The Local Court comes of age

On 30 August 2006 Deputy Chief Magistrate Graeme Henson was sworn in as chief magistrate of New South Wales. In the course of his remarks, the new chief magistrate made some important and interesting observations in relation to the history of the Local Court and the role of the magistracy in New South Wales. What follows is an edited version of his Honour's remarks.

[P]rior to 1985 magistrates in this state were public servants. What judicial independence they may have had was circumscribed by the Public Service Act of the day. As a consequence the composition of the court was drawn almost exclusively from the public service and from the court registry staff in particular. In the view of many this constraint on independence and inward looking approach to appointment to the office of magistrate was not conducive to the healthy development of the court. As events transpired this view was correct. My perspective is formed from playing a small role in the evolutionary process.

In the latter part of 1983 and during 1984 I spent many a morning sitting in the then chief justice's conference room at the Supreme Court. I had been assigned the task of providing executive assistance to the Magistrates' Appointments Committee chaired by former Chief Justice Sir Laurence Street. They were troubled times for the magistracy and the inquiries undertaken by the committee involved inter alia listening to the views of many prominent people involved in the legal system. The cumulative effect of what fell to my ears described a journey to what some might describe as an increasingly dystopian destination. I have never forgotten the circumstances and lessons that surrounded that relatively unhappy time. The deliberations and recommendations of the committee having been completed and delivered to government the first step was taken in establishing a local court that was not merely a continuum of the old. To assist in this event it was my role to organise the proclamation announcing the commencement date of the Local Courts Act and to prepare the Executive Council minute appointing the first 112 appointees as magistrates under that Act.

At the beginning of January 1985 it can be argued, and it is certainly my view, that a new court was created. No longer shackled by the constraints of the public service the court was born with the greatest of all gifts, independence. True it is, it was made up of an overwhelming majority of those who had held office as a magistrate immediately prior. However, the expediential effect of independence had immediate philosophical and practical effects. Access to appointment of qualified and meritorious persons from within the wider community became a reality. The court was obliged to consider the consequences of its changed nature and so too were successive chief magistrates. The court became one that ceased to be fixed in time and developed the characteristics of constant self development. For those who appreciate the distinction it is equally timely to note that in January of this year the Local Court that I described turned 21, an age usually associated with the coming of age and not an inappropriate analogy in many respects. The benefits of that initiation step taken in granting independence to the court has manifested itself many times over.

The entrenched independence of the court was further added to by reason of an amendment to the state Constitution in 1992 adding the magistracy to the protective provisions applying to the other levels of the judiciary. In addition to emphasising the independence of this court the amendment was another step towards establishing a commonality of identity with other levels of jurisdiction. The perceived and philosophical need for an independent judiciary was further emphasised in the March 1995 referendum that overwhelmingly carried the view of the community that there should be no change to this entrenched position other than through the referendum process. It may properly be said that the people of this state whom the judiciary are sworn to serve clearly understand the importance of judicial independence in carrying out that obligation. The underpinnings of the court are strong. The base upon which it has been constructed in the short period of 21 years parallels the development since its birth.

As I have observed, in 1985 there were 112 magistrates; there are now 136 made up of 130 full-time magistrates and six permanent part-time magistrates. In 1985 there were only four women appointed to the newly constituted bench; there are now 44 and the court has a commitment to increasing this level of representation.

In 1985 the overwhelming majority of magistrates came from within the local courts administrative system. Now the court draws its appointments from throughout the extended family of the law and benefits through the diversity of choice. Associate professors and lecturers in law from academia, crown prosecutors, public defenders, barristers and solicitors drawn from private and government practice and from executive positions in government both state and federal populate its ranks. Such an enlivening and enrichment of the court through such disparate callings and experience could not however have taken place without the initial steps to full integrated independence. That legally qualified persons from so many different roles continue to seek appointment to this court reflects ongoing recognition of its importance and positive perspective in which it is viewed by the outside world of the law.

In turn the court has repaid such confidence. There have been five magistrates appointed as judges of the District Court and two elevated

to courts in Supreme and superior jurisdiction culminating on Monday in the appointment of my predecessor and colleague Derek Price as a justice of the Supreme Court. These appointments could not have happened from within a court that failed to grow and develop a reputation for professionalism complemented by respect from within the wider community of the law.

Continual growth in jurisdiction and case loads is something with which my colleagues and I are more than passingly familiar. The court has regularly experienced the devolution of jurisdiction within its criminal and civil jurisdictions. When this occurs the court is entitled to conclude that it is due in part to the confidence the government has in the capacity of the court. This court has been a willing participant in implementing progressive legislative and administrative initiatives predominantly in this criminal jurisdiction and lately through the Uniform Civil Procedures legislation within its civil jurisdiction.

A short précis of the fields of adjunct involvement serve to demonstrate the many and varied complexities with which the court has become involved in those two short decades of its existence:

- circle sentencing for identified Aboriginal offenders;
- magistrates' referral into treatment programmes designed to address the underlying health and drug addiction issues outside the coercive role of the court now operates at 58 courts;
- pilot programmes in rural alcohol diversion are operating at Orange and Bathurst;
- a pilot domestic violence court intervention model at Campbelltown and Wagga Wagga; and
- adult conferencing programmes operate at Liverpool and Tweed Heads.

In the Children's Court jurisdiction there is a Youth Drug Court, young conferencing and the intensive court supervision programme operating in the Children's Court jurisdiction at Bourke and Brewarrina.

All represent opportunities for addressing some of the causes of crime that often fall outside traditional approaches. So too were the locations of psychiatric nurses at 22 courts throughout the state to identify those who may be better dealt with through a compassionate health oriented approach to combat the otherwise blunt instrument of the criminal justice process. These are not the limits of involvement by the court in reaching out into discrete areas of the community, merely representative. They demonstrate however just how complex the world of today's magistrate has become compared to that which predated the creation of this court.