

# NSW's Longest Serving Chief Magistrate Set to Retire

New South Wales' [Chief Magistrate, Judge Graeme Henson AM](#), has announced he will be retiring in August 2021 after 33 years on the bench.

Judge Henson is the state's longest serving Chief Magistrate, having spent the past 15 years as the head of Local Court in New South Wales.

The judge is well known for his 'straight talking' and 'no-nonsense' style, as well as his contributions to the legal profession as a whole.

## **Passionate about justice**

Throughout his career, Judge Henson has been a tireless campaigner for greater efficiency in the delivery of justice, gender parity on the bench, transparency in the court process, and the adoption of technology in a profession that is traditionally resistant to change.

He has also been a champion in supporting the mental wellbeing of magistrates by highlighting their heavy workloads and pressures, which can lead to stress and depression.

Over the years, Judge Henson has [lobbied the state government to provide sufficient funding](#) to the court hierarchy's busiest jurisdiction, in order to ensure the Local Court is able to achieve timely justice for all involved.

## **COVID-19**

Since March 2020, the judge has steered the Local Court system through [the challenges presented by COVID-19](#) – issuing directions [and implementing a number of innovative measures](#) to ensure the wheels of justice continued to turn in incredibly

difficult circumstances.

### **Moving with the times**

The judge also participated in the [Foxtel series Court Justice](#), which was filmed in [the Downing Centre Local Court](#) in 2017, giving audiences a 'fly-on-the-wall' experience of court proceedings in Australia's busiest courthouse.

The objective of the move was to help the public to better understand how the court process works and the various roles of those involved – including magistrates, [criminal defence lawyers](#) and police prosecutors.

### **Looking after those on the bench**

In 2012, Judge Henson campaigned for a range of entitlements for magistrates, including a minimum two-week court break over the holiday season, as well as mid-year break for the Local Court Conference.

He has also championed extended long service leave, greater carers' leave entitlements and free travel on public transport.

### **An exceptional career**

His Honour Judge Henson was admitted to the Bar in 1980.

He spent two years working for the Office of the Director of Public Prosecutions between 1986 and 1988, before being appointed a Local Court Magistrate.

The judge was appointed Deputy Chief Magistrate in 1994, Chief Magistrate of the Local Court in 2006, and a judge of the District Court in 2010 – the same year he was made a Member of the Order of Australia (AM).

He is a member of the Governing Council of the Judicial Conference of Australia and the Judicial Commission of New

South Wales.

Judge Henson is also a member of the Wollongong University Faculty of Law Committee and the Anglican Aged Care Board.

He will retire as Chief Magistrate on 27 August.

His replacement is yet to be announced.

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## **Prison Inmates Will Be Released Early Amidst Coronavirus Fears**

The management and process forward for many cases is now under review as the Local Court adapts to health policy recommendations to help stop the spread of coronavirus.

While aiming to strike a balance between sensible policy while also ensuring access to Justice, the Local Court has decided to review a number of operational issues, including how to manage its case load during Coronavirus.

These new rules supersede announcements [made earlier this month](#), as the Local Court adapts to evolving decisions being made by the State and Federal Governments. [The full list of new adjustments can be found here](#).

Under the new stipulations many matters as possible will be dealt with by Audio Visual Links, with unprecedented measures being taken to avoid the need for defendants to have to appear in court, with new rules which enable their legal representative to appear on their behalf, via email.

Like all other sectors of Australian Society right now, the courts are scrambling to respond to the potential threat of the spread of Coronavirus by ensuring that people don't mix together unless absolutely necessary.

### **New focus and reliance on technology**

And it's a test in many ways for the Justice system, which is so people-oriented, and one that could potentially change it forever, bringing about a re-think of how much can be done using technology that allows people and lawyers and court staff remote access, while still getting the job done.

### **Some inmates will be released**

In recent days The New South Wales Government has [granted newpowers to the corrections minister to release or parole inmates](#) nearing the end of their non-parole periods, or considered on a case-by-case basis whether inmates should be released earlier on in their sentences, as fears mount that already overcrowded prisons would struggle to contain a coronavirus outbreak, given that Australian prisons are currently operating at well over 100% of their design capacity:

The move comes on the back of a letter signed by more than 370 academics, lawyers, barristers and former magistrates warning governments that prisons face "an uncontrollable outbreak ... because COVID-19 spreads quickly in closed spaces ... and prisons are commonly epicentres for infectious diseases."

Corrections NSW will not have the power to release inmates sentenced for serious crimes like [murder](#), terrorism or sexual offences, and in all cases must "consider the risks to community safety, the protection of domestic violence victims, and the impact on any victim before releasing an inmate."

To abate public concerns about those who might be released posing a threat to the public, it's important to remember that

there are sensible guidelines around release and that in fact, large numbers of the people already in prison shouldn't necessarily be there anyway: 77% of people entering and 33% of people in prison are on remand and 30% are on sentences of less than 12 months.

Being 'on remand' means a person is detained in a prison until a later date when a trial or sentencing hearing will take place. Many prisoners on remand have not been convicted of a criminal offence and are awaiting trial following a not guilty plea.

The Aboriginal Legal Service (ALS) welcomed the move, because Indigenous inmates are most at-risk. Indigenous people make up 27 percent of the prison population and in many cases, already suffer chronic illnesses or disabilities. Of course many Indigenous people behind bars are also there for [relatively minor offences](#), including unpaid fines, assault, public nuisance, and break and enter.

There are also calls to release [frail and elderly and juvenile offenders](#) who are currently behind bars

Globally, governments are considering or already implementing early release to contain the virus, Ireland is planning to release prisoners with less than 12 months to serve, as were some US and UK jurisdictions. In some US jurisdictions, charges for minor offences have also been dropped to avoid court cases altogether at this point in time.

Every state and territory in Australia has already banned prison visits in an effort to reduce the spread of Covid-19.

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# Downing Centre District Court to Deliver Justice Over Tragic Hospital Mix-Up

The families of two babies affected by a fatal gas mix up at a Sydney hospital are still waiting for those responsible to be held accountable.

The sentencing hearing of gas installer Christopher Turner has been adjourned while the Attorney General makes a decision about whether to provide him with indemnity.

## **Criminal proceedings**

It was every parent's nightmare. Two small babies were given nitrous oxide – also known as 'happy gas' – instead of oxygen in a gas mix up at Bankstown-Lidcombe hospital in 2016. The gas is toxic to babies. Newborn John Ghanem died, while Amelia Khan was left with permanent brain damage.

The mix up occurred because nitrous oxide was incorrectly connected to the oxygen outlet in the resuscitation unit of one of the hospital's operating theatres.

It has been a complex case, with a report conducted by the Chief Health Officer finding that that a series of errors led to the babies being given the wrong gas, including failings in the installation of the piping, mislabelling, and improper post installation procedures – including that the requirement of an anaesthetist being present when the lines were checked.

Following the catastrophe, an extensive audit of all medical gas outlets installed in NSW Health facilities was conducted.

Installer Christopher Turner pleaded guilty not complying with health and safety duty under the Work Health and Safety Act.

He is being criminally prosecuted by Safework NSW but is also involved in the case Safework NSW is bringing against gas company BOC.

Safework NSW had also originally intended to prosecute the hospital, but dropped charges at the end of last year based on the fact that prior to the incident involving the gas mix up the hospital had a good health and safety record

At the time, instead of prosecution, SafeWorkNSW spokesman opted to ensure the entire South-Western Sydney Local Health District would upgrade its contractor management system, implement a risk information system and create a health and safety literacy program.

Amelia Khans' parents are also filing a civil suit because their young daughter now requires a feeding tube and around-the-clock nursing care.

### **Sentencing adjourned**

[Downing Centre District Court](#) judge David Russell adjourned proceedings the day he was expected to hear evidence from Mr Turner as well as an impact statement from the Khan family after Mr Turner's lawyers asked the NSW Attorney-General for indemnity, so that any evidence given in this matter cannot be used against him during the BOC trial.

As Judge Russell [granted the adjournment](#), he apologised to the families involved acknowledging the delay would cause them further trauma.

The [Sydney District Court in the Downing Centre](#) is considering the sentence to give to the independent contractor who installed the oxygen at the hospital, but until the NSW Attorney-General makes his decision, the sentencing has been put on hold.

### **Indemnity**

The specific situations in which the Attorney General may grant ind

emnity to a defendant are explained in [section 32 of the Criminal Procedure Act 1986](#) (NSW) which provides that:

(1) The Attorney General may, if of the opinion that it is appropriate to do so, grant a person an indemnity from prosecution (whether on indictment or summarily)–

(a) for a specified offence, or

(b) in respect of specified acts or omissions.

(2) If the Attorney General grants such an indemnity, no proceedings may thereafter be instituted or continued against the person in respect of the offence or the acts or omissions.

(3) Such an indemnity may be granted conditionally or unconditionally.

(4) Such an indemnity may not be granted in respect of a summary offence that is not a prescribed summary offence, unless the Attorney General has consulted the Minister administering the enactment or instrument under which the offence is created.