

EVALUATION OF THE REMOTE JP MAGISTRATES COURT PROGRAM

FINAL REPORT

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EXECUTIVE SUMMARY

This report presents key findings and recommendations developed as part of an independent evaluation of Queensland's Remote Justices of the Peace (Magistrates Court) Program (JP Court program). The evaluation has been conducted by researchers at the Cairns Institute, James Cook University. The Department of Justice and Attorney General (Qld) (DJAG) commissioned the evaluation.

Data on JP Courts and Their Sentences (Chapter 2)

Indigenous JP Courts dealt with 5210 matters, including bail, remand, committals, adjournments, etc over the three year period 2007-2009. Half these matters (2612) involved sentencing by the JP Courts. The majority of sentencing matters derived from a few courts: Kowanyama (30%) and Mornington Island (29%). Overall 94% of sentenced matters were in five courts (Kowanyama, Mornington Island, Woorabinda, Aurukun and Cherbourg). Gender is an important consideration in the work of the JP Courts: the majority of sentenced matters involved Indigenous women (57%), and this proportion was greater in JP Courts using by-laws.

Council by-laws accounted for 42.1% of all sentenced matters. The Liquor Act and the Summary Offences Act accounted for 19.3% and 17.6% of sentenced matters respectively. Communities with by-laws (Kowanyama, Woorabinda and Cherbourg) rely heavily on by-law offences for the JP Courts. School attendance is a major by-law offence, particularly in Kowanyama and Woorabinda.

Some 71.7% of penalties imposed by the JP courts involved a monetary fine. Nearly 70% of fines were between \$100 and \$500. A further 12.4% of fines were over \$500. Some 26.2% of sentencing matters were dealt with ex parte. There were 154 applications for orders, 92% involved applications for domestic violence orders.

Analysis of re-offending showed there was no difference in the rate of offending before and after JP court intervention. However the conclusions that can be drawn from these results are inconclusive given the absence of a control group, and the short pre and post test period.

Recommendation 1

It is recommended that DJAG develop separate identifiers within QWIC to differentiate the activities of JP magistrates and JP (Quals) conducting bail courts, and that a database be developed to identify the JPs sitting in each court for the purposes of training and support.

Support for the JP Courts (Chapter 3)

There is widespread support for the continued operation of the JP Court program. In terms of overarching program objectives, the program works best as an alternative to mainstream justice and in building community capacity to own local solutions to offending within communities. The program has been less successful in building partnerships.

The general support for the JP Court program is often based on its potential to lead to positive outcomes, rather than always due to tangible benefits delivered to date. Whilst JP Courts should be retained, more work is required to ensure that the program can work at maximum effectiveness and realise its great potential - on those communities where it is currently functioning and, with sufficient capacity developed, on communities where it has yet to be formally established.

Recommendation 2

It is recommended that the JP Court program be retained and ultimately expanded to other communities. However, prior to any expansion of the program, it needs to be better supported in those communities where it has been operating.

Increasing the numbers of JP magistrates (Chapter 4)

A fundamental issue impacting upon the program's immediate and longer-term capacity is the lack of JP magistrates available to constitute JP Court. Problems include potential loss of commitment to the program by JPs and other stakeholders. In more than one instance a functioning JP Court has ceased to operate, at least in the short term, due to a shortage of JP magistrates.

Initial JP training provided by DJAG is not sufficiently frequent to build and maintain JP magistrate numbers. Ideally, there should be enough JP magistrates (with a focus upon Indigenous magistrates) available to participate in JP Court on a rotational, rostered basis. Further, there are significant problems with retention of JP magistrates. Problems relevant to recruitment and retention include lack of ongoing DJAG training sessions for all JP magistrates; minimal support; the need for updated training materials and lists of qualified JPs on Indigenous communities; and poor resourcing of the Courts Innovation Directorate as administrators of the program. More financial and other resources are required to address these issues and thereby build program capacity.

Recommendation 3

It is recommended that DJAG provide for increased frequency of JP training for individuals on Aboriginal and Torres Strait Islander communities seeking to qualify as JP Magistrates as well as more frequent in-service training and support. Training should be provided in community as well as centrally.

Recommendation 4

It is recommended that DJAG increase resources provided to the Courts Innovation Directorate to enable increased capacity to deliver training and ongoing support through the appointment of additional training and support officers and an increased budget for training and community education. To administer the program more effectively there is also a need for improved DJAG record keeping of current, qualified JP magistrates.

Removing barriers to recruitment of JP magistrates (Chapter 5)

Legislative exclusion of persons from appointment as a JP magistrate on the basis of prior convictions significantly reduces the number of potentially eligible Indigenous participants in the program (especially Indigenous males). The provisions have particularly harsh consequences on Indigenous communities, given the disproportionate contact of Indigenous people with the criminal justice system.

In combination, the provisions result in persons being disqualified for relatively minor convictions with perhaps no real relevance to an assessment of an individual's suitability for appointment to the office of JP. They are unnecessarily broad ranging and should be reviewed. Guidance as to potential amendments might be found in provisions used in similar assessment processes, such as those used in appointing bail justices in Victoria or FRC Commissioners. An element of discretion and a higher threshold in terms of disqualifying offences may be introduced.

There is also a need for increased clarity amongst stakeholders in relation to relevant disqualifying provisions.

Recommendation 5

It is recommended that the *Rehabilitation of Offenders Act* be amended to remove JPs from the list of exceptions to the application of the expiration of rehabilitation period.

It is recommended that the provisions relating to disqualifications in the JP Act be reviewed. Potential guidelines which might be considered in terms of developing more inclusive qualifying provisions might be those relevant to applications for a Blue Card (Commissioner for Children and Young People and Guardian), the appointment to the Family Responsibilities Commission, and appointment as a Bail Justice in Victoria.

Remuneration for JP magistrates (Chapter 6)

The current rate of payment for JP magistrates is inadequate, given the distinctive role of JP magistrates in convening JP Court on Indigenous communities. Payment of a sitting fee to JP magistrates sitting on JP Court on Indigenous communities should be retained and increased. JP magistrates should be paid at a higher rate than others involved in Indigenous initiatives such as Murri Court and might be appropriately paid at a rate used for FRC sittings. An increase in payment would permit DJAG to remunerate JPs rather than having to rely upon other Government departments or employers to subsidise the JP Court program, as presently occurs on some communities.

Consideration should also be given to DJAG formalising arrangements with government agencies and other employers who currently employ JPs to ensure that JP magistrate employees are released for attendance at JP Court and JP training.

Recommendation 6

It is recommended that the current rate of remuneration offered to JP Magistrates be reviewed.

Payment ought to be offered to JP Magistrates as a sitting fee in accordance with present arrangements rather than as an hourly rate. A comparable scale would be the FRC scale of payment for a two hour sitting.

Increased awareness of and support for JP Courts (Chapter 7)

Community awareness of and engagement with the JP Courts is variable. JPs may feel a sense of isolation within their respective communities as a result and the effectiveness of the program is undermined. DJAG should work to increase understanding of the role of and support for the JPs and for JP Court. The CJG in particular could be more involved in JP Court, including for example by coordinating JP Court rosters and/or attending JP Court as they do in Magistrates Court.

Recommendation 7

It is recommended that DJAG develop community-based materials (including audio-visual (DVD) and written materials) covering the role, functions, disqualification provisions and other aspects of the JP Courts in order to increase community awareness of the JP Court program.

There is currently little interaction between JP Courts and relevant stakeholders (other than QPS). Under-developed working relationships between JPs and relevant stakeholders, including magistrates, court staff, corrections, legal service providers and others increases the isolation of JPs. Magistrates may have a specific role to play in supporting and connecting with JPs and the JP Courts that needs to be fostered. They may, for example, provide guidance in sentencing decisions and ensure that appropriate matters are placed before JP Courts, for instance. There need to be strategies implemented to provide for increased communication between all stakeholders. A court users forum for JP Courts will assist in this regard.

Recommendation 8

It is recommended that DJAG develop and provide information sessions for magistrates in relation to JP Courts; specifically, the range of matters that can be referred to JP court and the JP courts sentencing powers.

Recommendation 9

It is recommended that DJAG develop and improve relationships between JP magistrates and magistrates, community corrections, police, registrars and other relevant court staff, ATSILS, CJGs and other legal service providers as appropriate, for example, through the establishment of a court users group. A key role of the court users group is to identify and remedy issues of support and service provision (eg those relevant to corrections) and improve relations between service providers.

JP Court workload and increasing referrals (Chapter 8)

There is an expectation that the JP Court will reduce the workload of Magistrates Courts by hearing matters that would have otherwise gone before the Magistrates Court. They are generally not reaching capacity in this regard and this is due in part to problems within existing referral mechanisms. QPS are key decision-makers in terms of the type and number of matters listed before JP Courts but presently practice relating to QPS referrals is generally localised and unchecked. A statewide QPS directive setting out what matters, at a minimum, are appropriate for JP Courts may be required. (In addition) there is a need for consultation at a community level between JPs and other stakeholders about the sort of matters are appropriate for a particular community. Magistrates may also have a more formalised role to play in ensuring that more matters are referred appropriately to JP Court.

Recommendation 10

It is recommended that QPS, in consultation with magistrates and DJAG, develop guidelines for the referral and setting down of matters for JP courts.

Recommendation 11

It is recommended that QPS provide training to police in relation to JP courts, which should include information concerning the JP Courts' role; the potential scope of matters that can be referred to JP Courts; sentencing options available to the JP Court; and the availability of 1800 ATSILS number for advice.

The legal rights of those appearing before JP Courts (Chapter 9)

Presently, legal service providers (including ATSILS and family violence legal service providers) do not have adequate resources to provide direct representation and advocacy in the JP Court. Mandating legal representation may not be appropriate and for resourcing reasons would lead to the demise of the program. At a minimum however, offenders should be provided with access to legal advice through the ATSILS 1800 telephone number and with more information pertaining to JP Courts so as to better understand their rights.

Family violence legal service providers and ATSILS should also be included in any initiatives drawing in relevant program stakeholders such as a court users forum and attendance at JP in-service training.

Recommendation 12

It is recommended that DJAG develop an information sheet advising defendants of their legal rights, including their right to seek legal advice; the consequences of non-attendance at JP Court; and about the outcomes of any decision in the JP Court.

Legislative scope of JP Courts (Chapter 10)

There is no requirement to extend the legislative scope of JP Courts. The existing scope is adequate and there has not been a call for increased capacity to deal with more serious matters. For quite appropriate reasons, JP Courts may decide not to deal with the full range of matters that they are empowered by legislation to hear. Domestic violence applications, for example, are considered to be too problematic by JPs on certain communities. However, JP Courts are also not hearing relevant matters due to lack of understanding about the legislative powers of JP Courts. A misleading view held in some locations that JP Courts can only hear by-laws matters provides an example of the latter.

By-laws generally are seen as contributing positively to the program in a number of ways; including through empowering respective communities to identify and respond effectively to issues of particular relevance to them. In essence, for a number of reasons communities should be supported by DJAG to use by-laws, but reliance upon by-laws should not mean that state legislation offences are not placed before JP Courts due to a misunderstanding of the legislative capacity of JP Courts.

Recommendation 13

It is recommended that DJAG support the on-going use of by-laws in those communities which have introduced law and order by-laws.

JPs are not using broad sentencing options available to them, perhaps due to a range of factors such as a lack of awareness of the latter and inadequate support from relevant stakeholders, including community corrections. A range of sentencing options beyond monetary penalties should be more readily accessible to JP magistrates. Sentences (essentially fines) are sometimes perceived to be both inconsistent and disproportionate. There is some scope for both increased training relating to sentencing principles and options, and perhaps some further formalised direction to better guide sentencing decision-making.

Recommendation 14

It is recommended that JPs receive further initial and in-service training in:

- **the scope and type of matters the JP Court can be hear;**
- **sentencing principles and the sentencing options available to the JP court;**
- **the correct procedures of the JP Court (recording outcomes, convictions, etc.).**

The training provided should include participation of relevant service providers (such as registrars, corrections, ATSILS and magistrates).

Current administrative support for JP Court sessions (Chapter 11)

Presently, JP Court has insufficient administrative support during court sessions. Only a small number of communities have a clerk or registrar available to assist in JP Court - however providing such support is essential to ensure legitimacy and essential efficiency of the JP Courts so as to avoid the latter being seen as a 'second rate' system of justice. Problems arising due to the lack of support in this regard include incorrect record – keeping and some stakeholder perceptions of improper interference in court processes by QPS prosecutors.

Suggestions for provision of administrative support at least to the level of depositions clerk include training a local Indigenous person to provide support or bringing in court staff from a local Registry during court sittings. Remote technology may also be utilised, although problems with the latter may include technical issues impacting upon the operation of such technology and the inappropriateness of using such technology on Indigenous communities. At a minimum, providing facilities for audio-taping of proceedings is essential.

Recommendation 15

It is recommended that administrative support to the JP courts be provided to a minimum equivalent level of a depositions clerk. Potential options, in order of preference, are:

- i) training a local person for appointment on a part-time basis;**
- ii) flying-in clerical support at the time of the JP Court sitting;**
- iii) video link-up between JP court and relevant court staff.**

Recommendation 16

It is recommended that DJAG audio-record the proceedings of JP Courts.

CHAPTER ONE INTRODUCTION AND BACKGROUND

1.1 Introduction and Research Questions

This report presents key findings and recommendations developed as part of an independent evaluation of Queensland's Remote Justices of the Peace (Magistrates Court) Program (JP Court program). The evaluation has been conducted by researchers at the Cairns Institute, James Cook University. The Department of Justice and Attorney General (Qld) (DJAG) commissioned the evaluation. The DJAG Courts Innovation Programs Directorate presently administers the JP Court program along with other justice initiatives, including the Murri Court, Drug Court and Queensland Indigenous Alcohol Diversion Program (QIADP).

The legislative and policy framework underpinning the JP Court program provides for Aboriginal and Torres Strait Islander JPs to constitute a Magistrates Court, in the absence of a Magistrate, to hear and determine charges for specified minor offences where a defendant pleads guilty, including certain indictable matters that can be dealt with summarily. In addition the JP Court so convened is able to deal with bail applications and applications for domestic violence orders (where there is consent); to conduct committal hearings – although the latter power is rarely used; and to grant adjournments and bail, *inter alia*. At the time the research was conducted JP Courts were operating on eight or nine Aboriginal and Torres Strait Islander communities in Queensland and have been in place on various communities since 1998. The courts are designed to address alienation commonly experienced by Indigenous people within the criminal justice system and to foster the development of positive Indigenous role models within relevant communities, amongst a range of other objectives.

The material presented herein is intended to inform the future development and operation of the JP Court program. Given the number of years since introduction of the JP Courts, their evaluation at this stage is both timely and appropriate. The research has provided an opportunity for assessment of the structure, processes and effectiveness of the JP Courts and the frameworks that support it through a review of relevant policy and legislation. This has been achieved by way of analysis of both quantitative data and direct consultation with program stakeholders, including the JPs participating in the program.

The evaluation has been directed by a number of specific research tasks or questions. These have been used in gathering and processing both quantitative and qualitative data and in guiding the content and structure of this report. The principal issues for consideration are as follows:

- (i) the ways that the capacity of JP Courts might be enhanced to deal creatively and responsively with local criminal justice problems;
- (ii) identification of the barriers to the effective use of the current operating system of the program and recommendations for better utilisation of the JP Courts in meeting and responding to local justice needs;
- (iii) a description and analysis of JP Court data to measure the impact of JP Courts on sentencing outcomes and recidivism;
- (iv) an assessment of the impact of JP Courts on the broader justice system, with reference in particular to its impact on the need for and frequency of Magistrates Court circuits;

- (v) the adequacy of the current legislative and operational framework governing the use and scope of the JP Courts to support the program, with reference to the following:
 - appropriateness of the current scope of justice functions dealt with by Justices of the Peace (Magistrates Court) (JP magistrates), including comment on management of conflicts of interest;
 - the level of sufficiency and appropriateness of training and refreshers provided to JPs who constitute JP Court;
 - the appropriate level of remuneration or sitting fees for JPs who constitute JP Court;
 - the differential impact on remote communities of the operation of the JP Court program with regard to the existence or otherwise of local ‘law and order’ by-laws and local Indigenous police;
 - an assessment of the relationships between JP magistrates and other relevant stakeholders (including police, circuit magistrates, Community Justice Groups (CJGs), and legal service providers);
- (vi) the extent to which each local community drives the constitution of JP Courts and an assessment of local community drivers of successful JP Courts; and
- (vii) comment on the availability, potential use and impact of court-based technology, in particular audio visual links (AVLs) and remote conferencing, on justice services (including JP Courts) on remote communities.

The research provides analysis and recommendations in response to the above issues, with a view to improving the JP Court program’s capacity to engage with Indigenous and non-Indigenous stakeholders, to enhance criminal justice-related outcomes, and to further develop governance capacity for Indigenous communities through the program’s implementation.

1.2 Structure of this Report

The report is divided into 11 Chapters and an Executive Summary.

Chapter One provides introductory detail of relevance to the JP Court program and to its evaluation; including research questions and research project methodology. A brief literature review is also set out in this chapter. This provides some contextual information relating to the introduction of JP Courts on Aboriginal and Torres Strait Islander communities; a brief summary of previous academic and other commentary surrounding JP Courts; and discussion pertaining to the nature and objectives of similar Indigenous sentencing initiatives in Australia.

Chapter Two provides an analysis of JP Court data in terms of charges and outcomes. Chapter Three discusses the future of the JP Court program on Aboriginal and Torres Strait Islander communities and recommends that it be maintained and extended on the basis of general stakeholder support for its continued operation. Chapter Four discusses the issues associated with recruitment and retention of JP magistrates and the impact problems in these areas have on the operation of the courts. Recommendations are made to improve training and support in this regard.

Chapter Five analyses the legislative provisions relating to disqualification from the office of JP magistrate, which are also relevant to recruitment. Chapter Six deals with issues of remuneration of JP magistrates. The need to improve stakeholder engagement with and support for the JP Courts is discussed in Chapter Seven. In particular, ways to involve magistrates and Indigenous community members in the program, including those participating in CJGs, are considered. Suggested strategies require provision of information to offenders, the general public on Aboriginal and Torres Strait Islander communities, and magistrates, *inter alia*.

Chapter Eight looks at the impact of the JP courts on Magistrate's Courts workloads and recommends methods to increase referrals. The role of police in this context is discussed at some length. Chapter Nine makes recommendations to improve understanding of the legal rights of defendants before the JP Courts.

Chapter Ten analyses the legislative scope of the JP Courts in terms of the type of matters that JP Courts deal with and the sentences they impose. Concerns raised by stakeholders relating to sentencing include the lack of consistency and proportionality and dependency upon imposing fines in sentencing. The possibility of further guiding or directing JPs in sentencing is raised, as is the need for increased JP training in this area and stakeholder support to enable sentencing options available to the JPs to be used more effectively. A further significant issue is the reliance upon by-laws in the JP Courts.

Chapter Eleven identifies the need for greater administrative support during court sittings through provision of a clerk sourced from the community where the JP Court sits or otherwise.

The findings and recommendations of this report are directed towards responding to the research questions set out above. Importantly, all recommended strategies should be implemented *collectively* in order to have maximum efficacy. There is little utility, for instance, in boosting numbers of active Indigenous JPs to participate in the program and thus the capacity of the JP Courts to hear more matters, if broad stakeholder support for the program is not simultaneously enhanced or if the number of referred matters to JP Courts is not also increased. The recommendations we have developed are each designed to impact across a range of areas. For instance, providing greater court-based administrative support for JP Courts by way of employment of a clerk of the court may address issues associated with conflict of interest; record keeping; DJAG training for JPs around court procedures; and stakeholder support for and engagement with JP Courts.

1.3 Methodology

The evaluation has involved a number of research tasks; including compilation of a literature review, analysis of law and policy, interviewing stakeholders and collection and processing of data. The project has relied upon a number of different research methods in evaluating the JP Court program and carrying out these tasks. A combination of legal research, qualitative interviews and quantitative analysis was utilised; that is, a 'mixed methods' approach (Creswell & Clark). Mixed methods research combines the collection and analysis of both quantitative and qualitative data, offsets weaknesses in the use of quantitative or qualitative approaches alone and provides a better understanding of research problems, particularly in areas of law and legal policy research.

1.3.1 Legal Research

As part of the mixed method approach, legal research methods were included, which consisted of analysis of legislation and policy documentation relevant to the JP Court program (see Appendix 1: Legislative Review, in particular). Policy documentation provided by DJAG encompassed training material and the 2005 *Profile* document discussed further in the Literature Review.

1.3.2 Qualitative Data

The use of a qualitative research approach has been particularly relevant to this project. Qualitative data has been primarily gathered through interviews with a range of program stakeholders, identified below. Interviews have been directed towards seeking stakeholder comment pertaining to the JP Court program's strengths and barriers to its success, whether legislative or administrative in character. The material has been gathered from participants and also analysed once collected with a view to responding to the key research questions set out above.

Qualitative data was collected as follows. Program stakeholders were asked to contribute to the evaluation by way of interview. In most cases, interviews took place in person. Telephone interviews were used in the minority of cases. A very small number again of those invited to participate provided a written response to interview questions in lieu of participating in direct interviews. Few stakeholders declined to participate at all. Predominantly, qualitative data was collected during visits by the researchers to communities, although interviews were also conducted in some centres (specifically, Cairns, Brisbane, Murgon, Mt Isa and Cooktown (and again, by phone or through direct contact)).

Seven communities were purposively selected as principal research sites (with DJAG input), with the intention of thereby including communities where JP Court currently operates, communities where JP Court had been operating but had now ceased to do so, and communities where JP Court had never operated. Other factors relevant to the selection of communities included their proximity to geographic centres such as Cairns and/or their access to a permanent court registry, *inter alia* – factors that had potential relevance to assessment of the program's effectiveness. The communities selected to participate in the evaluation were as follows.

- Cherbourg,
- Aurukun,
- Mornington Island,
- Kowanyama,
- Thursday Island,
- Yarrabah, and
- Wujal Wujal

In consultation with DJAG, certain categories of individuals or agencies were selected to participate in face-to-face interviews with the researchers. These included local and state wide Aboriginal and Torres Strait Islander institutional or representative bodies; government and non-government-based service providers; and individuals directly involved in the program, for example. Those contacted as part of the evaluation process may be divided into two groups. Most stakeholders interviewed resided on, were located within and/or were

servicing relevant Aboriginal and Torres Strait Islander communities. Statewide stakeholders with no particular attachment to an individual community, but with (potential) involvement or interest in the program were also contributors to the evaluation.

Participants invited to attend an interview during visits to and/or in relation to particular communities were as follows:

- Indigenous JPs who have received training as part of the JP Court Program, including those who have sat on JP Courts and those who have not;
- QPS personnel;
- Indigenous police liaison officers (PLOs), Indigenous community police and Queensland Aboriginal and Torres Strait Islander Police officers (QATSIPs), where available;
- community members (including CJG members, Elders groups' members and local council members);
- Family Responsibilities Commission staff (located at one particular community only);
- magistrates and registrars circuiting to or servicing relevant communities;
- Aboriginal and Torres Strait Islander Services (ATSIS) policy officers and Regional Directors with responsibility for the relevant site areas;
- ATSILS solicitors and field officers;
- family violence prevention legal service provider staff; and
- Queensland Corrective Services (QCS) staff.

Statewide stakeholders with no particular connection to the nominated communities invited to participate in an interview were as follows:

- the Cultural Advisory Unit, QPS Commissioner's Office;
- Families Responsibility Commission staff;
- ATSIS managers;
- Department of Infrastructure and Planning staff;
- the Chief Magistrate for Queensland and other magistrates with an interest in Indigenous court initiatives;
- ATSILS (Qld) CEO and Principal Legal Officer;
- Queensland Aboriginal and Torres Strait Islander Advisory Council (QATSIAC) members; and
- DJAG staff with relevant responsibilities for or past involvement with the JP Court program.

In addition, certain other individuals (QPS and court staff) involved in JP Courts outside selected research site areas were also interviewed. (A full list of participants is set out in Appendix 3)

As noted above, a set of interview questions for all stakeholder groups were developed in order to gather quantitative data pertaining to key issues relevant to the evaluation and to ensure uniformity across all interviews (in terms of process). The questions were largely structured, although there were some open-ended questions to allow for broader discussion. The latter approach was particularly important in facilitating Indigenous knowledge and input into the research process.

Two different sets of questions were developed for use in interviewing two separate groups of stakeholders. Although they were similar, one set of questions had particular relevance for stakeholders based within Aboriginal and Torres Strait Islander communities (specifically, JP magistrates and members of councils, CJGs and Elders Groups). The other was used for all other stakeholders, with some necessary adjustments to these questions for QPS personnel in order to comply with a request in this regard by the QPS Review and Evaluation Unit, Ethics Command.

Attempts were also made to observe JP Courts in operation on two communities. Visits to these communities were specifically organised to coincide with JP Court sittings. However, court was convened in one community but all matters adjourned as no defendants appeared. On the other community no matters had been listed by police for JP Court at the sitting attended. Due to the short time frame within which the research needed to be completed, it was simply not possible to schedule (additional) visits to increase the likelihood of observing a JP Court in operation.

1.3.3 Quantitative Data

Data on JP Court sittings was provided by DJAG from the QWIC system for the three year period 2007-2009. There were problems with the data around differentiating sittings by JP magistrates from JP (Quals) conducting bail courts. In the end three data sets were constructed which provided the basis of the analysis in Chapter Two – these are described more fully in that Chapter. As requested by DJAG, recidivism was also measured on the basis of offending prior to and after an appearance in the JP Court. There was no control group to provide a comparison.

Recommendation 1

It is recommended that DJAG develop separate identifiers within QWIC to differentiate the activities of JP magistrates and JP (Quals) conducting bail courts, and that a database be developed to identify the JPs sitting in each court for the purposes of training and support.

1.4 Literature Review

Aboriginal and Torres Strait Islander JPs have been convening court on communities in Queensland for a number of years. Legislation enacted in 1984 led to the establishment of ‘community courts’ (or ‘Aboriginal’ or ‘Island Courts’) on specified Aboriginal and Torres Strait Islander communities, although there has been legislative capacity in Queensland for community courts of some description as far back as 1939 (Department of Aboriginal and Torres Strait Islander Policy (DATSIP) 1998: 19).¹ Following the 1984 enactments, Indigenous residents convened community court as either JPs or as members of the community council. The courts were able to hear and determine by-law breaches, including where the defendant did not plead guilty. They were restricted to the imposition of fines and fine option orders only (with a maximum penalty of \$500). There was also some capacity for

¹ *Community Services (Aborigines) Act 1984* (s. 40) and *Community Services (Torres Strait) Act 1984* (s. 42).

the courts to hear and determine disputes ‘governed by the usages and customs of the community’; that is, matters that did not fall under by-law or state legislation (DATSIP: 18).

Prior to 1991, there existed only one category of JP in Queensland, but new legislation introduced at that time created a three-tiered system of JP appointments. The relevant amendments in law were made following a Queensland Government review of the operation of the then-current JP system and of problems arising therein (Office of the Attorney-General 1990). After 1991, a new category of JP magistrates was created (see further Appendix 1). (Two or more) JP magistrates were empowered to constitute a JP Court and to impose penalties in relation to minor offences where an offender pleads guilty (*inter alia*). The JP Courts subsequently convened have been able to deal with by-law breaches as well as offences under state legislation.

Training for Aboriginal and Torres Strait Islander JP magistrates commenced from around 1993 and apparently constituted a component of Government implementation of the Royal Commission into Aboriginal Deaths in Custody recommendations (DJAG 2005a). Some of these Indigenous JPs worked on community courts (and had wider JP magistrate powers in community courts than in JP Courts). Others went on to convene JP Courts, which eventually replaced community courts on Aboriginal and Torres Strait Islander communities. JP Courts were formally piloted in three remote communities in 1998. The pilot program appears to have been initiated following amendments to the *Criminal Code* (Qld), which empowered certain Aboriginal and Torres Strait Islander JPs to impose sentence on defendants charged with indictable matters with capacity to be heard summarily (see Appendix 1).² The pilots were intended to provide some indication of whether JP Courts would ‘aid in a more efficient system of justice’ and to enable ‘study the effect of culturally appropriate processes and sentencing’.³

In 1998, DATSIP reviewed community courts and recommended abolishing them and focusing instead upon JP Courts, with an emphasis upon using Aboriginal and Torres Strait Islander JP magistrates in the latter courts (DATSIP 1998). Problems with the community courts identified by DATSIP included the expectation that the JPs could determine guilt despite their relative lack of legal knowledge and training; a lack of standardised records systems for the courts; and insufficient ‘legitimacy’ for the courts in the eyes of relevant communities. Some of these difficulties along with further issues raised in the DATSIP review, including problems relating to insufficient numbers of available JPs and a lack of integrated support structures for JPs, are similar to those noted below as being of contemporary concern across JP Courts. Other problems appear to be particular to community courts. There were, for example, allegedly few community courts established due to problems with the legislative provisions governing them and with local council resources for and administration of the courts.⁴

In 1998, the Queensland Law Reform Commission (QLRC) also examined in some detail issues of relevance to the office of JP under terms of reference directed to consideration of

² There had been some limited use of JP courts on Aboriginal and Torres Strait Islander communities prior to 1998, however. These 1997 amendments effectively created a ‘special class’ of JP magistrates with additional powers to those of ‘ordinary’ JP magistrates (QLRC 1998: 22).

³ Explanatory Notes to the *Aboriginal, Torres Strait and Remote Communities (Justice Initiatives) Amendment Bill 1997 (Qld)* at 3 (cited in QLRC 1998: 21). This bill amended the Criminal Code, as above.

⁴ *Ibid.*

the 'desirability of maintaining this office in the light of a changing society', given changes to court-based technology and 'professionalisation' of courts of summary jurisdiction (QLRC 1998 & 1999). The QLRC made a number of recommendations in its review, none of which pertained specifically to Indigenous JP magistrates. There was some discussion in the QLRC papers and final report about the utility and appropriateness of JP magistrates' power to sentence. Potential benefits of JP capacity in this regard were identified as including a reduction of time spent in custody; cost-effective administration of justice; reduction of the workload of Magistrates Court; and application of local knowledge to sentences and court process (QLRC 1998a: 152ff). Potential problems were said to include lack of expertise, particularly in relation to sentencing, and the impact that this may have upon the quality of justice received and a lack of familiarity with respect to court procedures. Further, local knowledge was seen to give rise to possible bias in JP decision-making (QLRC 1999a: 152ff).

There was some specific consideration of Indigenous JP Courts in the QLRC material, still in their infancy at this stage. Public submissions to QLRC in relation to the latter suggested that they might contribute efficiency and a level of community ownership to the justice system (QLRC 1999a: 220). Further comments to the QLRC review highlighted the capacity of the Aboriginal and Torres Strait Islander JP Courts in the following ways. Local JPs may be more aware of relevant cultural factors useful in ensuring decisions are appropriate; language difficulties will be minimised; and decisions made by local JPs are more likely to be understood and accepted by the community (including offenders), thereby enhancing 'community ownership of the justice process, leading to more effective rehabilitation and crime prevention' (QLRC 1999a: 221).

DJAG compiled a 'profile' document in 2005 based on identified strengths and weaknesses evident in the JP Court program (DJAG 2005a). It is reported therein that seventeen Aboriginal and Torres Strait Islander communities had received DJAG JP magistrate training to date, and that twelve communities had fully operational JP Courts. The program was said to have reached capacity with these numbers. The DJAG profile points to a number of factors likely to contribute to the success of JP Courts on a community, including having sufficient grassroots community support for (i) the program itself prior to setting up JP Court in a particular location and (ii) particular individuals prior to their appointment as JP magistrate; developing effective communication channels between JPs and magistrates to provide JPs with advice and sentencing guidance; and the use by stakeholder councils and police of by-laws, *inter alia*. Benefits of using by-laws at a local level were said to include by-law penalty revenue returning to the community; decreased truancy and alcohol control; community involvement in the justice system; and reduction of Aboriginal and Torres Strait Islander incarceration rates (DJAG 2005a: 4).

An independent evaluation of the Queensland Aboriginal and Torres Strait Islander Justice Agreement in 2005 stressed the need for a comprehensive review of the operation of JP Court program. This was seen as important to ensure that the program was able to realise its potential to 'fulfil important justice functions at the community level' (Cunneen et al. 2005: 104). The capacity of the program was discussed in terms of assisting Aboriginal and Torres Strait Islander people to understand their legal rights and improving Indigenous access to justice. In formally responding to the Justice Agreement evaluation, the Queensland Government committed to independently evaluate the JP Court program 'with respect to sentencing outcomes, recidivism, culturally appropriate processes and other community

justice issues' (Queensland Government 2005: 29, 39).⁵ Government also noted that the JP Court program is intended to address the 'usually negative interaction' of Aboriginal and Torres Strait Islander people with the criminal justice system, 'whether as a victim of a criminal act, an accused person, or otherwise, by offering (Aboriginal and Torres Strait Islander) people opportunities to play positive roles in the justice system' (Queensland Government 2005: 29).

Whilst the program is generally well supported on the basis of its potential to create a swifter, more accessible form of justice for Indigenous communities and to provide for greater community ownership and involvement in the justice system, there have been previous and subsequent appeals to that of 2005 for its evaluation to determine to what extent this potential is being realised and how improvements might be made in this regard (see O'Connor 2008; Loban 2006; Fitzgerald 2001). The Queensland Crime and Misconduct Commission (CMC) recently repeated the call for a 'much overdo' evaluation of the JP Court program in a report examining policing on Aboriginal and Torres Strait Islander communities, with particular reference to exploration as to how the JP Courts might have their capacity enhanced to deal 'creatively and responsively with local problems' and to 'effectively contribute to reducing crime and violence on Indigenous communities' (CMC 2009: 305, 309). The CMC noted that although JP Courts had been established on 14 communities, only seven or eight were active as at 2008. Contributions made by JP Courts varied across time and communities, and within communities, according to the CMC (CMC 2009: 304). Reasons for variation might be attributed to factors such as hesitancy of JPs to convene court; lack of administrative support to coordinate JP Courts; and an unwillingness of police to list simple offences before the JP Courts (CMC 2009: 304). The CMC called for further commitment by government to support and develop 'effective forms of local authority' in Aboriginal and Torres Strait Islander communities 'to respond to crime, violence and related issues.'

In responding to the CMC report, the Queensland Government agreed to an immediate review of the program and the evaluation conducted by JCU responds to this commitment. It also indicated that the JP Court, the Murri Court and other similar programs were intended to 'increase local participation and authority in community safety matters' (Queensland Government 2010: 8). In this context, it is worthwhile briefly canvassing relevant literature relating to other forms of Indigenous sentencing courts. Marchetti and Daly (2007) have considered in some detail Indigenous sentencing courts located in various Australian jurisdictions, including Queensland's Murri Court, New South Wales' Circle Court, and Victoria's Koori Court - comparing differences and, more importantly, identifying important similarities. JP magistrates may convene court to sentence offenders and undertake other judicial duties outside Aboriginal and Torres Strait Islander communities. As such, relevant legislation and policy is not Indigenous-specific. However, the Queensland Government has developed a JP Court program that is specific to Indigenous communities and focuses upon Aboriginal and Torres Strait Islander needs in a justice context. There have also been legislative provisions introduced with particular application to Aboriginal and Torres Strait Islander JP magistrates.

Comments made by Marchetti and Daly (2007) in their comparative analysis of Indigenous sentencing courts are also largely applicable to Aboriginal and Torres Strait Islander JP Courts. However, it must be borne in mind that Indigenous sentencing courts (such as Murri

⁵ See also, for instance, Department of Justice and Attorney-General (DJAG) (Qld) (2008) *Indigenous Justice Strategy*, DJAG Brisbane (and earlier Strategies).

Court) generally retain sentencing power for the magistrate rather than Indigenous participants. Aboriginal and Torres Strait Islander JP magistrates stand apart in that they have power to control sentencing outcomes in JP Court. The following points, derived from Marchetti and Daly (2007), are important to bear in mind in assessing the effectiveness of the JP Court program operating on Indigenous communities in Queensland.

Indigenous sentencing courts, similar to Indigenous JP Courts, are said to commonly make the justice process more culturally appropriate and more inclusive of both the Indigenous community and the Indigenous offender. These latter goals might perhaps be more predominant and/or more readily accomplished than that of reducing recidivism (as various evaluations of Indigenous sentencing courts indicate), although the capacity for Aboriginal and Torres Strait Islander Elders and other participants in the court process to impact upon individual offender's 'attitude and behaviour' through shaming processes is also highlighted. Through such processes, 'the application of 'white law' is inflected by Indigenous knowledge and cultural respect' (Marchetti and Daly 2007:437).

Indigenous sentencing courts (as well as JP Courts) may not directly adopt Indigenous customary laws, are not wholly Indigenous-controlled and as such are embedded within and reliant upon Australian criminal laws and procedures. However, there is seen to be a 'political' element to Indigenous sentencing courts, which may over time shift 'Indigenous-white justice relations' and lead to 'group-based change in social relations, not merely change in an individual (offender)' (Marchetti and Daly 2007:420). These courts have 'potential to empower Indigenous communities' and 'to bend and change the dominant perspective of 'white law' through Indigenous knowledge and modes of social control'. This potential extends to coming 'to terms with a colonial past' (Marchetti and Daly 2007:429-30). Comments such as are also relevant to our understanding Indigenous JP Courts.

In summary, existing literature points to some of the ongoing problems with Indigenous local courts – problems that were evident in the previous community courts for example. We also know from the literature on Indigenous sentencing courts that Indigenous participation in the sentencing process offers both capacity building and the opportunity to deal directly with localised offending behaviour.

CHAPTER 2 DATA ON THE JP COURTS

2.1 The Data Sets

Data was provided from the QWIC system on JP court sittings for the calendar years of 2007, 2008 and 2009. The ten courts covered in the data are Aurukun, Bamaga, Cherbourg, Kowanyama, Lockhart River, Mornington Island, Pormpuraaw, Thursday Island, Woorabinda and Yarrabah.

The data distinguished between a single JP sitting and two JPs sitting. We have excluded those matters dealt with by a single JP.⁶ Thus all reference to a JP court in the data sets below refers to two JPs sitting as a court.

There was no distinction in the available data between two JPs sitting as a bail court (which might include a JP magistrate and a JP (Qual)) and two JP magistrates hearing offences and imposing penalties. This lack of differentiation posed some problems for the data analysis. While we could assume that any JP court imposing a penalty was constituted by two JP magistrates, we could not be sure whether appearances that did not result in a sentence were JP magistrate or JP bail court matters. For example, two JP magistrates may have remanded a person or otherwise made a decision relating to bail. On the database this is indistinguishable from a JP bail court comprised of a JP magistrate and a JP (Qual) which has been required to hear a bail matter. For this reason we cannot say precisely what the total number of matters were that were heard by two JP magistrates only.

To overcome the problems identified above we developed three data sets to provide the most comprehensive analysis of the JP courts. **The data sets include only matters heard by two JPs.** They are based on the following criteria:

Data Set 1. All Matters [Charge Appearances]. This data set contains records of all charges heard by two JPs in each of the ten courts on each day over the three year period. For example if two charges of public nuisance came before a JP court and were adjourned to a later date when they were then both dealt with by way of fine, there would be four matters (charge appearances) recorded. The charge appearance data set provides a complete picture of the *workload* of the JPs courts (including bail courts).

Data Set 2. Final Appearances. This data set contains records of the last appearance for each charge heard by two JPs in each of the ten courts over the three year period. In the example given above of public nuisance, only the last appearance for those matters (when they were dealt with by a fine) would be recorded. This data set provides a more accurate picture of the *types of matters* which come before the JP courts than Data Set 1.

Data Set 3. Sentences. This data set contains records of the last sentence recorded for each charge heard by two JPs in each of the ten courts over the three year period. Because this data set deals with sentencing matters, it is by definition only inclusive of courts comprised of two JP magistrates. Thus Data Set 3 provides information on the type of matters which are sentenced in the JP courts and the *penalties* imposed by the court.

⁶ See Appendix 2 for the functions of the JPs (Qual) and JP magistrates and the various powers sitting alone or as two JPs.

2.2 All Matters Heard in the JP Courts

Table 2.1 shows that there were a total of 5210 matters heard in JP courts in the 10 remote Indigenous locations. These include all bail, remand, adjournments and sentencing matters heard by two JPs.

Table 2.1
All Matters Heard by Two JPs by Gender
2007-2009

Location	Female		Male		Total	
	No	%	No	%	No	%
Aurukun	118	5.2	1005	34.1	1123	21.6
Bamaga	36	1.6	237	8.0	273	5.2
Cherbourg	279	12.3	261	8.8	540	10.4
Kowanyama	640	28.3	293	9.9	933	17.9
Lockhart River	61	2.7	117	4.0	178	3.4
Mornington Island	533	23.6	830	28.1	1363	26.2
Pormpuraaw	2	0.1	4	0.1	6	0.1
Thursday Island		0.0	55	1.9	55	1.1
Woorabinda	591	26.2	144	4.9	735	14.1
Yarrabah		0.0	4	0.1	4	0.1
Total	2260	100.0	2950	100.0	5210	100.0

Table 2.1 shows that a quarter of all matters were heard in Mornington Island (26.2%) and slightly more than one in five were heard in Aurukun (21.6%). Five courts, Mornington Island, Aurukun, Kowanyama, Woorabinda and Cherbourg accounted for slightly more than 90% of all matters. It is clear that over the three year period the JP courts dealt with a large number of matters. However, as we detail further a significant proportion of these involved dealing with bail, remand and committal to the Magistrate's Court – as we indicate later the number of sentenced matters at 2612 (see Table 2.8) is only half the 5210 matters indicated above.

Table 2.1 also shows that the gender breakdown is noteworthy: some 43.4% of matters involved Indigenous women.

Table 2.2 shows the legislation under which matters were brought before the JP courts. The largest group were under the Criminal Code (16.8%), followed by the Summary Offences Act (15.2%), the Liquor Act (13.8%), Woorabinda Council By-laws (12.9%), Kowanyama Council By-laws (11.7%) and Cherbourg Council By-laws (8.2%). Collectively three council by-laws accounted for 34% of all matters.

Table 2.2
All Matters Heard by Two JPs by Statute
2007-2009

Statute	Total	
	No	%
ATSI COMMUNITIES (JUSTICE LAND & OTHER) ACT 1984	331	6.3
BAIL ACT 1980	113	2.2
CHERBOURG ABORIGINAL COUNCIL BY-LAWS	427	8.2
CRIMINAL CODE	873	16.8
CRIMINAL PROCEEDS CONFISCATION ACT 2002	2	0.0
DOMESTIC AND FAMILY VIOLENCE PROTECTION ACT 1989	84	1.6
DRUGS MISUSE ACT 1986	78	1.5
EDUCATION (GENERAL PROVISIONS) ACT 2006	16	0.3
JUSTICES ACT 1886	1	0.0
JUVENILE JUSTICE ACT 1992	6	0.1
KOWANYAMA ABORIGINAL COUNCIL BY-LAWS 1997	611	11.7
LIQUOR ACT 1992	720	13.8
MOTOR ACCIDENT INSURANCE ACT 1994	7	0.1
PENALTIES & SENTENCES ACT 1992	57	1.1
POLICE POWERS & RESPONSIBILITIES ACT 2000	260	5.0
REGULATORY OFFENCES ACT 1985	2	0.0
SUMMARY OFFENCES ACT 2005	791	15.2
TRANSPORT OPERATION (RUM - DRIVERS LIC.) REG 1999	2	0.0
TRANSPORT OPERATIONS (RUM - VEH. STAND.) REG 1999	1	0.0
TRANSPORT OPERATIONS (RUM - VEHICLE REGN) REG 1999	10	0.2
TRANSPORT OPERATIONS (RUM) ACT 1995	128	2.5
UNDEFINED STATUTE	2	0.0
WEAPONS ACT 1990	15	0.3
WOORABINDA ABORIGINAL COUNCIL BY-LAWS	673	12.9
Total	5210	100.0

Table 2.3 shows the orders made by the JP courts for all matters over the three year period. The 'unknown' category was excluded from the percentage calculations to provide a better indication of orders. Some 37% of matters were dealt with by way of fine; 16% of matters were adjourned. Matters relating to bail (bail enlarged, bail undertaking, bail refused - remanded in custody) accounted for 15.2% of matters. No action was taken in 8.4% of matters. Warrants were issued 4.8% of matters.

Table 2.3
All Matters Heard by Two JPs by Court Order
2007-2009

Court Order	Total	
	No	%
ADJOURNED	810	15.9
ADMONISHED	42	0.8
BAIL ENLARGED	364	7.1
BAIL UNDERTAKING	110	2.2
BOND	4	0.1
COMMITTED	26	0.5
COMMUNITY SERVICE ORDER	5	0.1
IMPRISONMENT	46	0.9
FORFEIT PROHIBITED LIQUOR	2	0.0
GENERAL ORDER	142	2.8
MEDIATION	2	0.0
MONETARY	1882	36.9
NO ACTION	428	8.4
OTHER	199	3.9
PROBATION	63	1.2
PROHIBITION ORDER	54	1.1
PROPERTY FORFEITED	185	3.6
REMAND IN CUSTODY	300	5.9
TRANSFER OTHER DISTRICT	132	2.6
UNPROVEN	67	1.3
WARRANT ISSUED	244	4.8
UNKNOWN	103	
Total	5210	100

Note: Percentage calculations exclude unknown orders

It is clear from Tables 2.2 and 2.3 that the JP courts hear a variety of matters and make a range of orders. Without the JP courts many of these matters would have required setting down before a circuit Magistrate's Court or transfer to another centre.

2.3 Final Appearances in the JP Courts.

The data set used in this section is based on the last appearance for each charge heard by two JPs in each of the ten courts over the three year period. It is a final appearance in the JP Court (although not necessarily a *finalised* appearance for the defendant if the matter has been transferred to another court, or the person has been remanded in custody). This use of the data does however reduce the counting of particular charges that may have appeared on multiple occasions in a JP court to only one record – the last appearance within our timeframe of 2007-2009. This data set provides a more accurate picture of the *types of matters* which come before the JP courts. There were 3069 final appearances in the 10 locations over the three year period.

Table 2.4
Final Appearances by Two JPs by Gender
2007-2009

Location	Female		Male		Total	
	No	%	No	%	No	%
Aurukun	68	4.3	357	24.1	425	13.8
Bamaga	22	1.4	76	5.1	98	3.2
Cherbourg	159	10.0	145	9.8	304	9.9
Kowanyama	603	37.9	252	17.0	855	27.9
Lockhart River	56	3.5	63	4.3	119	3.9
Mornington Island	380	23.9	447	30.2	827	26.9
Pormpuraaw	1	0.1	4	0.3	5	0.2
Thursday Island		0.0	20	1.4	20	0.7
Woorabinda	301	18.9	113	7.6	414	13.5
Yarrabah		0.0	2	0.1	2	0.1
Total	1590	100.0	1479	100.0	3069	100.0

More than half of final appearances were heard in two courts: Kowanyama (27.9%) and Mornington Island (26.9%). Five courts, Mornington Island, Aurukun, Kowanyama, Woorabinda and Cherbourg accounted for 92% of all matters. It is clear that over the three year period the JP courts dealt with a large number of matters.

Indigenous women accounted for the majority (52%) of final appearances. The fact that the proportion of women increased from that shown in Table 2.1 shows that matters involving Indigenous women are less likely to appear on multiple occasions in the JP courts: when we remove multiple counts for the same matter, then the proportion of women increases significantly. The fact that proportionately more matters are a final appearance for Indigenous women suggests that they are perhaps less serious and less likely to be adjourned or remanded on multiple occasions.

Table 2.5 shows that 55% of final appearances involved persons between the ages of 17 and 35 years; 4.2% involved juveniles 16 years old and younger.

Table 2.5
Final Appearances by Two JPs by Age
2007-2009

Age at Offence	Total	
	No	%
16 years or younger	130	4.2
17-25	778	25.3
26-35	907	29.5
36-45	851	27.7
46-55	289	9.4
over 55	114	3.7
Total	3069	100.0

Table 2.6
Final Appearances by Two JPs by Statute
2007-2009

Statute	Total	
	No	%
ATSI COMMUNITIES (JUSTICE LAND & OTHER) ACT 1984	231	7.5
BAIL ACT 1980	67	2.2
CHERBOURG ABORIGINAL COUNCIL BY-LAWS	235	7.7
CRIMINAL CODE	279	9.1
CRIMINAL PROCEEDS CONFISCATION ACT 2002	1	0.0
DOMESTIC AND FAMILY VIOLENCE PROTECTION ACT 1989	39	1.3
DRUGS MISUSE ACT 1986	21	0.7
EDUCATION (GENERAL PROVISIONS) ACT 2006	10	0.3
JUSTICES ACT 1886	1	0.0
JUVENILE JUSTICE ACT 1992	1	0.0
KOWANYAMA ABORIGINAL COUNCIL BY-LAWS 1997	598	19.5
LIQUOR ACT 1992	519	16.9
MOTOR ACCIDENT INSURANCE ACT 1994	5	0.2
PENALTIES & SENTENCES ACT 1992	9	0.3
POLICE POWERS & RESPONSIBILITIES ACT 2000	105	3.4
REGULATORY OFFENCES ACT 1985	2	0.1
SUMMARY OFFENCES ACT 2005	513	16.7
TRANSPORT OPERATION (RUM - DRIVERS LIC.) REG 1999	2	0.1
TRANSPORT OPERATIONS (RUM - VEH. STAND.) REG 1999	1	0.0
TRANSPORT OPERATIONS (RUM - VEHICLE REGN) REG 1999	8	0.3
TRANSPORT OPERATIONS (RUM) ACT 1995	51	1.7
UNDEFINED STATUTE	1	0.0
WEAPONS ACT 1990	8	0.3
WOORABINDA ABORIGINAL COUNCIL BY-LAWS	362	11.8
Total	3069	100.0

The data in Table 2.6 of final appearances by the legislation under which charges were laid shows the importance of the use of council by-laws (particularly in Kowanyama and Woorabinda). Collectively council by-laws comprised 39% of the final matters heard by the JP courts. Matters under the Liquor Act and the Summary Offences Act accounted for 16.9% and 16.7% respectively. Criminal Code matters accounted for 9.1%.

Table 2.7 shows the orders made in the final appearance for each charge during the three year period. Some 62% of orders made involved a fine. Property was forfeited in 6% of matters and general orders were made in 4.7% of matters.

Table 2.7
Final Appearances by Two JPs by Court Order
2007-2009

Court Order	Total	
	No	%
ADJOURNED	56	1.9
ADMONISHED	42	1.4
BAIL ENLARGED	11	0.4
BAIL UNDERTAKING	16	0.5
BOND	4	0.1
COMMITTED	19	0.6
COMMUNITY SERVICE ORDER	4	0.1
IMPRISONMENT	46	1.5
FORFEIT PROHIBITED LIQUOR	2	0.1
GENERAL ORDER	141	4.7
MONETARY	1872	62.2
NO ACTION	103	3.4
OTHER	80	2.7
PROBATION	50	1.7
PROHIBITION ORDER	54	1.8
PROPERTY FORFEITED	182	6.0
REMAND IN CUSTODY	124	4.1
TRANSFER OTHER DISTRICT	75	2.5
UNPROVEN	72	2.4
WARRANT ISSUED	58	1.9
UNKNOWN	58	
Total	3069	100

Note: Percentage calculations exclude unknown orders

2.4 Sentencing in the JP Courts

This section is based on the last sentence recorded for each charge heard by two JPs in each of the ten courts over the three year period. Because this data set deals with sentencing matters, it is by definition only inclusive of courts comprised of two JP (Mag Ct). The data reported here gives the best indication of the work carried out by the JP (Mag Ct) excluding any cases that were bailed, remanded, adjourned or had an outcome other than a sentence.

Table 2.8 shows that there were 2612 matters where sentences were imposed in the JP courts between 2007 and 2009. Some 30% of these matters sentenced by the JP court were in Kowanyama, followed by Mornington Island (29%). Overall 94% of these matters were in five courts (Kowanyama, Mornington Island, Woorabinda, Aurukun and Cherbourg).

Table 2.8
Sentenced Matters in the JP Court by Gender
2007-2009

Location	Female		Male		Total	
	No	%	No	%	No	%
Aurukun	60	4.0	218	19.3	278	10.6
Bamaga	20	1.3	40	3.5	60	2.3
Cherbourg	141	9.5	121	10.7	262	10.0
Kowanyama	588	39.6	199	17.6	787	30.1
Lockhart River	55	3.7	31	2.7	86	3.3
Mornington Island	364	24.5	402	35.6	766	29.3
Pormpuraaw	1	0.1	4	0.4	5	0.2
Thursday Island		0.0	6	0.5	6	0.2
Woorabinda	255	17.2	107	9.5	362	13.9
Total	1484	100.0	1128	100.0	2612	100.0

The majority of these sentenced matters involved Indigenous women (57%). Indeed, Indigenous women comprised 75% of sentenced matters in Kowanyama and 70% in Woorabinda. In Aurukun and Mornington Island those sentenced by the JP courts were more likely to be male (78% and 52% respectively).

Table 2.9
Sentenced Matters by Two JPs by Age
2007-2009

Age at Offence	Total	
	No	%
16 years or younger	84	3.2
17-25	594	22.7
26-35	771	29.5
36-45	777	29.7
46-55	272	10.4
over 55	114	4.4
Total	2612	100

Some 52% of sentenced matters involved offenders aged between 17 and 35 years. Juveniles accounted for 3.2% of sentenced matters.

Table 2.10 shows that 22.5% of sentenced matters were under the Kowanyama Council by-laws. The Liquor Act and the Summary Offences Act accounted for 19.3% and 17.6% of matters respectively. All council by-laws accounted for 42.1% of sentenced matters.

Table 2.10
Sentenced Matters by Two JPs by Statute
2007-2009

Statute	Total	
	No	%
ATSI COMMUNITIES (JUSTICE LAND & OTHER) ACT 1984	224	8.6
BAIL ACT 1980	29	1.1
CHERBOURG ABORIGINAL COUNCIL BY-LAWS	202	7.7
CRIMINAL CODE	117	4.5
CRIMINAL PROCEEDS CONFISCATION ACT 2002	1	0.0
DOMESTIC AND FAMILY VIOLENCE PROTECTION ACT 1989	9	0.3
DRUGS MISUSE ACT 1986	13	0.5
EDUCATION (GENERAL PROVISIONS) ACT 2006	9	0.3
JUSTICES ACT 1886	1	0.0
KOWANYAMA ABORIGINAL COUNCIL BY-LAWS 1997	587	22.5
LIQUOR ACT 1992	504	19.3
MOTOR ACCIDENT INSURANCE ACT 1994	4	0.2
PENALTIES & SENTENCES ACT 1992	5	0.2
POLICE POWERS & RESPONSIBILITIES ACT 2000	84	3.2
REGULATORY OFFENCES ACT 1985	2	0.1
SUMMARY OFFENCES ACT 2005	461	17.6
TRANSPORT OPERATION (RUM - DRIVERS LIC.) REG 1999	2	0.1
TRANSPORT OPERATIONS (RUM - VEH. STAND.) REG 1999	1	0.0
TRANSPORT OPERATIONS (RUM - VEHICLE REGN) REG 1999	7	0.3
TRANSPORT OPERATIONS (RUM) ACT 1995	34	1.3
UNDEFINED STATUTE	1	0.0
WEAPONS ACT 1990	4	0.2
WOORABINDA ABORIGINAL COUNCIL BY-LAWS	311	11.9
Total	2612	100.0

Table 2.11 shows sentenced matters for the five courts that made the greatest use of JP courts for sentencing (Kowanyama, Mornington Island, Woorabinda, Aurukun and Cherbourg). The table shows the extent to which particular communities utilise different legislation. The three communities with by-laws (Kowanyama, Woorabinda and Cherbourg) rely heavily on by-law offences where they comprise 74.6%, 85.9% and 77.1% of sentenced matters, respectively. In Aurukun where there are no law and order by-laws, sentenced matters fall under the Criminal Code (30.9%), the Summary Offences Act (28.1%) and the Liquor Act (23.4%). In Mornington Island sentenced matters are primarily under the Liquor Act (34.9%), the Summary Offences Act (30.9%) and the Aboriginal and Torres Strait Islander Communities (Justice and Land) Matters Act 1984 (25.2%).

Table 2.11
Sentenced Matters by Two JPs in Five Courts by Statute
2007-2009

Statute	Aurukun	Cherbourg	Kowany.	Morn'gton	Woorab.	Total
	%	%	%	%	%	%
ATSI COMMUNITIES (JUSTICE&LAND) MATTERS	0.7	5.7	1.3	25.2	0.0	7.0
BAIL ACT 1980	6.1	0.0	1.1	0.1	0.0	1.1
CHERBOURG BY-LAWS	0.0	77.1	0.0	0.0	0.0	8.2
CRIMINAL CODE	30.9	0.0	0.6	2.0	0.3	4.4
CRIMINAL PROCEEDS CONFISCATION ACT 2002	0.0	0.0	0.1	0.0	0.0	0.0
DOMESTIC AND FAMILY VIOLENCE PROTECTION	0.7	0.0	0.0	0.4	0.0	0.2
DRUGS MISUSE ACT 1986	0.4	0.0	0.1	1.2	0.0	0.4
JUSTICES ACT 1886	0.4	0.0	0.0	0.0	0.0	0.0
KOWANYAMA ABORIGINAL COUNCIL BY-LAWS	0.0	0.0	74.6	0.0	0.0	23.9
LIQUOR ACT 1992	23.4	13.0	9.1	34.9	1.4	18.0
MOTOR ACCIDENT INSURANCE ACT 1994	0.0	0.0	0.1	0.0	0.0	0.0
PENALTIES & SENTENCES ACT 1992	1.8	0.0	0.0	0.0	0.0	0.2
POLICE POWERS & RESPONSIBILITIES ACT 2000	4.0	1.9	2.4	4.0	1.4	2.9
REGULATORY OFFENCES ACT 1985	0.0	0.0	0.0	0.1	0.0	0.0
SUMMARY OFFENCES ACT 2005	28.1	1.5	9.1	30.9	11.0	17.6
TRANSPORT OPERATIONS (RUM - DRIVERS LIC.)	0.0	0.0	0.3	0.0	0.0	0.1
TRANSPORT OPERATIONS (RUM - VEH. STAND.)	0.0	0.0	0.1	0.0	0.0	0.0
TRANSPORT OPERATIONS (RUM - VEH. REGN.)	0.0	0.0	0.3	0.0	0.0	0.1
TRANSPORT OPERATIONS (RUM) ACT 1995	2.9	0.8	0.4	1.0	0.0	0.9
UNDEFINED STATUTE	0.0	0.0	0.1	0.0	0.0	0.0
WEAPONS ACT 1990	0.7	0.0	0.1	0.1	0.0	0.2
WOORABINDA ABORIGINAL COUNCIL BY-LAWS	0.0	0.0	0.0	0.0	85.9	12.7
Total	100.0	100.0	100.0	100.0	100.0	100.0

2.4.1 The Specific Use of Aboriginal Council By-Laws

As noted above, Kowanyama was the JP Court with the most sentenced matters over the three year period (Table 2.8). It was also a court where 77% of sentenced matters were under the local council by-laws (Table 2.11).

Table 2.12 shows the specific use of by-laws in Kowanyama. Some three quarters (76.1%) of all the by-law matters related to school attendance. A further 20.6% related to public drunkenness.

Table 2.12
Sentenced Matters, Kowanyama Council By-Laws
2007-2009

By-Law Matter	Total	
	No	%
BEHAVE IN A RIOTOUS, VIOLENT, DISORDERLY, INDECENT, OFFENSIVE, THREATENING OR INSULTING MANNER	10	1.7
CAUSE CHILD BETWEEN 6 AND 15 YEARS TO BE ABSENT FROM SCHOOL	447	76.1
DRUNK AND DISORDERLY IN PUBLIC PLACE	121	20.6
POSSESSION OF DANGEROUS ANIMAL, ARTICLE OR FIREARM TO CAUSE INJURY	4	0.7
POSSESSION OF DANGEROUS ANIMAL, ARTICLE OR FIREARM TO DESTROY OR DAMAGE ANY PROPERTY	1	0.2
UNLAWFULLY ASSAULT A PERSON IN THE AREA	2	0.3
WILFUL DAMAGE OR DESTRUCTION OF PROPERTY	2	0.3
Total	587	100.0

Table 2.13 shows the specific use of by-laws in Woorabinda. Like Kowanyama, some three quarters (75.6%) of all the by-law matters related to school attendance. A further 12.9% related to public drunkenness. Also noteworthy were a small number of matters related to volatile substance misuse (1.9%).

Table 2.13
Sentenced Matters, Woorabinda Council By-Laws
2007-2009

By-Law Matter	Total	
	No	%
ASSAULT / OBSTRUCT POLICE	2	0.6
CHILDREN TO ATTEND SCHOOL	235	75.6
CONSUMPTION OF LIQUOR WHERE COUNCIL HAS MADE NO DECLARATIONS	2	0.6
CONSUMPTION OF METHYLATED SPIRITS	6	1.9
DRUNK IN A PUBLIC PLACE	40	12.9
INHALATION OF PETROL, GLUE PAINT	6	1.9
PERSON GIVEN NOISE ABATEMENT DIRECTION FAILS TO COMPLY WITH THE DIRECTION	5	1.6
POSSESSION OR CONSUMPTION OF LIQUOR ON CONTROLLED OR DRY PLACE	3	1.0
THROWING STONES, ROCKS ETC.	1	0.3
TRESPASS	1	0.3
UNLAWFUL ASSAULT	7	2.3
WILFUL DAMAGE / DESTRUCTION	3	1.0
Total	311	100.0

Table 2.14 shows the specific use of by-laws in Cherbourg. Unlike Kowanyama or Woorabinda, slightly more than half (51%) of all the Cherbourg by-law matters related to disorderly behaviour. A further 28.7% were related to alcohol consumption. Some 14.9% were school attendance matters.

Table 2.14
Sentenced Matters, Cherbourg Council By-Laws
2007-2009

By-Law Matter	Total	
	No	%
BEHAVE IN A DISORDERLY MANNER	103	51.0
CAUSE OR PERMIT A CHILD BETWEEN THE AGES OF 6-15 YEARS, FOR WHOM A PARENT/GUARDIAN IS RESPONSIBLE, TO BE ABSENT FROM SCHOOL WITHOUT REASONABLE CAUSE	30	14.9
OBSTRUCT POLICE OFFICER IN PERFORMANCE OF DUTIES	5	2.5
UNAUTHORISED CONSUMPTION OF LIQUOR	58	28.7
USE PROFANE, INDECENT OR OBSCENE LANGUAGE WHILE IN OR NEAR A PUBLIC PLACE	4	2.0
WITHOUT REASONABLE EXCUSE HAVE AN ANIMAL/ARTICLE IN HIS/HER POSSESSION WHERE IT IS REASONABLY LIKELY THAT THE ANIMAL/ARTICLE WOULD BE USED UNLAWFULLY	1	0.5
WITHOUT REASONABLE EXCUSE POSSESS OPEN VESSEL OR UTENSIL CONTAINING LIQUOR IN PUBLIC PLACE OTHER THAN LICENSED PREMISES OR PLACE DESIGNATED BY COUNCIL	1	0.5
Total	202	100.0

2.4.2 JP Courts without Council By-Laws

Mornington Island and Aurukun are the two locations where the JP (Mag) court sits relatively frequently – determining 29.3% and 10.6% of all JP Court sentenced matters respectively – and do not have la and order by-laws.

Table 2.15 shows the major type of sentenced matters in Mornington Island grouped under the Liquor Act, the Summary Offences Act and the Aboriginal and Torres Strait Islander Communities (Justice and Land) Matters Act 1984. These three Acts accounted for 91% of all sentenced matters in Mornington Island (see Table 2.11).

Most matters in Mornington Island under the Liquor Act related to possession of alcohol; most offences under the Summary Offences Act were public nuisance offences, and most offences under the Aboriginal and Torres Strait Islander Communities (Justice and Land) Matters Act 1984 were related to home brew.

Table 2.15
Sentenced Matters, Major Offences, Mornington Island
2007-2009

Type of Matter	Total	
	No	%
LIQUOR ACT 1992		
DRUNK OR DISORDERLY IN PREMISES TO WHICH A PERMIT/LICENCE RELATES	1	0.4
FAIL TO LEAVE LICENSED PREMISES	4	1.5
POSSESS MORE THAN THE PRESCRIBED QUANTITY OF A TYPE OF LIQUOR IN A RESTRICTED AREA WITHOUT A PERMIT	169	63.3
POSSESSION OF LIQUOR IN RESTRICTED AREA	93	34.8
Total	267	100
SUMMARY OFFENCES ACT 2005		
COMMIT PUBLIC NUISANCE	235	99.2
TRESPASS - ENTERING OR REMAINING IN DWELLING OR YARD	1	0.4
TRESPASS - ENTERING OR REMAINING YARD OR PLACE FOR BUSINESS	1	0.4
Total	237	100
ABORIGINAL COMMUNITIES (JUSTICE&LAND) MATTERS 1984		
POSSESS HOME-BREW KIT OR HOME-BREW ALCOHOL IN COMMUNITY AREA OR PRESCRIBED AREA OR PRESCRIBED COMMUNITY	193	100
Total	193	100

Table 2.16 shows a greater variety of matters before the JP courts in Aurukun, particularly under the Criminal Code. While matters under the Liquor Act and the Summary Offences Act typically relate to possession of alcohol, public nuisance or public drunkenness, there both property offences and personal violence offences under the Criminal Code.

Table 2.16
Sentenced Matters, Major Offences, Aurukun
2007-2009

Type of Matter	Total	
	No	%
CRIMINAL CODE		
ASSAULTS OCCASIONING BODILY HARM	6	7.0
COMMON ASSAULT	2	2.3
ATTEMPTED UNLAWFUL USE OF MOTOR VEHICLES	7	8.1
DANGEROUS OPERATION OF A VEHICLE	2	2.3
DEMANDING PROPERTY WITH MENACES WITH INTENT TO STEAL	2	2.3
DEPRIVATION OF LIBERTY - UNLAWFULLY DETAIN/CONFINE	1	1.2
ENTER DWELLING AND COMMIT INDICTABLE OFFENCE	9	10.5
ENTER DWELLING WITH INTENT	1	1.2
ENTER PREMISES AND COMMIT INDICTABLE OFFENCE	15	17.4
ENTER PREMISES WITH INTENT	3	3.5
RECEIVING STOLEN PROPERTY (OR PROPERTY FRAUDULENTLY OBTAINED)	1	1.2
ROBBERY	2	2.3
STEALING	2	2.3
UNLAWFUL ENTRY OF VEHICLE FOR COMMITTING INDICTABLE OFFENCE	2	2.3
UNLAWFUL USE OF MOTOR VEHICLES AIRCRAFT OR VESSELS - USE	18	20.9
WILFUL DAMAGE	9	10.5
WILFUL DAMAGE OF POLICE PROPERTY	2	2.3
OTHER	2	2.3
Total	86	100
LIQUOR ACT 1992		
ATTEMPT TO ENTER RESTRICTED AREA IN POSSESSION OF MORE THAN THE PRESCRIBED QUANTITY OF A TYPE OF LIQUOR FOR THE AREA	1	1.5
POSSESS MORE THAN THE PRESCRIBED QUANTITY OF A TYPE OF LIQUOR IN A RESTRICTED AREA WITHOUT A PERMIT	64	98.5
Total	65	100
SUMMARY OFFENCES ACT 2005		
BEING DRUNK IN A PUBLIC PLACE	26	33.3
COMMIT PUBLIC NUISANCE	41	52.6
POSSESSION OF IMPLEMENTS THAT WAS BEING OR ABOUT TO BE USED IN RELATION TO PARTICULAR OFFENCES	5	6.4
TRESPASS - ENTERING OR REMAINING IN DWELLING OR YARD	4	5.1
TRESPASS - ENTERING OR REMAINING YARD OR PLACE FOR BUSINESS	2	2.6
Total	78	100

2.4.3 Penalties Imposed by the JP Courts

Table 2.17 shows that 71.7% of penalties imposed by the JP courts involved a monetary fine; 7.1% of penalties involved forfeiture of property; and 5.4% were general orders. Monetary fines were clearly the most frequently used sentencing option. We discuss these further below.

Forfeiture of property outcomes involved forfeiture of alcohol in virtually all cases⁷ where the nature of the property was listed.

The vast majority of ‘general orders’ (96% or 135 of the 141 orders) were imposed in Kowanyama and all related to offences under the by-laws of keeping a child absent from school. Presumably these orders involved an undertaking that the child attend school.

Some 3.9% of matters resulted in ‘no action’ taken by the court. Further analysis showed that 89.3% of these 103 outcomes were related to school attendance by-laws. It would seem in these matters that the court was satisfied that bringing the matter of school attendance before the JPs was sufficient to ensure that school attendance obligations would be met in the future.

Table 2.17
Penalties Imposed by Two JPs
2007-2009

Court Order	Total	
	No	%
ADMONISHED	42	1.6
BOND	4	0.2
COMMUNITY SERVICE ORDER	4	0.2
IMPRISONMENT	46	1.8
GENERAL ORDER	141	5.4
MONETARY	1872	71.7
NO ACTION	103	3.9
OTHER	54	2.1
PROBATION	50	1.9
PROHIBITION ORDER	54	2.1
PROPERTY FORFEITED	184	7.1
UNPROVEN	58	2.2
Total	2612	100.0

⁷ One exception involved an assault while armed and the confiscation of a pair of scissors.

Fines were the most common penalty imposed by the JP magistrates. Table 2.18 shows that fines were imposed for a wide range of offences under various statutes. The largest proportion of fines were imposed under the Summary Offences Act (21.9%) followed by the Liquor Act (19.6%) and Kowanyama council by-laws (19%). Council by-laws accounted for 41.7% of all fines.

Table 2.18
Fines Imposed by Two JPs by Statute
2007-2009

Statute	Total	
	No	%
ATSI COMMUNITIES (JUSTICE LAND & OTHER) ACT 1984	172	9.2
BAIL ACT 1980	17	0.9
CHERBOURG ABORIGINAL COUNCIL BY-LAWS	169	9.0
CRIMINAL CODE	10	0.5
DOMESTIC AND FAMILY VIOLENCE PROTECTION ACT 1989	1	0.1
DRUGS MISUSE ACT 1986	8	0.4
EDUCATION (GENERAL PROVISIONS) ACT 2006	9	0.5
KOWANYAMA ABORIGINAL COUNCIL BY-LAWS 1997	356	19.0
LIQUOR ACT 1992	367	19.6
MOTOR ACCIDENT INSURANCE ACT 1994	4	0.2
PENALTIES & SENTENCES ACT 1992	2	0.1
POLICE POWERS & RESPONSIBILITIES ACT 2000	59	3.2
REGULATORY OFFENCES ACT 1985	2	0.1
SUMMARY OFFENCES ACT 2005	410	21.9
TRANSPORT OPERATION (RUM - DRIVERS LIC.) REG 1999	2	0.1
TRANSPORT OPERATIONS (RUM - VEH. STAND.) REG 1999	1	0.1
TRANSPORT OPERATIONS (RUM - VEHICLE REGN) REG 1999	7	0.4
TRANSPORT OPERATIONS (RUM) ACT 1995	20	1.1
WOORABINDA ABORIGINAL COUNCIL BY-LAWS	256	13.7
Total	1872	100.0

Table 2.19 shows the dollar amount of fines imposed in the JP courts. Nearly 70% of fines were between \$100 and \$500. A further 12.4% of fines were over \$500.

Table 2.19
Fines Imposed by Two JPs by Dollar Amount
2007-2009

Fine Amount	Total	
	No	%
\$30	11	0.6
\$50	156	8.3
\$75	175	9.3
\$90	1	0.0
\$100	158	8.4
\$101 to \$200	495	26.4
\$201 to \$500	643	34.3
\$501 to \$1000	199	10.6
\$1001 to \$3000	34	1.8
Total	1872	100.0

It is also noteworthy that 1.8% (46) of sentences involved imprisonment. Table 2.20 shows the nature of offences and locations where imprisonment was used. Of the 46 imprisonment sentences, 43% (20) sentences of imprisonment were imposed in Aurukun and 46% (21) in Mornington Island.

Table 2.20
Imprisonment by Two JPs
2007-2009

Statute	Aurukun	Kowany.	Morn'gton	Pormp.	Total
	No	No	No	No	No
BAIL ACT 1980		2			2
CRIMINAL CODE	16	1	9	1	27
DOMESTIC AND FAMILY VIOLENCE PROTECTION	2		2	1	5
LIQUOR ACT 1992			4		4
POLICE POWERS & RESPONSIBILITIES ACT 2000			1		1
SUMMARY OFFENCES ACT 2005	1		3		4
TRANSPORT OPERATIONS (RUM) ACT 1995	1		2		3
Total	20	3	21	2	46

Offences under the Criminal Code accounted for 59% (27) of the imprisonment sentences.

Table 2.21 shows the length of imprisonment imposed in the JP courts. Some 63% of sentences (29 of 46) were for periods of three to six months. No sentences of imprisonment imposed in Aurukun were less than three months, and 65% were for six months. This may reflect that the majority of the offences for which imprisonment was used in Aurukun were under the Criminal Code (see Table 2.19). Certainly JP courts operating under council by-laws were less likely to impose imprisonment as a sentencing outcome.

Table 2.21
Imprisonment Period by Two JPs
2007-2009

Imprisonment Period	Aurukun	Kowany.	Morn'gton	Pormp.	Total
	No	No	No	No	No
7 DAYS			2		2
9 DAYS		2			2
1 MONTHS			6		6
2 MONTHS			6	1	7
3 MONTHS	5	1	5		11
4 MONTHS	2		2		4
6 MONTHS	13			1	14
Total	20	3	21	2	46

2.4.4 Ex Parte Matters in the JP Courts

Table 2.22 shows the number and proportion of matters which were dealt with ex parte. Kowanyama and Cherbourg were the two courts which had the greatest proportion of ex parte matters. Over all the JP courts some 26.2% (or 685) of the 2612 sentencing matters were dealt with ex parte.

Table 2.22
Sentencing Ex Parte by Two JPs
2007-2009

Location	Ex Parte		Pleaded Guilty		Other ⁸		Total	
	No	%	No	%	No	%	No	%
Aurukun	23	3.4	188	10.6	67	45.0	278	10.6
Bamaga	8	1.2	47	2.6	5	3.3	60	2.3
Cherbourg	122	17.8	124	7.0	16	10.7	262	10.0
Kowanyama	269	39.3	507	28.5	11	7.4	787	30.1
Lockhart River	8	1.2	75	4.2	3	2.0	86	3.3
Mornington Island	44	6.4	707	39.8	15	10.1	766	29.3
Pormpuraaw		0.0	5	0.3			5	0.2
Thursday Island		0.0	5	0.3	1	0.7	6	0.2
Woorabinda	211	30.8	120	6.7	31	20.8	362	13.9
Total	685	100.0	1778	100.0	149	100	2612	100.0

⁸ 'Other' included resentenced matters, proven breaches, matters struck out, dismissed or withdrawn.

2.5 Applications Heard in the JP Courts

Data was provided from the QWIC system on applications heard in the JP courts for the calendar years of 2007, 2008 and 2009. These covered domestic violence applications, fine option orders, applications to amend community service orders, applications to-re-open proceedings and child protection order applications.

**Table 2.23 Applications Heard in the JP Courts
2007-2009**

Court	Application Title	Result	No
AURUKUN	DV GENERAL APPLICATION	ADJOURNED	2
		GRANTED – PROTECTION ORDER	3
CHERBOURG	FINE OPTION ORDER APPLN (PENALTIES AND SENTENCES)	GRANTED	2
DOOMADGEE	APPLN AMEND OR REVOKE COMMUNITY BASED ORDER	ADJOURNED	1
	CHILD PROTECTION ORDER APPLN(CHILD PROTECTION ACT)	ADJ. – TEMPORARY ORDER	1
	FINE OPTION ORDER APPLN (PENALTIES AND SENTENCES)	GRANTED	4
KOWANYAMA	DV GENERAL APPLICATION	ADJ. – TEMPORARY ORDER	14
		ADJ. TO NEXT CALLOVER	1
		ADJOURNED	22
		GRANTED	9
		GRANTED – PROTECTION ORDER	63
		NO ORDERS MADE	2
	DV PHONE OR FAX APPLICATION	GRANTED – PROTECTION ORDER	2
	RE-OPEN PROCEEDINGS(PENALTY AND SENTENCES ACT)	GRANTED	1
LOCKHART RIVER	DV GENERAL APPLICATION	GRANTED – PROTECTION ORDER	5
	FINE OPTION ORDER APPLN (PENALTIES AND SENTENCES)	GRANTED	2
MORNINGTON ISLAND	FINE OPTION ORDER APPLN (PENALTIES AND SENTENCES)	GRANTED	1
THURSDAY ISLAND	DV GENERAL APPLICATION	ADJ. – TEMPORARY ORDER	9
		ADJOURNED	6
		GRANTED – PROTECTION ORDER	1
	DV PHONE OR FAX APPLICATION	ADJ. – TEMPORARY ORDER	1
	DV VARY APPLICATION	ADJ. – TEMPORARY ORDER	1
		ADJOURNED	1
Total			154

Table 2.23 shows that the majority of applications for orders involved domestic violence orders (142 of 154 or 92.2%). A further 5.8% involved applications under the Penalties and Sentences Act for a fine option order. One case involved a temporary order under the Child Protection Act.

2.6 Recidivism and the JP Courts

It is difficult to definitively test whether the JP Courts have been effective in reducing recidivism as there is no comparable control group available. A control group is particularly important given the restricted nature of offences dealt with by the JP Court (particularly those only dealing with by-laws). However a limited indication of effectiveness can be gained by comparing the rate of offending before and after JP court intervention for each person.⁹

To test this, the number of charges each person received in the 12 months before their first JP sentence was compared with the number in the subsequent 12 months for each person.

To ensure that a full 12 months of follow up data was available for all those sentenced only JP sentences up to the end of 2008 were included in the recidivism analysis. This totalled 834 people.

These 834 people had an average of 2.4 charges in the 12 months before their first JP sentence and an average of 2.6 charges in the subsequent 12 months. This difference is not statistically significant (Paired T-test = -1.388, p = .1652).

Similarly no significant differences were identified when the data was separately analysed for females and males (female recidivism - average before 1.71, average after 1.98 (Paired T test = -1.569, p =0.117), male recidivism - average before 3.13, average after 3.30 (Paired T test = -0.595, p =0.552)).

2.7 Key Points

Indigenous JP Courts dealt with 5210 matters, including bail, remand, committals, adjournments, etc over the three year period 2007-2009. Half these matters (2612) involved sentencing by the JP Courts.

The majority of sentencing matters derived from a few courts: Kowanyama (30%) and Mornington Island (29%). Overall 94% of sentenced matters were in five courts (Kowanyama, Mornington Island, Woorabinda, Aurukun and Cherbourg).

Gender is an important consideration in the work of the JP Courts: The majority of sentenced matters involved Indigenous women (57%), and this proportion was greater in JP Courts using by-laws.

Council by-laws accounted for 42.1% of all sentenced matters. The Liquor Act and the Summary Offences Act accounted for 19.3% and 17.6% of sentenced matters respectively. . Communities with by-laws (Kowanyama, Woorabinda and Cherbourg) rely heavily on by-law offences for the JP Courts. School attendance is a major by-law offence, particularly in Kowanyama and Woorabinda.

⁹ We also acknowledge the significant limitations more generally of using re-offending rates to measure program value or effectiveness. See Cunneen and Luke (2007) and Marchetti and Daly (2007).

Some 71.7% of penalties imposed by the JP courts involved a monetary fine. Nearly 70% of fines were between \$100 and \$500. A further 12.4% of fines were over \$500.

Some 26.2% of sentencing matters were dealt with ex parte. There were 154 applications for orders, 92% involved applications for domestic violence orders.

Analysis of re-offending showed there was no difference in the rate of offending before and after JP court intervention. However the conclusions that can be drawn from these results are inconclusive given the absence of a control group, and the short pre and post test period.

CHAPTER 3 SUPPORT FOR THE JP COURTS¹⁰

Stakeholders were asked whether they supported the ongoing operation of the program. JPs and community-based stakeholders (Community Justice Group (CJG) members, Elders and council members) were also specifically asked to identify and comment on any strengths and weaknesses of the JP Court program. In this context, three principal objectives were drawn from DJAG program materials and stakeholders were asked to indicate how effectively each was being met. The objectives provide a useful starting point in considering the overall strengths and weaknesses of the program:

- (1) building partnerships on and off community (with community organizations, police, magistrates and others);
- (2) providing an alternative to mainstream criminal justice approaches to dealing with offending, including alternatives to arrest and incarceration; and
- (3) building community capacity to provide input and participation into the criminal justice system.

There was widespread support for maintaining the program. With few exceptions, stakeholders suggest that the program should be retained on communities where it is already running and, according to some, should be (re)-established on those communities where JP Courts have not yet been operating or have fallen down.

3.1 Building Partnerships, Providing Alternatives and Building Community Capacity

Whilst the effectiveness of the JP Courts varied from community to community, the program is generally seen as least successful in building partnerships (objective (1)). On some communities, relationships between stakeholders and JPs are perceived to be working well. Police may have a commitment to sustaining the JP Courts, despite significant difficulties, for example, and some JPs report having a very good rapport with them. One CJG member indicates that a particular strength of the program is that on and off the bench, in JP Court people ‘can relate to each other’. Certainly, non-Indigenous and Aboriginal and Torres Strait Islander JP magistrates appear to collaborate without significant problems on most JP Courts that are presently operating. However, a number of recommendations highlight the need to bolster connections between JPs and others, and hence support for the JPs themselves; including corrections, magistrates, Queensland Police Service (QPS), court staff, lawyers and the community itself in which they operate. The JPs need to be enabled to network better among themselves. Further points in this regard are set out below throughout the report.

Stakeholders suggest that the program has greatest potency as an alternative to mainstream justice approaches (objective (2) and through its potential to build capacity for Aboriginal and Torres Strait Islander communities to own possible solutions to offending within their

¹⁰ To ensure the anonymity of participants the following categories of stakeholders have been used throughout this document. DJAG staff (staff employed at Department of Justice and Attorney General); Registrar; Legal service provider staff (includes ATSILS and family violence prevention legal service staff); JP (JP magistrate); ATSI staff (staff employed at Department of Communities Qld); Community member (Elder, CJG member, local council member); QPS staff (staff employed at QPS, QATSIPs); and QCS staff (staff employed at Queensland Corrective Services).

communities (objective (3)). When the latter aspects of the program are working effectively JP Courts stand out as a worthy initiative.

Program strengths in achieving objectives (2) and (3) are set out in the report below. In brief, however, the location of the JP Courts and JPs within the communities in which the courts operate was compared to the fly-in, fly-out nature of magistrates and their circuit courts. JP Courts provide an opportunity for genuine community participation and input into justice processes and outcomes and for development of a realistic alternative to mainstream justice mechanisms.

The JP magistrates have, for instance, local knowledge, including of issues of particular significance in their respective communities and of existing social structures. They are also generally familiar with the circumstances of individual community members, including offenders. As Queensland Corrective Service (QCS) staff indicate, 'it may be that being a small community everyone does know everyone. This is one of the benefits.' A particular JP may reprimand an offender in JP Court by saying 'I know your dad and he'd be ashamed of this', for example.

We want to be seen as serving our people. Coming before us, they're more relaxed. We know why they did this. It may be alcoholism, drug abuse. We find out why this is happening. We have an understanding (JP).

People don't seem to take notice of the magistrate or police because (they) say, '(I'm) not going to listen to what a white man tells me to do' (JP).

(It's the way you deliver it at court. We were more encouraging, proud. JPs can read people. With that power you have you need to help people too and do things with confidentiality and ethics. You're not there to be a gossip and to abuse power. Ethics is in the left hand, power in the right. Use it in a good way (JP).

The Court works very, very well here. In dealing with offences – given the option defendants will opt for JPs rather than outsiders hearing the matter. At times it is confusing, because although the JPs can be harder on them the defendants still choose it. Because it's dealt with quickly, it's a maximum of 2 weeks people have to wait. Defendants like their justice done quickly and so does the rest of the community. They're judged by their peers and not by outsiders. Sometimes they give them a pasting and bring things into it a magistrate wouldn't know about such as family history, ancestors, deceased members of their family or community who would be shamed by their behaviour. They use cultural influence and the defendants don't like to be shamed like that. They respect the JPs. We've been here six years and there's been no retribution or abuse of the JPs. Defendants take the decisions and move on (QPS staff).

3.2 A Cultural Way of Doing Justice

Importantly, Aboriginal and Torres Strait Islander JPs in particular speak the same language and share the same cultural background as the people who appear before them in JP Court, which is reported as increasing the impact they are able to have upon individual offenders. Aboriginal and Torres Strait Islander JPs provide examples of how living alongside and knowing an offender permits them to really respond to that person in court.

(O)ur people can go to their own people. They can ask questions and we can tell them things - known people all their lives. You can say 'I've know this fella all his life', that's good (JP).

Also in Magistrates Court there is a lot of gratuitous concurrence, saying 'yes, yes' and nodding the way defendants do when they don't understand the jargon or the language. Language is a huge barrier. JP court isn't like that. It is community members running those courts (QCS staff).

Some people don't understand English. I talk language so that people can understand. We get Aurukun people here and I can speak their language. If they are in trouble for urinating in public at the court and embarrassed, I can talk to them in language. I can guide them in court. I ask them if they will plead guilty, and if they want to plead guilty I can tell them how to say it. It's the same for sly grogging. I tell them not to lie when they say they didn't do it because I know. I do it in language and then they tell me everything! Speaking language to them is good (JP).

If they are speaking their language it's much better, then there's no confusion at all about what's been said and what's gone on in court. That confusion in people in Magistrates Court - that happens with English speakers as well. So if you're not 100% sure of the language that increases the chance of that confusion (Registrar).

JPs can utilise these important tools or skills in 'doing justice' in a manner that is seen as different to that of visiting magistrates. Their immediate availability means that JP magistrates can convene court and deal with matters as required and in this sense provide a positive alternative to Magistrates Court. As noted above, defendants are said to 'like their justice done quickly, and so does the rest of the community'.

Also another good thing about JPs is that matters aren't just adjourned. If someone is an alcoholic they won't get caught once, they get caught lots of times and the JP court serves a purpose as it hears matters quickly. The JP court gets stuff done straight away (QCS staff).

It's another string to our bow - it's a very effective string. It gives the defendant a choice. It's better justice for the defendant and community as well. They deal expediently with matters. The matters are not just hanging around (QPS staff).

In this context, bail matters can be dealt with on the community avoiding having to hold a person in custody to fly them into Cairns, for example; thus potentially reducing incarceration rates within their respective communities. This is cost-effective and otherwise beneficial for all concerned. On one community, a similar situation occurs with domestic violence orders.

(We) can make orders if both parties are present and consent. If one person doesn't turn up we can go over for temporary orders; otherwise conditions lapse in 7 days, it's often up to 3 weeks until the magistrate sits. JPs are very good and will convene court in the off weeks to deal with DV matters and put temporary orders in place. They have no problem doing that (JP).

3.3 Taking Responsibility

JP Courts also provide communities with an opportunity to take responsibility for local law and order-related problems as they arise, and to respond appropriately to those problems, especially in the context of hearing by-law offences. JPs may feel that they can use their sentencing power to tackle issues of particular relevance to their respective communities, whether that be breaking glass on the street or non-attendance at school. One JP noted that ‘there’s a sense of pride up there in that position. We are role models for the young ones’. JP Courts may thus tap into and reinforce traditional systems of authority, for instance. This all serves to build community capacity, as well as that of individual JPs. Some of these points are set out in the following comments.

JP Courts can empower some people in the community to deal with issues. Young ones – to see elders telling them, ‘we not taking that’ - is good. In some communities the young kids are really not respecting their elders anymore. There was a group of kids between the ages of 6 and 12 riding on bikes one night kicking a man in his 60s as he went out walking. But the Elders with the JP Courts are now taking more control and this restores respect (JP).

(I)t was our problem, our people sorting it out in our language when necessary. I’d like to see it again; it’s challenging; its leadership. We become part of the solution to the problem. The issue is the issue and the person is the person who we know and he knows us, so everyone has that relationship. (Court) was here, it was within our community; also part of our culture. We could use our own language and help people if they were nervous (JP, located on a community where the program had ceased to operate).

(I)t really is empowering for our people when the JP Courts are working well. They should be overseeing these matters in the community and taking responsibility (Legal service provider staff).

I’d like to get the JP Court going again, spend time doing the course and I’d like to put it into practice. Young people can then step up into it, into our shoes. Who knows - they may go to uni and become barristers and understand the law (JP).

Significantly, stakeholders often support the program as an initiative with symbolic significance and on the basis of its potential capacity to achieve the aforementioned objectives, rather than solely on the basis of its tangible achievements to date. Alongside comments about the strength of the program and a concern that it be sustained, there were a number of issues and criticisms raised by stakeholders relating to the effectiveness of the program as it presently operates. Perceived weaknesses in the program are set out below, along with suggested strategies to address them – many of which are inter-related. A series of key reforms are seen as necessary in order to ensure that the program remains viable and realises its capacity in terms of achieving the intended overarching goals set out above and related objectives.

In this context, the JP Court program should be retained. However, more work is required to ensure that the program operates effectively on those communities where it is currently functioning by attending to identified problems. As at 2005, there were 17 communities which had received JP training and 12 of these with functioning JP Courts (DJAG 2005: 11). There are however currently only 8 or 9 JP Courts in operation. Clearly, JP Courts are not always being sustained over time. More work is required to ensure the ongoing operation of the program. The program should also be set up to run on those communities where a deal of

preliminary DJAG work has already been completed (such as training JPs). If the key issues highlighted herein are attended to by DJAG, there may also be potential to expand the program to a greater number of communities, but only where capacity is developed to an appropriate level.

3.4 Key Points

There is widespread support for the continued operation of the JP Court program. The program works best as an alternative to mainstream justice and in building community capacity to own solutions to offending within their communities. The program, is less successful in building partnerships.

The general support for the JP Court program is often based on its potential to lead to positive outcomes, rather than always due to tangible benefits delivered to date. Whilst JP Courts should be retained, more work is required to ensure that the program as a whole can work at maximum effectiveness - on those communities where it is currently functioning and, with sufficient capacity developed, on communities where it has yet to be formally established.

Recommendation 2

It is recommended that the JP Court program be retained and ultimately expanded to other communities. However, prior to any expansion of the program, it needs to be better supported in those communities where it has been operating.

CHAPTER 4 INCREASING THE NUMBER OF ACTIVE JP MAGISTRATES

4.1 The need for increased frequency of training to recruit JP magistrates

A fundamental problem consistently identified by stakeholders during consultations as hindering the effective operation of the JP Court program and impacting upon its sustainability is the lack of JP magistrates available to constitute court on those communities where JP Courts have been or are presently sitting. This is an issue that has been raised as far back as 1990 with respect to JPs generally, but one which may have particular ramifications for the JP Court program on Aboriginal and Torres Strait Islander communities (see below).¹¹

Presently, there are very few active JP magistrates available to sit in court in most of the communities where JP Courts are convened. Despite the fact that on some communities there are significant numbers of persons formally identified by DJAG as being qualified as JP magistrates, it appears to be not uncommon to have only two to three JP magistrates convening a JP Court on any sort of regular basis.

It should be noted that on at least one community a JP (Qual) convenes JP Court alongside a JP magistrate when two JP magistrates are not available. This may occur elsewhere and is permissible under relevant legislation. However, the combination of JP (Qual) and JP magistrate inevitably reduces the range of matters that the JP Court is able to hear. At least two JP magistrates are required to sit so that the court is able to operate to its maximum intended capacity; that is, with capacity to sentence defendants for relevant offences upon a plea of guilt (s. 29(4)(a) of the *Justices of the Peace and Commissioners for Declarations Act 1991 (Qld)* (the JP Act). (see further Appendix 1). As far as possible, the program ought to be supported at a level that enables proper exercise of these sentencing powers.

There are three main effects of the current shortage of JP magistrates:

- No available JPs to convene JP Court
- Loss of commitment to and support for the program
- Conflict of interest

We discuss these issues further below.

4.1.1 No available JPs to convene JP Court

A shortage of JP magistrates has potential to significantly impact upon the continued viability of JP Courts. In more than one instance a functioning JP Court has ceased to operate, at least in the short term, due to a shortage of JP magistrates. The lack of available JPs means that the same few individuals are frequently (if not always) called upon to hear matters in JP Court. Active JP magistrates are commonly assisting their communities in other capacities, including through membership of the local CJG or Family Responsibility Commission (FRC) or in paid employment with some community focus. Some JPs report that although they are willing to help those in their community, convening JP Court on a constant basis can be demanding and time consuming and requires a significant commitment on their part. Over

¹¹ The 1990 Queensland Government *Green Paper* on JPs in Queensland considered public dissatisfaction with the then-current JP system due to problems with locating available, willing and competent JPs (Office of the Attorney General (Qld) 1990: 1).

time the most active JPs may withdraw, and have withdrawn from participation in the program, for this reason. One stakeholder noted the hard work that some JPs put into the program.

The JPs work exceptionally long hours – they sit routinely from 9am to 10 or 10.30pm. I know cause I've sat there with them. They work all the way through. They don't complain, they just get on with it. They see that things have to be dealt with expeditiously, until it's finished. They work long, long hours; they don't moan. The JPs are the people who are prepared to do everything. It happens in communities everywhere - a couple of people do everything and get drained and leave and someone else steps in. There are very, very high expectations of them. The norm for them is to work long hours in the JP Court (QCS staff).

Those individual JPs who are effectively carrying the program on a particular community may also cease participating, temporarily or permanently, for personal reasons unrelated to their JP workload. These reasons may include illness or absence/departure from the community in question. Whether JPs leave the program due to frustration or for other reasons, there are often no additional JP magistrates able or willing to keep the JP Court running.

4.1.2 Loss of commitment and support for the program

A further consequence of the shortage of active and qualified JP magistrates is that the commitment of others to the JP Courts, in particular QPS staff, may be lost due to frustrations arising from difficulties in locating JPs to convene court, given that there are so few people to call upon.

QPS staff and others involved in the operation of the JP Courts commonly report that it is very difficult to gather together sufficient JPs for court day. One QPS Officer in Charge (OIC) refers to finding JPs to hold court as like 'catching people with a butterfly net' and called for more JP magistrates to be trained. The essential 'gate-keeping' role of the QPS in maintaining JP Courts is discussed further below but it is important to note that there is a very real danger that the QPS may simply cease listing matters for JP Court where there are no JPs available to sit. Without matters to deal with, a JP Court will cease to operate, either temporarily or permanently. DJAG staff note the potential consequences for the JP Courts in this context. 'There are frustrations for police. You can set matters down and the JPs don't turn up. Some police will just stop listing. The key is to have a larger number of JPs.'

4.1.3 Conflict of interest

Conflict, in the legal sense, is inevitable on Aboriginal and Torres Strait Islander communities and generally there appears to be a good understanding amongst JPs of the nature of and appropriate response to the issue. At a community where JP Court is now not sitting, a JP suggested that 'conflict of interest came up all the time cause we're a small community'. The JP reports that '(w)e're all related. But these are minor matters, and the conflict issue was dealt with (at the time court sat) according to all the guidelines in training. We were very professional about it'.

It's like any voluntary thing. It falls to a few in close-knit community; there's relationships; people related. The 'poisoned cousin' thing, cultural difficulties, lots to consider (QPS staff).

There is some suggestion that conflict may arise not just through family connections and not only for JPs. It may arise for non-Indigenous and Aboriginal and Torres Strait Islander JPs on the basis of their dual or multiple roles within the community. Potential conflicts arising in JP Court might be based upon the multi-faceted role that police play as law enforcer, prosecutor, and key player in running JP Court, an issue dealt with further below. QCS officers who are also JPs indicate that they could not convene JP Court due to the inappropriateness of sentencing in that forum and supervising offenders sentenced in Magistrates Court. One stakeholder suggested that a conflict of interest might arise in communities where the FRC was operating and local commissioners were also JPs. Others have suggested that CJG Coordinators should not be able to convene JP Court, as individuals may not be sufficiently clear about appropriate boundaries. Some suggest that involvement by CJG members as JPs sitting in JP Court creates a conflict of interest.

One of the other JPs stated it was a conflict of interest to be on CJG and JP Court because you go to court and speak up on behalf of and for clients in CJG and then as a JP go and sentence client – so they feel like it is a conflict of interest for us (JP).

Generally, conflict is readily identified and avoided as far as possible. However, where there are insufficient numbers of participating JP magistrates a potential conflict of interest between an offender and a JP magistrate cannot always be resolved by simply finding another JP to sit in court. With no other available JP, a matter may have to be removed from the jurisdiction of the JP Court and placed before the magistrate. According to DJAG staff, ‘in a perfect world you’d have a pool of JPs, and just flick to someone else to do; here you’d have to wait till the Magistrates Court came’. JP Courts need to hear *more* rather than less matters and moving matters to Magistrates Court for lack of JPs is problematic.

Further, rather than sending matters across to Magistrates Court, stakeholders (including the JPs) indicate that a JP may simply proceed to hear a matter where there is a conflict of interest because there is no other JP to take their place. One JP reports that she had to sentence her younger brother in JP Court for this reason and that she felt compromised in so doing. An outcome such as this is obviously inappropriate. Corrections staff members indicate that ‘the JP courts are held accountable to the community so you can’t be biased with families.’ The difficulty does not appear to arise due to any gaps in JP knowledge and training, but because of low numbers of JPs available to convene JP Court. This is illustrated by the following comment by a JP.

(W)e talked about it in our training. We would declare the conflict if family members and stand aside. We may have to just announce it and still deal with the matter though, depending if there was no one else to deal with the matter.

Without doubt, JP Courts need to be supported effectively to enable JPs to withdraw from hearing matters involving a conflict as failing to do so may have negative consequences for individual JPs and the program more broadly. The greater the number of JPs available, the higher the likelihood that conflicts will be adequately dealt with and that essential community support will be provided to the program.

4.2 JP Magistrates Training

DJAG provides three possible training opportunities.

- (i) Initial training provided to JP magistrates is broken down into three parts. It is provided intensively over three non-consecutive weeks, over as short a time period as possible. The first week trains a person to the level of JP (Qual); the second to the level of JP magistrate; and the third engages participants in staged JP Court scenarios and other tasks so that they might apply relevant skills acquired.
- (ii) DJAG also provides annual refresher training to qualified JPs (this year in Cairns), but generally only for the most active program participants.
- (iii) DJAG may also send out staff, where possible, to observe JP Courts, although this may not occur on any regular or consistent basis.

Most initial training is provided on site at communities by DJAG as an essential first step towards qualification as a JP magistrate. It is thus a crucial determinant in terms of how many JP magistrates any community may have available to convene JP Court.

JP magistrates who have attended DJAG training are satisfied with its content and delivery, in most respects. In general, it appears that DJAG has worked to present culturally responsive training to applicant Aboriginal and Torres Strait Islander JP magistrates and tried to pre-empt possible barriers to completion pertaining to literacy. There is overall satisfaction with the JP training for applicant JP magistrates. However, there needs to be adequate resourcing to allow for timely reviews and updates of training materials.

Resources also impact upon the frequency with which training is provided - an important issue with significant consequences for the recruitment and retention of JP magistrates. Provision of initial training to those interested in applying for appointment as a JP magistrate may not be sufficiently regular to meet the needs and demands of communities. DJAG could address the present dependency by communities upon so few JP magistrates through *more frequent* provision of training, finalised as quickly as possible, to those interested in applying for appointment as a JP magistrate. At this stage, there is little sense that the Courts Innovation Directorate is properly resourced to effectively keep track of numbers of qualified (and active) JP magistrates available on communities *and* then to proactively ensure optimal numbers are trained up and ready to go as required. There are a number of interested individuals who appear to have been waiting on communities for (sometimes considerable) periods of time to attend training and thereby work towards formal qualification as a JP. Some community members have also been waiting for the latter portions of the training to be finalised, having completed it to the level of JP (Qual). These difficulties are recognised, but attributed to poor resources.

More people could attend if the training came here. It might encourage more people to come and hold court if they knew how the court worked through training. It is hard to track them down. We have 5 new JPs (Qualified) and they want to upgrade. Then we'd have 10 people to hold court (Community member).

There are others that want to do training. They had one last year with ten people there. But it hasn't been finished and people don't know what is happening. They need to tell people what is going on (JP).

If we do want to run a new group (for training) they fill out forms.... There has to be a minimum of 5. This is done 2 months prior to training to do checks. You do the first week

and you want to do number 2 and number 3 within a couple of months. But we don't have enough staff or money (DJAG staff).

The issue with training is resourcing. You can't run it on the basis of one training officer. It is difficult to keep the JPs going especially if you have a changeover of JPs or if one individual JP is strong but then leaves... (and) the JPs then fall apart. We don't have the resources to deal with issues strategically and avoid the risk of it falling apart altogether for this reason. We can't be proactive about training and go in there before it falls and train up more (DJAG staff).

The Courts Innovation Directorate needs to be better resourced to provide for a more strategic approach to training so as to upkeep JP numbers to an optimal level. Initial JP training should be sufficiently frequent to build and maintain JP magistrate numbers so as to ensure the sustainability of the program. Ideally, there should be enough JP magistrates within any one community to participate in JP Court on a rotational, rostered basis so as to avoid the difficulties set out above.¹²

Other issues which present as barriers to recruitment (including remuneration for JPs, lack of community awareness of the program and disqualification provisions) are dealt with further below.

4.3 The need for increased support and training for qualified JP magistrates

4.3.1 Problems with retention of JP magistrates

The shortage of JPs is not solely a result of issues relevant to recruitment, but is also due to problems relating to *retention* of qualified JPs. It appears that there are a sizeable number of JP magistrates who have at some time received training from DJAG and are registered as qualified JP magistrates but who may never sit after completing training or only sit irregularly. There are also those who have sat but have now withdrawn from the program. This inevitably increases the need for the Courts Innovation Directorate to constantly train JPs anew and whilst providing more *initial* training to increase recruitment is important, DJAG must also consider how it might work to keep qualified JPs as active participants in the program.

One community member suggested that inactive JPs should be de-registered. The QLRC in its review of JPs in 1999 also indicated that non-participating JPs should not continue to hold office for the following reasons: resources are expended upon individuals who are not able to contribute to the program; infrequent exercise of powers means a JP does not develop expertise through practical application of skills (see further below); and the office of the JP 'could come to be regarded as an entitlement for the office holder, rather than as a necessary service for the community' (QLRC 1998: 71).

Given that those JPs who were less active were also less readily available to participate in the evaluation, it is not easy to define in absolute terms barriers to their ongoing involvement in the program. Underlying issues contributing to non-participation were identified by various stakeholders, and include difficult individual personal circumstances; the mobility of the local

¹² The QLRC also indicated that a 'rolling roster' for JPs would assist in preventing any 'abuse of power (QLRC 1998: 79-80).

population; perceived or real challenges associated with being a JP, including the possibility of community retaliation; and a lack of confidence in their ability to perform court duties.

4.3.2 Challenges of the role and other issues

In many communities JPs feel respected and are held in high esteem by the community (for example in Aurukun and Cherbourg). However, some stakeholders commented on the difficulties for a JP in convening court and penalising offenders on a small community. JPs have little anonymity within or distance from their community. One registrar suggested they would find it enormously difficult to reside on a community 'hearing matters about my neighbours and not being able to remove myself at the end of the day'. According to DJAG court staff, JPs 'perform a unique function' as sometimes in performing their work 'they are at odds with people in the community. JPs are and must be unique people'.

A few JPs report experiencing a level of hostility from people in their respective communities as a result of their work as a JP. This may impact upon their willingness to continue convening court. One QPS staff member reported that the JPs he worked with got 'abused in Court by offenders who question their authority.' Hostility towards JPs appears to be localised to some communities and is not endemic to the program.

One result of community hostility is that JPs may need to be 'cajoled' into convening court. 'The JPs don't like this. It leaves them with a bitter taste. "Why should I put up with this", they say.' There is some suggestion that DJAG is not adequately supporting JPs to cope with these problems.

(S)mall communities often have divisions along family lines and this can make working the JP Courts very difficult for the sitting members. People cop a lot just working for DJAG as officers, let alone working as JPs. So JPs cop a lot of flak and I don't know if DJAG properly supports people through that, or whether they're aware of it (Registrar).

DJAG staff members may acknowledge the potential problems and not know how to respond.

You might have 10 people interested in training but after the training is done and the criminal record checks, it comes down to one or two. They may not continue to sit over time afterwards because they face challenges in terms of dealing with matters. They do drop off. It can be confronting to be on a community and hear matters. Some are prepared for this, some aren't. There's nothing that can be done about it (DJAG staff).

Other difficulties arise where workplaces refuse to allow JP employees to take time off for court and/or do not offer to pay wages to employees for the time taken to convene JP Court. This may deter individuals from applying to appointment as JP but also from participating once qualified. Further, one JP interviewed also suggested that the people who were taking up JP training opportunities on their community were not local people and therefore not likely to commit to serving the community in the long-term. They inevitably leave and take their skills and qualifications elsewhere.

The problem is that people attending the training usually are not from here. They only stay here a while and they grab the opportunity. Then they go. You won't find a very brave Indigenous person to do it (JP).

4.3.3 Increased in-service training and support

Some JPs suggest that they do not know what support is available to them from DJAG staff. This was something that DJAG staff acknowledged. 'Not enough support, left us to float on the tide a bit, we need commitment as well as support, know our boundaries' (JP). Lack of support is an important issue, noted by DJAG staff.

There is not much contact with us after training... We need to know what we can do to ensure that JPs show up for court so that... (police) will list matters for the JPs. They all have our details, but they don't contact us. Servicing is a fundamental flaw. We don't have the manpower. We try to get to as many communities as possible to get courts up and running that have fallen over. We also need though to service those already up and running (DJAG staff).

Other than contact at annual refresher training sessions, JPs are currently provided with a contact number for the Courts Innovation Directorate in Brisbane for ongoing assistance. Whilst active JPs may (rarely) contact the Branch by phone, those less active JPs are unlikely to do so. Calls may not be responded to swiftly due to the small number of staff to administer the program from within DJAG; one with responsibility for a number of other programs and the other often travelling as part of the program.

DJAG should consider how it might better support JPs after their initial training to deal with barriers to participation so as to ensure that motivation and commitment are maintained over time. DJAG could increase provision of *in-service* support and training for JP magistrates. It could be more proactive in maintaining regular contact with JPs once qualified, including those that are not participating regularly in JP Court. In the context of increasing retention, this could be achieved in part through more frequent and regular visits to all communities to gather feedback on problems and to liaise with other stakeholders such as QPS so that issues can be addressed as appropriate.

Regular contact with the community might enable them to ask what is happening with the JPs. The JPs could mention that the search warrants is an issue, for instance. They could deliver and assist. This is more contact for the JPs (DJAG staff).

DJAG might also consider providing for more regular in-service training (alongside more frequent initial training) to *all* individuals who are qualified as JP magistrates. JPs who had recently attended DJAG JP refresher training were unanimously pleased with its content, with the opportunity to maintain and develop skills and, importantly, the opportunity to network with other JPs and with some service providers who were present. However, some requested more regular refresher training: even once every three or six months.

Importantly, refresher training provides DJAG with a chance to re-connect with qualified JPs and to 'get the JP base numbers back', according to DJAG staff members. Currently, however, limited resources necessitates restricting participants to only the most active JPs and this means that the opportunity is lost to draw back into the program qualified JP magistrates who may not be sitting. Ongoing training is necessary to update knowledge and skills. This might be especially important for less active JPs whose skills acquired during training may be lost over time in the absence of their practical application. One registrar reports that JPs may be incapable of carrying out relatively simple tasks on the bench due to the time lapsing between sittings on one particular community. The QLRC has raised this issue in the context of discussion relating to JPs generally (including JP magistrates and JPs (Qual)), indicating that irregular or infrequent exercise of powers and duties may mean an

individual misunderstands their role and may provide an ‘inconsistent and unjust exercise of powers’ for this reason. This may ‘reflect poorly on the system of justices of the peace as a whole’ (QLRC 1998: 71).

At a minimum, therefore, annual refresher training should be provided to qualified JP Magistrates sitting with any regularity on JP Court centrally. Providing training in a central location gives JPs a forum to talk with other JPs about how they are dealing with matters on their respective communities, as suggested above, and should be maintained. Ideally, DJAG should also be able to provide with some increased regularity ongoing training *on communities* for *all* qualified JP magistrates, perhaps regardless of their level of involvement in the program. As noted above, DJAG staff responsible for the program currently travel out to communities to observe JP Courts and see how they are functioning as a form of support and training. Providing assistance and training *on site* at communities in this way but perhaps with increased regularity is essential to retaining qualified JP magistrates as it not possible for all community members to find the time and resources to travel.

Wanted to go to refresher course but something came up and I couldn't go. Someone coming here would be good because you don't always have time to go out to brush up on your training (JP).

Networking between the JPs should also be encouraged as far as possible. One JP requested a filing cabinet, stationary and laptop computer for networking. Simple strategies such as these would enable JPs to talk together about how they are all dealing with similar types of matters or problems.

In this context, DJAG might draw upon the experience of more active JPs to offer support and training to new or less active JPs in order to improve retention. One seasoned JP magistrate expressed a desire to step back from convening JP Court and providing, alternatively, a key mentoring role for more ‘junior’ JP magistrates. At least two participating JPs who had frequently convened JP Court sought to encourage JPs reluctant to sit to actually come and observe court. DJAG could consider formally calling on more active JPs to deliver training and mentoring. DJAG staff members acknowledge the potential assistance this might provide.

JPs don't want to be alienated through sitting on the bench. They don't want rocks thrown at their house. Once they come in and talk to the JPs and see that nothing like that's happened ... (and that) they are very respected in the community. Because they are, they haven't had any adverse effects (DJAG staff).

4.3.4 The Need for Increased Resources

The solution to problems within the operational framework of the program, including retention and recruitment, lies at least in part in increased financial and administrative resources for DJAG. An increase is justified, as the program will not be resource-effective if JPs are being trained but fail to undertake JP duties due to unaddressed concerns and issues, for example.

We might compare the funding to the FRC pilot project in four communities in Cape York compared to the funding provided to the JP Courts (even while acknowledging that the FRC is a state/federal project). There is at least some comparability in terms of the local composition of FRC commissioners and local JPs both of whom are required to deal with

matters at a local level, although the FRC deal with far fewer communities than the JP Courts program. The income for the FRC in 2008-09 was \$3,665,000, of which \$2,500,00 came from the Queensland government (Families Responsibility Commission 2009: 60). Funding for the JP Courts for the same period was \$190,000 (which is the equivalent of 7.6% of the Queensland contribution to the FRC). We do not make any suggestion that the FRC is in any way over-funded for the work it does. Rather we make the point that the JP Courts are seriously under-funded for the type of work they are expected to successfully conduct.

Improved DJAG resources are not only required to provide direct support to JPs on communities where JP Court is operating. Those JPs who are on communities where the program has fallen down indicate that they do not know what caused its collapse and whether DJAG intends to re-instate it. These JPs indicate a strong desire to have JP Court up and running. With increased resources, DJAG could work towards achieving this goal. More resources are also necessary to ensure that DJAG can effectively coordinate and administer the program, including by setting up a JP court users forum for stakeholders and providing community education to increase support for JPs (and thereby assist with retention issues) (see below).. DJAG capacity to deliver training and ongoing support can be increased through the appointment of additional training and support officers and an increased budget for training and community education.

4.4 Focus upon Indigenous JPs in recruitment

A proportion of those attending JP training are not permanent members of relevant communities. Stakeholders also remarked that non-Indigenous persons on Aboriginal and Torres Strait Islander communities might commonly take on JP duties, including bench duties. This does occur, but it appears that non-Indigenous JP magistrates always share the bench with Indigenous JPs.

There are benefits to having non-Indigenous members of relevant communities participating in the program thus, including where there is a conflict of interest between offenders and Aboriginal and Torres Strait Islander JPs due to their community connections. The degree of separation from community life and family connections that non-Indigenous JPs can bring to JP Court can be useful and even essential in certain circumstances.

JPs and other stakeholders of both Indigenous and non-Indigenous backgrounds have suggested however that it is vitally important that qualified *Aboriginal and Torres Strait Islander* JPs are (and are seen to be) primarily responsible for JP Court work on Aboriginal and Torres Strait Islander communities, given the focus of the program upon Aboriginal and Torres Strait Islander community empowerment and ownership. This is a point raised in the 1998 review of community courts by DATSIP (see above: Literature Review). A non-Indigenous JP, who is often called upon to carry out bench duties due to problems gathering together available Indigenous JPs for this role, suggests that ‘it’s fair to be called on occasion, but it defeats the purpose if I am always sitting’. One community member commented as follows.

(If you’re looking at Aboriginal and Torres Strait Islander interests, (it) should be Aboriginal and Torres Strait Islander people as JPs; the law and culture should be done by Indigenous JPs (otherwise) that understanding won’t come to the judgement.

Without detracting from the important contribution that non-Indigenous program participants currently offer and will continue to offer to relevant communities through their JP magistrate work, there should be focus by DJAG upon recruiting and supporting Aboriginal and Torres Strait Islander JP magistrates.

4.5 Updated list of JP magistrates

Additional DJAG resources should be used to ensure that there is an *updated* list of JPs in each community involved in the program. The list of JP magistrates that DJAG maintains is current. It seems to list names of deceased persons and does not appear to include all persons on relevant communities who self-identify as JPs. A number of stakeholders indicate that they did not know who had qualified as a JP magistrate on their respective communities. They suggested that there could be some benefit in having a list of JPs so that people understood whom they might call upon for help, particularly for tasks such as signing documentation – a task that can be completed by JPs (Qual). There is no suggestion here that unwilling JP magistrates should be forced to convene JP Court. This list would also have benefits for the Courts Innovation Directorate in providing more strategic support to the program to ensure that sufficient numbers of (active) JPs are available for JP Court.

It would be better if there was a list of names in each community saying who's who. Everyone would come to me or to (the CJG Coordinator). We still get interrupted all the time at work to sign forms... It's still a big issue, people coming to see me for help (JP).

The distribution of a *current* list of JPs magistrates and JPs (Qual) is a matter for DJAG, which may have to consider a range of relevant issues.¹³

4.6 Key Points

A fundamental issue impacting upon the program's immediate and longer-term capacity is the lack of JP magistrates available to constitute JP Court. The shortage of JPs gives rise to a number of problems, including potential loss of commitment to the program from JPs and other stakeholders such as QPS. In more than one instance a functioning JP Court has ceased to operate, at least in the short term, due to a shortage of JP magistrates.

Appointment to the office of JP requires mandatory attendance at initial JP training delivered by DJAG. This training is not currently sufficiently frequent to build and maintain JP magistrate numbers. Ideally, there should be enough JP magistrates (with a focus upon Indigenous magistrates) available to participate in JP Court on a rotational, rostered basis. Further, there are significant problems with retention of JP magistrates within the program once qualified, due at least in part to inadequate DJAG in-service support and training. Ongoing DJAG training sessions for JP magistrates, for instance, are not presently available to *all* qualified JPs. Training materials and lists of qualified JPs present on Indigenous communities are not up to date. More financial and other resources are required to address these issues and thereby build program capacity.

¹³ Notably, s 38 of the JP Act refers to provision of a list of registered JPs, including to the QPS Commissioner, 'for the purpose of ensuring that as many justices of the peace as may be practicable perform functions of office'. Further, a police officer in selecting a JP to 'perform a function of office, is to have regard, if practicable, to the list' so provided 'for the area in which the function is to be performed'.

Recommendation 3

It is recommended that DJAG provide for increased frequency of JP training for individuals on Aboriginal and Torres Strait Islander communities seeking to qualify as JP Magistrates as well as more frequent in-service training and support. Training should be provided in community as well as centrally.

Recommendation 4

It is recommended that DJAG increase resources provided to the Courts Innovation Directorate to enable increased capacity to deliver training and ongoing support through the appointment of additional training and support officers and an increased budget for training and community education. To administer the program more effectively there is also a need for improved DJAG record keeping of current, qualified JP magistrates.

CHAPTER 5 REMOVING BARRIERS TO RECRUITMENT OF JP MAGISTRATES

5.1 Criminal convictions as a significant barrier

A major barrier impacting upon the effectiveness of the JP Court program is the legislative exclusion of persons from appointment as a JP on the basis of prior convictions. The provisions as presently constituted reduce the number of persons eligible to apply for appointment on Aboriginal and Torres Strait Islander communities; precluding persons from appointment or disqualifying them *after* appointment as a JP on the basis of their criminal history. Most stakeholders have suggested that review of these provisions should be a priority for DJAG in building capacity of the program, given the problems associated with low JP numbers discussed above. Registrar comments about the provisions include the following.

Another thing is that you cannot be a JP if you have a criminal record and that's ridiculous because we know of people who have records dating 15-20 years back for minor offences and they are hardworking people who want to get ahead with their lives, and they can't do the JP training. Something needs to be done about that legislation so that there are exceptions to allow people to be sitting members, or so that they can undergo the training. This is something that impacts disproportionately on Indigenous people (Registrar).

It's hard to get eligible people because of convictions. (Their conviction) could be reasonably simple in nature. AMP convictions wipe out a hell of a lot (of eligible JPs). It seems to be any conviction. I'd support a review of the current restrictions. Even if a one off situation and they lacked sense and reason and they did something silly. They may be upstanding in the community. They're knocked out... (Registrar).

5.2 Current disqualification provisions

There are two legislative aspects to the present disqualification provisions. Firstly, the JP Act specifically disqualifies persons from appointment or continuing appointment if convicted of certain offences (see below). Secondly, JPs are not able to rely upon spent convictions legislation, which might otherwise remove past convictions from a person's criminal record once a period of rehabilitation has expired.

5.2.1 Disqualification under the JP Act

Currently, the JP Act specifies that the Governor in Council may only appoint a JP (JP (Qual) or JP magistrate) or Commissioner for Declarations if the person in question is considered to be 'fit and proper' person; is over 18 years of age; has completed an approved training course for appointment; and is an Australian citizen (s. 16) (see further Appendix 1). Section 17 of the JP Act also provides that a person is not qualified to be appointed to, or to continue in office under the JP Act as a JP (or Commissioner for Declarations) in certain circumstances, as specified. Those circumstances include where the person in question:

- (a) is an **insolvent** under administration;
- (b) has a conviction for an **indictable offence**, heard summarily or on indictment;
- (c) has a conviction for an offence against the JP Act (such as failing to deliver a certificate of registration to the registrar if disqualified from holding office under s 17);

- (d) has a conviction for more than **two relevant offences** (as defined below);
- (e) has been convicted within the last **five** years of a **relevant offence** or **an offence under ss 78-80 of the *Transport Operations (Road Use Management Act) 1995*** (Road Use Act). Sections 78-80 refer to traffic offences involving liquor or other drugs (including failing to provide a breath specimen if requested to do so by a police officer); or
- (f) has been convicted within the last **four** years of **more than (any) two offences under the Road Use Act**. The latter offences might include unlicensed driving (by virtue of suspension, disqualification or failure to obtain a licence), but do not include offences relating to ‘regulated parking’ under the Act.

‘**Relevant offence**’ is defined in the Act broadly as being any offence other than an offence under the Road Use Act or against the JP Act.¹⁴

5.2.2 Spent Convictions

The above provisions of the JP Act should be read in conjunction with those of the *Criminal Law (Rehabilitation of Criminal Offenders) Act 1986* (Qld) (Rehabilitation of Criminal Offenders Act). The latter provides that a person is no longer required to disclose convictions upon expiration of a ‘rehabilitation period’, depending on the seriousness of the offence in question.¹⁵

Ordinarily, persons convicted of an offence may benefit from these provisions, which effectively remove convictions from an individual’s criminal history after a rehabilitation period of from 5 years to 10 years, the latter period applicable to convictions for indictable offences (s. 3). Section 6 of the Act states that a person need not disclose a conviction after the relevant rehabilitation period has expired, unless the disclosure is to be made in circumstances ‘that are expressed by section 9(2) to be a case to which the provisions of section 9(1) do not apply’. Section 9(1) imposes upon persons or authorities an obligation to disregard any conviction of a person applying to be admitted to a profession, occupation or calling when assessing that person’s fitness for admission.

Section 9A of the Act provides that categories of persons applying for appointment to specified positions or offices have to disclose convictions for certain offences regardless of the aforementioned spent convictions provisions. JPs are included in the listed categories of persons. Relevant offences for those seeking appointment as a JP are also generously defined as ‘contraventions or failures to comply with any provision of law, whether committed in Queensland or elsewhere’. Those seeking to become JPs are therefore required to disclose *any* past convictions, regardless of the time at which they were acquired; and a conviction for any offence will also result in disqualification if already qualified as a JP.

Other categories of persons similarly excluded include teachers employed by the Department of Education; persons registered, licensed or approved under the *Child Protection Act 1999*; and applicants for employment with QPS. Not all categories of persons, however, are

¹⁴ If within any four-year period there have been more than six offences committed under the Road Use Act (other than those related to regulated parking), the person in question is not eligible for appointment for five years after the date of the last conviction. The Minister may also exempt an applicant for appointment as Commissioner for Declarations from disqualification under s. 17(1)(f) and (2) if ‘special circumstances exist’ (s. 17(5)).

¹⁵ Sections 6 & 3, *Rehabilitation of Criminal Offenders Act*.

excluded for such a broad-ranging offences. Teachers within the Department of Education, for instance, must only retain in their criminal history convictions for offences of assault or of a sexual nature as well as specified offences under the *Criminal Code* or the *Drugs Misuse Act 1986* (see s 9A).

In combination, the JP Act and the Rehabilitation of Offenders Act thus disqualify a person from appointment as a JP for the following convictions:

- (a) a single conviction *at any time* for an indictable offence (including those heard summarily) or for an offence under the JP Act itself;
- (b) more than two convictions *at any time* for a relevant offence - any offence other than those committed under the Road Use Act or the JP Act;
- (c) a single conviction *within the last five years* for any offence or for an offence under ss 78-80 of the Road Use Act; or
- (d) more than two convictions *within the last four years* for any traffic offence (other than one relating to regulated parking).

5.2.3 Application of disqualification provisions to Aboriginal and Torres Strait Islander communities

Although these provisions are applicable to *all* JPs, regardless of their cultural background, they have particular ramifications for the program as it operates on Aboriginal and Torres Strait Islander communities.

In general, ‘criminal checks are always going to be an issue on Aboriginal communities’, according to a member of one community. A QPS representative pointed out that it was ‘very rare to find someone without a criminal history’ on the community which he served as ‘there are so many police here as a ratio of people that you’re bound to get in trouble because of over-policing’. Stakeholders spoke of the growing numbers of persons amassing criminal histories under Alcohol Management Plan (AMP) provisions as a result of problematic alcohol intake – an issue common to many Aboriginal and Torres Strait Islander communities. In this context, one council member stated that the provisions ‘disqualifies a lot of us... (as) the AMP (provisions) makes people criminal when they’re not’. Others remarked that convictions for traffic offences are also very common for Aboriginal and Torres Strait Islander people.

Male members of Aboriginal and Torres Strait Islander communities are even more likely to acquire a criminal conviction over time. The lack of Indigenous men on JP Courts was highlighted by some stakeholders, including the JPs themselves, and directly connected to the issue of criminal convictions. Having so many women on the bench is seen by one DJAG court staff member as ‘a cultural issue – men see no incentive to be JPs’. JPs indicated that ‘(w)e need more men to sit on with us’. One legal service provider expressed concern in relation to having predominantly female JPs dealing with matters; ‘a woman sitting there (as JP Magistrate) may ‘touch up’ the male offender more’. Interestingly, however, the JP Court data set out in Chapter 2 above suggests that a fair proportion of offenders appearing before JP magistrates are Indigenous women; that is, 52% of final appearances (2.4) and 57% of sentenced matters (2.8). Discussing the level of offences that should lead to disqualification, a DJAG staff member commented as follows.

Not for rape or murder or major fraud, but for some stealing and minor assaults it should be okay. These things just happen on communities. We get a tremendous amount of people, especially males, doing minor stuff getting knocked out for assaults. We then don't get the representation of males on the courts....

(Addressing the current provisions) ... would get more (males) on the training course. All JPs say we need more male presence. An offence from 15-20 years ago may disqualify them. At (one named) community, I put 42 names through a check but only 4 could pass. Of these 4 only 2 were interested because community knowledge of the role of JPs is clouded. We need to address this.

Further, having so many men and women potentially ineligible for appointment within such a small, relatively static population as exists on most communities presents real problems. A staff member of QPS commented on this as follows, and suggested that review of the current provisions as they apply specifically to Aboriginal and Torres Strait Islander communities would be appropriate rather than discriminatory.

In terms of those who are already JPs, we do have to knock them out if they commit offences and lost one JP to robbery. We have difficulty because of priors. There was the possibility of exemption for particular communities hearing matters on the communities. From having worked here, I don't have the same sense that this is discriminatory as others might. I understand how communities are. People don't seem to mature here until 40 years of age and then are responsible. Blemishes impact on their futures still. Probably where convictions are expired, they should not be held accountable anymore and should qualify. In Townsville or somewhere like that, there are people coming in and out of the community who might qualify. We don't have that movement here. No one comes in who can qualify. That means you always have such a small pool of people who could contribute to the program.

Where criminal history checks are compulsory they may deter people from even applying for work and training opportunities in order to avoid potentially embarrassing scrutiny of their past life experience. This is particularly problematic as there is a lack of clarity about just what convictions will lead to disqualification, evident in some of the comments set out herein by stakeholders. Whilst the disqualifying provisions are very broad, it is not 'any offence' that will lead to exclusion, as suggested by one stakeholder above. There are limits, but there may not be sufficient understanding of these by community and other stakeholders and individuals who might be eligible may chose not to apply for training as a result of the latter.

Other than amending the disqualification provisions (see below), there ought to be improved clarity around levels and frequency of offences relevant to disqualification from appointment as a JP. DJAG needs to ensure that *all* stakeholders have accurate information about the legal provisions relating to disqualification so that individuals are not unnecessarily reluctant to apply due to concerns about the applicability of the provisions to their own histories. The Commissioner for Children and Young People has developed community-focused material about its disqualification provisions that might provide some direction in this regard.

5.3 Review of the provisions

Most stakeholders recognise that JP magistrates are exercising a judicial role commanding respect and a certain status within the community. On this basis there may be place for some legislative exclusion from appointment on the basis of prior offending. The present provisions however, are unnecessarily broad ranging in terms of those they exclude. The provisions need to be reviewed to allow for an increased intake of Aboriginal and Torres

Strait Islander persons with the requisite character to take on JP magistrate work, despite some history of offending, whilst not placing at risk the integrity of the program and the office of JP magistrate.

Suggested methods of revising the disqualification provisions might include amending provisions of both the Rehabilitation of Offenders Act and the disqualifying provisions of the JP Act. It is useful to turn at this point to examples of assessment processes and criteria for appointment to positions that are not dissimilar to the office of JP magistrate. We provide three processes that provide the basis for comparison: appointment as a local Commissioner with the FRC or Victorian bail justice and application for a blue card to work or volunteer with children in Queensland.

5.3.1 Victorian Bail Justice

Appointment to the role of bail justice in Victoria appears to be largely discretion-based. The *Magistrates Court Act 1989* (Victoria) provides for appointment by the Attorney General of honorary (unpaid) bail justices, empowered to determine after-hours bail and interim accommodation order applications made by Victoria Police and the Department of Human Services under the *Bail Act 1977* and the *Children, Youth and Families Act 2005* (respectively). Similar to JP volunteers, bail justice volunteers also have the power to witness statutory declarations and receive affidavits within Victoria. Other than with respect to the sentencing power of JP magistrates, the role of the Victorian bail justice is comparable to that of the JP magistrate.¹⁶

There are general eligibility criteria for bail justice appointment, including that an applicant must be less than 65 years of age, be capable of successfully completing bail justice training, and ‘be of good character’. Applicants must also demonstrate that they are a ‘fit and proper person’. Certain persons *may* be ineligible for appointment, such as those with a perceived or actual conflict of interest (such as a corrections officer or lawyer). Those who are currently bankrupt will also not be appointed. In terms of offending history, applicants must be willing to undergo a formal criminal history check, but any other relevant information held in this context by local police might also be taken into account. The selection process will involve an interview with local police and participation in a ‘background/probity’ check. Unlike the provisions for appointment as a JP in Queensland, however, convictions do not *automatically* exclude a person from appointment. There is an element of discretion in making decisions as to suitability. Persons found guilty of an indictable offence or fraud will be ‘unlikely to be recommended for appointment’.¹⁷ However, where there are summary, traffic or other offences and/or involvement with police, an assessment will be made of an application by taking into account the following:

- the nature of the offence/record;
- the frequency of the offence/record;

¹⁶ Information taken from Department of Justice (Vic), 2008) *Bail Justice Information Sheet for Applicants*, DOJ VIC, Melbourne Vic

¹⁷ Section 122 of the *Magistrates Court Act* (VIC) indicates that reasonable grounds for suspecting that a bail justice is guilty of an indictable offence will lead to suspension. Otherwise, the *Magistrates Court Act* states that mental or physical incapacity; incompetence or neglect of duty; or unlawful or improper conduct in the performance of duties will lead to suspension. Once suspended, the Supreme Court must determine whether proper cause exists for removal from office.

- and the date of the offence/record.

The Victorian criteria used in exercising discretion for more minor offences (including perhaps indictable offences heard summarily) might be used in assessing JP magistrate applications in Queensland.

5.3.2 Blue Card

Application for a blue card in Queensland, required by those who intend to work or volunteer with children, must be made to the Commission for Children and Young People and Child Guardian. The Commission is responsible for vetting the applications according to certain criteria.

Most charges and/or convictions do not automatically lead to rejection of an application. However, certain ‘serious offences’ or ‘disqualifying offences’ will result in rejection unless the applicant can satisfy the Commission that the case in question is ‘exceptional’. ‘Serious offences’ include offences such as torture, murder, those involving minors and offences of a sexual nature. ‘Disqualifying offences’ again include offences committed against children (such as making of pornography or sexual intercourse with a child under 16 years). Persons convicted of a disqualifying offence (whether the conviction is recorded or not) are prevented from even signing an application for a blue card and doing so may result in imprisonment or a substantial fine. In extremely limited circumstances, those convicted of a disqualifying offence may be granted an eligibility declaration, which means that they are able to apply (but maybe not successfully) for a blue card.¹⁸ For all other offences, where the person has charges/convictions an assessment will be made with reference to the following factors:

- the type of charge or conviction and its relevance to working with children and young people;
- when it was (or was alleged to have been) committed;
- for convictions, the nature of the penalty imposed by the relevant court; and
- any other relevant information.

If information provided indicates a likelihood of an application being rejected, applicants are invited to make submissions as to why they should not be refused a blue card. The process of calling for applicant submissions might be adopted in Queensland if discretion is introduced in assessing suitability of JP magistrate applicants. Further, the fact that assessment includes examination of whether offences are *relevant* to working with children and also *when* they were committed might be points worth noting in amending the disqualification provisions for JP magistrates.

5.3.3 Family Responsibility Commission’s Local Commissioners

Relevant criteria for appointment as a Local FRC Commissioner include that the person be ‘of good standing’; a member of a CJG or ‘relevant community group’, or an Elder or ‘other respected person’; and of Aboriginal and Torres Strait Islander background (s. 18: *Families Responsibilities Commission Act 2008* (FRC Act)). ‘Relevant community group’ is defined as being ‘any group of persons within the (relevant) area’ that is involved in activities relating to

¹⁸ Conviction for such an offence will also lead to disqualification for those already in possession of a blue card.

local justice issues (including activities such as providing information to a court about, or providing diversionary, interventionist or rehabilitation activities relating to Aboriginal and Torres Strait Islander offenders (Schedule: FRC Act).

A person is not eligible for appointment to, or to continue in the role of Local Commissioner if they:

- are insolvent;
- have been or are the subject of an FRC agreement or decision of the FRC under s. 69(1)(b) ;
- have been convicted of a ‘serious offence’ and the offence is not a spent conviction. ‘Serious offence’ is defined as a ‘serious violent offence’ attracting a conviction under s 161A of the *Penalties and Sentences Act 1992* (including incest, attempted murder and carnal knowledge); a ‘serious offence’ as defined under the *Commission for Children and Young People and Child Guardian Act 2000* (see above); an offence under the *Drugs Misuse Act 1986*; or an offence under s. 168B of the *Liquor Act 1992* (prohibition of liquor on a restricted area).
- have been the subject of a protection order (at any time within five years before the commencement of s 20);
- may pose a risk to a child’s safety (as identified by the child protection chief executive) (s. 20: *Families Responsibilities Commission Act 2008* (FRC Act)). FRC Act).

Section 27 of the FRC Act provides that the Minister may seek from the commissioner of police a written report pertaining to an applicant Local FRC Commissioner’s criminal history (with a brief description of the circumstances of any conviction) and domestic violence history.

Further, potential local commissioners must be nominated by either the relevant local CJG or by ‘as many relevant community groups’ (as defined above) from the area as the Minister considers appropriate (s. 14: FRC Act). The CJG or relevant community group must have regard to eligibility criteria in s. 18 and must provide to the Minister a notice indicating that it is satisfied that the person is a ‘suitable person to perform the duties of a local commissioner’.

Again, with the FRC criteria there is some attempt to restrict offences or histories to those most relevant to appointment. Spent convictions legislation also applies.

5.4 Eligibility criteria for JP Magistrates on Indigenous communities

Both the JP Act and Rehabilitation of Offenders Act (so far as it applies to JP magistrates) should be reviewed. Although there may be some argument for reviewing these legislative provisions in their application to the broader community, they certainly need to be reviewed *at least* so far as they apply to Aboriginal and Torres Strait Islander JPs in order to build effective capacity of the program, given the discussion above relating to JP numbers and program sustainability. Thus any relevant amendments might be made only with respect to Aboriginal and Torres Strait Islander JP magistrates residing on specified communities and participating in the JP Court program.¹⁹

¹⁹ There is precedent for distinguishing Aboriginal and Torres Strait Islander JP magistrates on certain Aboriginal and Torres Strait Islander communities in s 35 of the JP Act (provisions relating to

Suggested amendments to both of these Acts are as follows.

5.4.1 Amending the Rehabilitation of Offenders Act

Section 9A of the Rehabilitation of Offenders Act may be unnecessarily broad in scope, as noted above. The spent convictions legislation appears to create significant hurdles for those wishing to apply for appointment as a JP magistrate. Stakeholders overwhelmingly indicated that the spent convictions provisions *should* apply to JPs.

Currently a criminal conviction will carry through for the rest of your life. In Cherbourg an Elder went through training without having done the criminal history check. She was an awesome JP magistrate. She'd stolen 30 years ago and because the police had charged her with stealing not shoplifting she was excluded. There is no discretion here for these older offences. I'd like to see the Rehabilitation of Criminal Offenders Act apply to JPs (Registrar).

If you have been jailed for a week 20 years ago for a traffic offence you are out. Now, that'd be a \$100 fine! (QPS staff).

The selection for training that is hard – the criminal history check. We are some of the lucky ones who have had no offences in the past. We would like to see those who have offended before but are now 'model citizens' sit as JPs. Some are minor offences committed with particular circumstances. What is their present role in the community? They are now accepted as role models. Other communities say the same things (JP).

I think with disqualifying people from being a JP for convictions, it should depend on whether the offence was committed over five years ago. Maybe minor assaults or minor offences should be okay. It is very rare to find someone without a criminal history. You have done time, done rehabilitation – now you have a leadership role and yet you are disqualified forever (QPS staff).

(If someone hasn't done anything for a long time, it should be OK, if it's an issue of dishonesty, then no. Most people just get to an age where they stop offending (QPS staff).

Indigenous people applying for appointment as a JP should be entitled to benefit from the spent convictions provisions of the Rehabilitation of Offenders Act, at least for certain convictions. There is potential to retain the exception to the latter provisions for JPs where they have committed certain more serious offences *or* offences of particular relevance to their work and status as a JP, as occurs in relation to teachers under the Rehabilitation of Offenders Act. Presently, s. 17 of the JP Act effectively places time limits upon the relevance of certain convictions to disqualification. Thus, a person needs more than two convictions acquired within the last four years to be ineligible (see above). There is scope for greater leniency, however, in this regard through amendment to the spent convictions legislation itself. Another option is to introduce some discretion in relation to the application of s 9A to *any* offences. Alternatively, and ideally, JPs as a category could be removed altogether from the s. 9A exception.

payment of JPs on a community area) and s 552C of the Criminal Code (Qld) (provisions relating to JPs on Indigenous or remote communities hearing indictable matters summarily) (see Appendix 1).

5.4.2 Amending the JP Act

Stakeholders provided the following comments in relation to the relevance of certain offences to disqualification, as well as comments detailing the type of offences that might be seen as more serious and therefore relevant to assessment of an applicant's character.

If you've done a really serious thing then you shouldn't be a JP. If you've done lots of little things you should be okay (JP).

I think there should be something as well for repeat offenders on simple offences. You can only give so many chances. If they have one or two convictions for minor offences more than X number of years ago that could be a discretionary thing... AMP offences would fall within summary offences but we've just had our first imprisonment for a repeat offender. So they need to look at how many convictions – this would show a total disregard. It might have been a silliness and not so much keeping on doing it. They probably shouldn't be a JP if there's no respect for the law (Registrar).

The offences set out in s 17 of the JP Act could be reviewed so as to reduce the range of convictions (and offences) automatically leading to disqualification. Whilst it may be appropriate for certain (serious) indictable offences to always lead to disqualification, regardless of when they were committed, a discretion could be introduced for indictable offences heard summarily and other more minor offences, as has been done for bail justices and with respect to applications for blue cards. The range of offences that lead to automatic exclusion would therefore be reduced.

'Relevant offences' (for the purpose of determining eligibility) in the JP Act could be more specifically defined with reference, for instance, to their significance to the role of a JP magistrate and less restrictive in scope. Discretion could be introduced as to whether these more minor offences will lead to disqualification. This might be based upon factors such as the type of offence, the number of convictions where there is more than one, the date of last conviction and any other relevant factors and the discretion in this instance might be granted to the Director General of DJAG (or to an individual holding office of similar status). Applicants could be permitted to make submissions and/or present supportive evidence from respected members of their community.

With respect to the latter, the information provided to date in relation to nomination of and formal support for prospective JP magistrates by a relevant community is inconsistent. *The Justices of the Peace and Commissioner for Declarations Regulations 2007* refer to a local Member of Parliament having responsibility for nomination. DJAG suggests that local council must nominate a community member in order that to have their application considered by DJAG. Some community stakeholders suggest that community has nothing to do with selection of JPs, however. This issue is discussed briefly below in relation to community input into the constitution of JP Court. Council, as the representative body for relevant communities, ought to play a role in nominating individuals or supporting them in their application for appointment as a JP, regardless of whether any discretion is introduced in relation to disqualification, which might rely in part upon community representatives providing supportive evidence where there are convictions raising the prospect of an

applicant's disqualification. The FRC requires CJGs or other community groups to in effect sponsor a local person as Local Commissioner.

5.5 Key Points

Legislative exclusion of persons from appointment as a JP magistrate on the basis of prior convictions, as provided for under the JP Act and the Rehabilitation of Offenders Act, significantly reduces the number of potentially eligible Indigenous persons (especially Indigenous males) available to work as JPs on their respective communities. The provisions have particularly harsh consequences on Indigenous communities, given the disproportionate contact of Indigenous people with the criminal justice system.

In combination, the provisions result in persons being disqualified for relatively minor convictions with perhaps no real relevance to an assessment of an individual's suitability for appointment to the office of JP – including where those convictions were acquired well beyond the expiration of the rehabilitation period of 5-10 years provided for in the Rehabilitation of Offenders Act. They are unnecessarily broad ranging and should at least (and in particular) be reviewed as they apply to Indigenous JP magistrates convening JP Court on Indigenous communities. Guidance as to potential amendments might be found in provisions used in similar assessment processes, such that used in appointing bail justices in Victoria. An element of discretion and a higher threshold in terms of disqualifying offences may be introduced.

There is also a need for increased clarity amongst stakeholders in relation to relevant disqualifying provisions.

Recommendation 5

It is recommended that the *Rehabilitation of Offenders Act* be amended to remove JPs from the list of exceptions to the application of the expiration of rehabilitation period.

It is recommended that the provisions relating to disqualifications in the JP Act be reviewed. Potential guidelines which might be considered in terms of developing more inclusive qualifying provisions might be those relevant to applications for a Blue Card (Commissioner for Children and Young People and Guardian), the appointment to the Family Responsibilities Commission, and appointment as a Bail Justice in Victoria.

CHAPTER 6 REMUNERATION FOR JP MAGISTRATES

6.1 Current provisions for payment of a sitting fee

The JP Act states that it is an offence for a JP or Commissioner for Declarations to ‘seek or receive, directly or indirectly, any reward in connection with the performance of the functions of office’ (s. 35). However, ‘reward’ is defined in the Act as ‘a charge, fee, gratuity or any consideration’ but not a ‘daily sitting fee’ paid to a JP magistrate constituting JP Court within a ‘community area’ (under the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* (Qld) (s 35(2)). The latter is permissible and currently JPs are eligible to claim through DJAG a sitting fee of \$36.50. This amount is payable whether JPs sit for 1 hour, 5 hours or longer but is not payable if the court does not sit as expected on a particular day. Some JPs report sitting for up to 10 hours, on occasion.

All stakeholders were asked about JP remuneration. There are mixed views as to whether JPs should be remunerated (including at a better rate than the current one). There is some suggestion by a minority of stakeholders that JPs should never be paid *any* amount of money as JPs willingly volunteer to undertake judicial functions to serve their respective communities. As one DJAG staff member indicates, ‘(t)here is never one voice and some people say it is a job for their community.’ A registrar commented as follows.

I think it is disgraceful to pay them as no other JPs are paid. They should not be remunerated. They call it an attendance fee but it’s really a wage or payment. They are JPs for other reasons. The money is not the main reason as it is so small anyway.

This kind of sentiment is probably reflected in the JP Act, as above, wherein most JPs are precluded by law from receiving any ‘reward’ for their services.

The introduction of the legislative exception in the JP Act to allow for payment of a ‘sitting fee’ for JP magistrates on certain Aboriginal and Torres Strait Islander communities is, however, appropriate. It perhaps serves as an acknowledgement of the distinctive role JP magistrates have within the justice system and the level of difficulty involved in their work in convening court. The JPs involved in the JP Court program are expected to carry out judicial duties by *regularly* convening JP Court – as often as fortnightly on at least one community at the present time. Other JP magistrates in Queensland are not expected to perform on this basis, although they may convene court in certain instances. As one QPS stakeholder remarked, JP magistrates ‘are not paid but they’re used more in remote communities’. They are thus different to other JP magistrates and also to Murri Court Elders and CJG members. The latter do not have a decision-making role in the justice system, as ultimately this resides with the mainstream judicial officers in both Murri Court and in local Magistrates Court in which they participate.

Payment of a sitting fee to JP magistrates sitting on JP Court on Aboriginal and Torres Strait Islander communities should certainly be retained (in preference to paying an hourly wage or abolishing the fee altogether), but should be reviewed in terms of whether the amount payable is sufficient, given the aforementioned role of JPs. Many stakeholders believe that JP work is worth more than the \$36.50 fee currently payable. A reasonable increase in payment is widely supported, including as a means of increasing recruitment and retention, although it is noted that those serving their communities as a JP would ideally be doing so for reasons other than monetary reward, as the following stakeholders suggest.

The payment of \$36 is also very 'token'. If they were paid better, maybe there'd be more willingness. We don't want to make the role only for money but a better amount would be good. They might want to do it and have incentive (QPS staff).

For payment, they need to start talking about a reasonable rate, for example \$100 per hour because of the stress that sometimes can come with the job. It is all part of bettering their community. But we live in the community so that puts a lot more pressure on us than is on the visiting magistrate because of black / local politics (JP).

When you compare Magistrates Courts they have much better resources, of course they went to uni and trained and have loads of experience, but so do a lot of JPs and they have a lot of responsibilities. I'm not saying money alone will solve (the issue of a lack of JPs), but they should be paid so that they can put in more from their end. It's expensive to fly them up there, the magistrates and their equipment. It would be great if we could train more Aboriginal and Torres Strait Islander people to deal with these matters (Registrar).

The JPs don't feel valued – they don't get what the magistrate gets but the magistrates have so much more education. But then if JPs were paid it would be a total job – and so on that community level they could walk away from it and say, 'I was doing my job' (QCS staff).

6.2 JPs employed by government

Not all JP magistrates currently claim the amount of \$36.50, some because it is seen as 'token' anyway, as suggested above, and others because they are effectively being remunerated to convene JP Court by other Queensland Government departments. Thus, JPs employed by the Department of Health are permitted on one community to take time off work for JP Court and for refresher training, with no loss of wages. As one JP noted:

...with remuneration, I don't claim money because my manager here (at Department of Health) covers me. I'm still acting as an advocate for the community when I do the courts. Whenever I go away I take money for incidentals but health covers my salary. I think remuneration should cover or meet what you are already being paid out (if you lose your salary to participate). This is still another government department. We're doing a cheap job for them. If it's a community organisation they are not resourced for it.

Whilst this casual arrangement appears to work for at least one community, consideration should be given to formalising arrangements across relevant government agencies to ensure that *all* Government departments are willing to release JP magistrate employees for JP Court and JP training. Coordination across Government in this context might help to ensure that JPs are better supported in their work and is something that DJAG is apparently presently considering. The current mechanisms are fairly adhoc and inconsistent in application. DJAG is currently considering a directive, which might work more effectively.

We are also looking at special leave provisions for those working. If working for government, you should be able to take time off to do JP, Murri Court and QIADP work. The Government as a whole should support this. It's currently just a local agreement. We should try to make it a directive (DJAG staff).

In formalising agreements with other government agencies, DJAG will need to determine which agency should be responsible for paying JPs their regular wage whilst they sit in JP Court. Overall, DJAG should preferably have capacity to better remunerate JPs rather than

having to rely upon other Government departments or employers to subsidise the JP Court program. If JPs who are currently remunerated through work with government are paid an *increased* sitting fee, as suggested below, there will be less need to rely upon government agencies to pay their wage for time spent in JP Court. Their sitting fee will hopefully be sufficient to cover wages that would otherwise be paid.

6.3 Unemployed JPs or JPs employed by non-government organisations

Increased capacity for remuneration is also (especially) important for all those JP magistrates who do not have the benefit of any sort of ‘arrangement’ with their current employers to permit them to convene JP Court or who are unemployed. JPs may potentially be employed by community-based organisations without adequate financial resources to cover them during sittings. Some JPs may be permitted to leave their work for the relevant period in these situations, but are not paid by their regular employer for time taken. Others are not permitted to leave or feel that they can’t leave because of their work commitments, as the comments below indicate. A CJG member suggested that DJAG should write a letter to relevant employers seeking agreement that JPs will be released for JP Court and still be paid. One registrar indicates that he has often been called upon to prepare such letters as there is no-one else to do so. DJAG should be able to assist JPs to negotiate time off from their regular employment, if employed, and to pay them a reasonable wage to cover any lost wages.

(M)aybe we should be paid, then you’d get commitment. Some members drive taxis and they’re self-employed so if they are doing JP court they miss out on fares and work. For me the ferry costs money - \$20 at least for the ferry and taxi even on a dinghy. Someone has to cover that cost (JP).

Not getting paid has a big impact because there was no money to cover me leaving or no person. But no one would talk about the issue. People didn’t want to talk about it and rock the boat. But it was very hard if no one else was at work to cover for me (JP).

Maybe in the future the issue of payment needs to be addressed too because the services we work for won’t pay us to go and do the JPs sitting, so we don’t get paid. So that’s a big issue. We never got paid, we had to fill out forms but we never got paid. Someone needs to be paid. Magistrates get paid thousands to do their work. We get abuse from the community for doing this work, and our families are threatened too. That’s injustice (JP).

6.4 Increasing the sitting fee payable

The current amount paid to JPs for sitting might only feasibly cover costs associated with attending court. DJAG could consider a rate of payment that better recognises the level of skill, the challenges and the responsibility associated with JP magistrates’ court work. ‘If the courts sat regularly then this is a job – a skill we have trained people in and as with all service provision we should pay a level that recognises their role’ (ATSIS staff).

As noted briefly above, any increase in remuneration for JPs convening court (rather than JPs undertaking other duties) ought to be payable by DJAG as a sitting fee, rather than a wage, in accordance with the present arrangements in the JP Act. In terms of specific amounts, some have called for consistency across different Indigenous justice programs. Whilst they are currently remunerated at the same rate as CJG members and Murri Court Elders, the JP role is different to both. As discussed above, the JP role involves judicial decision-making and

justifies a payment scale that is separate to that used to remunerate those engaged in the aforementioned Indigenous –focused justice initiatives.

We can compare JPs to, for example, the differing roles and payments for FRC Commissioners, interpreters and Murri Court Elders as follows.

With greater remuneration we may get more JPs. It is a token amount for a four-hour sitting, given their role. If you get the opportunity to sit as a Commissioner, but not make the actual decision, you'd take that. The JPs actually make the decision. Interpreters get \$200 to interpret! ... The poor old JPs have a raw deal. Compared with Murri Court, they are actually dealing with law and justice outcomes and making the decisions. The Commissioners get paid quite handsomely! FRCs get \$200 per sitting (DJAG staff).

A scale of sitting fees that may provide some sort of precedent, given the nature of JP magistrate duties, is that utilised by the FRC. The FRC members are paid an amount of \$239 for four hours or less of sitting in one day and \$477 for more than four hours a day²⁰, and these amounts might provide a useful reference in determining any increase for JP Magistrates.

6.5 Key Points

The current rate of payment for JP magistrates is inadequate, given the distinctive role of JP magistrates in convening JP Court on Indigenous communities. Payment of a sitting fee to JP magistrates sitting on JP Court on Indigenous communities should be retained and increased. JP magistrates should be paid at a higher rate than others involved in Indigenous initiatives such as Murri Court and might be appropriately paid at a rate used for FRC sittings. An increase in payment would permit DJAG to remunerate JPs itself rather than having to rely upon other Government departments or employers to subsidise the JP Court program, as presently occurs on some communities.

Consideration should also be given to DJAG formalising arrangements with government agencies and other employers who currently employ JPs to ensure that JP magistrate employees are released for attendance at JP Court and JP training.

Recommendation 6

It is recommended that the current rate of remuneration offered to JP Magistrates be reviewed.

Payment ought to be offered to JP Magistrates as a sitting fee in accordance with present arrangements rather than as an hourly rate. A comparable scale would be the FRC scale of payment for a two hour sitting.

²⁰ Scale taken from DJAG document *Remuneration Categories and Fees: Daily and Half day fees*. The relevant category of payment is C1; that is, 'Focused impact on a specific target group or industry' with the function of regulatory, investigative or review powers'.

CHAPTER 7 INCREASED AWARENESS AND SUPPORT FOR JP COURTS

7.1 The importance of community support for JP Courts

Stakeholders were asked about the relationship between Aboriginal and Torres Strait Islander communities and the JP Courts, including how community influences the makeup and constitution of the courts. This is discussed briefly above. One suggestion in this regard is that if a particular family predominates (deliberately) in JP Court, the program loses community support due to perceptions of bias. Where the program loses favour with the community in such situations, it cannot operate.

(On) one community a particular family had stacked a (JP) court and dealt unfairly with offenders depending on their connection with the family in question. The court fell down. We can't get it up and running and there is a negative community perception about it. Most of the JPs deal with conflict well but when things like this happen we have a bad flow on effect for years. We must make sure that two different family members hold court. They know what (conflict of interest) is in the training. You'd hope that if they don't stand aside the other JP will deliver outcomes (DJAG staff).

The relationship with the community is important. It does influence the constitution of the JP Court. If the community perceives that the JPs are being too harsh on particular families, they may put pressure on them in terms of sentencing. JPs may also then pull out. JPs need to be respected by the community (ATSIS staff).

These examples illustrate the importance of positive Aboriginal and Torres Strait Islander community engagement with JP Courts to their effective operation. It is essential that JPs have respect within their community in order to convene court and undertake relevant duties. As a registrar suggested, 'the greater the involvement by the community the more the operation of the JP court will be enhanced.' Without respect for JPs and the institution of the JP Court, the likelihood of the program achieving its objectives is compromised.

There is some indication that JP Courts have potential to build capacity in their respective communities when they function well, creating a sense of local ownership of law and order issues and solutions. The potential strength of the program in this regard is discussed above in the context of building community capacity and providing an alternative to mainstream justice. Where there is a sufficient level of support from the community for JP Courts the community may thus gain much from their presence. Community members may approach JP magistrates with all sorts of requests for justice-related or quasi-legal assistance. The JPs then meet community needs and develop capacity in a broader sense.

Support from the community in which JP Courts are located is apparently, however, not present at all times and on all communities. Some suggest that community respect for JP Courts and JPs (particularly simply on the basis that they are often Elders) is something that must be worked at.

There is also no respect for the Elders. The younger ones - it can get really out of hand. It is not about petrol sniffing or substance abuse, it's just the younger ones behaving badly. Lack of respect is a serious issue and (Elders) need to restore their status in the community. Government policy assumes a level of respect - younger people see them as authority and don't like them (Legal service provider staff member).

Most of them are just considered members of the community, which may lead to a lack of respect. They are not exactly experiencing hostility, just a lack of respect. They get upset when referred to as a 'kangaroo court'. The offenders themselves in court are fairly respectful. Not much that CJG or others can do to address this issue. You can't 'alter' the level of respect of offenders in any way (Registrar).

7.2 Lack of community awareness of and engagement in the program

In a number of instances, there appears to be a lack of community support for, awareness of and engagement with the JP Courts – which impacts negatively upon the program. JPs may feel a sense of isolation within a community. There is a need to assist JPs in this regard, as the following comment recognises.

JPs feel they're not valued and they're not whingeing, it's just how they feel. There's not a lot of support, there's no backslapping. There are some really strong family groups – some people go to meetings to get good outcomes, others use those meetings to make other people uncomfortable – to use reverse racism. It's awful. So the JPs are alone a lot of the time. JPs can come from different families and there is sometimes that friction. It would be good to have an Honour Board for all our serving JPs, like with the police (QCS staff).

There are perhaps only occasional instances of outright hostility, discussed briefly above in the context of JP recruitment and retention. This may result from the nature of the work as JPs are sitting in judgement on their peers. Defendants and their families may not be happy with sentences imposed. A registrar notes that JP Court is 'very stressful in small communities. They are making judgements about people - it's no fun'. Sometimes, however, this is due to ongoing family tensions or other conflicts or issues arising within a particular community, which may or may not have much to do with the JPs themselves but which inevitably impact upon them. 'Small communities often have divisions along family lines and this can make working in the JP Courts very difficult for the sitting members', according to one registrar. Further, some JPs do not want to deal with AMP offences because of community opposition to the legislation.

(The) underlying thing is that the community expects the JP court to be easy on them. But the fines are higher than the Magistrates Court and the JPs believe that the AMP is a community document for their benefit. One of them has suffered retribution (as a result of sentencing under AMP provisions). I don't know how many times his car windows have been broke (DCS staff).

More common than hostility, however, is a general lack of understanding or involvement with JP Courts - although commonly *all* community-based stakeholders support retention of the JP Courts. Others highlight the high numbers of offenders failing to appear before JP Court as evidence of a lack of respect for JP Courts. However we do not know if JP Courts have a higher rate of non-appearances than Magistrates Court. As shown in Table 2.22, JPs exercise their powers to finalise matters ex-parte in approximately 26% of matters.²¹

DJAG JP training discourages JPs from dealing with offences on an ex-parte basis as it diminishes the effectiveness of the court in addressing offending. Offenders perhaps need to be better informed about the role of JP Courts and the consequences of non-appearance in the

²¹ The JP Courts are empowered to deal with matters ex-parte under s 142A of the *Justices Act 1886 (Qld)*.

courts. Defendants may not show up because they know they are going to receive a fine and are content to just pay it, as suggested below.

JPs have nil effect on re-offending. They are not deterring offenders; they issue fines only. 99.9% of matters are dealt with ex parte. Offenders are not showing up at all. This means that JP court is a waste of time. Community call it a 'kangaroo court'. They could issue a warrant but it's only simple offences such as public nuisance, truancy. Not worth it (Registrar).

Many of those living on communities in general (except perhaps those involved in the criminal justice system) may not know much about JP Courts – about the disqualifying provisions relevant to appointment of JPs (see above) or their powers in terms of sentencing and the matters they can deal with. Community engagement with JP Courts seems to be fairly minimal, although this is variable. Whilst one CJG Coordinator, for example, could work to bring offenders and JP magistrates to JP Court another might have extremely limited knowledge of the work that JP Courts perform.

7.3 Strategies to improve community support for the program

Some JPs express a wish to be better connected with community. An important first step would be to increase the profile of JP Courts on Aboriginal and Torres Strait Islander communities. The need to enhance public awareness of the program was raised as an issue impacting upon the capacity of the courts, as follows.

There is variety in terms of how council and others relate. Sometimes community doesn't understand the role of JPs. I feel that the JPs don't get utilised enough and there is not enough understanding of them (DJAG staff).

Community doesn't understand the JP role and get it confused with role of CJG. For a while we have only had three JPs and one person couldn't understand why only those three people sat all the time. We had to explain to him that they sat exams and passed in order to get to that level – so changing people's opinion is needed by telling them how the JPs got there (JP).

JPs themselves suggest that the JP Court 'needs to be promoted. We need brochures, a media release, that sort of thing'. They called for 'greater recognition (of JP Court) within community.' People should better appreciate the role of the JP 'through advertising or radio or local TV or posters'. Other creative ways of emphasising the contribution that JP Court can make to a community and increasing community involvement are also suggested.

It would be really nice for someone to come up to the community and hold morning tea, with training and maybe photos; it's not up here often we have morning teas with fruit – we get boxes of the one fruit, like kiwi fruit when it's available; those older people really love morning teas and things like that; we need more visits from DJAG with training and support – to give the JPs acknowledgement of their support. It would also be good to talk to the bigger kids at school to give them appreciation of the court system, to illicit change for younger people and the community (QCS staff).

Some specific community members might appropriately increase their engagement, in particular. CJG members (particularly the CJG Coordinator) should be working more effectively with JP Courts, although this issue is clouded somewhat because of the common overlap between CJG and JP Court membership. In some instances, JP Court was seen as not operating as effectively as it might where the same was true for the relevant community's

CJG, illustrating the potential impact that a CJG may have upon the program – both positive and negative.

If the CJG was better supported then more JPs would stand up. The CJG has no training, no refresher training – what capacity building do they have? DJAG should train them up better. They are in need of information, inspiration and this would make them function better. There'd then be more JPs (ATSIS staff).

CJG should be involved in developing 'more networking between the (justice) groups on communities; it would be good, so we're all on the same wavelength', a council member suggests. 'To me, CJG is just a building in the community but everything should blend in'. CJG members could also attend and thus support JP Court, just as they attend Magistrates Court or take a more active role in coordinating JP Court rosters and ensuring that JP magistrates convene the Court as required, for example. A CJG Coordinator in a community where JP Courts no longer operates indicated that the CJG would have been willing to take on the roster for JP Court and get it up and running. CJG should also be involved in any court users forum established to support JP Courts (see below).

With the CJG Coordinator, they should be there at every court. They could bring someone into court; Their role is vast. They do bring them in on some communities. They can explain the process to offenders. They are there on behalf of the courts but not as a defence mechanism. They oversee the process (JP).

As well as ensuring that DJAG is able to directly support JPs in their work as discussed above, it is also important that DJAG commit to developing more consistent community-based support for the JP Courts, to build program capacity. One way of achieving greater awareness and engagement of all on communities might be through development of community education materials relating to the JP Courts, made accessible to members of relevant communities, including those interested in applying for JP training. DJAG needs to be resourced to develop such materials and otherwise implement strategies to increase community awareness, as noted above. Community education material could be audio-visual and/or written in nature. Information that could be included might cover the role of the JP Courts; training for JP magistrates; and the sentencing powers and range of matters JP magistrates are able to deal with. Legislative provisions relating to disqualification might also be set out in plain English as there is a need for greater clarity about current provisions, as noted above.

Recommendation 7

It is recommended that DJAG develop community-based materials (including audio-visual (DVD) and written materials) covering the role, functions, disqualification provisions and other aspects of the JP Courts in order to increase community awareness of the JP Court program.

7.4 Increased Awareness and Support from Service Providers

The issues relating to increasing community support for and awareness of JP Courts set out above are all highly relevant for service providers, whose working relationship with JP Courts needs to be strengthened. Relevant service providers include magistrates, registrars

and other court staff; community corrections; police; ATSILS and other legal service providers.

7.4.1 Magistrates and the JP Court program

The involvement of magistrates in the program requires particular attention. In short, there appears to be little interaction between JP magistrates and magistrates that circuit to relevant communities. This is clearly stated by stakeholders. One JP suggested, for instance, that there was not much ‘interconnection’ with Magistrates Court. ‘They run their court, we run our own. It’d be good to talk with them more. I think I’ve spoken to them once in ten years’. It is also evidenced by an indication of a somewhat limited awareness amongst a number of magistrates of key issues of relevance to JP Courts. None of the magistrates contacted identified themselves as having had a role to play in or experience with JP Courts. This lack of contact between magistrates and the JPs was attributed by one magistrate to the fact that a magistrates’ visit to a community for circuit court does not coincide with the convening of JP Court. The courts thus appear to work on the same communities, but at a distance from each other.

JPs strongly indicate that establishing a better connection with magistrates is important for a number of reasons including enhancing support, increasing legitimacy and to enable a (mutual) exchange of knowledge and skills, particularly in relation to sentencing. One JP suggests that JPs could ‘draw strength from the magistrate. We’d like to exchange with the magistrate coming to our community’. Others make the following suggestions.

If magistrates have more input, some incentive that we’re doing something right, give us a bit of a push and shove ... in a supportive way; maybe a day before court; if he could sit for an hour or two with the JP magistrates... tell us if we’re good (JP).

If they increase what we do (jurisdiction), then we could sit with the magistrate to show him how we talk to our residents and how we are trying to get them to take responsibility for their actions. We are a bit stricter than the magistrate (JP).

There is some suggestion that a monthly meeting between JPs and their local magistrate could be appropriate and worthwhile. Regular contact would ideally lead to discussion about which court (JP Court or Magistrates Court) different types of matters might be appropriately referred to, for example. Magistrates do have some influence in terms of the number and type of matters that are referred to JP Courts. JPs also seek greater clarity from Magistrates about the appropriateness of sentences they impose and this might also be considered during any meeting. DJAG recognises this. DJAG JP magistrate training encourages JPs to stand a matter down and seek advice from magistrates or clerks at their nearest Magistrate Court if they require clarification (DJAG 2005b: 16). Contact might be made at the time of Magistrates Court circuit or, less ideally, via video-conferencing if this is established (see below).

We should start before Court and get the judge to come and sit with us. We did have a morning tea some time with the magistrate. That was good. We should work together and get them to sit down with us (JP).

JPs might use it to talk to the magistrate monthly though to get advice with the court system. The magistrate could train and assist them in this way. They could discuss their issues with

the magistrate. That would be brilliant. The magistrate currently doesn't have any time and they don't even stay here overnight (QPS OIC).

JPs need time to observe other magistrate. The main difficulties are not in holding court; that works very, very well and is very, very professional. They struggle to do some things, trip up on some things or think they will. Maybe they don't know the options, or it's their lack of experience or knowledge, they're not 100% confident but that comes with the frequency of doing your job. Even magistrates adjourn court to ring up their mates and ask them about what they should do, about what their role is in certain situations (JP).

Given the capacity of magistrates to assist in supporting JPs, it may be appropriate to develop information specifically targeted at informing magistrates about the JP Court program and the role of the JPs. Increasing the awareness of magistrates in this way may increase their involvement in the program.

7.5 The need for a court users forum

There is a need for greater coordination and communication between all stakeholder service providers and others to ensure that JPs are better supported; that all stakeholders better understand the role and work of the JP Courts; and that relevant issues arising might be aired and addressed. Agencies need to be able to work together towards similar justice-related goals.

Community corrections, for instance, do not attend JP Courts with any regularity (if at all). There is potential for this agency to have a key role in JP Courts, particularly by facilitating access to alternative sentencing options (see further below). There is also some indication by correctional staff that they would like to be better informed about what the JPs are doing in JP Court, especially because the offences that JP Courts deal with may have some relevance to the work that corrections do supervising offenders. A minor alcohol-related offence dealt with by the JPs, for example, might lead to a breach of an offender's CSO.

The JPs should be formally linked up with a range of service providers as detailed above, including community corrections, magistrates, registrars and other court staff; QPS; CJG; ATSIILS and other legal services; *inter alia*) by way of a JP Court users forum. A regular meeting of a forum such as this, possibly held on each community at the time of circuit court where possible, might be an effective tool to incorporate service providers in a local network of support for the program. DJAG should consider taking the lead and establishing such a forum or similar mechanism of support and inviting relevant service providers to attend. A forum of this nature would, for instance, provide an opportunity for matters such as those immediately above to be addressed and for enhancing the way that JPs and corrections staff work together.

Service providers also need to be more involved in DJAG JP in-service training. The JPs indicated that having key players in the justice system attend and present at their refresher training was helpful and a number of service providers have also suggested that they would like to attend such training more regularly (including registrars and ATSIILS).

7.6 Key Points

Community awareness of and engagement with the JP Courts is variable across and within communities and over time. JPs may feel a sense of isolation within their respective

communities as a result and the effectiveness of the program is undermined. DJAG should work to improve the profile of JP Courts amongst the general public on Indigenous communities to increase understanding of the role of and support for the JPs and for JP Court as an institution. The CJG in particular could be more involved in JP Court, including for example by coordinating JP Court rosters and/or attending JP Court as they do in Magistrates Court.

There is currently little interaction between JP Courts and relevant stakeholders (other than QPS). Under-developed working relationships between JPs and relevant stakeholders, including magistrates, court staff, corrections, legal service providers and others, increases the isolation of JPs. Magistrates may have a specific role to play in supporting and connecting with JPs and the JP Courts that needs to be fostered. They may, for example, provide guidance in sentencing decisions and ensure that appropriate matters are placed before JP Courts, for instance. There need to be strategies implemented to provide for increased communication between all stakeholders. A court users forum for JP Courts might assist in this regard.

Recommendation 8

It is recommended that DJAG develop and provide information sessions for magistrates in relation to JP Courts; specifically, the range of matters that can be referred to JP court and the JP courts sentencing powers.

Recommendation 9

It is recommended that DJAG develop and improve relationships between JP magistrates and magistrates, community corrections, police, registrars and other relevant court staff, ATSILS, CJGs and other legal service providers as appropriate, for example, through the establishment of a court users group. A key role of the court users group is to identify and remedy issues of support and service provision (eg those relevant to corrections) and improve relations between service providers.

CHAPTER 8 JP COURT WORKLOAD AND INCREASING REFERRALS

8.1 Impact upon Magistrates Court workloads

We noted in Chapter Two the number of matters determined by JP courts. Over a three -year period (2007-2009) there were over 2600 sentences imposed, and 5200 matters heard (including bail matters). We also noted that JP Courts hear a variety of matters and make a range of orders which without the JP Courts would have had to be heard in a Magistrates Court.

During the consultations, stakeholders were asked to comment on whether JP Courts had any impact upon the need for and frequency of Magistrates Court sittings. There is perhaps some (implicit) expectation, evident at least in responses to this question, that JP Courts can and should be able to reduce the workload of magistrates visiting Aboriginal and Torres Strait Islander communities on circuit (and thereby improve the efficiency of the justice system as it operates on those communities) by hearing matters that local magistrates might otherwise be required to deal with. To have this impact, JP Courts need to turn over on a regular basis and with reasonable speed a sufficient number of matters that would ordinarily be dealt with by a magistrate. It is possible that JP Courts can achieve this. As noted above, a particular strength of the program may be based within the JP Courts' potential to convene swiftly and deal with matters relatively quickly compared with Magistrates Court. One stakeholder suggests that JP Courts could be running on a weekly basis and dealing with a larger number of matters. Other comments include the following.

(The strengths of the JP Courts include) (t)ime saving for magistrates if the JP Courts hear minor matters. Court lists in Magistrates Courts are huge; then they get adjourned because of any number of matters - sorry day, rain, floods, cyclones, monsoons. Then everything gets adjourned for another month and so it goes. So the JP Courts can really help that situation (Legal service provider staff).

JPs divert a lot of matters from the Magistrates Court. I've been here 4 years and sometimes the magistrate would have 100-150 matters. Now with JP Court he doesn't have anywhere near that (DCS staff).

JPs do hear matters that would otherwise be heard by a Magistrate and it should be noted that these matters are dealt with at significantly less financial cost to Government than would be required to finalise these matters in Magistrates Court. However, the achievements of the JP Courts in this regard vary from community to community and over time. Certain JP Courts are working better than others in this regard. Although JP Courts are having some impact in terms of numbers heard, it seems that generally JP Courts are not hearing as many matters as they might, as a number of registrars suggest.

My magistrate says that he appreciates the JP Courts continuing. Our court is so massive so the matters they do don't have to go to the magistrate. If they are extremely productive, the police could actually move more matters to the JPs compared with what they do (Registrar).

When you have a Magistrates Court, you don't need a JP Court. He might have 100 matters on his list, instead of 103. The only benefit I can see is the direct involvement of the community and magistrates can do that with the CJG in court, he can talk to them. So the only gains are the community involvement and you're better off doing that through the CJG (Registrar).

Spending time on (JP Court) – 4 & 5 hours – well that’s time you just don’t have, it’s not effective the way it is; only a few matters are dealt with; most are adjourned to Magistrates Court. I don’t see it being effective; so it takes all the motivation out of it (Registrar).

There are also, of course, communities where JPs are waiting to convene court but have not been adequately supported to do so due to a lack of DJAG resources, in part, but which obviously have no impact upon Magistrates Court workloads. The following comments are relevant in this context.

From the Courts perspective the Magistrates Court works better when the JP Court is sitting because they don’t get bogged down with matters that the JPs can hear. The magistrate has more time to deal with more serious matters, rather than adjourning matters and sending them back to Cairns. The JP Courts are a good idea, but they’re just not being administered properly. At the moment without JP Courts (operating on some communities), it clogs the Magistrates Court. If it’s working well then it reduces that. In some places at the moment, with JP Courts not sitting, there are 100 matters listed for the Magistrates when they arrive on their first day (Registrar).

It should also be borne in mind that some JP Courts will be appropriately hearing matters under by-laws that would not ordinarily be referred to Magistrates Court anyway and which may therefore be seen as irrelevant, in a sense, to any calculations around whether the JP Court program is reducing the ordinary workload of magistrates. Truancy matters provide an example in this regard. A further point made by stakeholders is that behaviour on a community which may be perceived by police or JPs as being ‘anti-social’ in nature or likely to escalate to (more serious) offending may sometimes be dealt with by the JPs under by-laws due to the breadth of relevant breach provisions contained in these instruments rather than as a more substantial offence under state legislation, with all the consequences that the latter approach might have for an offender. In this sense, by-laws are seen to have potential to prevent higher level offending (as it is understood under state legislation) which may ultimately result in an appearance in the Magistrates Court and in this sense reduce the number of matters magistrates are required to deal with.

As noted above, JPs express a preference to deal with more minor matters. In this context, whilst there are no obvious legislative additions or subtractions that need to be made to the current scope of matters that the JPs deal with, including by empowering JPs to hear more serious matters as noted above, there is capacity to enlarge considerably the *number* of matters that the JPs currently hear with the aim not just of reducing Magistrates Court workloads but to sustain the program in its own right. The program needs a sufficient numbers of matters to operate with reasonable regularity and efficacy. As a DJAG staff member stated, JP matter numbers ‘may reduce the Magistrate’s load, but they are not intended solely to make the Magistrate’s work easier. It is broader than that.’ This is achievable through administrative rather than legislative responses. An increase in numbers of JP Court matters thus needs to be achieved through increased referrals rather than through any increase in range of matters they deal with.

8.2 Improving QPS referral mechanisms

The fact that JP Courts are not hearing as many matters as they could is partly related to problems with current QPS referral mechanisms.

Stakeholders were interviewed about the role of both State police and Indigenous community police in relation to the JP Courts. Community police are seen as potentially important to the program in having people charged with by-law offences, assisting with prosecuting matters, and/or bringing offenders to the JP Court. At present, they do not appear to have a key role in the context of most JP Courts however. On at least one community, council no longer employed community police because of the difficulty for them in enforcing unpopular AMP provisions.

State police commitment to the program generally is seen as absolutely essential to the effective operation of the JP Courts. The role of police usually encompasses charging offenders and appearing in JP Court as prosecutor. Police may also provide administrative assistance by taking carriage of paperwork produced in court; assistance with SPER fine payment after JP Court; bringing offenders to court; assisting JPs in court with court procedures (see discussion below) and ensuring that there are sufficient JPs to hold court to hear matters listed, *inter alia*.

Overwhelmingly, the most significant function identified for police with respect to the JP Courts is decision-making in relation to listing matters before JPs. In this sense, police may provide a lifeline, effectively, to JP Courts by listing sufficient numbers of matters before them. Where they cease to refer matters, or do so without consistency, the JP Court will fail to thrive, or in more extreme cases, collapse.

If the OIC is not committed to the program it will fail simple as that. If it is supported it will succeed. In (named community), if anything is too hard it will not be supported and can't work. There is a lot more work involved in running the JP Court program (Registrar).

Police are very important. They are the gatekeepers. They can make or break the courts by way of the matters they chose to set down. If an officer in charge doesn't like JP courts then they won't have a court list and the court will die. The OIC at (named community) saw value in the JPs and set matters down. ... It is more work for Police as they have to list matters, prosecute and maybe round up offenders, depending on community police. It is extra work but it depends on their support level (DJAG staff).

In deciding to refer certain matters, QPS officers may determine the relevant capacity of the JPs. The criteria used in making referrals are both unwritten and very much localised, although there is some common ground across communities too. It appears, for example, that police may divert matters away from the JPs to the Magistrates Court where at least one or more of the relevant charges involves a serious offence that would ordinarily be placed before a Magistrate; where the defendant has a significant criminal history; where the defendant is on a CSO, probation order or suspended sentence; or where there is a direct conflict of interest between the offender and sitting JPs. Other factors that may influence decisions about which forum to use for offenders may include personal attitudes of individual officers to the JP Court; whether a defendant prefers to appear before the JPs or the magistrate; law and order issues arising in a particular community; and the level of understanding about the powers of JP Courts. Sometimes police may not list matters before JP Court or Magistrates Court because of diversionary options available to them in dealing with minor offences in lieu of court appearances. A QPS officer indicated how discretion was exercised to refer a matter to JP Court or Magistrates Court, as follows.

Simple offence goes to the JP by the police and defendant saying so. Nothing goes before the JPs that's contentious, that's going to cause disharmony in the community - or someone with

an extensive history. If the defendant asks us, we'll consider the options; public nuisance, unlicensed driving; 1st time offender, not juvenile matters, no child safety matters. Don't think community would deal with it, can of worms here. Child safety does child safety (QPS staff).

One QPS staff member indicated that he 'thought mistakenly that JPs can only deal with simple offences but they can do any matter.' The officer continued:

Their education and social experience however means they may not have the same standard in terms of whether they can adequately deal with all offences. We give them only minor matters around alcohol and public nuisance. These are about 25% of local matters anyway (QPS staff).

The difficulty is that the discretion is uncontrolled and in the hands of individual officers on each community. The level of commitment they have to and interest in the program may lead to its success or failure. QPS staff turnover is a relevant concern in this regard. As a QPS staff member indicates, 'the biggest impediment for the program can be police and others who are only here for a short time. Once a person goes, will the program be sustained you wonder?' Further, sometimes police referrals are made with little understanding of the powers of JP Court. For example, QPS may only list by-law offences before JPs due to the fact that they do not understand the relevance of state legislation to the JP Courts.

8.3 The Need for Referral Guidelines

Development by QPS at an operational level, perhaps in consultation with DJAG, of a set of guidelines providing direction to QPS officers in terms of the referral to and setting down of matters for JP Courts would better ensure that matters are appropriately referred to JP Courts with some reliability and uniformity. This may overcome problems that arise in terms of shifting support on communities as a result of QPS staff turnover, for instance Police themselves, along with DJAG staff members acknowledge the difficulties they face and the utility in such a direction.

We need clarification about what should be put before the JPs. This would allow for streamlined consistency. To do this, it'd be like it is for children. You issue a set of guidelines or principles as to cautioning and conferencing for first and second offences. Though it does always depend on the offence level not just whether it is the first or second offence. A first offence could be more serious than another (QPS OIC).

A blanket direction from the Commissioner would be good for police. JPs deserves the support of police. It doesn't need to be legislative. At the moment, it'd be quite good to do that direction under the CMC report. That'd be the easiest way. I think it's not just the OIC, must be higher. If our Director finds out that something is not happening then he can talk to his counterpart in QPS. It's like the agreement that they may have with ATSILS around offenders in custody. Some loosely developed agreement would be good. If the offender has a particular history and has committed certain offences then give it to the JPs (DJAG staff).

The guidelines could state that at a minimum, there is a presumption that certain matters must be referred to JP Court. Alongside any QPS overarching direction, there could be scope for formal input at a *local* level by various stakeholders (including JPs) through the proposed JP court users forum about the types of matters JPs can and are willing to hear.

We are currently doing consultations with Murri Elders. The feedback indicates that the Elders want to decide at a local level what they have capacity to deal with – what types of matters. It may be the same for JPs. A local agreement about their scope between JPs and police may be effective... Some consistency might be good in terms of what types of matters are listed where. A statewide acceptance of parameters for JPs could be put in place and then JPs decide at a local level too (DJAG staff)

Magistrates may also have some influence upon the number of matters that JP Courts are able to deal with, as noted above. They may refer matters back to JP Courts as appropriate or take clusters of matters away from them, as occurred in relation to alcohol-related offences on one community. Interestingly, the latter occurred so that Aboriginal and Torres Strait Islander offenders on the community in question may have access to the Queensland Indigenous Alcohol Diversion Program (QIADP). Ideally, Indigenous justice initiatives should be better aligned, rather than operate in this way. One QPS OIC contacted suggested that in place of any set of guidelines issued by QPS to police officers relating to the range of matters that JP Court is empowered to deal with, local magistrates might issue a direction to ensure that appropriate matters are placed before the JPs. There was some comment, for instance, that magistrates had in some instances referred matters from Magistrate Court back to JP Court (as well as take them away, as noted above). This might be more formalised as a process.

To get police to list matters you could have a directive from the Magistrates Court. Like when they've made it quite clear about youth justice cases, if they get something before them that they think should be at conferencing they will say so and send it back (QPS OIC).

It is useful that *all* stakeholders, including police and magistrates, consult with JPs and other services in making decisions about appropriate referrals – not for each and every offender, obviously, but in a more strategic sense. This should take place within respective communities in a JP court users forum, as recommended. Providing further information to magistrates about the functions and powers of JP Courts may also assist in guiding magistrates about the range of matters they can direct to or remove from JPs.

Police could also benefit from comprehensive training in relation to the role, objectives, and powers of JP Magistrates Courts to inform development of any statewide guidelines along with localised practice. One JP indicated that police are used to dealing with magistrates but need more training to deal with JPs more effectively. Training might also include detail of the ATSILS 1800 number and the sentencing powers of JP Courts (see below).

8.4 Key Points

JP Court is (implicitly at least) expected to reduce the workload of Magistrates Courts by hearing a certain number of matters. They are generally not reaching capacity in this regard and this is may be due in part to existing referral mechanisms. QPS are key decision-makers in terms of the type and number of matters listed before JP Courts but presently practice relating to QPS referrals is generally localised and unchecked. A statewide QPS directive setting out what matters, at a minimum, are appropriate for JP Courts may be required. Magistrates may also have a more formalised role to play in ensuring that matters are referred appropriately to JP Court. (In addition) there is a need for consultation at a community level between JPs and other stakeholders about the sort of matters are appropriate for a particular community.

Recommendation 10

It is recommended that QPS, in consultation with magistrates and DJAG, develop guidelines for the referral and setting down of matters for JP courts.

Recommendation 11

It is recommended that QPS provide training to police in relation to JP courts, which should include information concerning the JP Courts' role; the potential scope of matters that can be referred to JP Courts; sentencing options available to the JP Court; and the availability of 1800 ATSILS number for advice.

CHAPTER 9 THE LEGAL RIGHTS OF THOSE APPEARING IN JP COURTS

9.1 ATSILS representation and the rights of defendants

ATSILS is only resourced to travel to Aboriginal and Torres Strait Islander communities for Magistrates Court. Their visits do not coincide with JP Court sittings and thus defendants in JP Courts are rarely represented, although sometimes offenders appearing before JP Court might seek advice or information from ATSILS lawyers or field officers in relation to a penalty imposed by JP Court. On only one JP Court is more regular ATSILS representation provided because the relevant legal service is located within ten kilometres from the community in question.

The lack of legal representation available in JP Courts is an important issue, but one without a simple solution. A number of stakeholders did not identify lack of representation as a problem. Some JPs indicate that offenders want to have their matter dealt with swiftly by JP magistrates and that they are better able to achieve this and to speak freely about an offence without representation. JP Courts are seen as different to Magistrates Court in this regard and such suggestions may relate to the view that JP Courts are intended to be an alternative to existing approaches to Aboriginal and Torres Strait Islander offending.

(T)he ATSILS have had some strong comments about it, about people not being represented. They come on the magistrates court days and say the person hasn't had representation; members of the community are honest and they want to say why they did something, not plead not guilty when they know they did something wrong; they want to explain why they did it. At times it frustrated the defendants when solicitors are telling them about their right to silence and they want to have their say (QPS staff).

Legal service providers, however, raise a number of concerns relating to representation and the legality of the JP Courts. There is some concern, for instance, that offenders are regularly pleading guilty and being sentenced in JP Court without legal advice. There is also comment in relation to the sentencing outcomes of JP Courts; in particular, that they are disproportionate to the offences allegedly committed and that they lack consistency (see below). Stakeholders also raise the issue of conflict of interest, suggesting that whilst JPs may not see a conflict of interest in a particular matter an offender may do so but have no advocate in JP Court to raise this or any other issues on their behalf.

They do not have solicitors though. This is a concern. They might plead to something that ordinarily they wouldn't. This is a problem. With bail objections we notify the Legal Aid Commission. You might open a can of worms, but people feel that they should plead guilty in the JP Court. They should be advised (QPS staff).

(If JP Court penalties) went to the District Court on appeal they would be overturned, for sure. But people appearing in JP Courts don't appeal, they don't have legal representation and they wouldn't know (Registrar).

People opt to go to the Magistrate Court instead of going to the JP court and getting a huge \$700 fine. People might get worse results (in JP Court) and they don't have legal representation. So there's no defence for them, so people might not want to use the JP Court. To work it properly we could do it through ATSILS but we would need to double our legal staff (ATSILS staff).

ATSILS identify access to representation as a legal right for all Aboriginal and Torres Strait Islander people but indicate, correctly, that mandating representation in JP Court would effectively lead to the demise of the program. The current inadequate resources available to ATSILS makes legal representation in all JP Courts an impossibility, given that lawyers are generally only present on communities for circuit court and not at other times when JP Court is likely to sit. At best, those residing on remote communities may access an ATSILS 1800 phone line for advice. Otherwise, defendants need to talk with ATSILS lawyers when they are present at communities for Magistrates Court – either before or after JP Court. None of these options afford them direct representation. One suggestion was that where field officers were present on communities at the appropriate time they might appear in JP Court on behalf of defendants.

I believe that all our people should have representation as a basic right. In general, whatever courts require our presence puts extra pressure on us. We fully support representation and I suggest we'd be the supplier of choice. Resources are the main issue. If courts expand (in terms of jurisdiction), it will impact upon us resource-wise. Ideally you'd want representation, but not mandated as a prerequisite for the JPs to preside. This may mean that the JPs don't get to sit... We have the 1800 number for free legal advice and I believe that they should be represented – no ifs no buts. The number is there as a 24 hour service. They can contact us. All the police in every region know our phone numbers (ATSILS staff).

Given the problems associated with ensuring adequate representation in JP Court, at this point in time it is not realistic to recommend that all defendants have access to legal representation in JP Court as a prerequisite to their appearance due to the serious repercussions this would have for the program. If, however, the JP Courts were to substantially expand their jurisdiction to deal with more serious matters or juvenile offending, for instance, having solicitors in court would be a necessity.

9.2 Access to Legal Assistance and Advice

It is important to acknowledge that despite the relatively minor nature of offences heard in JP Court, defendants should *at least* have access to legal assistance and advice. Penalties in JP Court may be practically restricted to fines for the most part at this point in time, but those fines may be hefty ones; convictions are recorded; and sentencing outcomes may impact upon or be relevant to sentences previously imposed by Magistrates Court (as noted above). Access to legal assistance serves to reinforce the legitimacy of the JP Courts as a judicial forum.

Solicitors should be there to represent people; people should have the full knowledge of what it means to plead guilty. The 'no conviction recorded' thing; that has a huge impact on a defendant. Defendants need to know if they re-offend they'll get a conviction and they need to know what that means, they need to know all the consequences too; that is, no government job, maybe they can't travel, all of that. The chances of disadvantage are greater and higher because the resources are not set in place.... It's got to be done properly if you're going to have a court (Registrar).

At a minimum, those charged to appear before JP Court should be advised of the right to speak with a lawyer and of the availability of the 24-hour ATSILS 1800 number. Police should be trained to ensure that this occurs on a consistent basis (see below). Arguably, all defendants should have to speak with a solicitor prior to pleading guilty in JP Court. One QPS OIC serving a community where JP Courts have been active recommended having

offenders sign a form to plead guilty only if they have talked with an ATSILS solicitor previously, which can be done through the 1800 ATSILS number. This may be particularly important in JP Court due to the number of cases dealt with ex-parte. Offenders need to be aware that matters may be dealt with in their absence.

The necessity of informing the community (especially offenders) about the need to appear in JP Court as required by summons or otherwise is noted above in the context of discussion concerning ex-parte matters. As one QPS staff member indicates,

(t)he JPs that are nominated need to be respected so that people will show up or else it is just seen as a kindergarten court. They won't show up. They need public awareness about what JPs can do and also about having to show up to court. If they don't show up we can issue a warrant and put them in prison to get them to court. They should know they have these legislative powers and can do this and they need to show up.

Offenders should have access to written material - probably a short, simple information sheet – advising them about their rights once charged to appear before a JP Court. This material should be readily accessible on communities to the general public and/or could be provided directly to offenders. Information might detail an offender's a right to seek legal advice and to appeal any decision of JP Court as well as the consequences of non-attendance at JP Court, including that matters might be heard in their absence.

9.3 Family Violence Legal Service Providers

Family violence legal service providers expressed some concern about the lack of legal assistance available to individuals seeking protection in JP Court. There is no indication that family violence legal service providers are representing or otherwise assisting applicants for restraining orders in JP Courts with any consistency, if at all.

(W)e don't think that they should be hearing DV matters. There is already no support for the victims. Usually the CJG coordinators act for defendants and perpetrators and the victims get left. For our matters women come to us to take out orders for a range of reasons. Police can take out protection orders and they will get involved if women want them to or if they're called to a DV incident. But at other times, women don't want the police involved. (I)f JP Courts were to hear these matters there'd be no support for most women/victims (Legal service provider staff).

There are however similar difficulties in calling for an advocate to be available at each and every JP Court sitting for those on whose behalf police may be seeking a protection order, again related to resource issues. In fact, resourcing may be an even more problematic issue in this area than it is for ATSILS. Not all communities at the time of consultations appeared to have well-established legal or other services for victims of offences of domestic violence even in Magistrates Courts, which are generally likely to be better serviced than JP Courts.

Civil applications for (temporary) protection in cases of domestic violence are relatively unusual in JP Courts compared to criminal offences (see Chapter Two for data on applications). In JP Courts, police seek protection orders from the JP Court and in this sense there is someone in court advocating on behalf of the victim, although a number of issues undoubtedly arise in this context. It is still important that victims of domestic violence have access to legal assistance and advice and this is, again, something that needs to be addressed. Legal service providers dealing with family violence protection and with Aboriginal and

Torres Strait Islander offending need to be included in both in-service JP training and in any JP court users forum established by DJAG to support JP Court.

9.4 Key Points

Presently, legal service providers (including ATSILS and family violence legal service providers) do not have adequate resources to provide direct representation and advocacy in JP Court. This is potentially problematic where sentencing by JPs is seen as inappropriate, for example, but remains unchallenged because offenders have no representation. It may be less problematic for applicants for domestic violence protection orders. Mandating legal representation would lead to the demise of the program, however. At a minimum, offenders should be provided with access to legal advice through the ATSILS 1800 telephone number and with more information pertaining to JP Courts so as to better understand their rights.

Family violence legal service providers and ATSILS should also be included in any initiatives drawing in relevant program stakeholders such as a court users forum and attendance at JP in-service training.

Recommendation 12

It is recommended that DJAG develop an information sheet advising defendants of their legal rights, including their right to seek legal advice; the consequences of non-attendance at JP Court; and about the outcomes of any decision in the JP Court.

CHAPTER 10 THE LEGISLATIVE SCOPE OF JP COURTS

10.1 Adequacy of the current legislative scope of JP Courts

All stakeholders were invited to comment on the current scope of the JP Courts, including with reference to the type of matters the courts have and/or should have legislative capacity to deal with.

The range of matters that the JP Courts are empowered by law to hear, in particular by way of sentence, is generally thought by stakeholders to be adequate, with some limited exceptions. There is for the most part no strong indication that their capacity needs to be enlarged by legislative amendment, although there is a common desire for introduction of by-laws on those communities where they are not presently enacted.

Presently, two JP Magistrates are permitted under the JP Act to convene JP Court to sentence defendants charged with limited categories of offences and only when an offender pleads guilty. The charge in question must be for a simple or regulatory offence and would include by-law offences; driving under the influence of (s. 79: *Road Use Act*); being drunk in a public place (s. 164(2): *Liquor Act 1992 (Qld)*); or wilfully destroying property (causing loss of \$250 or less) (s. 7: *Regulatory Offences Act 1985 (Qld)*). The *Criminal Code* also provides that JP Magistrates can hear indictable matters summarily where the maximum penalty and any property involved (if a property offence) do not exceed certain limits (s. 552C). Relevant indictable offences might include less serious assault, stealing or unlawful possession of a motor vehicle. Further, JP Magistrates are also able to conduct committal hearings and to take or make procedural actions or orders (defined as including issuing a warrant, granting bail and making a domestic violence order by consent) (see further Appendix 1).

There is very little indication that JPs need greater legislative power to deal with more serious matters. JP Courts generally deal with minor offences within their legislative powers and appear content to be so doing. Matters might be contained practically to those unlikely to lead to any level of community conflict or significant difficulty for the JPs. JPs themselves, along with other stakeholders, may determine what is appropriate for their respective communities in this regard. One JP stated that ‘our court is the minor one. We give them the fines. The Magistrate has all the things there and full pay... (so) he should get the difficult ones’.

Domestic violence matters provide an example of the latter. All stakeholders were asked whether domestic violence is something that JP Courts have capacity to deal with. Most seemed aware of their legislative capacity in this regard and the relevant provisions in the *Domestic Violence Protection Act 1989 (Qld)*, which empower two JPs to determine applications for a domestic violence order where consented to by all parties; to make or extend a temporary protection order if a magistrate is not ‘readily available’; and to make a protection order when hearing an indictable matter summarily under s 552C of the *Criminal Code*. Some JPs are quite happy to deal with these applications pursuant to the above provisions; but others think that doing so might be seen as ‘taking sides’ between parties to an order and lead to negative repercussions. They do not wish to hear such matters, despite their powers to do so. Chapter 2 indicates that Kowanyama has dealt with a fair amount of applications in relation to domestic violence but that very few other communities have done so (2.23). Offending behaviour with potential to impact negatively upon the community as a

whole (such as drinking in public, fighting, etc.) may be seen as more appropriate for JP Courts rather than offences that may lead to inter-family conflict such as domestic violence, as noted in the following comment.

We don't want to do violence matters..... too much responsibility on the JPs because they have to live here and you might be seen as favouring one family over another. It could put JPs in a very difficult situation. There could be backfiring and repercussions on the JPs. We haven't had anything come back at us, touch wood, but that could change with the more seriousness of the offences like DV. It is about the seriousness of the offence that would cause a problem. People could see JPs as biased. They think in their minds that they are right and you ask a community member to make that decision. Serious property offence is okay – it is the personalisation of the offence that is the problem. I could do break and enters and car thefts. We don't get those referred to us (JPs).

DV is a really hard issue because we're all related. Coming to some kind of verdict about people's relationship is therefore very hard. Another issue is that DV affects not just the two people involved but the whole family, kids especially. So I'm 50/50 about that, about whether JPs should deal with it (JP).

Similarly to the offences involving domestic violence, some JPs were unwilling to deal with AMP-related charges because of the lack of community consensus around the relevant provisions and the potentially heavy penalties applicable.

We want to be able to take the vehicle and maybe have a big fine for them like \$10,000. But we would build a fire in town if we did that! We want the magistrate to do it. We want to do the minor stuff. We want to keep it this way. If there is lots of grog then the magistrate must do it (JP).

Regardless of any overarching legislative powers enabling JP Courts to hear certain types of matters, there is some variation in the range of offences ultimately brought before the JPs. Practice is largely determined at a local level, regardless of legislative powers applicable to all JP Courts.

Other stakeholders (particularly QPS but also magistrates (as discussed above) and DJAG) determine the type of matters placed before JP Courts. The decision that a particular JP Court or the JP Courts as a whole should or should not deal with certain issues may be based upon an assumption relating to JP's legislative or other capacity. A DJAG staff member makes the following comment.

We don't encourage them to deal with higher levels of offences coming through. The police are good and don't put the big things in front of them. We always say to the JPs at training that if you are ever thinking of jailing, something is wrong and you should adjourn it to the magistrate. It's not a nice thing and the repercussions on the community may be great. For the well being of JPs, there may be a hang over effect and they should not be hearing this matter. This isn't about their skill level but because of their membership in the community (DJAG staff).

Juvenile offences provide an example of matters that are at this point in time perhaps properly kept away from JP Courts. JPs are presently empowered under s. 54 of the *Youth Justice Act 1992* (Qld) to determine a charge of a simple offence where the child in question pleads guilty and some JPs believe that they should be exercising these powers (see Appendix 1). There seems, however, to be little awareness amongst stakeholders of these provisions

and JPs are not encouraged or purposively trained to deal with youth offending through JP Court. DJAG JP training materials indicate at one point that JP Courts are not able to deal with such matters, despite the provisions in the Youth Justice Act. Some stakeholders suggest that JPs should not be dealing with such matters.

I don't think they should hear kids matters. When that is your community it's too difficult. As an Indigenous person I know that - with kiddies and old people and indictable matters. No, it places the JPs in danger to hear those matters. The JPs are ordinary people who are closely related to the community and to preside over kids matters – NO – they're in jeopardy, the JPs are. Most of the CJG people, when they're in the Magistrates Court and these matters come up they get up and leave, only a couple of them will stay in court to hear them (QCS staff).

On the other hand, when questioned during interviews some JPs in particular indicated that JP Courts should be able to reprimand young people in their community who were causing trouble. They thought that linking kids up with Elders and others with authority might have some benefits in addressing youth offending and anti-social behaviour. One JP notes that magistrates are referring kids to diversionary options and that JPs should be able to do this too.

Most offenders are juveniles but we can't deal with them. We could put them in supervision with the Elders. They could go out to traditional lands and be taught culture and what is good and what is not. They young boys want to go to Cleveland and come back thinking they are so big.... We could do something culturally appropriate like initiation for those boys 13 – 20 years old. If they are suspended from school we could do this. We want the community to support this. It came out of the women's group. The men's group also supports it (CJG member).

DJAG has indicated that youth offending matters are not referred to JP Court because of problems in relation to capacity, although we note that the data in Chapter 2 suggests that matters involving children 16 years or younger are heard in JP Courts (4.2% of final appearances (2.5) and 3.2% of sentenced matters (2.9)). There would need to be provision for enabling the Chief Executive's (Child Safety) right of appearance in such matters and to have parents attend court. Further, children would have to be able to access appropriate legal representation and diversionary sentencing options. JPs would also need to receive relevant training in relation to sentencing of young people. All of these issues need to be addressed prior to referring youth offending matters to JPs.

The latter demonstrates the point that JPs have sufficient powers in law, but whether or not they exercise them will depend on assumptions about capacity. This is not necessarily a problem. However, a fundamental issue in terms of the scope of JP Courts relates to how to ensure that sufficient numbers of appropriate matters are referred to JP Courts to enable them to operate at their maximum effectiveness. Presently, JP Courts may not hear all relevant matters due to misinformation or misunderstanding about the capacity of JP Courts, particularly its legislative capacity. This is discussed further below in the context of by-laws.

10.2 Council By-Laws and JP Courts

10.2.1 Support for and usage of by-laws

Stakeholders were asked to comment on the impact that by-laws have upon the operation of JP Courts. Law and order by-laws exist in a number of Indigenous communities and contain offences such as assault, offensive behaviour, allowing animals to escape, truancy and liquor offences. Chapter Two indicates the usage of by-laws in Cherbourg, Kowanyama and Woorabinda. Collectively, council by-laws on these three communities comprised 39% of the final matters heard by the JP courts (2.6) and the majority of sentenced matters (2.11) (see above).

Where by-laws exist their impact upon JP Courts is seen as substantial. Overall, there is widespread support for JP Courts to deal with offences under by-laws, including on those communities where by-laws have not been introduced (but which want them in place) *and* where state legislation containing virtually identical offences could be used to deal with offenders in place of existing by-laws. By-laws, along with public nuisance offences, are seen as fundamental to the JP Courts and vital to their 'livelihood'. As shown in Chapter Two, JPs will predominantly hear by-law offences where they are in place. Nearly 75% and 90% of sentenced matters in Kowanyama and 90% Woorabinda respectively were by-law breaches, for example (2.11).

JP Courts may deal with by-law offences rather than state legislation offences due to a misapprehension amongst some QPS staff, JPs and others that JP Courts can *only* hear by-laws matters and that JP Courts require by-laws in order to operate. This may be due in part to knowledge of the earlier community courts functioning on Aboriginal and Torres Strait Islander communities, which only had capacity to deal with by-law breaches (see Chapter One). On one community without a JP Court, JPs reported that service providers and council had advised them that they could not sit without their by-laws up and running.

I've got fifteen people lined up to do JP training. But there's no point. We'd be interested but it's useless without by-laws. We need someone else to oversight this council, get the ombudsman in to look at it, We need to shake these people up (CJG member and JP).

On some communities, police appear to use relevant by-laws in preference to state legislation as a method of neatly defining what JPs can and can't deal with but sometimes due to a lack of understanding about JP powers. As a result, numbers and types of matters listed before JPs is perhaps unnecessarily restricted. The lack of knowledge by all stakeholders in this context, particularly JPs and QPS, needs to be addressed by DJAG to increase the range and numbers of matters referred to JPs.

The by-laws are critical where they are the focus of the JP work. They provide in some sense clear guidelines about what matters they can and can't deal with. They also relate to a sense of ownership because they are local. They are more comfortable with them. JPs could hear state legislation matters but it would depend on whether police were comfortable listing such matters before them (DJAG staff).

10.1.2 Perceived benefits of using by-laws

Our research indicates that by-laws are preferred by JPs and other stakeholders for a number of reasons. They are seen to provide an opportunity for Aboriginal and Torres Strait Islander communities to identify and address through the law issues of relevance at a local level and in so doing sometimes make up for legislative omissions evident in state law. Community issues might include truancy, animal control, problematic intake of certain substance, and juvenile misbehaviour. It is noteworthy that Kowanyama and Woorabinda, for instance, use

by-laws to deal with school attendance issues to a significant degree whereas in Cherbourg the predominant social problem tackled through by-law enforcement is ‘disorderly behaviour’, despite provisions in the Cherbourg by-law that could be used to respond to school truancy (see Chapter 2). The use of by-laws is seen to relate to questions of ‘self-determination and personal responsibility – allowing a community to own an issue and as such to enforce an action’, according to an ATSSIS staff member.

By-laws are good for JPs. They provide an opportunity for the local community to determine what is important and what they want targeted. For example, in (named community) they have (an offence of) drinking methylated spirits. They have chosen this. It would be good now if they could include sniffing, as there is no state legislation prohibiting it (DJAG staff).

Attendance bylaw is very effective; that’s dealing with kids not going to school. It would take 6 months to go through state legislation for truancy matters. Two months later you might get the kid to school. With the bylaws, you can get the kid to school straight away. The bylaws were formulated to respond to community needs, especially here (JP).

In a broader sense, by-laws may also serve as an effective, community-based alternative even where there are existing state provisions and may offer Aboriginal and Torres Strait Islander communities a sense of control and ownership that enforcing state legislation cannot provide, particularly where used in conjunction with community police. By-laws appear to sit well alongside JP Courts, directed towards providing a local alternative to mainstream approaches to offending. Using by-laws, community police, and JP Courts in combination is important symbolically. It reduces ‘outside influences’, according to a QPS staff member.

By-laws are important, but the Court will function without them. They are important to the community and it gives them a sense of ownership. There’s a sense that we (QPS) are assisting our community (by using by-laws). With state legislation it loses a bit. They feel they are giving it back to the community (with by-laws) and money, for example, comes back to council. They are there as representatives of the community doing justice work (QPS staff).

Apart from their symbolic importance, there is also a belief, particularly amongst JPs themselves, that by-laws provide greater flexibility than state law in terms of available sentencing outcomes. In particular, it is seen as positive that fines imposed in JP Court as a result of offending under by-laws are (at least in theory) held by council for community use rather than by state government, as noted immediately above. This is an important ‘carrot’ that renders by-laws so attractive to communities, according to a DJAG staff member. The importance of ensuring that the community somehow benefits from court responses to offenders is discussed further below, but fines imposed for state legislation offences are seen as not coming back to the community in the same way. As one JP notes,

(t)he fine and SPER option means nothing is being recouped. We always say to the offender that the money is coming back to the community and not paying justice people in Brisbane – ‘you know you’ve done something wrong so put the money into the community’. A lot of the offenders are in both courts, and we try to tell them that it’s different to SPER. It comes to improve the community (JP).

Further, JPs and others may also perceive that by-law provisions enable them to address offending and other problematic behaviour more creatively than they might do under state legislation, including before such activity becomes more serious or entrenched in nature (in some instances) (see above and below). Under by-laws, JPs and others suggest that offenders

may avoid the recording of a conviction, for instance, and may more readily access alternative sentencing options, although in reality sentencing powers under by-laws and state legislation may not always be altogether different from each other.²² Whilst Chapter 2 notes that a reasonable proportion of orders made by JP Courts were ‘general orders’ to try to keep children in school (2.17) over 41% of all JP Court fines were imposed for by-law offences, for example. DJAG staff members comment as follows.

Convictions aren’t recorded under by-law matters. Police may exercise discretion to charge under by-laws for this reason where you may still be reprimanded but it won’t carry on through your life. It’s good that police have this discretion. Police are happy to refer to by-laws and use their discretion well. JPs like them because they provide a community voice (DJAG staff).

There is now a push to get rid of by-laws where there’s duplication but the feedback that I’ve had is that by-laws were the result of hard work – intended to provide a local justice framework.... It provides an inventive way of dealing with matters. (Named community) does truancy under the by-laws because the *Education Act* is too cumbersome. They may order the parents to help out in class to ensure attendance. This is better than a fine. Whilst the by-laws may lead to a fine and the council recoups this money, their real strength is to allow some inventiveness. Under state legislation, I think JPs would feel a bit more restraint in terms of sentencing options. They like their by-laws (DJAG staff).

The sentences they imposed may not have always been within their powers. For truancy matters, for example, they ordered mothers to attend school for a few days with their children. This was actually effective (in terms of reducing further offending). It was outside power but a good idea. It had positive results (Registrar).

JPs also appear more comfortable dealing with by-laws where they exist because of their supposed simplicity and effectiveness. They may assume that having to use state legislation would add degrees of difficulty to their work. One JP indicates that they would ‘want more money and need support from clerks’ if required to use state legislation. ‘It is a bigger responsibility.’ This may not always be accurate and may, as discussed above, be an idea based upon inaccurate assumptions about respective laws and JP powers. However, it is probably correct at least in relation to state school truancy laws.

(W)hy wouldn’t you use them rather than state legislation. Carrying an offensive weapon is broader under the by laws in the way it’s worked. Sometimes you nip something in the bud - the behaviour hasn’t gone all the way until an offence is committed (but can still be dealt with as an offence under the by-laws). Even with duplication, that is how you can use the by-laws effectively (QPS staff).

We are using by-laws for truancy and drunk and disorderly. If you didn’t have by-laws you wouldn’t have local court. With truancy, we can sort out the issues and refer to relevant services. With the state legislation, they’d need a greater understanding to deal with (truancy). We don’t have that knowledge so it’d be harder for them to deal with. The by-laws are for what the community needs (CJG member).

10.1.3 Providing support for use of by-laws in JP Courts

²² The CMC referred to the fact that by-law convictions do not form part of a person’s criminal history and although not recorded in QPS crime data reports, they may be recorded in Magistrates Court data (CMC 2009: 74).

Given the pervasive support for by-laws, communities should be supported by DJAG to develop them where they do not exist and to retain them where they already exist. Use of by-laws sits well alongside the overarching objective that the JP Courts be developed as an alternative to mainstream criminal justice mechanisms and an initiative with an emphasis upon community control and empowerment. By-laws may also reduce incarceration rates of Indigenous people. Whilst imprisonment may have been imposed in only 1.8% of all sentenced matters in JP Courts, by far the majority of these were imposed in communities with no by-laws in place (Aurukun and Mornington Island)

Without by-laws, JP Courts *are* able to and do hear offences in state legislation. They may in fact hear a larger range of matters where they rely solely upon state legislation but by-laws are supported even on those communities where there are none in place at this time. Current by-laws appear to be useful to communities in identifying and responding to issues of particular significance on Aboriginal and Torres Strait Islander communities, particularly where there is no relevant provision pre-existing in state legislation. A few important points, however, can be made in this context.

The potential of by-laws to properly reflect individual community needs and attitudes is limited where there is minimal representation in terms of the process of developing relevant by-laws. JPs have indicated, for instance, that they would like to have greater opportunity to provide input in their formulation. For this reason, it is probably important that community is involved in deciding whether *and* what by-laws should be developed on a relevant community to provide for appropriate, representative input into local management of relevant law and order issues.²³

Further, whilst having by-laws in place is seen as positive in most instances, the capacity of JP Court should not be unnecessarily limited in terms of the numbers and range of matters it deals with through any sort of misinformed dependency upon by-laws; that is, stakeholders need to be aware of the ability of JP Courts to deal with state legislation offences. Greater consultation and information – sharing about the JP Courts powers is recommended above as a means of assisting in this regard.

Recommendation 13

It is recommended that DJAG support the on-going use of by-laws in those communities which have introduced law and order by-laws.

10.3 Current sentencing powers

The sentencing options of JP Court are as broad as those of any magistrate in Queensland. They have access to the full range of outcomes set out in the *Penalties and Sentences Act 1992 (Qld)*, regardless of whether charges are brought with respect to relevant provisions of

²³ Further, provisions may also not be enacted where contrary to the State interest test applied by the Queensland Department of Infrastructure and Planning to proposed by-law provisions. There needs to be better community understanding of legislative requirements surrounding development of by-laws.

state legislation or of by-laws (although by-laws may impose certain limitations upon sentences such as maximum fines to be imposed) (see Appendix 1).

Stakeholders were asked to comment generally about JP Courts' sentencing outcomes and specifically about any impact these outcomes have upon re-offending on relevant communities. Despite the data in Chapter 2 relating to recidivism (see 2.6), JPs are seen as having an impact upon individual offenders appearing before them. Their connection with the offender and the offenders' culture and community, particularly perhaps where they are also Indigenous in background, means that they can reach the offender more effectively than a magistrate might. An offender 'would lie if they talked to the magistrate. It is about trust – they can bluff the magistrate but not me', one JP indicates. Some JPs speak about trying to turn an offender around and to address underlying issues contributing to offending and about how their knowledge of the defendant assists with sentencing.

(W)e're trying not to increase the numbers in the system; trying to not record convictions against people, get the offenders to heal and address the struggles in the community. But if they come before us again we might give them a bigger fine then. We give them a chance to fix up their problems, but we can only guide them. Some abuse the laws and then we can record convictions against them. People are not that bitter to us, they can see we're trying to help them (JP).

We know the people and their family histories because we've all grown up together. We know where the feuds come from. We know what people do in the community. You can help to change their ways in relation to offending. ... You will see some of the residents we talk to have been on the verge of crying because of the shame when we talk to them (JP).

Does in some regards; more complex though; unless people are in that frame of mind to cure themselves of addiction etc, the sentence isn't enough of itself; also there's lots of home brew people are addicted to, you have to want to change; JPs can warn defendants to send a clear message on breaching AMPs and they do; they're not afraid to do that (DCS staff).

Despite the available options and the general sentiment amongst stakeholders (including JPs) that fining offenders is largely ineffective, monetary penalties are imposed by JP Courts in the majority of cases dealt with. As noted in Chapter 2, nearly 72% of all sentenced matters involve imposition of a fine. The constant imposition of fines by JP Courts is seen as limiting in terms of outcomes for JP magistrate, offender and the community more broadly. One JP commented that offenders 'just laugh at the fine'. 'They go back to do it over and over again.' Community may see the JP Court as a second rate kangaroo court because they are only fining offenders. Offenders on Aboriginal and Torres Strait Islander communities also have little capacity to pay fines, in general, and the present SPER system used to administer payment of fines may mean an offender loses their licence for non-payment and then is charged for driving unlicensed, continuing the cycle of offending and punishment.

In this respect, JP Court is not providing an effective alternative to Magistrates Court and may have little impact upon recidivism – although we note the comments above made in the context of evaluation of other Indigenous sentencing courts; that is, that recidivism is only one measure of program effectiveness along with increased community engagement and self-determination. JPs and others express a preference for penalties that require offenders to give back to the community (as noted in the context of by-laws above) such as orders that require them to clean up facilities on the community or to build a community well; they want to use CSOs, good behaviour bonds or even mediation.

No I don't think the JPs reduce offending; I don't think it's working because of fines. We need to change our tactic, use community service, people can clean the street, be shamed then that would change their habit, it will work. Now with fining people it's like taking water out of a stone, they got no money. The people who suffer are the kids, if they go to school and have no money and no food to go there (Council member).

JPs may intend to keep people out of jail and reduce reoffending, but in order to have genuine capacity to achieve this a defendant 'should be able to leave JP Court with more than just a sentence. Recovery mechanisms or something should be provided as well', according to an AT SIS staff member.

10.4 Improving the scope of sentencing outcomes

The reliance upon fines as a sentencing option may be due to lack of understanding amongst JPs and others about their sentencing powers, as the following statement by corrections staff indicates. Similar problems are discussed above in the context of JP powers to hear certain matters in JP Court. However, DJAG training material does contain detail pertaining to sentencing options as well as sentencing principles.

Orders aren't quite lawful sometimes as JPs have a lack of understanding about sentencing sometimes. They rely on us, the JPs to ask us if they're sentencing under the appropriate legislation that sort of thing. They mightn't know about all the options they have, whether to use a fine option order or use a CSO and what the minimum and maximum hours are, that sort of thing (QCS staff).

We need more help with this. All service providers should provide positions for offenders on CSO. When I first became a JP I didn't know I could do CSOs. They didn't tell me (JP).

It may also be a result of insufficient support from stakeholders who might better assist JPs to access alternative sentencing options. Inadequate service provision and a lack of relevant programs to address underlying causes of offending such as alcoholism or mental health is not a problem solely for those appearing before JP Court on Aboriginal and Torres Strait Islander communities. Offenders appearing in Magistrates Court may also be left out in this regard. Interestingly, the recent CMC report into policing on Indigenous communities found that Magistrates Court on circuit also failed to use diversionary options as much as they might, including due to a lack of service provision by criminal justice services such as corrections (CMC 2009: 289).

So it works like this, you get gaoled for having a stubbie on you. Get a monetary penalty, transfer your money basically from federal to state coffers. In the meantime you go without food. Monetary penalties are a lost cause. There should be more community service, but in remote communities it's not available (Legal service provider).

However, it is clear that JP Courts are often less connected than Magistrates Court with services such as community corrections, as noted above, and with available programs. The following comments demonstrate some of the relevant issues.

Most of the JPs know that they can impose [penalties] other than a fine. DJAG may be telling them to stick to the fine and if it is more complicated they should refer it to the magistrate. If I was a Magistrate I'd ignore that and just do what I want. A magistrate will sentence them to jail anyway; why not go beyond simple fines (Registrar)

With offenders, we want them to stay away. We don't want them to come back, to see other agencies, we want to work more with other service providers, support each other in the court (JP).

We want community service officers sit in with the courts and see what programs they have running, see what the offender's done, refer the offender to them. (They) sit at the Magistrates Court. We'd want to see more support from them. They say it's a resourcing issues. We could clean the community up through CSOs. Without practical support, we end up doing fines. The magistrate is referring offenders to diversionary options and the JPs should do this too. Then we could reduce offending – offenders are seen out there doing CSOs and there is a shame factor (JP).

A range of sentencing options beyond monetary penalties should be more readily accessible to JP magistrates. The CMC has called for 'innovative' use of sentencing powers in JP Courts. Perhaps a range of 'incentives and disincentives' in JP Court might be used to alter offending behaviour and if evaluated positively, the FRC model may be used in adapting JP Court in this regard, according to the CMC (CMC 2009: 206). JPs should be able to utilise diversionary programs, including perhaps QIADP or mediation programs such as the Mornington Island Restorative Justice Project, which mediates community conflict including by way of mandated court order from the Magistrates Court. JPs need to be supported to exercise their capacity to sentence more effectively. There is scope to increase JP knowledge of the options available to them and to develop workable sentencing alternatives for the JP Court in collaboration with service providers, including community corrections. JPs should be better connected with existing services in this respect. A court users forum; participation of service providers at JP training; and education for JPs, Magistrates and QPS about JP Court sentencing powers are all strategies that could be put in place by DJAG.

10.5 Inconsistency and discretion in JP Court sentencing

Further criticisms of the fines imposed by JP Courts relate to their inconsistency and lack of proportionality: they are inconsistent when compared to those imposed by magistrates, and are too high relative to the seriousness of the offence. Legal service providers and court registrars both raised this criticism. There is a call for better JP training so that the JP fines do not 'run contrary to the magistrate', although DJAG JP training materials indicate that JPs are not encouraged to impose a maximum fine unless absolutely necessary (DJAG 2005b: 47). JPs may be 'overstepping their boundaries' as they seem to think that 'they are setting a precedent for the Magistrates Court but they should not do this', claims a QPS staff member. There is some suggestion that offenders will opt for Magistrates Court to avoid a hefty fine. The level of monetary penalties is set out in Chapter 2 (2.19). The greater proportion of fines are between \$200-\$500. As noted above, without legal representation in JP Court - and therefore no way of introducing into the sentencing process submissions about the appropriateness of penalties - there is little check on sentences imposed. Sentences rarely go to appeal in a higher court.

The JPs impose sentencing far above what they would be getting (defendants) in Cairns from the magistrate. In Cairns if you get picked up for public drunkenness you go to the watch house and you're out for 10 cents, in the communities we're seeing penalties of \$300! JPs don't want to be toothless, but is it reasonable to make that decision? It's inconsistent and unfair when measured against the wider community. I don't know what their training is. I don't think anyone is reviewing the penalties being imposed but they should (Registrar).

One argument is that if fines are high, this represents a community's intention to gain some control over problems causing harm to the community (such as grog running), particularly where used in relation to by-law offences. As one JP suggested, sometimes 'in local court (JP court) I explain it to them. Some people don't want to come to us. They think we charge them (sentence) them too much. I explain to them 'no – this is council law about grog''. There is some dissatisfaction with the penalties imposed by magistrates with respect to certain offences. In the context of harsh sentencing under AMP provisions, one community police officer remarked that the community 'wants to seize cars, but the magistrates won't do it. They say it will create hardship but they're killing their own people (by running grog)'. JPs may step in to redress this perceived leniency in Magistrates Court as they are living with the problem of alcohol on their community on a daily basis and want to seize control, in a sense. One JP explained the situation, in the context of discussion about dealing with grog running with heavier penalties.

This time of year, people might get drunk and we can't sleep because so worried at night. We have a fear of fights. People need something to do to stop them drinking. We need to find a way to keep people off grog. This is a health issue. They bring us all down even when we don't drink because we have to be so worried. There are too many alcoholics here (JP).

10.6 The need for sentencing guidelines for JP Courts

In order to provide greater accountability and direction for JP Courts in terms of sentencing, DJAG could ensure that there is greater guidance for JPs in JP Court. Two communities at least currently have guidelines specifically for JP Court sentencing – one provided by a Magistrate and the other by council (covering by-law offences). Possibly, a sentencing guideline that is applicable to all JP Courts could be introduced. One CJG member indicated that JPs need 'a book' to help them with sentencing. Material of this nature might provide an effective way of reigning in the range of fines or other penalties that should be imposed for offences with reference to whether they are a first or second offence, for instance, and precedents across JP and Magistrates Court. On one community, introduction of such guidelines is thought to be of some assistance.

At time the ATSILS have gone to the magistrate and complained about the JP court outcome but the magistrate can't review it – the level of sentence. The fines for alcohol matters are a lot higher than in Magistrates Court. Then again, the magistrates did a fine structure and placed it in front of everyone; when they spoke they put discretions – JPs follow it and magistrates want to lower it. People in possession of alcohol they go to the JP Court because that's what they want. There's a schedule –in the by-laws; maximum fine amount of \$500. Another sentencing option they use is a good behaviour bond/order (QPS).

DJAG JP training encourages JPs to consider the maximum sentence for each offence and to ascertain the usual 'average' sentence prior to sentencing. JPs are also encouraged to contact their local clerk of the court to study court records in order to gather sentencing detail for offences that are similar to those a particular JP Court commonly deals with (DJAG 2005b: 16, 72). There is scope for DJAG to provide written material to guide JP Courts on a more formal basis. As noted above, the manual provided to JPs is used in training across all Aboriginal and Torres Strait Islander communities. It may be useful to assist JPs by providing more information in relation to appropriate penalties for certain offences.

Although JPs are already trained by DJAG in relation to sentencing guidelines, principles and options (as set out in the Penalties and Sentences Act), if they are to be permitted to continue

to exercise a relatively unfettered discretion in sentencing (or even in addition to any introduction of general guidelines) there should be further training for JP Magistrates around both sentencing options and principles. The latter might be applied in determining 'appropriate' penalties. JPs (and others) need to be more aware of the powers that they have in terms of the type of matters they can deal with and the sentencing options available to them. This sort of information could be a component of increased training, along with training to improve administrative skills of JPs. Having more contact with magistrates through a court users forum or during DJAG training might also assist. Advice about sentencing is something JPs seek from magistrates.

10.7 Key Points

There is no requirement to extend the legislative scope of JP Courts. The existing scope is adequate and there has not been a demand for increased capacity to deal with more serious matters. At this point, JP Courts may not deal with the full range of matters that they are empowered by legislation to hear - quite appropriately. Domestic violence applications, for example, are considered to be too problematic by JPs on certain communities. Sometimes, however, JP Courts are not hearing relevant matters due to lack of understanding about the legislative powers of JP Courts. Use of by-laws provides an example of the latter.

By-laws generally are seen as contributing positively to the program in a number of ways; including through empowering respective communities to identify and respond effectively to issues of particular relevance to them. In essence, communities should be supported by DJAG to use by-laws, but reliance upon by-laws should not mean that state legislation offences are not placed before JP Courts due to a misunderstanding of the legislative capacity of JP Courts.

JPs are not using broad sentencing options available to them, perhaps due to range of factors such as lack of awareness of the latter and inadequate support from relevant stakeholders such as community corrections. A range of sentencing options beyond monetary penalties should be more readily accessible to JP magistrates. Sentences (fines) are sometimes perceived to be both inconsistent and too heavy. There may be some scope for both increased training relating to sentencing principles and options, and perhaps some further formalised direction to better guide sentencing decision-making.

Recommendation 14

It is recommended that JPs receive further initial and in-service training in:

- **the scope and type of matters the JP Court can be hear;**
- **sentencing principles and the sentencing options available to the JP court;**
- **the correct procedures of the JP Court (recording outcomes, convictions, etc.).**

The training provided should include participation of relevant service providers (such as registrars, corrections, ATSILS and magistrates).

CHAPTER 11 ADMINISTRATIVE SUPPORT FOR JP COURT SESSIONS

11.1 Current problems with the administration of JP Court sittings

We have set out above a number of administrative issues impacting upon the quality of JP Court justice, including those relating to JP recruitment and inadequate stakeholder support for the courts. With few exceptions the JP Courts also sit with very little administrative support from DJAG, especially when compared with that provided to Magistrates Court. This impacts upon the program's effectiveness and the legitimacy of JP Courts as a judicial forum.

A legal service provider staff member suggests in the context of administrative processes that JP Court 'can look like a second rate justice system if it isn't supported properly' - an outcome that should be avoided through increased assistance in the running of JP Courts by DJAG. It is apparent that the present situation is leading to frustrations and significant errors with negative consequences in terms of the effective administration of justice and of the program itself.

Problems with the current operational framework available to JP Courts include the following. At JP Court there is in general no 'third party' individual or agency such as a clerk or legal advocate for the defendant available to effectively keep a check on the legality or appropriateness of court procedures. Whereas lawyers, members of the general public, clerks and others may be present at Magistrates Court, for JP Court there is little outside scrutiny and no recording of proceedings. One Magistrate indicated that it is a 'fundamental' requirement that matters are recorded, but that this 'does not happen due to lack of support'.

If you're going to hold JP court, hold it like any other court. There should be legal representation, probation and parole, police, court staff (Registrar).

It appears that the only JP Court output is the recording by JPs of sentences imposed. In some instances there are however, according to DJAG court staff, problems in relation to the accuracy of these records. On one occasion, for example, a JP had noted on an offender's file two contradictory sentencing outcomes. Without any other formal record it is difficult to retrospectively correct important inaccuracies such as these.

I see the files from (named community) and the sentences they write up. Well they don't write up the complete sentences. They don't know that there should be forfeiture of grog under the Liquor Act – there are no orders like that written on the file. Also I don't know if there is a sentence of 'conviction not recorded' because they don't write that on the file. So if that's not written on the file, even if that sentence was given, I can't tell so I can't put that into the system. The files come to us without that written on the file and defendants could well be getting that. The defendants go on their own so there's no legal representation. The lawyers would make sure the sentence was recorded properly, but the sentences are incompletely written up (DJAG court staff).

I see copies of result for follow-up action; JPs are elders, from the older generation; they are not computer savvy or even know how to use basic technology; they try – the orders go to the court house at [X] – orders are often out before they get checked which is a problem; so you need someone who's computer savvy; no one to do it so they struggle; Magistrates have clerks and all the court staff, JPs don't have anyone, so why would they themselves have those skills? (QCS staff).

Court staff also indicate that councils might send money to a Registry brought in by an offender to pay off a fine but due to some delay in the manual transfer of records from the JP Court there is no corresponding court paperwork at hand with a written record of the relevant order made in relation to the particular offender. The paperwork may arrive months after the JP Court sat.

Apart from the practical difficulties that current levels of support give rise to, the lack of accountability and scrutiny referred to above may lead to a perception or potential that procedures followed in JP Court might be 'inappropriate'. More than one stakeholder believed, for instance, that police in JP Court influence sentences imposed by JPs, albeit as a means of offering much-needed assistance in relation to decision-making. 'The prosecutor may guide the JPs. That is not their role. They should be impartial.' Further, it was suggested that 'the JPs work off what the police suggest they should give them. And that's not right. We don't know who they are listening to as there is no paperwork coming through'. The 'main problem is that JPs get a bit leant on by police. Sometimes police have a view and it might not be a community view'. This issue relates to conflict of interest, and has real potential to undermine the authority of and derail community support for the JP Courts. DJAG JP training actually instructs JPs to maintain independence from police in JP Court. Training materials contain the following advice, but the perception of stakeholders may be all-important, nevertheless:

- It is permissible to seek relevant information or submissions from the police, but you do not follow police 'instructions' or 'orders'. You are in charge of the court. It is your court, it does not belong to the police.
- Do not be seen to be closely associating with the police. If you are seen talking with the police the defendant may suspect that you might not be fair and independent (DJAG 2005b: 15):

Further, there appears to be no single agency across *all* communities with formal responsibility for completing relevant administrative tasks associated with JP Courts, especially in terms of overseeing court processes before, during and after sittings. There is a lack of clarity around who should be assisting in this regard and the administration of the JP Courts is fairly ad hoc in terms of efficiency as a result. There is indication from stakeholders that police used to be funded to undertake clerk duties in JP Courts, but that as this funding was no longer available to QPS their assistance in this regard had dropped off. Some QPS staff, however, indicated that they still undertake administrative duties associated with JP court. On at least one community the CJG Coordinator assists in this regard, but sometimes court staff are left to follow things up when they come to the community for Magistrates Court.

(Police) work as clerk of the court here. We compile documents. We used to get payment for this, we don't anymore but the court works easier if we do it. You have a very efficient court day if you do it. We pride ourselves it's very much sorted out. We work very well with (the Registry) and it takes the pressure off Magistrates Court. The administrative burden needs to be taken off them. We photocopy the front page and send off the documents to Cairns (QPS).

11.2 The Need for a JP Court Clerk

A solution to administrative issues such as these may involve the appointment of a clerk for JP Courts. JPs currently receive training and then 'are left to it' but 'this downplays how

difficult it is to run court. There is no course that could possibly qualify JPs for court. They need more assistance other than training', suggests one registrar. This gives rise to inaccurate recording of outcomes; the reliance, at times, upon police for advice about sentencing; and problems relating to handling of paperwork for JP Court – issues that a clerk could assist with. By virtue of their presence alone, a clerk would also provide improved accountability as a 'third party' court representative, as the following registrar suggests.

(T)hey should have clerks of the court involved at the very least. I just think it makes it appear as fair as possible, even if that means one person is paid in the community to do the coordination of that job. ... I can't see why clerks wouldn't be involved in the JP Court, they should be. Clerks often travel to go to those courts already in those areas where the JP Courts sit, in the magistrates courts. Alternatively they should really train people in the community to do those jobs instead of sending the clerks there (Legal service provider staff).

A number of JPs and other stakeholders identified a need for attendance of a clerk of the court at JP Court. One magistrate suggested that JPs should not have less support than Magistrates and that they should be provided with a clerk of the court 'or something similar'. Setting in train formal administrative checks to ensure greater accountability is important for all involved – offenders, prosecutors and JPs. There is a real potential for a conflict of interest in some situations. Whilst there is no evidence of improper conduct, it is important to address this issue. Police may feel uncomfortable acting as prosecutor and also assisting JPs where JPs look to them for clarification during court proceedings. A police officer prosecuting in one JP Court raised this issue and called for increased administrative support to address it.

It would be okay to link in by video sittings to support around procedural matters or for clarification of certain issues for JPs. Also, this may allow for recording of proceedings, which is also a good thing. This relates to procedural fairness and accountability. We could if we wanted to manipulate outcomes to suit us. It is better to have a third party in on it even if by video. If offenders have issues, recording proceedings is also important (QPS staff).

Only two of the communities participating in consultations has the local registrar or clerk been able to sit in court and provide administrative support. The support occurred where the JP Court was more accessible geographically to the relevant Registry. On one of these two communities, the court staff member who attends provides assistance by overseeing the accuracy of the recording of outcomes placed on files by the JPs; taking all paperwork back to the Registry for completion, which may include creating warrants for the JPs to sign (and chasing them up to do so); and also updating the court database. This is the type of work that a depositions clerk travelling with a magistrate might undertake on communities for circuit court. Importantly, the JPs who work closely alongside the registrar or clerk in JP Court highlight the assistance that such a person provides in relation to court procedures. The clerk effectively provides the JPs with 'on-the-job training' in relation to the workings of a court, which may be preferred by and be more useful to JPs rather than further DJAG training, as the following JP indicates.

It is helpful to have (a registrar or clerk) there on the bench. If we want clarification they can help us. Do we need more training on procedural stuff? It's something you need to pick up as you go along. Extra training might not help. You only want clarification at certain times. Mostly you deal with the same offences. We are all busy working and we don't need to do training for the sake of training. The support of the clerk is better. Clarification about procedural stuff; looking at bail stuff; minor things need be checked. We might ask 'what is better?' For alcohol, should some of them go to the Magistrate because of the complexity; if the offence was committed at hospital or an aged care facility, for example? We want to say

that we know the person and we know their background but that the Magistrate can impose a heavier sentence, so do we refer it to him? (JP).

(W)e met with the clerk of the court; she gave us a rundown of the matters and a bit of support for about one hour before court; then a rundown on each case we were about to hear, but it was quick (JP).

11.3 Options to improve support during court sittings

We identify three options available to DJAG in developing a role of JP Court clerk, each of which might assist in ensuring that JP Court procedures are improved. These options were specifically identified by those involved in the program during consultations. The first, and possibly most ideal given the community focus of the program, is to train a local person on a community for part time employment to the minimum equivalent of a depositions clerk. The role of the clerk would be to observe the sitting and provide advice to the JPs and possibly the prosecutor about procedural matters. They could ensure that paperwork is accurately completed before they arrive at the Registry, saving time expended upon chasing up details with JPs. As a JP noted:

(a) local justice coordinator could be trained to provide (clerical) assistance to JPs on the court day.... You could also look at traineeships within the courts. Young Indigenous people could train and they work in the community or advance in the legal system further (JP).

The second option is to employ (a) designated clerk(s) to travel to communities for JP Court. The latter provides an opportunity to have present a person from 'outside' the community with greater impartiality than someone who is from the community in question, if required in situations of conflict of interest.

(One registrar currently attending JP Court) can sit because (that individual is) a JP Mag, but can leave the verbalising up to (the local JP). Should there be an independent JP magistrate flying round to each court sitting like a Clerk of the Court? The locals still sit because you can do it with three or four JP magistrates (but the visiting JP) would make sure processes are good and also can sit in if there is a conflict as long as they have no verbal input. You could solve two issues here (DJAG staff).

A third and final alternative is to provide a video link-up between court staff at a relevant Registry and the JP Court during sittings to avoid having to fly individuals in or train local people. Stakeholders were asked to comment about whether introduction of remote video conferencing would replace the need for JP Courts. Virtually all stakeholders did not believe that JP Courts could or should be replaced by such technology. Genuine difficulties were raised in relation to the practical operation and set up of the technology, but also the utility of using it in place of face-to-face contact on Aboriginal and Torres Strait Islander communities, where it would diminish the effectiveness of court. Examples of relevant comments by stakeholders follow. One JP suggested that 'Indigenous people want face to face contact with the court, they like to let us know why they did something'. Further,

(w)hilst it may be effective in some places, I do question it with Indigenous people. It wouldn't engage. There'd be a loss of connection with the communities. There's already fly in fly out justice as a constant complaint. There's no chance to speak with Magistrates when they are there. By doing remote conferencing, this will just get worse (DJAG staff).

Up here, equipment just doesn't always function, it goes on the blink ten times a month, so it would cost a lot of money for video conferencing and you would need more people. And doing it like that, it wouldn't work, it would take away the effect of having your peers in your face (Registrar).

Video conferencing would not work and shouldn't replace JPs. If you've got someone in Cairns berating and sentencing over video the impact is lost.... There are issues around understanding technology too here. They may not be able to understand someone somewhere else making decisions. They could be in Cairns or Antarctica (DJAG court staff).

The JP Courts may be slowly becoming obsolete with public nuisance notices (issued by police in preference to charging to appear in court). Using technology will also lead to the death of the program for sure. We are relying on QPS to list matters for JPs and if they have the option of using a Magistrate because they know the Magistrate is there (via video) they will list it before them... In terms of enhancing effectiveness, technology would do what (DJAG staff)?

Stakeholders, however, were more likely to identify such technology as being useful to enhance support for JPs, including court-based administrative support by linking in with Registries during JP Court. More generally, video conferencing might be useful for providing operational support and for developing networks, including with the local magistrates. One JP suggests that it could be used to 'yarn up with the magistrate before court – you could see that work'. In this sense, technology would 'not replace but add value' to JP Courts. The difficulties with this option, however, include the substantial time and cost involved in setting up properly functioning equipment on communities, particularly on the more remote communities. Further, Registries will need to be adequately resourced to ensure that relevant staff can make themselves available for the duration of the JP Court sitting. More importantly, using video technology to train and support should only ever be a measure of last resort. Aboriginal and Torres Strait Islander JPs benefit most from direct contact in the sense outlined above in relation to using video conferencing for offenders in Magistrates Court.

In terms of technology, and regardless of whether and how a clerk is introduced into JP Courts, DJAG should at a bare minimum provide for equipment, training or other resources as necessary to enable audio recording of JP Court proceedings. Audio records could be retained and sent to the relevant Registry. This would improve the accuracy of court records and accountability of JP Court, *inter alia*, as one registrar suggests.

I don't think technology will replace JP Courts, but it could help to have audio equipment for them. Right now, there is no way of even recording what goes on in these courts. No one knows; it's not recorded digitally or by hand. We have the audio equipment when we travel to courts. It would work like an advisor at the other end for the JPs, to ask questions and get assistance, that'd be good (Registrar).

Finally, Registry staff may already support JPs administratively at a distance from centres such as Normanton, Cairns and Innisfail. Court staff have a raft of skills and knowledge that might well be invaluable to JPs and may be directly shared with JPs by their attendance at JP Court as a clerk and by training a local person to undertake a clerkship with JP Courts. Registrars indicated in at least one instance that they would like to be part of JP training if presented with the opportunity. In this context, there should be a place for court staff at in-service training provided by DJAG and at any JP court users forum, if established by DJAG.

11.3 Key Points

Presently, JP Court has insufficient administrative support during court sessions. Only a small number of communities have a clerk or registrar available to assist in JP Court - however providing such support is essential to ensure legitimacy and essential efficiency of the JP Courts so as to avoid the latter being seen as a 'second rate' system of justice. Problems arising due to the lack of support in this regard include incorrect record – keeping and stakeholder perceptions of improper interference in court processes by QPS prosecutors.

Suggestions for provision of administrative support at least to the level of depositions clerk include training a local Indigenous person to provide support or bringing in court staff from a local Registry during court sittings. Remote technology may also be utilised, although problems with the latter may include technical issues impacting upon the operation of such technology and the inappropriateness of using such technology on Indigenous communities. At a minimum, providing facilities for audio-taping of proceedings is essential.

Recommendation 15

It is recommended that administrative support to the JP courts be provided to a minimum equivalent level of a depositions clerk. Potential options, in order of preference, are:

- i) training a local person for appointment on a part-time basis;**
- ii) flying-in clerical support at the time of the JP Court sitting;**
- iii) video link-up between JP court and relevant court staff**

Recommendation 16

It is recommended that DJAG audio-record the proceedings of JP Courts.

BIBLIOGRAPHY

Creswell, J.W. and Plano Clark, V., (2007) *Designing and Conducting Mixed Methods Research*, Sage, Thousand Oaks

Cunneen, C, Collings, N, & Ralph, N, (2005) *Evaluation of the Aboriginal and Torres Strait Islander Justice Agreement*, Institute of Criminology, University of Sydney, Sydney

Cunneen, C. and Luke, G. (2007) 'Recidivism and the Effectiveness of Criminal Justice Interventions: Juvenile Offenders and Post Release Support', *Current Issues in Criminal Justice*, Vol 19, No 2 pp.197-210

Crime and Misconduct Commission, (2009) *Restoring Order: Crime prevention, policing and local justice in Queensland's Indigenous communities*, CMC Brisbane

Department of Aboriginal and Torres Strait Islander Policy (DATSIP), (1998) *Review of the Aboriginal and Torres Strait Islander Community Courts 1998*, Brisbane

Department of Justice and Attorney General (DJAG), (2005a) *Profile: Justice of the Peace (Magistrates Court) Training and Instituting Court Sittings on Remote Communities*, Brisbane DJAG

Department of Justice and Attorney General (DJAG), (2005b) *Training Course: Justice of the Peace (Magistrates Court)*, DJAG Brisbane

Department of Justice and Attorney General (DJAG), (n.d.) *Remuneration Categories and Fees: Daily and Half day fees*, unpublished document

Department of Justice (Vic), (2008) *Bail Justice Information Sheet for Applicants*, DOJ VIC, Melbourne Vic

Department of Justice and Attorney-General (DJAG) (Qld) (2008) *Indigenous Justice Strategy*, DJAG Brisbane

Families Responsibility Commission, (2009) *Annual Report 2008-09*, Families Responsibility Commission, Cairns

Fitzgerald T., (2001) *Cape York Justice Study report*, Department of Communities, Brisbane Qld

Loban, H., (2006) 'Torres Strait Justice Project Report to the Law and Justice Chief Executive Officers Committee', unpublished report

Marchetti, E & Daly, K., (2007) 'Indigenous Sentencing Courts: Towards a Theoretical and Jurisprudential Model', 29(3) *Sydney Law Review* 415

O'Connor DM, (2008) *Improving Cape York Justice Services*, DJAG Brisbane Qld

Office of the Attorney General (Qld), (1990) *A Green Paper on the Justices of the Peace in the State of Queensland*, Brisbane Qld

Queensland Government, (2005) *Evaluation of the Aboriginal and Torres Strait Islander Justice Agreement: Government Response*, Brisbane Qld

Queensland Government, (2010) *Response to the Crime and Misconduct Report: Restoring Order: Crime prevention, policing and local justice in Queensland's Indigenous communities*, Brisbane Qld

Queensland Law Reform Commission (QLRC), (1998) *The Role of Justices of the Peace in Queensland: Issues Paper WP No. 50*, QLRC Brisbane Qld

Queensland Law Reform Commission, (1999a) *The Role of Justices of the Peace in Queensland: Discussion Paper WP No. 54*, QLRC Brisbane Qld

Queensland Law Reform Commission, (1999b) *The Role of Justices of the Peace in Queensland: Report No. 54*, QLRC Brisbane Qld

APPENDIX 1: JP Court Legislative Framework

JP legislation prior to 1991

The *Justice Act 1886* (Qld) was the first legislation introduced to regulate JPs in Queensland. It conferred upon ‘justices’, without reference to any categories of JPs that presently exist, powers to hear and determine certain judicial proceedings; to issue summonses and warrants; and to witness affidavits and statutory declarations. ‘Justices’ are defined in s. 4 of the 1886 Act as including a ‘justice of the peace’.

This legislation is still in force and relevant to the JP scheme, though it has been subsequently amended and must be read in conjunction with more recent legislation relating to the appointment of and exercise of power by JPs (see below). It authorises a ‘justice of the peace’ to carry out a number of tasks, including the following:

- to constitute a Magistrates Court (generally with another JP) to hear and determine a ‘complaint’ (s. 27) (known as ‘bench duties’);
- to issue a summons to a defendant (s. 53) or to a witness (s 78);
- to issue a warrant to apprehend a person to answer a charge (ss 57, 59);
- to issue a warrant for a witness or defendant failing to appear in answer to a summons (ss 79, 142);
- to commit a defendant to trial or sentence where the committal hearing is uncontested (s 110A(6));
- to adjourn a matter and remand the defendant in custody (in the case of an indictable offence (s 84); and
- to adjourn a matter (in the case of a simple offence) (s. 88).

In 1975, the *Justices of the Peace Act 1975* (Qld) repealed those provisions in the earlier Act dealing with the appointment and removal of JPs. It introduced a register for JPs, for instance, and power to remove a JP on the basis of mental illness or criminal conviction. Notably, JPs were not at this stage required to participate in any training prior to appointment. Further, the 1975 Act still provided for a single category of JPs, with all JPs empowered to undertake relevant tasks as set out in the *Justices Act*.

Justices of the Peace and Commissioners for Declarations Act 1991 (Qld) and the legislative powers of JP magistrates

The 1975 legislation was repealed and replaced by the *Justices of the Peace and Commissioners for Declarations Act 1991* (Qld) (the JP Act). This legislation significantly reformed the JP system in Queensland, included by establishing a number of different categories of JPs and imposing mandatory training for JPs.

The 1991 Act established a category of JPs (magistrates court) (JP magistrates); JPs (qualified); and commissioners for declarations. The powers relevant to the different type of JP office holders are set out in s. 29 of the Act, with JP magistrates able to exercise the broadest powers of each of the categories of JP. JP magistrates are granted all the powers of a JP (qualified) (to witness documents or grant bail, for example). However, JP magistrates are different to other categories of office holders predominantly on the basis of their capacity to impose penalties in court upon defendants in certain circumstances.

It is important to note that various laws will confer relevant powers upon justices of the peace without reference to categories of appointment, including legislation passed both prior and

subsequent to the 1991 Act. Examples include the power to ‘witness’ documents (such as statutory declarations (under the *Oaths Act 1867 (Qld)*) or to issue search warrants (under the *Police Powers and Responsibilities Act 1997 (Qld)*). The JP Act serves, in a sense, to draw legislative boundaries around or to consolidate powers thus conferred upon JPs. Any legislation dealing with JP powers might generally be read in conjunction with the 1991 JP Act.

Section 29(1) of the JP Act states that a JP ‘has and may exercise all the powers conferred on the justice of the peace or on a commissioner for declarations by the *Justices Act 1886* or any other Act’ ... ‘subject to subsections (3) and (5)’. The latter subsections thus limit the respective powers of JPs (qualified) and commissioners for declarations. Section 29(4) sets out parameters for the exercise of power by JP magistrates. Section 29(7) also states that any limitation of JP powers imposed by subsections (3) – (5) applies ‘despite the provisions of any Act conferring powers on a justice of the peace unless the Act expressly excludes the operation of the subsection’. Thus, despite legislation granting justices certain powers, the limits upon the latter as established by the JP Act will generally apply to restrict the actions of JPs.

An example of legislation that intentionally excludes the operation of s 29 is found in the *Child Protection Act 1999 (Qld)*. Under this legislation, JP magistrates are granted power to deal with child protection matters in certain circumstances. Section 102(3) of the provides that the Children’s Court must be constituted by a magistrate or two JP magistrates when exercising a specific jurisdiction, as follows. This section is noted as having effect despite s. 29(4) of the Justices Act. Despite the limitations imposed by s. 29(4), JP magistrates are therefore permitted under the Child Protection Act to:

- a) decide applications for court assessment orders or;
- b) to make interim orders on applications for court assessment orders or child protection orders or adjourn the hearing of the applications.

The capacity of JPs to deal with juvenile offending, however, is subject to restrictions imposed under s. 29 of the JP Act. Under s. 5 of the *Youth Justice Act 1992 (Qld)*, a Children’s Court Magistrate is defined as including the ‘Children’s Court when constituted by a Children’s Court Magistrate, Stipendiary Magistrate or justices’. However, s. 54(1) of the *Youth Justice Act 1992* states that if the Children’s Court is constituted by 2 justices it is limited to (i) hearing and determining a charge of a simple offence where the child pleads guilty and (ii) taking or making a procedural action or order (such as remanding a young defendant or granting bail). Section 54(3), however, states that s. 54(1) does ‘not affect a limitation placed on the power of a justice’ under the JP Act. Restrictions imposed upon JPs (qualified) by the JP Act would mean, for example, that JP magistrates alone have power to hear and determine charges of a simple offence and must do so in accordance with the provisions in the JP Act.

We turn to s 29 of the JP Act now. As noted above, the *Justices Act* of 1886 enables JPs to constitute a Magistrates Court. Section 29(4) of the JP Act provides, however, that a JP magistrate may only constitute court in relation to the following matters:

- (a) the hearing and determination of a charge of a **simple offence** or a **regulatory offence** pursuant to proceedings taken under the *Justices Act 1886* in a case where the defendant pleads guilty;
- (b) conducting an examination of witnesses in relation to an indictable offence

under the *Justices Act 1886*; and
(c) taking or making a **procedural action or order**.

Section 3 of the JP Act defines **procedural action or order** as:

... an action taken or order made for, or incidental to, proceedings not constituting a hearing and determination on the merits of the matter to which the proceedings relate, for example the charging of a defendant, the issue of a warrant, the granting of bail, the remand of a defendant or the adjournment of proceedings.

Section 28(1) of the *Police Powers and Responsibilities Act 1997* (Qld), for instance, enables JPs to issue a search warrant to enter and search a place to obtain evidence of the commission of an offence if the JP is satisfied that there are 'reasonable grounds for suspecting' that there is or is likely to be relevant evidence. As the issuing of a search warrant is a 'procedural action or order' it falls within the definition of JP's (magistrates) powers (in s 29(4) of the JP Act). A procedural action or order would also extend to the issuing of a summons and the making of a domestic violence order.

This section also defines **simple offence** as 'a simple offence or breach of duty within the meaning given to those terms by section 4 of the *Justices Act 1886*'. The latter provision defines 'simple offence' as 'any offence (indictable or not) punishable, on summary conviction before a Magistrates Court, by fine, imprisonment or otherwise'. The definition of 'breach of duty' is as follows:

...any act or omission (not being a simple offence or a non-payment of a mere debt) on complaint of which a Magistrates Court may make an order on any person for the payment of money or for doing or refraining from doing any other act.

Section 26 of the *Summary Offences Act 2005* (Qld) provides that an offence against this Act is a 'simple offence' and a proceeding for an offence against this Act is a 'summary proceeding' under the *Justice Act*. Relevant summary offences would include public nuisance, trespass, possession of an implement in relation to an offence, or unlawful possession of another's vehicle. Other relevant offences would include driving under the influence of liquor or driving without due care and attention (*Transport Operations (Road Use Management) Act 1995* (Qld), ss. 79 and 83, respectively); being drunk in a public place (*Liquor Act 1992* (Qld), s. 164(2)); or wilfully destroying property (causing loss of \$250 or less) (*Regulatory Offences Act 1985* (Qld), s. 7). There is also a 12-month time limit placed upon the taking of summary proceedings under the *Justices Act* for an offence (s. 37).

As noted above, the powers attached to JP magistrates by s 29(4) apply despite provisions in other legislation conferring broader powers upon any 'justice of the peace' (unless the legislation in question expressly excludes the operation of 29(4)). Thus, JP magistrates are restricted to hearing limited categories of criminal matters (only when not defended), conducting committal hearings and taking or making procedural actions or orders (as defined). A JP magistrate still retains more substantive powers under the Act, however, compared with a JP (qualified) and commissioner for declaration (see s 29(3) and (5)).

There is generally no limitation in terms of the type of penalties or sentencing outcomes that a JP Court can impose. They are able to access the full range of options set out in the *Penalties and Sentences Act 1992* (Qld).

It is important to note that there is no category of ‘remote JPs’ or ‘Aboriginal and Torres Strait Islander JPs’ created within the JP Act. Section 35, however, prohibits the giving of any reward (including a fee) to JP magistrates unless the JP is convening court in a ‘community area’ under the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*. The Queensland *Criminal Code*, on the other hand, provides for a specific category of powers for JPs (magistrates court) on remote, Aboriginal and Torres Strait Islander communities (see further below).

Criminal Code and the powers of JP magistrates

JP magistrates have been granted further powers under the *Criminal Code 1899 (Qld)* (the Code). The Code was amended in 1997 to enable two or more JP magistrates on remote or Aboriginal and Torres Strait Islander communities determine certain indictable offences summarily, whereas previously only a magistrate could do so.²⁴

Sections 552A-552B of the Code provide for (some) indictable offences to be heard summarily in Magistrates Court. Section 552C provides that certain JPs magistrates court may constitute a Magistrates Court to deal summarily with relevant indictable matters (s 552C(1)(b)), ‘subject to subsections (2) – (5)’.²⁵ Ordinarily JP magistrates could not deal with such matters, despite the reference above to the definition of ‘simple offence’ including indictable matters heard summarily. Section 552C(2) states that:

- the offender in question must plead guilty;
- the offender must be punishable by a penalty that does not exceed the maximum penalties set out in s 552H (100 penalty units or six months imprisonment, s 552H(1)(c)); and
- that any property involved (in relevant property offences) must not exceed the value of \$2500.

Further, JP magistrates may only hear such matters at an identified ‘place’ under the Code if gazetted by the Attorney-General for appointment to do so; the latter restricted by subsection (5) to a location:

- (a) that is within a community government area under *the Local Government (Community Government Areas) Act 2004* or a local government area of an indigenous regional council under the *Local Government Act 1993*; or
- (b) that the Attorney-General considers is remote.

According to s 552A, offences that *must* be dealt with summarily include assault (not being of a sexual nature) with a penalty of no more than 5 years. The type of offence that *may* be dealt with summarily includes stealing of or damage to property with a value of less than \$5000 (see further restriction below); unlawful use or possession of or dangerous operation of a motor vehicle; assaults attracting a penalty of up to 7 years; and certain offences of a sexual nature (s 552B).

²⁴ See discussion QLRC 1999a: 144.

²⁵ Other legislation may also permit JPs to hear indictable matters summarily where they are not expressly excluded from doing so. An example of legislation that contains such an exclusion is the *Drugs Misuse Act 1986 (Qld)* and that by default permits JPs to hear indictable matters is *Classification of Films Act 1991(Qld)*.

Unless the matter relates to an offence that must be dealt with summarily on prosecution election under s 552A, if not legally represented the defendant must consent to having the matter heard summarily (s 552I(2)).

Domestic violence orders

JP magistrates are empowered to deal with certain domestic violence matters. Section 4 of the *Domestic Violence Protection Act 1989* (Qld) provides that two JPs (magistrates court) may only deal with violence protection matters as follows.

A Magistrates Court generally has power to deal with domestic violence matters; and would ordinarily be constituted only by a magistrate. However, if an application is made—

- (a) to make a domestic violence order in terms agreed to by, or on behalf of, an aggrieved and a respondent; or
- (b) to make or extend a temporary protection order and a magistrate is not readily available to constitute a Magistrates Court for the purpose; or
- (c) to adjourn proceedings taken with a view to the making of a domestic violence order against a respondent (s 4 (3))

a Magistrates Court may be constituted by 2 or more justices. Section 4(4) provides that an order made, or action taken, under s 4(3) (a/a) is a ‘procedural order or action for the purposes of’ the JP Act.

Further, s 4(5) and (6) of the *Domestic Violence Protection Act* provides that where two JPs are exercising jurisdiction in relation to indictable offence under s 552C(3) of the *Criminal Code* they are empowered to make a violence protection order on their own initiative or upon application.

APPENDIX 2: Data Relating to JP Courts

Jurisdiction of a Justice of the Peace (Magistrates Court)

JP (Qual) - Sitting alone

- grant remands
- grant adjournments
- grant bail
- enlarge bail
- vary bail
- refuse bail
- forfeit bail (& issue arrest warrant)

JP (Qual) – With at least one other JP (Qual) or JP (Mag Ct)

These duties are exactly the same as those of a JP (Qual) sitting alone.

- grant remands
- grant adjournments
- grant bail
- enlarge bail
- vary bail
- refuse bail
- forfeit bail (& issue arrest warrant)

JP (Mag Ct) – Sitting alone

These duties are exactly the same as those of a JP (Qual) sitting alone.

- grant remands
- grant adjournments
- grant bail
- enlarge bail
- vary bail
- refuse bail
- forfeit bail (& issue arrest warrant)

JP (Mag Ct) – with at least one other JP (Mag Ct)

The duties include the duties those of a JP (Mag Ct) sitting alone:

- grant remands
- grant adjournments
- grant bail
- enlarge bail
- vary bail
- refuse bail
- forfeit bail (& issue arrest warrant)

but also allow for:

- imposing penalties for minor offences when plea's of guilt received

When two JPs (Mag Ct) MAY impose penalties?

If the charge is:

- generally speaking, a minor matter in terms of the legislative provisions;
- a 'simple offence' under the Criminal Code;
- a Regulatory Offence Act matter;
- a Summary Offences Act matter;
- a minor Traffic matter;
- an 'indictable offence' under the Criminal Code which may be heard and finalised summarily in the Magistrates Court at the option of the defendant, (*only applicable if appointed pursuant to Section 552C of the Criminal Code*).

and if:

- the defendant wants the case heard immediately; and
- the defendant pleads guilty; and
- your court has 'territorial jurisdiction'.

(Source: DJAG 2005b:11-12)

APPENDIX 3: List of Interviewees

Yarrabah consultations

(1/6/10)

Fiona Patterson (JP)

Dorita Bounghi (JP)

Lucy Rodgers (JP)

Josephine Murgha (JP)

Brent Pearson (Coordinator CJG)

(17/8/10)

Dick van Drie (Snr Sgt OIC, QPS)

Clarence Fourmile (PLO, QPS)

Leon Yeatman (Council, CEO)

Cherbourg consultations

(7-8/7/10)

Libby Bateman (Registrar, Murgon and JP)

Warren Collins (CEO, Cherbourg Council)

Alan Korobacz (Regional Director ATSILS)

Peter de Lange (Constable, QPS)

Alzira Conlon (JP)

Cecil Brown (JP)

Clowry Kennell (Principal Project Officer, ATISIS)

Wujal Wujal consultations

(12/7/10)

Joan Beacroft (CJG Coordinator)

Kathleen Walker (Elders/JPs/CJG member)

Lily Yougie (Elders/JPs/CJG member)

Doreen Ball (Elders/JPs/CJG member)

Reagan (Bobby) Kulka (Elders/JPs/CJG member)

Francis Walker (Council, Former Deputy Clerk)

Craig Roberts (OIC, QPS)

Garry Ashworth (Community Development Officer, Council)

Nikki Gong (Programs Officer)

Carmen Forward (Registrar, Cooktown – phone interview)

Kowanyama consultations

(15-16/7/10)

Tanya Adams (CJG Coordinator)

Irene Major (JP and CJG)

Priscilla Major (JP and CJG)

Thomas Hudson (Mayor, Kowanyama Council and JP)

Lance Millward (Sgt, QPS and JP)

Karen Millward (Administrative Officer, QPS and JP)

Stephen Kersley (OIC, QPS)

Colin Higgins JP (Deputy School Principal, Kowanyama State School and JP)

Vina Duplock (Service Development and Integration Officer, Department of Communities)

Mornington Island consultations

(27-28 /7/10)

Garry Sweeney (OIC, QPS)

Alan Seckington (PCYC)

Ila Amini (JP)

John Lewis (JP)

Roger Kelly (CJG Chair)

Roberta Felton (CJG)

Annie Chong (CJG)

Mary Cameron (CJG)

Hugh Ben (CJG)

Louisa Roughsie (CJG)

Clare Walker (Probation & Parole, QCS)

Wendy Towle (Probation & Parole, QCS)

Frank Watt (PLO PCYC)

Avril Thompson (Mornington Island Council)

Robert Cooper (Mornington Island Council)

Cecil Goodman (Mornington Island Council)

Sean Linden (Mornington Island Council)

Rev Roger (Mornington Island Council)

Phil Venables (DJAG staff, Mornington Island Restorative Justice Project)

Thursday Island consultations

(21-23/7/10)

Ron Laifoo (JP Magistrate)

Josephine David Petero (JP Magistrate)

Rob Trevallion (JP Magistrate)

Peter Yorkston, (CJG coordinator)

Dorothy Elu, (CJG member)

Simeon Namok, (CJG member)

Ivy Bon, (CJG member)

Ronald Bon, (CJG member)

Alan Filewood, (CJG member and JP)

Ricky Grice, (Registrar Court House)

Fiona McAdam Solicitor, (ATSILS)

Jeff Tanswell, (Sergeant QPS)

Katie Hall (Constable/Prosecutor QPS)

Aurukun consultations

(4-6/8/10)

Dellis Gledhill (JP)

Vera Koometa (JP)

Linda Sivyer (JP)

Alan Dewis (OIC, QPS)

Rex Yunkaporta (Community police, QPS)

David Hootan (CJG coordinator)

Nicole Norris (Probation & Parole, QCS)

Genni Hartley (Probation & Parole, QCS)

JP Training Forum (Cairns)

(23/6/10)

Selena Shepherd (JP Palm Island)
Delena Foster (JP Palm Island)
Janice Johnson (JP Palm Island)
Pamela Adams (JP Woorabinda)
Ethel Singleton (JP Lockhart River)

Courts Innovation Programs DJAG (Brisbane)

(6 -7/7/10)

Peter Kent (Manager, Courts Innovation Programs)
Chris White (Manager, Indigenous Justice Strategy)
Nathan Higgins (Training and Project Officer, JP Court Program)
Damien Mealy (Registrar, JP Branch)

QPS (Brisbane)

(6/7/10)

Rod Charles (Acting Inspector, Specialist Courts and Diversion Unit, Legal Services Branch, QPS)

QATSIAC (Brisbane)

(6/7/10)

Sonja Carmichael, QATSIAC (Working Group Member)
Nathan Jarro, QATSIAC (Working Group Member)
Norm Clarke, QATSIAC (Working Group Member) -Georgina Archer, QATSIAC (Working Group Member)

Department of Infrastructure and Planning (Brisbane)

(6/7/10)

Max Barrie (Director, Department of Infrastructure and Planning)
Christine Cuskelly (Manager, Local Government Services, Local Government and Planning)
Julie Lawler (Principal Project Officer, Local Government and Planning)

ATSIS (Qld) (Brisbane)

(7/7/10)

Carmel Ybarlucea (Director, Indigenous Policy and Performance Branch) Claire O'Connor
(Executive Director, Indigenous Policy and Performance Branch)
Wayne Briscoe (ATSIS)

ATSILS Qld (Brisbane)

(7/7/10)

Shane Duffy (CEO, ATSILS Qld)
Greg Shadbolt (PLO, ATSILS QLD)

DJAG and Dept of Communities (Brisbane)

(9/7/10)

Liza Windle (Principal Policy Officer, Aboriginal and Torres Strait Islander Justice Policy, Strategic Policy (DJAG))
Greg Wiman (A/Manager, Policy Development, Program Implementation and Evaluation (DJAG))

Blair Arndell (DJAG)
Tammy Wallace (Dept Communities)
Sarah Lim (Dept Communities)
Di Raeburn (Dept Communities)
Michelle Hoffman (DJAG)
Helen Missen (DJAG)

ATSILS (Cairns)

(22/6/10)
Michael McElhinney (PLO)
Mandy Bowen (Solicitor)
Mary O'Shane (Field Officer)
Clint Fatnowna (Field Officer)
Cedric Williams (Field Officer)
Jayde James (Field Officer)

Indigenous Family Violence Legal Service Cairns

(30/6/10)
Kerry Rees (Solicitor)
Jan Methven (Solicitor)
Kimiko Mosby (Coordinator)

Innisfail Courthouse

Magistrate Brassington (Magistrate for Yarrabah) (22/6/10 – phone interview)
Registrar Gavin Fox (Registrar for Yarrabah) (30/6/10 – phone interview)

Blackwater Courthouse

(23/6/10)
Robert Purcell (Registrar for Woorabinda – phone interview)

Cairns Courthouse

(24/6/10)
Kerryn Lunn (Registrar)
Amanda Graham (Registrar)

Kingaroy Courthouse

Magistrate Buckley (Magistrate for Cherbourg - written response provided).

Mount Isa

Simone Jackson (Regional Director, Mount Isa, North Queensland Region, Department of Communities – written response provided)
Magistrate Howard Osborne (phone interview)
Mr Ian Pilgrim (ATSILS) (phone interview)

QPS (phone interview)

(22/07/10)
David Holmes (OIC, Lockhardt River)

DJAG staff (phone interviews)

(09/08/10)

Francesca Adams (Victims Services)

(22/07/10)

Jason Webb (Manager, Indigenous Justice Programs, Courts Innovation Programs)

Family Responsibilities Commission (Cairns)

(16/7/10)

Vera Koomeeta (JP and Local Commissioner, FRC, Aurukun)

Dellis Gledhill (JP and Local Commissioner, FRC, Aurukun)

Dorothy Pootchemunka (Local Commissioner, FRC, Aurukun)

Ada Woolla (Local Commissioner, FRC, Aurukun)

Doris Poonkamelya (Local Commissioner, FRC, Aurukun)

Sarah Wolmby (Local Commissioner, FRC, Aurukun)

Edgar Kerindun (Local Commissioner, FRC, Aurukun)

Douglas Ahlers (Local Commissioner, FRC, Aurukun)

David Glasgow (Commissioner, Family Responsibility Commissioner)

Cairns Magistrates

(14/7/10)

Suzette Coates (Magistrate)

Jane Bentley (Magistrate)

Others Contacted, Not Participating

Chief Magistrate Brisbane

QPS Cultural Advisory Unit, Brisbane

Indigenous Family Violence Legal Service (Mt Isa)

Carol Stevenson (Registrar at Normanton - for Mornington Island)

Jennifer Frank JP (Kowanyama)

Council CEO/Mayor (Thursday Island)

Legal Aid Commission Qld (Cairns) (Family Violence Legal Service Provider for Thursday Island)

Juleen Bani (JP, Thursday Island)

Talita Nandy (JP, Wujal Wujal)

Rhonda Sandow (JP, Cherbourg)

Beryl Gambrill (JP, Cherbourg)

Eric Law (JP, Cherbourg)

Patricia Bond (JP, Cherbourg)

Clarissa Malone (CJG Coordinator, Cherbourg)

Delys Yunkaporta (JP, Aurukun)