Changing times at the District Court

By Keith Chapple

Before 2000, on any given Monday, the Sydney District Court Criminal Jurisdiction could provide no certainty that a trial would proceed.

A certain number that were listed would actually be heard. Those trials that could not be accommodated were marked 'not reached'. They were re-listed months later, sometimes being 'not reached' yet again.

These false starts could result in an accused remaining on remand for a long period and for those on bail the prospects were even grimmer. Obviously there was a loss of time, money and public confidence in the justice system.

But times have changed and the District Court's own figures tell the story. In 1998 the 'not reached' figure for trials in Sydney stood at 77. In 1999 it was 40. But for the four years since then the figure for 'not reached' trials in Sydney has been nil.

If there is any doubt about the turnaround the latest annual report of the Australian Productivity Commission has removed it. The commission keeps figures on what it describes as the first national standard in courts, that is, no more than 10 per cent of criminal lodgments pending completion being more than 12 months old. In the District Court, Australia-wide, New South Wales was the only jurisdiction that met this national standard.

The improvement has even made the mainstream press. When the New South Wales Government statistics were released for 2003 showing a 42.8 per cent reduction in delays over the last few years in the District Court criminal listings, the *Australian Financial Review* wrote that the Chief Judge, Justice Reg Blanch AM 'should have been crowing'.

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John Maddison Tower.
Photo: Milan Scepanovic. News Image Library.

The mission: Timely delivery of justice

When *Bar News* caught up with the Chief Judge to find out the reasons behind the changes, it would be fairer to describe him as reflective and proud of the court's achievements.

His Honour pointed out that he was well aware of these endemic problems with the listing system long before he went to the Bench.

Before his appointment he had experienced the delays first hand as a public defender and then for many years as the director of public prosecutions.

His Honour recalled a sense of 'embarrassment' when the inefficiency was raised at conferences within Australia and internationally, especially when it did not exist to the same extent in similar systems in England, Canada and the United States. His Honour's overwhelming conclusion by about the mid-1990s was that there was no real reason why the New South Wales systems could not be improved to an acceptable level. The main difficulty was that he was still not in a position to act.

All of this changed with his appointment to the Supreme Court and then subsequently taking the post of chief judge of the District Court. Reduction in delays was a high priority.

'It was one of the main reasons I took this job', his Honour told *Bar News* and then carefully outlined the reasons behind the transformation.

Changing the approaches

The modifications were many but in the main came about after a meeting between the Chief Judge, the former chief

magistrate, the new DPP and the Legal Aid Commission. This resulted in a centralised committal system with some major improvements coming about almost immediately, others following a year or so later. The most important changes were:

- The DPP was given carriage of serious matters from the Local Court onwards, rather than when they reached the District Court for the first time.
- Legal aid was granted in committals in serious matters because it allowed the DPP lawyers and those from the Legal Aid Commission to be in close contact with each other to sort out charges and conduct any plea bargaining that might be involved. An early plea in one matter meant that legal aid funds could be husbanded for more expensive and complicated trials that actually proceeded. It also meant that there would only need to be one application for legal aid for committal and trial.
- Another dramatic reform that was agreed upon was to have the DPP present an indictment within a month of committal to allow the defence to consider their approach to the final disposal of a case. The indictment could only be changed by agreement or by leave of the court.
- Pre-trial disclosure was also formalised around the same time.

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The combined effect of these initiatives was that the system speeded up dramatically. Following committals in the Local Court, matters were first listed in the District Court as early as one week later.

Reaching the not reached

Coupled with the changes before trial were the new procedures introduced on hearing days.

Most criminal practitioners will recall that it was about 1999 when the Chief Judge began sitting himself in LG.2 in the Downing Centre to supervise the criminal trial lists. At that stage the 'not reached' trial figures were still running at about 15 per cent of the court's business. As a result, if an accused was inclined to delay he or she only had to make themselves part of that 15 per cent and the object had been achieved. The reduction in the 15 per cent was critical to success.

A multi-pronged attack was made on this problem:

- The number of judges available to hear criminal trials was effectively increased from 15 to 17.
- Retired judges were brought in as acting judges on the Tuesday of a trial week if necessary.
- The District Court regarded the whole metropolitan area as a combined area for trial allocation which led to trials being sent, for example, from the Downing Centre to Parramatta or Campbelltown.
- Extra courts were available in the John Maddison Tower and Darlinghurst if needed.

In a relatively short time the improvements in the system and concentration of resources brought about a position where the focus moved from reducing the 'not reached' numbers to how to deal with and properly dispose of those trials that had been listed. Date certainty meant that the matter proceeded to finality one way or another unless there were proper reasons for an adjournment.

The new system at work

It was not as if attempts had not been made earlier to try and reduce delays in the District Court. One of these was the Sentence Indication Hearing regime that was running during the mid 1990s.

The Chief Judge remembered this system when was he was the DPP. His final verdict on it is that it did not address the fundamental problems in the system. He was of the view that to some extent it brought the system into disrepute because of the lenient sentences that were often imposed. Ironically, it could often lead to delays because of further plea bargaining and preparation of evidence that could be called by the defence to try and bring about an even more reduced sentence than that first indicated.

Clearly the system by the mid-1990s was in need of fundamental changes at the two levels at which serious criminal matters were being processed. Changes in committal proceedings and early arraignment eliminated some delays. But it was the relentless focusing of resources on trial listing days that finally lowered the 'not reached' levels.

Throughout the interview the Chief Judge stressed that the changes were the result of a lot of work by a lot of people over the last five to ten years. His rather modest appraisal of his own role: 'I take pride in it'.

All the practitioners *Bar News* spoke to were impressed with the new regime, especially those who have laboured in the jurisdiction for a decade or more.

Their unanimous verdict on the Chief Judge's initiatives was simple - mission accomplished.