

A new courthouse for Newcastle

Peter Cummings SC spoke on behalf of the Newcastle and New South Wales bar associations at the 2016 Opening of Law Term in Newcastle. The ceremony was the final time the court convened prior to the opening of a new courthouse in Newcastle.

At the last two Opening of Term ceremonies for 2014 and 2015 I have on behalf of the bar suggested with some trepidation that it may be the last such occasion to be held in this courtroom... yet here we are again.

This time I can, with as much confidence as is prudent, predict that this *will* be the last time the court convenes in this building to mark the opening of Law Term.

The sadness borne of sentiment that such a prospect creates is quickly overshadowed by the recognition that an upgrading of this city's state court facilities is long overdue, is welcome and will hopefully be a significant advantage to the community.

The new court will be officially opened on 15 February 2016. It will commence operations as I understand shortly thereafter. That will be an occasion for acknowledging that governments both past and present have made a material step towards fulfilling their responsibility of providing better premises for the operation of the justice system. I appreciate that there are some who have in the past, and may well in the future, have reservations or concerns about the location and adequacy of those facilities but time will tell.

The considerable efforts of the courts administration staff in Newcastle in operating in these present premises particularly over the past probably 10–15 years should be acknowledged. I include in that group, with respect, judges and their associates, security personnel, sheriff's officers and members of the legal profession in particular staff of the DPP and Legal Aid.

The conditions under which this group has had to work have been difficult to say the least. Although there are probably other examples of woefully inadequate working conditions in the NSW public service I presently cannot think of any comparable situation in this region in recent times.

Many will have vivid recollections of the regular failure of the air conditioning system, the unmistakable smell of rising damp in particular in Court 6, the infamous dead rat in the late Judge Coolahan's Chambers, the conducting of sensitive conferences with witnesses and clients in corridors, in staircases or on the street and even the bee swarm in Court 3 which made the already seriously compromised acoustics impossible to deal with.

Throughout this period those who have worked in this building have shown enormous dedication to ensuring that the wheels of justice kept rolling as smoothly as they possibly could. The expression 'above and beyond the call of duty' comes to mind.

However here we are at the beginning of a new Law Term for 2016 and we look forward to moving to new premises.

Whilst the advent of such new premises marks an improvement in the community's facilities it must be said that governmental responsibility to properly resource the justice system does not begin and end with infrastructure no matter how new and shiny and impressive a building it may be.

It is the view of the bar, and has been for some time, and I believe with respect that view is shared by the solicitors of New South Wales, that courts at state and federal level are currently undergoing a resourcing crisis.

The burden of hardworking courts such as the District Court, the Local Court and the family courts, and by that I mean the Family Court of Australia and the Federal Circuit Court, has been increasing quite significantly over the past several years yet in that time there has not been a corresponding increase in resources to meet the community's demand.

Take the District Court for example. In New South Wales the number of criminal trials in the court had more than doubled from 1,019 in 2011 to 2,055 in September 2015. Increases in Police funding have resulted in a growth in the number of arrests and as a result an increase in serious offences proceeding to trial. In that time there was no equivalent increase in resources of the court, Crown prosecutors or public defenders, resulting in a crushing workload for judges, the director of public prosecutions, defence counsel and solicitors. In fact over this period the number of judges declined.

A recent report by the Bureau of Crime Statistics and Research revealed that the average time taken to finalise criminal cases where the defendant is on bail in New South Wales in 2014 was 369 days an increase of over a third since 2007. The report also found that the average delay where the accused was in custody was 300 days before their case is resolved in the District Court. Let me pause there to reflect upon the real significance of these stark statistics.

Lest there be any suggestion that the cry for more resources for the criminal justice system is something made by the legal profession out of self-interest, may I respectfully remind those present that delay in the processing and conclusion of a criminal trial is a matter which has profound and serious consequences not only for those working within the criminal justice system but also for those accused of criminal offences, some of whom are ultimately found not guilty, witnesses caught up in criminal

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trials and, most importantly, victims of crime and their families. Despite the best efforts of all those involved delay in the processing of criminal trials necessarily has the potential to compromise the quality of justice. Witnesses' memories erode over time. The suffering of victims and their families is aggravated when cases drag on and closure is unable to be quickly achieved. There is an old and true saying 'Justice delayed is justice denied'. These statistics and their consequences are of great concern to the bar.

Recently the New South Wales Government announced a twenty million dollar package to assist in addressing the backlogs in the District Court.

When the NSW government announced this interim funding president of the New South Wales Bar Association Noel Hutley SC made these remarks with which I respectfully agree:

The Government's package is a step in the right direction. It is an important interim message to reduce the backlog given the disproportionate funding for law enforcement measures and insufficient resourcing for the courts, the Director of Public Prosecutions and Legal Aid.

He went on to say:

The Government's package will go some way towards alleviating these pressures on the court. The additional resources will help address these problems in the short term, however more significant funding is required to clear the disturbing backlog.

The New South Wales Bar welcomes the indication from the attorney general that she will be seeking input from key stakeholders in the justice system in order to find a lasting resolution regarding District Court delays. The bar stands ready, willing and able to work with the government to find long term solutions to these systemic problems and develop a sustainable criminal justice system which fairly addresses the requirements of all persons concerned including victims and witnesses.

As yet it remains unclear as to how those funds will be spent and we look forward to clarification as to whether this region will see any of them. In saying that it must be acknowledged that the problems in some regions are currently greater than those experienced in Newcastle but these situations change quickly and the overall problem remains to be equitably addressed.

I should at this point happily acknowledge the presence in court today of my colleague Alister Henskens SC MP, now part of the state government and the member for Ku-ring-gai. Alister grew up and practiced for many years in Newcastle. It is nice to know that old Newcastle lawyers remember and

acknowledge their roots and I am pleased that he is here to mark the last ceremonial sitting in this court and to hear, as I know he will, both praise and urging for the state government's ongoing resourcing support for the administration of justice.

A similar resourcing problem but in a different context is occurring in the area of family law. Families in turmoil are finding it increasingly difficult to have their cases determined in a timely fashion. In the Federal Circuit Court, the daily diet of which is difficult and entrenched family disputes invariably involving children whose lives and development are severely disrupted by family dysfunction and turmoil, in some regions parties can wait for years for their cases to be heard. A family in dispute in Wollongong recently had their case transferred to Brisbane for hearing as it was apparently the only registry that could offer them a reasonable trial date. Unsurprisingly, the parties were reported to be shocked and upset by the extra cost and inconvenience. There are enormous problems with a lack of resources in Sydney and in Parramatta also and the profession waits with great anticipation for the promised appointments to these registries.

We congratulate and thank the Commonwealth Government for the recent appointment of Judge Middleton to the Federal Circuit Court Newcastle registry. Judicial appointments of course require careful consideration, but there can be no doubt that the appointment was well overdue. Every member of the legal profession practising in that jurisdiction can recount numerous examples of problems arising from the delay in the replacement of Judge Coakes.

Having said that the FCC in Newcastle is to be commended, as is the profession, for the work that has gone into reducing waiting times which has been especially effective since the appointment of Judge Middleton. There are further measures being implemented and investigated by the court with a view to further streamlining the work of the court and the profession stands by to assist.

Barristers and I dare say solicitors in this state whether practising in crime or in family law or sometimes even in other areas of law are regularly confronted with despair and dismay from their clients and others involved in cases as a result entirely of the delay which places their lives on hold and cripples the efficient administration of justice. Lengthy delays in completion of court cases inevitably have the effect of increasing direct and indirect financial costs as well as the very real human cost. It is perhaps difficult for members of the community whose lives are not touched by court cases to appreciate these matters but be assured there are many who are profoundly affected.

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Photos: courtesy of the Department of Justice NSW

The simple point is that an increase in the workload and demands upon a justice system must be met by an increase in resources. It is exciting and positive that the state courts will soon head to a new building. It is trite, however, to say that buildings do not administer justice, it is the people within them who do that, and they must be properly resourced for their sometimes difficult and taxing task if the community's legitimate expectations are to be met and significant suffering, unnecessary costs and associated social problems are to be alleviated.

In concluding may I on behalf of the bar, wish your Honours, their staff, the hardworking administration staff of the court and our colleagues all the very best for 2016 and in particular a smooth and pleasant transition to the new court building! What a prospect...moving courts...what, as they say, could go wrong? Nothing we hope.

Whilst we will not be volunteering to help carry boxes to the new building, the court can be assured that the Bar will continue to advocate in the interests of the community which it serves and will, as always, do its very best to assist the courts in their important work in 2016.

