

The consequence of delay in Local Court criminal matters

By The Honourable John Nader RFD QC

With the passage of time it has become necessary to illustrate by specific example that the process of the administration of minor criminal law cases in the NSW local courts is so slow as to have become a disgrace to the executive administration.

Those delays are complained about time and again but rarely with specific reference to cases. I will refer to one such case below.

Many of the cases are either traditional summary cases or what I refer to as hybrid cases being prosecutions for indictable offences that can be heard and decided by magistrates without committal for trial by judge and jury.

Although I have no statistical evidence, I am confident that the great majority of such cases are financed by the New South Wales Government legal aid system. Legal aid is strictly subject to means testing. There are persons charged with summary and indictable offences who do not qualify for legal aid but who cannot afford the expense of a legal practitioner. Persons in that situation seek *pro bono* representation in a process akin to begging. Such *pro bono* work has come to me from time to time by sympathetic referrals by concerned persons, mostly with no connection to the case or the persons involved but concerned about justice.

The faults that gives rise to the grossly excessive delays in Local Courts are not faults of the magistrates or of the public servants who work to the limits of their mental and physical ability to perform very difficult duties. That should be kept in mind if occasionally court staff show some irritability when the pressure is on, which it is on most sitting days. Pressure on staff and magistrates seems to an outsider like myself to occur mostly on what are called "short matters days" when pleas of guilty and mentions are before the court.

It would be wrong to think that the problem is in part due to a shortage of courts.

Without the benefit of statistics I am reasonably confident in saying that a shortage of courts is not a significant factor. Many of the courts are not used as such on most days. They are not used because there are not enough magistrates or court staff to utilize and staff them.

What I call excessive delay is illustrated in the case to which I now refer.

The defendant was an 18 year old boy who was working as a fencing contractor and earning a reasonable amount of money. He



attended a party on 15 July 2017 at a private home and yard in a country town at which there may have been as many as 30 persons, almost all young males: 17 and 18 were the ages of a number of them. The host was 17.

The party commenced at about 6 PM and ended a little before midnight. Alcohol was consumed at the party, most of which was purchased by the Defendant who had a debit card and was asked by the host to purchase some alcohol. The Defendant purchased a large amount of beer after being driven by the host to purchase the beer. The Defendant had only been at the party for a short while when he became concerned after he saw a large number of the party goers sitting around a table smoking what he believed to be ice and marijuana. At one stage the Defendant left his wallet on the table and went to the toilet. When he returned his wallet was missing. The Defendant became quite distressed and was asking everyone where his wallet was. He was told by one of the other party goers to stop accusing people of stealing. The wallet was eventually located but the keycard was missing. The Defendant got into a scuffle with a couple of other guests as a result. When the scuffle broke out the Defendant has a leatherman type tool in his hand which made a cut on the shoulder of one of the others involved in the altercation. The injured man reported to the hospital and the hospital reported the incident to the police. The Defendant was charged with an assault offence. This is the only time he has ever been in trouble.

On 20 August 2017 a potential witness made a statement to the senior constable in charge of the prosecution.

On 25 October 2017 the defendant was interviewed by the senior constable.

On 24 May 2018 a potential witness made a statement for the senior constable.

On 12 April 2018 the defendant voluntarily attended the police station where he was interviewed by the senior constable and charged with two indictable offences based on the same facts.

On about 11 or 18 May 2018 a potential witness made a written statement for the senior constable.

On 16 November 2018 the date fixed for the hearing of the case did not proceed because so called *short matters* had also been listed and the presiding magistrate decided that the possible start time was after midday. That is understandable because the magistrates do not know from day to day where they may be required to sit.

Because the day had been fixed for the hearing, the defendant and his family had travelled from another town to be at there.

On 25 February 2019 the case was, at last, heard. The defendant and his family again travelling from another town for the hearing.

The case took well under a day to be heard. The defendant was found guilty and the matter was adjourned to 11 April 2019 for sentence. The magistrate considered it for some time. Although finding the Defendant guilty he was only sentenced to counselling for a short period of time and under section 10 of the Crimes Act does not have as criminal record.

You will notice that the case was on foot, from beginning to end, from July 1917 to April 1919; one year and eight months to dispose of a trial for a crime which on any view was not serious.

You will have no difficulty in imagining the distress of the defendant and his family as well as a number of close friends through that inordinately long time.

The defendant had only recently turned 18 when he attended the party: no convictions, no money other than his wages as labourer; never paid out of the taxpayer's purse; and paid \$100/week to his mother for his board.

No adjournment or other delay was applied for by the defendant or his counsel that might have extended the duration of the case. The defence was ready to proceed at all times. The defendant was not granted legal aid and, although he was at all material times employed, he had to seek representation *pro bono*.

The government has a duty to the community at large to improve the unsatisfactory system of management of summary criminal offences. **BN**