to the Cape York Justice Study would have been touched to know that primary school children affected by community violence wanted to help solve the problems.

In their own words, they thought this could be achieved by:

- *Tell[ing] kids to come to school more*
- *Look[ing] after children, help[ing] parents look after children*
- *Help[ing] organise games after school, stuff kids would be interested in rather than walking around all hours of the night*
- *Put[ing] up signs, protect[ing] our families, shar[ing] our food with other people, and*
- *Tell[ing] them to stop, hide the beer and drugs , tip it out*

These are the voices of our children and young people, and this is my elixir of youth. I hope you too will become more youthful by soaking up some of the wisdom of our children and young people to address some of the challenges of your work as Magistrates.

ⁱ Sheppard, D. C. (1997) “Listen. We’re talking now! Kids views on their rights in Education” *Children’s Rights: The next step* (Conference papers Vol. 2) First Asia-Pacific Conference on Children’s Rights : Brisbane