

# More 2015 Drama at Downing Centre Court

As discussed in [last week's blog](#), 2015 was a big year at the Downing Centre!

From an escaping defendant to a father who attacked the man convicted of sexually assaulting his daughter, the year has been packed full of drama.

Here are more the year's highlights, challenges and changes.

## **Inquest into the Martin Place Siege**

The Martin Place Siege shocked Sydney and the world, leading to an inquest into the police response to the incident.

The inquest has already revealed the incompetence of the DPP solicitor who opposed Monis' bail application, the [failure of the DPP make any application to revoke Monis' bail under the New Bail Act](#) (even after he made social media threats in the days leading up to the siege) and the questionable police and ASIO response to the incident itself.

The inquest began January and is ongoing, with the results to be determined sometime in the middle of this year.

## **Police allowed guns in court**

Security in courthouses is the domain of the Office of the Sheriff of New South Wales – not the police, who are merely witnesses in court.

But despite opposition from lawyers and many judges, the powerful Police Association [succeeded in obtaining authorisation](#) for officers to routinely take their guns into the courtroom with them; even have them on the witness stand while being cross-examined.

Prior to 10 August, like everyone else, police were not allowed to take weapons into court with them, unless they had sought and received permission to do so.

### **Famous faces in the Downing Centre**

Retired Soccerroos star, [Mark Bosnich](#), faced court after being charged with driving recklessly when he crashed his car with more than three times the legal amount of alcohol in his system. Fortunately for the star, his case was dealt with leniently and he did not receive a criminal conviction.

X-factor [Judge Luke Jacobz was found guilty of his second drink-driving offence](#) – which earned him the title of “serial offender” from the Magistrate.

Mr Jacobz lost his licence for one year and received a \$700 fine – which automatically carries a criminal record. And Jacobz wasn't the only former Home and Away star to come before the court – Johnny Ruffo also faced court charged with several driving offences. His case has been adjourned until late this month.

### **Unusual cases:**

All kinds of cases make their way before magistrates – including the one involving a teen who did a [nudie run for a free kebab.](#)

Unfortunately for the hungry young man, he was caught by police and given a \$500 criminal infringement notice for offensive conduct. He then took the matter to court and was fortunate enough to receive a ‘section 10’ (now [section 10 dismissal](#) or [conditional release order](#)) in court, meaning he did not receive a criminal record, fine or other penalty.

In another case, a jury trial had to be aborted after the Judge noticed a female juror winking and making suggestive gestures to the defendant.

## Uber versus Taxis:

The long-standing battle between Uber and the taxi industry continued throughout the year.

Shortly after vigilante [Russel Howarth was ordered to stop performing citizens' arrests](#) on Uber drivers, Uber itself was prosecuted by the RMS.

But the [Magistrate found that the RMS didn't have the authority to prosecute](#), forcing them to drop the 24 charges laid against Uber drivers.

Finally, at midnight on 18 December, the NSW state government declared the ride-sharing business legal, ending the dispute surrounding Uber's legality – at least for the time-being.

With 2015 now behind us, we look forward to what this year holds for Sydney's busiest courthouse.

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# Downing Centre: A Year in Review

As 2015 draws to a close, it's time to reflect on the year that was in Downing Centre Court.

## 1. Riot Squad Halts Court Case

Back in February, a jury trial in Downing Centre District Court ground to a halt after police [received information about a plan to disrupt the proceedings.](#)

The trial concerned an armed robbery allegedly carried out by

two men outside Broadway Shopping Centre in 2013. One of the men was charged with stealing a car, aggravated break and enter, shooting at a home, larceny and participating in a criminal group.

The NSW Police Riot Squad responded with scores of heavily armed specialist officers descending upon the courthouse.

Several black Riot Squad vehicles were seen outside the courts, and a police helicopter circled overhead.

Despite the commotion, the building was not evacuated. The trial in question was adjourned until the following week.

## **2. Man Escapes Custody at Downing Centre Courts**

You might recall our earlier blog about Ali Hussain Chahine, the 33-year-old man who escaped from the dock in courtroom 3.1 of Downing Centre District Court in September this year, in the presence of one of our very own criminal lawyers.

Mr Chahine was in court for the purpose of a bail application – but he made a run for it at around 4pm after his application was refused by Judge Scotting.

Upon escaping the dock, Chahine ran out a fire escape and boarded a bus on Castlereagh Street, reportedly disembarking near Central station.

He was [arrested at a unit in Alexandria the following week](#), and charged with ‘escaping lawful custody’ and ‘assault occasioning actual bodily harm’ for supposedly assaulting two corrective services officers.

## **3. Drug Charges Dominate Court Lists**

As usual, drug charges featured heavily in Downing Centre court lists.

The year kicked off with [214 people arrested and charged for](#)

[drug offences](#) at the Field Day music festival, held in Sydney's Domain on New Year's Day. The majority of those charged appeared in Downing Centre Court in January and February.

High-profile drug cases included those of Rebecca Hannibal and Matthew Forti, both charged with supplying ecstasy to Georgina Bartter, who tragically died of a drug overdose at Harbourlife Music Festival in 2014.

Ms Hannibal was sentenced on 26 June to a 12 month section 9 good behaviour bond. [Matthew Forti](#) received a 22 month prison sentence, with a 12 month non-parole period on 29 August

In an unrelated case, high-profile DPP lawyer Lisa Munro fronted the Court on 28 September charged with the possession of cocaine, after police observed her carrying out a drug deal in Potts Point in July. She pleaded guilty was handed a 12 month section 10 bond (now [conditional release order](#) without conviction), without criminal conviction.

Finally, Olympic kayaker Nathan Baggaley appeared alongside his younger brother Dru on the 18 December for charges of drug manufacturing and conspiracy. Both men are alleged to have played a role in the production of 18,000 tablets of 2CB and were planning to manufacture ice. Both were sentenced to a non-parole period of two years and three months imprisonment.

#### **4. Police Officers Facing Court**

Although they are entrusted with enforcing the law, a number of NSW Police Officers fronted the Downing Centre Court this year.

46-year-old Senior Detective Andrew John Clarke pleaded guilty to high-range drink driving after blowing a reading of .170 during a random breath test on the 10th of July.

Subsequent investigations revealed that he had been driving

unlicensed for over 20 years.

Mr Clarke was sentenced in October to a fine of \$2,000 and an order preventing him from applying for a licence for nine months.

Another former police constable, Allan Robert Simon, was sentenced in September after [helping his drug dealing girlfriend evade police detection](#). He received a sentence of 1 year and 10 months imprisonment, but was ultimately released on an intensive corrections order.

## **5. Father Attacks Child Sex Offender**

In an emotionally charged incident in August this year, the father of a young girl who was sexually assaulted by a former serviceman [bashed the man after he was sentenced to 6 years imprisonment](#).

The 64-year-old South Coast man, who remains unnamed for legal reasons, was convicted of two charges of aggravated sexual assault on a child under the age of 10.

According to eyewitnesses, it took five people to restrain the father.

It is unknown whether he has been charged for the attack.

The Downing Centre Court is sure to once again be the centre of high drama and controversy in 2016.

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# Who Does What in the Criminal Justice System

[Professor Kathleen Daly](#) describes the Australian criminal justice system as a 'collection of interdependent agencies' that enact, enforce and administer criminal laws.

The system certainly has its flaws, and the public perception appears to be that its outcomes are seldom just.

## **Wheels of 'Justice'**

Criminal laws, processes and procedures are embodied in countless pieces of legislation, cases, bench books, practice directions, policy manuals and the like – but 'the criminal law does not enforce itself' – it needs people with specific roles and responsibilities to facilitate outcomes.

That's where the agents of the system come into play – performing their duties interdependently to keep the wheels of 'justice' rolling.

Some of the main agents are:

### **Police**

Police are public servants tasked with preventing crime, protecting members of the community and maintaining public order.

They are required to investigate crime – liaising with the complainant and witnesses, and gathering evidence. Where they suspect on reasonable grounds that there is sufficient evidence against a suspect, they are able to arrest, detain, charge and prosecute.

Police are responsible for preparing the 'Court Attendance Notice' which contains the allegations against a defendant.

They also take witness statements and prepare the evidence.

There are many different 'departments' in the police force – from General Duties Officers, to more specific departments such as the Highway Patrol and Public Order and Riot Squad.

## **Prosecutors**

Prosecutors run cases in court. They include police prosecutors – who prosecute matters in the Local Court – and DPP solicitors – who are qualified lawyers that prosecute more serious cases. They are supposed to present all of the admissible evidence fairly in order to assist the court in arriving at the truth, rather than to secure a conviction at all costs.

Some prosecutors also prepare case for court – which can involve liaising with defence lawyers, police and witnesses. DPP lawyers may also be called on to decide whether cases go ahead or are discontinued.

## **The Judiciary**

The Judiciary is comprised of Magistrates in the [Local Court](#), [Judges in the District Court](#), and [Justices in the Supreme and High Courts](#).

Members of the judiciary preside over all types of court cases – from short court dates called 'mentions', to bail applications, defended hearings and jury trials.

They are required to act fairly and apply the law impartially, and ensure that court processes are conducted in a timely and efficient manner.

Magistrates decide whether a defendant is guilty or not guilty in the Local Court, while District and Supreme Court Judges and Justices assist juries to decide guilt or innocence by directing them about the law.

The judiciary is also responsible for imposing penalties upon those who are guilty.

## **Prison Staff**

Prison staff are responsible for supervising and controlling those in custody. They deal with people whose cases are yet to be finalised, as well as sentenced prisoners.

Prison staff are required to maintain appropriate custodial conditions whilst maintaining discipline and order within prisons. They are also meant to assist in preparing inmates for release into the wider community.

## **Criminal Defence Lawyers**

[Criminal defence lawyers](#) represent those who are suspected or accused of crimes, ensuring that their rights and interests are protected. Their role includes advising clients about the strength of the case against them, the applicable law, the options, best way forward and the likely outcome.

Unlike police prosecutors who often receive cases on the day of court, criminal defence lawyers will be experienced at conducting cases from start to finish – including preparing and issuing subpoenas for evidence, preparing ‘representations’ for the withdrawal of charges, fighting for withdrawal, scrutinising briefs of evidence, engaging medical and forensic experts, preparing cases for court and, of course, defending criminal charges inside the courtroom.

The courtroom work of a defence lawyer is broad and varied – from short court mention dates, to bail applications, sentencing hearings, defended hearings and the independent conduct of jury trials for more experienced advocates.

Defence lawyers need to be familiar with a wide range of counselling and rehabilitation programs which can assist their clients. Where a client wishes to plead guilty, undertaking

rehabilitation can serve a dual role of reducing the likelihood of reoffending – which benefits the community – and demonstrating to the court that the client has taken responsibility and taken steps to overcome any issues, such as drug or gambling addiction, anger management issues and so on.

So there you have it – a thumbnail sketch of some of the main agents in our criminal justice system.

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## The Role of the Registrar in Downing Centre Court

Gone are the days where after a long legal career, lawyers would wind down by “retiring to the bench” and becoming a judge.

Nowadays, the job of a magistrate or judge involves a lot of tough work; with one magistrate describing it as “[a bit like putting your mouth over a fire hydrant.](#)”

Thousands of cases pass through our local courts each year, and it can take months or even years to finalise any particular case. A standard [local court list](#) could have over 100 cases on any given day, all of which must be dealt with by day’s end.

To ease the pressure, registrars are often used to sort cases out before they come before magistrates. As well as in the Downing Centre Local Court, which is the busiest court in the state, registrars are employed now in many Sydney and regional local courts, as well as in District, Supreme and Federal courts. The roles of Registrars vary from court to court.

Registrars have some, but not all, of the powers and functions of their counterparts, and can preside over both civil and criminal proceedings.

### **What are the powers of a Registrar?**

Local court registrars have the authority to make decisions about procedural matters; for example, adjourning cases, accepting pleas of guilty, ordering the service of brief materials, granting access to subpoenas, listing cases for defended hearings, and so on. Judicial decisions are then left to magistrates and judges; including presiding over sentencing hearings and defended hearings in the Local Court, and jury trials in the higher courts.

Under [rule 8.2 of the NSW Local Court Rules](#), registrars are permitted to:

- Adjourn proceedings, without the consent of the parties;
- Make orders by consent;
- Set times by which documents must be served on the other party;
- Deal with subpoenas;
- Determine preliminary matters prior to the commencement of a hearing or trial;
- Conduct pre-trial reviews;
- Grant costs applications; and
- Make orders in relation to the just, efficient and timely management of court proceedings

### **How is a registrar different to a magistrate?**

Aside from the greater limitations on the power of registrars, proceedings before registrars are often less formal. While some registrars do sit in courtrooms, these are often much smaller, and some may even sit in a small office room with none of the usual trappings of a courtroom.

This is not the case at the Downing Centre Local Court, where

the Registrar sits in courtroom 4.4, on level 4.

Unlike magistrates or judges who are addressed as 'Your Honour', the correct way to address a registrar is simply 'Registrar.'

From court to court, registrars and their expectations of formalities differ, and while getting to your feet is required when speaking to a Local Court magistrate or District Court judge, this is not always the case with registrars.

### **What are the qualifications of registrars?**

Although registrars perform important administrative functions, they are not always legally qualified. However, legislation now requires that a person must be an Australian lawyer to be appointed as a registrar in the NSW District court.

While Local Court registrars do not currently need legal qualifications, the [Litigation Law and Practice Committee has recommended that admission as an Australian lawyer](#) should be made a prerequisite.

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## **10 Bits of Legal Jargon Used in Court**

Going to court can seem like a minefield to many – when to stand, when to sit and when to bow, how to speak to the magistrate or judge, where to speak from, what to call them, what to say – the list goes on.

Adding to the confusion is legal jargon used by prosecutors, defence lawyers and whoever that person is that decides the

case.

While plain English is often the best approach, it can help those who are going to court to know some of the most common terms used inside courts like the Downing Centre.

Here are some of the top ones, so you can look like a pro – or at least understand what everyone is going on about.

### **'Court list'**

This is the list of cases that will be heard in court on any particular day.

The Downing Centre Local court list is printed and posted on Level 4, and contains all the matters that will be heard, along with the courtroom they will be heard in.

The District Court lists are also printed and posted daily.

#### **1. 'Standing a matter in the list'**

This is a handy thing to do if you can't have your matter heard straight away – because you are waiting for a witness, a document, or maybe even your lawyer!

Asking for a matter to be "stood" or "held" in the list means that you would like your case heard later in the day.

Prosecutors, criminal defence lawyers and unrepresented defendants can all request that the case stands a matter in the list.

#### **2. Magistrate, judge or registrar?**

Many people use the terms interchangeably, or use the term 'judge' to refer to all judicial officers of any court.

The difference is simple: in the local court, the judicial officer is a magistrate, and in the district court, the judicial officer is a judge.

Sometimes, the person in court will be neither a magistrate nor judge, but someone called a 'registrar' – who sorts out cases, decides upon adjournment applications, and undertakes other administrative duties in order to take some of the pressure off magistrates or judges.

When speaking to a Magistrate or Judge, you should address them as "Your Honour", and a Registrar should simply be address as "Registrar".

In Downing Centre Local Court, the Registrar sits in courtroom 4.4 – which is often where your matter will be listed on the first court date.

### **3. 'My friend'**

If you hear a lawyer and a prosecutor referring to each other as "my friend" at the bar table, this doesn't mean that they are golfing buddies on the weekend.

Rather, this is a term used by all lawyers and prosecutors when they refer to one another. The tradition originated from a time when there were few lawyers who would indeed all know each other.

### **4. 'Adjournment'**

This is when the court proceedings are postponed until a later date.

An adjournment application can be made by either the defence or prosecution for a range of reasons – to receive legal advice, to await the service of materials, to obtain a medical report, to complete counselling or a program like the Traffic Offender Program or Magistrates Early Referral into Treatment program ('MERIT'), to prepare for a sentencing hearing, and so on.

### **5. 'Brief service orders'**

If a lawyer requests 'brief service orders', they are asking for the judge or magistrate to order the prosecution to give all of the statements and other materials to the defence by a certain date.

Brief service order will ordinarily be made on the first court date if the defendant indicates a plea of not guilty, and the prosecution will ordinarily be ordered to serve the materials within 4 weeks. A further court date will normally be set 6 weeks away, to allow the defence to go through those materials and either confirm the not guilty plea, or enter a guilty plea.

The term 'serve' means to deliver the materials according to methods set out in the court rules – which usually require hand delivery – although the defence may agree to accept service by a less formal method, such as via email or fax.

## **6. 'Interim order'**

This is an order made by the court which will stay in force just until the next court date.

An example of an interim order is where the defendant in an [Apprehended Violence Order \(AVO\)](#) case is required to comply with AVO conditions until the next court date, or a defendant who faces criminal charges complying with bail conditions.

## **7. 'Listing advice'**

A [local court listing advice](#) is a form that is usually available on the bar table inside the courtroom, which the defence is required to fill out and hand up to the court if the case is being set down for a defended hearing. The defence is required to specify a range of matters: including which prosecution witnesses they require to attend the hearing, the estimated time for the hearing, and whether or not audio-visual facilities are required.

## **8. 'Representations'**

Criminal defence lawyers often write a detailed letter to the prosecution in order to persuade them to drop all or some of the charges. This letter is called 'representations'.

## **9. 'Pre-Sentence Report'**

A pre-sentence report (or 'PSR') may be ordered by the magistrate or judge after you plead guilty or are found guilty. The report contains background information about you, and says whether you are eligible and suitable for alternatives to imprisonment; such as a good behaviour bond or community service order.

PSR's are normally ordered if the court is contemplating sending you to prison. However, defence lawyers will sometimes ask the court to order a PSR if they feel it will assist you in court.

In either case, you will need to report to your nearest [Probation and Parole Services](#) for assessment.

## **10. 'Non Conviction Orders'**

If the court grants a '[section 10 dismissal](#) or [conditional release order](#)', it means that a criminal conviction is not recorded against your name even though you are guilty of an offence. You also escape a fine, licence disqualification and any other penalty – although a good behaviour bond can be imposed, and you may have to pay a small fee for court costs and a 'victims compensation levy'.

So if you are going to court, all the very best to you. We hope that your 'representations' are successful if you are pleading not guilty, or that you get a non conviction order if you are pleading guilty!

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# Free Legal Services at the Downing Centre Court

Attending court for a criminal case can be a nerve wracking experience – particularly if you cannot afford to hire a lawyer.

The good news is there is a range of free legal services at the Downing Centre which may be able to assist you on the day.

Here are a few of those services:

## **Legal Aid**

The Legal Aid office is located on Level 4, opposite Courtroom 4.6.

Legal Aid offers free legal services in a range of criminal cases. [Duty lawyers](#) are available on all court days to assist those who have a matter in court, but are not legally represented.

Duty lawyers can offer advice and assistance to anyone, regardless of whether they meet the eligibility criteria or not – but if a person requires ongoing representation in court (e.g. for a more serious case or a hearing/trial) they will need to satisfy a means and merit test.

In certain cases, Legal Aid duty lawyers can seek an adjournment for defendants to obtain proper legal advice.

## **Duty Solicitor / Barrister**

[Duty solicitors](#) and barristers are located on Level 5, near Courtroom 5.1.

They are fully qualified members of the legal profession who have volunteered their time to help members of the public free of charge.

Duty solicitors and barristers are able to assist people who are due to appear in court by providing free legal advice – and sometimes representation – for a range of criminal cases.

While you do not need to book an appointment to see a duty lawyer, it is best to arrive early as they can get very busy, and may not be able to assist everyone.

### **Aboriginal Legal Service NSW/ACT**

The [Aboriginal Legal Service \(ALS\)](#) office is also located on Level 4, near Legal Aid.

It operates similarly to Legal Aid in so far as it provides free legal advice on a wide range of criminal cases, but it is targeted towards Aboriginal and Torres Strait Islander people.

ALS lawyers are well known within the Indigenous community, and will often be able to make a judgment as to a person's Aboriginal status in a culturally sensitive manner.

ALS lawyers are able to provide assistance to Indigenous people on the day of court without a prior appointment.

Those who have a court case simply need to show up at the ALS office before entering the courtroom. The ALS lawyer will be able to provide them with advice before dealing with the case in court.

In more complex or serious cases, they may seek an adjournment to obtain further information or undertake preparations.

### **Women's Domestic Violence Advocacy Service**

The [Women's Domestic Violence Advocacy Service](#) (WDVAS) is an initiative of the Legal Aid Commission which offers assistance

to women seeking protection from domestic violence.

While they are not able to provide legal advice, they can refer women to Legal Aid lawyers – including those who are affiliated with the Domestic Violence Practitioner Scheme.

The WDVAS is able to provide emotional support, information about the court process and a safe area where they can await their turn in court without seeing the alleged perpetrator.

The Service is also able to refer women to other community support services, including those offering safe housing, income support and counselling services.

### **Salvation Army Court Services**

The [Salvation Army](#) has an office on Level 5.

It offers counselling, advice and emotional support to those who are due to appear in court, especially complainants and other witnesses. While they are not able to provide legal advice or representation, they can outline the court process and refer cases to a duty lawyer.

The Salvation Army also runs prison services to assist those in custody and their families, as well as post-release services to help former inmates reintegrate into the community.

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## **Behind the Scenes: Downing**

# Centre Magistrates

Appearing before a magistrate at the Downing Centre Court can be a nerve wracking experience.

For those who are charged with crimes, magistrates can be viewed as tough, emotionless beings with all the power in the world over their future.

Experienced criminal defence lawyers will often be aware of the particular likes and dislikes of specific magistrates, and how to go about getting the best possible result.

Although some think that magistrates 'live in an ivory tower' and are 'out of touch' with the community, the reality is that magistrates often live in the same communities and deal with the same day-to-day issues as most others – even though they have led illustrious legal careers.

Here we take a behind-the-scenes look at three of the most accomplished magistrates at Sydney's Downing Centre court.

## **Graeme Henson – Chief Magistrate**

Graeme Henson was appointed as Chief Magistrate of the Local Court of New South Wales in 2006.

In 2010, he was also [appointed as a Judge of the District Court of NSW](#) by then Attorney-General John Hatzistergos. He currently serves in both roles interchangeably – although he is usually found in Court 5.2 at the Downing Centre Court; or in the Chief Magistrates Office on Level 5.

Magistrate Henson was admitted as a lawyer in 1980. He spent two years working for the Office of the Director of Public Prosecutions between 1986 and 1988 before being appointed a Magistrate. Besides his judicial positions, Mr Henson is also a member of the Wollongong University Faculty of Law Committee and the Anglican Aged Care Board.

His Honour has presided over several newsworthy cases during his time on the Bench: earlier this year, he [sentenced Rebecca Hannibal](#), the 19-year-old woman who supplied her best friend Georgina Bartter with three ecstasy pills.

Ms Bartter ultimately died after consuming the pills; collapsing at the Harbour Life Music Festival in 2014.

At a sentencing hearing in June, His Honour placed Ms Hannibal on a 12-month good behaviour bond after providing lengthy remarks on sentence.

And late last year, Mr Henson made headlines after he infamously revoked Amirah Droudis' bail.

Ms Droudis was the partner of Sydney siege gunman Man Haron Monis, and was facing charges for murdering his former wife. A review of her bail was ordered by then NSW Attorney-General Brad Hazzard following the highly-publicised siege. Ms Droudis is currently in custody at Silverwater Womens' Prison awaiting trial.

Besides overseeing a wide range of criminal cases in the Local Court, the Chief Magistrate has been known to fight for greater working benefits for his fellow colleagues.

Back in 2012, he [made the news](#) after demanding 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 asked for extended long service leave, greater carer's leave entitlements and free travel on public transport.

### **Jane Mottley – Deputy Chief Magistrate**

Magistrate Mottley began her legal career in 1979 when she commenced working as a clerk at North Sydney Court.

But she soon rose through the ranks; being admitted as a lawyer in 1989 and spending time working for Legal Aid and the State Drug Crime Commission, before being appointed as a Magistrate in 2000. She was [promoted to the role of Deputy Chief Magistrate in 2009](#).

Like her colleagues, Magistrate Mottley has presided over many famous cases before the Court: earlier this year, [she heard a bail application made by disgraced criminal lawyer Ugo Parente](#), who was charged with drug supply after police located a number of containers filled with GHB in his car and home. Her Honour refused Mr Parente bail.

In December 2014, Ms Mottley sent [Manly Sea Eagles player Jamil Hopoate](#) to prison for his 'savage and unprovoked' assault on a man outside the Ivanhoe Hotel in Manly, finding that 'Mr Hopoate and his co-offenders set out to exact revenge on a person or persons'. She handed him an 18 months prison sentence with a non-parole period of 12 months.

### **Christopher O'Brien – Deputy Chief Magistrate**

Christopher O'Brien was [appointed a Deputy Chief Magistrate](#) in January 2014, after spending 8 years as a Local Court Magistrate working all around the state.

Prior to his appointment to the Bench, he spent 17 years working as a partner in a Sutherland law firm.

He has also presided over several interesting cases – including that of a [police officer who was charged with misconduct in public office](#) after he drove a drink-driver home.

Police officer Christopher Dove failed to charge the woman with drink driving, instead seizing the opportunity to make sexual advances towards her.

Magistrate O'Brien dismissed the charge under a [section 10](#)

[dismissal](#) or [conditional release order](#), finding that the officer's legal battles were 'sufficient to reflect the objective seriousness of the offending overall.'

He also sentenced a young law student who ran naked through a Byron Bay kebab shop during schoolies last year, dismissing the charge of offensive behaviour under a non conviction order.

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## Police Officer Sentenced for Drink Driving

Earlier this year, we [published a blog](#) about a police officer who was charged with drink driving and driving without a licence.

46-year-old Andrew Clarke, a Detective Sergeant who had worked for the NSW Police Force for over 26 years, made headlines in July after he blew a high range reading of 0.17 at a roadside breath test – more than three times the legal limit.

Subsequent investigations revealed that he had not held a licence in over 25 years, despite the fact that NSW Police guidelines require police officers to hold a current driver licence.

### Officer Sentenced

After appearing at the Downing Centre Local Court earlier in the year, Mr Clarke [proceeded to sentence](#) before Local Court Magistrate Gary Wilson last week.

Mr Clarke's criminal defence lawyer argued that the Court should have regard to the fact that he was not performing

duties as a police officer at the time of the incident, and that he was suffering from mental health problems which were exacerbated by his duties as an undercover officer.

However, the police prosecutor argued that a heavy sentence was warranted due to Mr Clarke's role as a police officer, which meant that he should have known about the seriousness of his actions.

After hearing submissions from both sides, Magistrate Wilson imposed a fine of \$2,000 and made an order preventing Wilson from applying for a licence for nine months.

A fine carries a criminal conviction, which means that the offence will be recorded on Mr Clarke's criminal record.

His lawyer indicated that this could have a detrimental affect on his ability to continue as a police officer in NSW.

### **A Fair Penalty?**

High range drink driving is considered to be a serious offence in NSW, especially if the offender does not hold a driver licence.

In NSW, [section 110 of the Road Transport Act 2013](#) prescribes a maximum penalty for high range drink driving (i.e. a reading of 0.15 or higher) of 18 months imprisonment and a fine of \$3,300 for a a first offence.

For the offence of driving without a licence, [section 53 of the Road Transport Act 2013](#) prescribes a maximum penalty of \$2,200.

Taking all matters into account, it could certainly be argued that Mr Clarke received a relatively lenient penalty – particularly considering his breach of the public's trust as a police officer.

### **Police with Criminal Convictions**

Although Mr Clarke may fear losing his job, he can take comfort in the fact that hundreds of other police officers around the state have been allowed to keep their positions despite being convicted of criminal offences – many of which are more serious than high range drink driving and driving without a licence.

Last year, the ABC obtained records under Freedom of Information laws showing that 434 officers in NSW have [convictions for criminal offences](#); which is around 1 in 40.

Many officers have been convicted of more than one crime – and several of them are senior members of the police force.

A breakdown of the offences showed that 58 officers have been convicted of high-range drink driving, 144 have convictions for mid-range drink driving, 39 have convictions for stealing, 14 for break, enter and steal, 7 for common assault and 4 for assault occasioning actual bodily harm.

These statistics have led many to question whether those who are entrusted with enforcing the law should be allowed to become police officers – or, indeed, continue working within the force [if they commit criminal offences](#).

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## **On the Run – Australia's Most Wanted**

An elusive father and son duo has featured heavily in the news over the past week.

[Gino and Mark Stocco](#) are two of the most wanted fugitives in the nation at present. They are suspected of number of serious

criminal offences, including stealing firearms, burning down farms, killing animals, damaging and destroying property, and various acts of identity fraud. There are nine outstanding warrants for their arrest.

Police hope that the increased media attention will assist members of the public to recognise and report the men to police.

But they are not alone: Police recently released a list of [20 of the Most Wanted People in Australia](#) as part of Operation Roam; a national initiative between Crime Stoppers and state and territory police which aims to gather information from the public to assist in tracking down fugitives.

Counting down five of [Australia's most wanted](#):

## **5. Brady Hamilton**

47-year-old [Brady Hamilton](#) has been on the run for 16 years, after he allegedly bashed a man named Peter Ledger to death in Erskine Park in 1999.

Police say that Hamilton was an inner circle member of the Comanchero motorcycle group. They claim that he was called in by the group's Supreme Commander to take care of Ledger after there was a disagreement about the swap of a Triumph motorcycle for a Harley-Davidson.

Hamilton is said to have visited Ledger along with two associates, including fellow Comanchero Ian Clissold, brutally bashing him after demanding money and the return of his club colours.

It is believed that the men did not intend to kill Ledger, but simply wanted to 'teach him a lesson'. However, the bashing went one step too far and Ledger's body was later found dumped outside a house in Erskine Park.

It is believed that Hamilton fled the state after the

incident. Despite police issuing numerous appeals for information about his whereabouts, Hamilton remains on the loose.

#### **4. Warwick McEwen**

[Warwick McEwen](#) ran a successful chiropractic business in Campbelltown for over two decades before he was charged with 45 counts of child sexual assault which had allegedly been committed at his workplace in the 1980's.

He had previously spent time in custody for other child sex offences; but in 2006, shortly after his release from prison – and the laying of fresh charges – McEwen decided to take off.

Police were alerted to his disappearance after he failed to appear at Campbelltown court in relation to the new charges.

#### **3. Stuart Pearce**

Adelaide man Stuart Pearce is believed to be the [most wanted person in South Australia](#).

He is wanted for his alleged role in the horrific murder of his wife, Meredith, and their three children in 1991.

Police say that Pearce tied his wife to a chair and stuffed a towel into her mouth, before spreading petrol across the floor and lighting a fire that quickly destroyed the family's Parafield Gardens home.

His three children, aged 11, 9 and 2, were found with plastic bags over their heads. They are believed to have suffocated to death before the fire took hold.

By a stroke of luck, another son, Matthew Pearce, escaped injury as he was sleeping over at a friend's house on the morning of the incident.

There are a variety of explanations for the heinous alleged

incident: some say he was suffering severe financial hardship and wanted a way out. Others believe it had something to do with drugs, as 25 cannabis plants were found in a bunker underneath his home.

There have been no reports of Pearce's sighting since the incident – and police do not know whether he is still in Australia, or even alive.

## **2. Michael Davison Tillman**

A renowned snooker player, Michael Tillman is wanted by in relation to his alleged involvement in an [attempted murder](#) which occurred in Surfers Paradise in 2010.

Police say that Tillman became involved in an altercation with his friend, Troy Kiss, whilst the pair were enjoying a night out with friends.

Tillman allegedly stabbed Kiss 11 times in the neck, chest and back, and was charged with attempted murder and grievous bodily harm as a result. He was released on bail pending his trial, but whilst in the community, Tillman allegedly attacked another man named William Patterson at a pub.

Mr Patterson says that he was confronted by Tillman and three of his friends in 2011. The group threw him to the ground, before Tillman allegedly bit his face – leaving him with a chunk of his cheek and half his nose missing. Tillman then fled the scene.

Although there have been numerous reports of sightings since, police have been unable to track Tillman down.

He had [previously served time in prison](#) for the killing of a former friend outside a Sydney hotel in 2003 by gouging his eyes out.

## **1. Graham Gene Potter**

Victoria's most wanted fugitive, [Graham Gene Potter](#), is also one of the country's most dangerous.

In 1980, Potter murdered 19-year-old Kim Barry, a shop assistant from Wollongong, after she reportedly refused his sexual advances. In a horrific act of violence, he cut off the young woman's fingers and head while her brother slept in the next room. On the night of the incident, he was enjoying his bucks night, and had met Ms Barry at a local nightclub.

Ms Barry's body was found dumped near Jamberoo. It is believed that her bra had been used to tie her wrists and legs together. Her fingers and head were discovered around 1km away in a plastic bag, together with clothing and bedclothes belonging to Potter.

The heinous crime earned Potter the nickname 'the head and fingers killer.'

Potter spent 16 years in prison for the murder – and incredibly ended up marrying his wife whilst in prison.

He was released from custody in 1996, but went back to prison again in 2008 after being charged with conspiracy to murder and various drug offences.

In a desperate bid to secure his early release, Potter acted as a police informant; giving authorities valuable information about drug importation schemes. His co-operation with police resulted in him being granted bail – but he failed to appear at Melbourne Magistrate's Court in 2010.

There have been sightings of Potter since – one in 2012 when he was pulled over by police and fled yet again, and another in 2013 when he was seen picking fruit on the NSW and Victoria border.

A \$100,000 reward has been offered for information leading to his arrest.

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# Man faces Downing Centre for 'one punch' assault

The Downing Centre District Court is the venue where James Ian Longworth, 34, is facing trial after knocking out a security guard with a single punch.

Described by a friend as "[the nicest guy in the world](#)", Mr Longworth's loved-ones were shocked by his actions.

The court heard that Mr Longworth was slurring and stumbling by the time he and a friend, Mr Hume, arrived at Bar 333 in the city. The court was told that before arriving, Longworth drank about 10 schooners of beer at another bar. He was refused entry from Bar 333 on that basis.

His friend walked away from the Bar despite being told he could enter, intending to come back in a few minutes.

After his friend had left, Mr Longworth punched security guard Fady Taiba to the ground. Taiba was seriously injured and later went into a coma.

Mr Taiba told police: "I gave him a tap. I didn't know he would land like that. I stupidly gave him a tap."

In court, Mr Longworth [testified that](#): "I remember thinking I wanted to hit him and it was spontaneous. I just remember the impact of the punch and being in disbelief that I hit him."

Mr Longworth said that he had been overwhelmed by the recent death of his father, and the fact that he didn't get to say

goodbye. He testified that he would not have reacted in that way on any other night.

Mr Longworth is pleading 'not guilty' on the basis that he did not intent to cause grievous bodily harm to Mr Taiba. This is an essential part of the offence of 'cause grievous bodily harm with intent', with which Longworth is charged. Under [section 33 of the Crimes Act](#), that offence carries a maximum penalty of 25 years imprisonment.

### **Specific Intent**

Being intoxicated is not, by itself, enough for a person to be found 'not guilty' of an offence.

However, some offences require a person to have a specific mental state at the time of the incident. The fact that the person was severely intoxicated at the time may be used as evidence that he or she could not have formed the required intent, and could not therefore be guilty of the offence charged.

In that case, they may still be found guilty of an alternative, less-serious offence such as 'recklessly cause grievous bodily harm' under [section 35 of the Crimes Act](#), which carries a maximum penalty of 14 years imprisonment.

### **'One Punch' Laws**

Mr Taiba was fortunate to survive Mr Longworth's the attack.

If the punch had been fatal, Mr Longworth could have faced mandatory penalties under new 'one punch laws'. [Section 25B of the Crimes Act](#) says that anyone who assaults another person while intoxicated and causes their death is subject to a mandatory minimum prison term of 8 years. The maximum penalty is 20 years imprisonment.

This was part of the NSW government's plan to crack down on alcohol-fuelled violence, which also included the [Sydney](#)

[lockout laws](#), and greater police powers to 'move on' intoxicated people.

Mr Longworth's trial continues, and it remains to be seen whether the jury will find him guilty of the offence charged, or of an alternative offence.