

Impact of COVID-19 on the Criminal Justice System

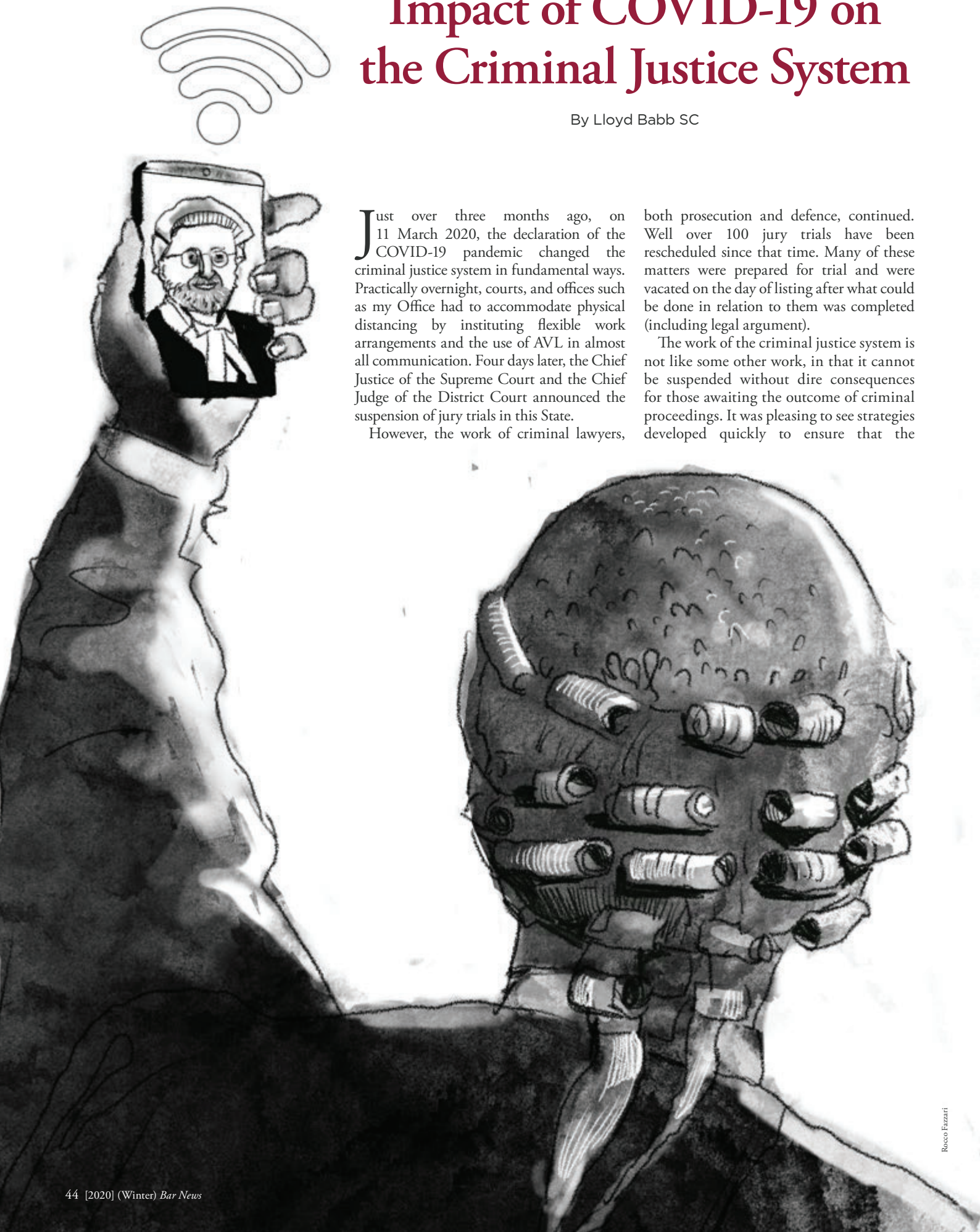
By Lloyd Babb SC

Just over three months ago, on 11 March 2020, the declaration of the COVID-19 pandemic changed the criminal justice system in fundamental ways. Practically overnight, courts, and offices such as my Office had to accommodate physical distancing by instituting flexible work arrangements and the use of AVL in almost all communication. Four days later, the Chief Justice of the Supreme Court and the Chief Judge of the District Court announced the suspension of jury trials in this State.

However, the work of criminal lawyers,

both prosecution and defence, continued. Well over 100 jury trials have been rescheduled since that time. Many of these matters were prepared for trial and were vacated on the day of listing after what could be done in relation to them was completed (including legal argument).

The work of the criminal justice system is not like some other work, in that it cannot be suspended without dire consequences for those awaiting the outcome of criminal proceedings. It was pleasing to see strategies developed quickly to ensure that the



work that could continue did continue as efficiently and effectively as possible. The combined efforts of the courts and prosecution and defence lawyers has seen much accomplished despite the inability to appear in court in person. Recognising that jury trials needed to be suspended, much thought went into ways of reducing ongoing pressure on the justice system, and to ensure that accused persons were treated fairly and without unnecessary delay – this was done by having judge alone trials, and using the time to charge certify, negotiate, and record evidence where possible.

The *COVID-19 Legislation Amendment (Emergency Measures) Act 2020* made amendments that operated from 25 March 2020, including enabling particular witnesses to give evidence before the trial in a pre-recorded evidence hearing, enabling the recorded evidence of those witnesses to be used in a new trial, empowering a court, of its own motion, to order a judge alone trial (should the accused consent to such a course) and facilitating the greater use of audio and audiovisual links in trials and other proceedings.

From mid-March until 6 June 2020, 54 judge alone trials have been conducted in venues across the State at Bourke, Coonamble, Campbelltown, Coffs Harbour, Dubbo, Gosford, Goulburn, Griffith, Newcastle, Nowra, Parramatta, Penrith, Port Macquarie, Queanbeyan, Sydney, Tamworth and Wagga Wagga.

The evidence of adult complainants has been recorded in multiple matters at Parramatta, Newcastle, Sydney and Wagga Wagga District Courts. The Child Sexual Assault Program in Sydney and Newcastle has continued to conduct the recording of the evidence of children.

While primarily working from home, since mid-March prosecution lawyers have managed to charge certify 1768 matters, prosecution and defence lawyers have together attended 920 case conferences, participated in 109 Readiness Hearings in the District Court. A high number of bail applications have been determined – 628 in the Supreme Court, 276 in the District Court and 699 in the Local Court.



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The Chief Justice moved swiftly to increase the number of Court of Criminal Appeal hearings over the period that the jury trials were not running in the Supreme Court, ensuring that there has been no delay in the hearing of appeals. 107 appeals were heard between mid-March and 6 June 2020.

Furthermore, some 717 legal submissions were received in my Chambers since 16 March. This figure is up about a third on last year and the explanation lies in the fact that Crown Prosecutors and defence counsel have been working on upcoming matters and seeking to settle appropriate matters by way of early guilty pleas and to discontinue matters where they consider that there is no reasonable prospect of conviction.

In my view the response to the pandemic has been swift, innovative and flexible. Judicial officers and lawyers have swiftly adapted to the use of AVL for court appearances and

hearings. We have achieved the unthinkable and appeared remotely in court in all sorts of cases. In my Office we established dedicated virtual courts in the offices with rooms large enough to accommodate social distancing. More training and assistance needed to be given in how to use the technology.

Initially, there were problems with the technology. The AVL capacity of the courts was at the start inadequate, however, we have noticed significant improvements and stability of the platform, particularly since the last week of April.

Other negative experiences included lap tops not working, poor microphone quality – shouting to be heard, or echoes when the sound was turned up too high, documents previously tendered being unavailable to the judge and not being able to follow the defence documents. One lawyer pointed out the curious effect of not being sure if they were in the right court when they entered the virtual space. Each time an issue has arisen there has been a collective effort to improve the system going forward.

I hope that there will be potential for utilising more remote appearances, particularly in mentions and interlocutory hearings in the future.

The practice of getting everyone in the virtual courtroom at 10 am for a busy list and waiting their turn, didn't work in the virtual world. This problem was recognised by the various jurisdictions and starting times were staggered. Maintaining a practice of remote lists with staggered starting times could provide greater efficiency for justice – saving clients' money by their representatives not having to travel and wait before mentioning their matter.

However, despite the work of prosecutors and defence lawyers in resolving and shortening trials over this period, the adjournment of so many jury trials will have consequences for ongoing delays in jury trials across Australia. I note that, at the time of writing, the reintroduction of jury trials is imminent. I am hopeful that these can be swiftly, safely and justly reintroduced. Hopefully, by continuing our work in plea negotiation and by the efficient conduct of these jury trials, we can ensure that delays are reduced as quickly as possible. **BN**