

# Criminal Lawyers Appointed as Local Court Magistrates

In October 2018, NSW Attorney General Mark Speakman announced a [four year, \\$148 million funding boost designed to ease the pressure of the state's District Courts](#) by facilitating the appointment of seven new judges, more senior lawyers at Legal Aid NSW and upgrades to regional courts to enable them to accommodate for jury trials.

## Five new Magistrates for NSW Local Courts

This week, [Mr Speakman announced the appointment](#) of five new Local Court Magistrates as part of a \$4.1 million package aimed at dealing with an influx in sexual and indecent assault cases resulting from the findings of the Royal Commission into Institutional Responses to Child Sexual Abuse.

The appointees have a combined experience exceeding a century. They comprise a criminal defence barrister, three solicitors with significant experience in criminal law and a former coroner.

“The Local Court deals with more cases than any other court in Australia and increasing its ranks on the bench will help ensure it continues to lead the nation in the delivery of timely justice,” Mr Speakman stated.

## The appointees

Miranda Moody and Greg Elks will be the first to join the bench on 21 January, before Ian Rodgers Fiona McCarron in late February, and Stephen Olischlager in late March 2019.

## Miranda Moody

Ms Moody was an associate to a number of judges in the District Court of NSW for several years before becoming a

barrister in 2006.

She has represented clients in cases ranging from drink driving, common assault and drug possession in the Local Court up to jury trials for serious offences in the District Court.

She has also appeared for clients before the Independent Commission Against Corruption (ICAC) and is a member of the Legal Aid Commission's General Criminal Law Panel.

### **Greg Elks**

Mr Elks commenced his involvement in the criminal justice system as a police officer in 1979, before attaining the rank of sergeant and working as a police prosecutor from 1988.

He was admitted as a lawyer in New South Wales in 1991 and was employed for many years as a solicitor with Legal Aid NSW and then the Office of the Director of Public Prosecutions, before opening a law firm in Cronulla.

He became an Accredited Specialist in Criminal Law in 1999 and has serviced the community with integrity and commitment throughout his career.

### **Ian Rodgers**

Mr Rodgers was admitted as a NSW lawyer in 1998 and has been employed as an Associate to a District Court Judge, a solicitor with the Aboriginal Legal Service (NSW/ACT) and a policy officer with the NSW Department of Justice.

For the past three years, Mr Rodgers has been in charge of Newcastle's busy Legal Aid office, managing several lawyers and administrative staff.

### **Fiona McCarron**

Ms McCarron was employed as a Judge's Associate in 2000 before being admitted as a lawyer in NSW in 2002 and joining the

Legal Aid Commission.

She was involved in the case of Sydney woman Christine Lee, who was [charged with fraud](#) after going on a spending spree when Westpac mistakenly deposited \$4.6 million into her bank account.

Ms Lee spent large sums of money on penthouse apartments, designer shoes and handbags, and siphoned about \$33,000 a week over a period of nine months into her other accounts.

The [charges against Ms Lee were ultimately dropped](#) when the Office of the Director of Public Prosecutions decided the essential element of 'deception' could not be proved.

Ms McCarron has worked as the solicitor in charge and managing solicitor of Legal Aid's Inner City Local Courts office.

### **Stephen Olischlager**

Mr Olischlager has had a lengthy and varied career in the criminal justice system – working as a registrar, a coroner, a developer of policy and a drafter of legislation including the Civil Procedure Act 2005, Coroners Act 2009 and Uniform Civil Procedure Rules.

Since 2009, he has been employed as an Assessor in the Small Claims Division of the NSW Local Court.

His involvement in the legal system spans 23 years.

It is hoped the newest appointments will help ease the pressure on some of the state's busiest courts.

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# Uber Driver Guilty of Negligent Driving Causing Death

By Ugur Nedim and Sonia Hickey

32-year old Uber driver Nazrul Islam is facing up to 18 months in prison after a Magistrate in Downing Centre Local Court found him [guilty of negligent driving occasioning death](#).

The court heard that Mr Islam had been working for 21 hours before the incident and, despite testifying he had seven hours of sleep, it was not continuous rest.

Magistrate Mary Ryan found that the circumstances of 30-year old Englishman Samuel Thomas' death suggested that Islam was "much more fatigued than he admitted", and her Honour was not convinced the driver had slept during his breaks for as long as he claimed.

Mr Thomas had been drinking at a birthday party with colleagues in Strathfield, before he caught the Uber towards Pitt Street with friends Stephen Ronning and Greg Hensman.

When the car stopped at a red light, Thomas opened the door and got out, and was immediately hit by a bus.

Her Honour noted that the sound of the door opening could be heard in footage played in court, and that opening the door automatically switched the car's internal light on, which woke the other intoxicated passengers. She found that these facts would have alerted a reasonably prudent driver to remain stationary.

Instead, Mr Islam accelerated when the light went green and Mr Thomas was half way out the door.

## **Negligent driving**

[Negligent driving is established](#) where the prosecution is able to prove beyond reasonable doubt that a driver or rider of a motor vehicle departed from the standard of care for others that would be expected of a reasonably prudent driver or rider in the circumstances; R v Buttsworth (1983) 1 NSWLR 658.

This is known as an 'objective test' which looks at what a reasonable and practicable driver would have done in the given situation.

It requires an assessment of all relevant circumstances known to the driver or rider at the time, rather than a determination as to what, given the benefit of hindsight, would have been the best course of action.

Driving in the absence of 'due care and attention' can amount to negligent driving, provided the act was causing the inattention was deliberate or arose from an error of judgment; Sprigg v Police [2011] SASC 10.

The maximum penalty for negligent driving occasioning death where it is a motorist's first major traffic offence in five years is 18 months' imprisonment and/or a fine of \$3,300, plus three years off the road which can be reduced by a court to a minimum of 12 months.

## **Fatigue on New South Wales Roads**

Fatigue is one of the top three killers on New South Wales Roads, and collisions caused by fatigue are twice as likely to be fatal.

Being tired at the wheel can seriously impair the ability to drive, with research suggesting that being awake for about [17 hours has a similar effect on cognitive function as a blood alcohol content \(BAC\) of 0.05](#).

## **Calls for reform**

There are calls for greater regulation of the ride-share industry, with critics of the current situation saying governments should step in and impose more rules rather than continue to essentially sit on their hands.

Shortly after Mr Islam was charged last year, Uber [implemente a policy that would automatically log drivers off for six hours](#) after they have been online and driving for 12 hours.

But there are concerns that drivers can still drive for up to 15 hours, despite the automatic log off feature within the app, because it stops calculating when a driver is stopped at traffic lights or for a passenger pickup.

A recent report suggests that many Uber drivers are working [for less than the minimum wage](#), so may be pushing themselves beyond safe physical and mental limits to make ends meet..

Uber has not publicly commented on the death of Mr Thomas, except to say the company is committed to 'driver and passenger safety.'

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## **Is Public Nudity a Crime in New South Wales?**

Canterbury-Bankstown rugby league players Adam Elliot and Asipeli Fine were each fined \$25,000 by the club and charged by police with the crime of obscene exposure after allegedly being naked on the balcony of the Harbour View Hotel at The Rocks during 'Mad Monday' Celebrations in early September this year.

Today, Mr Elliot appeared with his defence lawyer in [Downing](#)

[Centre Local Court](#) where his case was adjourned until 21 November 2018.

Mr Fine's lawyer appeared on his behalf and adjourned the case to the same date.

It is expected the defendants will formally enter their pleas at that time.

In the event of a not guilty plea, the case is likely to be set down for a defended hearing – which is when evidence including photographs of the alleged conduct is expected to be tendered before the magistrate makes a determination.

Before that time, the defendants' lawyers can send written '[representations](#)' to police requesting the withdrawal of the charges and setting out the reasons for that request.

In the event of a guilty plea, the matter will proceed to a sentencing hearing at which time the magistrate will determine the appropriate penalty, which in the case of an obscene exposure charge where the defendants have already been fined and shamed is likely to be:

- A [section 10\(1\)\(a\) dismissal](#) without a conviction,
- A [conditional release order](#), or
- A [fine](#).

### **The offence of obscene exposure in NSW**

[Section 5](#) of the Summary Offences Act 1988 (the Act) prescribes a maximum penalty of six months in prison and/or a fine of \$1,100 for anyone who, 'in or within view from a public place or school, wilfully and obscenely exposes his or her person'.

### **Wilful**

Wilful has been defined as having the requisite intent, which means the prosecution must prove beyond reasonable doubt that

the exposure was on purpose rather than by accident, by the act of another person or through mere negligence.

So, if there is some evidence that any exposure of the genitalia of the rugby league players was unintentional, the prosecution would then need to exclude any reasonable possibility of this beyond a reasonable doubt.

### **Obscene**

Whether exposure is 'obscene' is determined by contemporary standards of decency, although the courts have held that exposure of the penis and/or testicles amounts to obscene, and that section 5 is capable of applying to female genitalia as well.

However, there is commentary to suggest it is unlikely that exposure of the female breasts would suffice in the present day, and that the act of breastfeeding almost invariably would not.

### **Public place**

Public place is defined by section 3 of the Act as, 'a place (whether or not covered by water), or a part of premises, that is open to the public, or is used by the public whether or not on payment of money or other consideration, whether or not the place or part is ordinarily so open or used and whether or not the public to whom it is open consists only of a limited class of persons'.

The definition certainly encompasses licensed premises, regardless of whether they are only made available at the time to a certain class of persons.

In any event, the activity of the rugby league players – if they have been correctly identified – is said to have been captured from outside the hotel.

### **Case law**



In that regard, the NSW Supreme Court in the case of [R v Eyles \[1977\] NSWSC 452](#) found that the prosecution only needs to prove that the exposed area *could have been seen* by a person who was *in a public place*, not that the defendant was in a public place at the time of the exposure or that the exposure was actually seen by anyone.

That case involved a man who was alleged to have been masturbating behind a fence on his own property. There was no evidence the man's penis was seen by anyone, although it could have been seen by someone who was in a public place and his act was established through evidence of his mannerisms and the fact he seen was naked from the waist up.

### Legal defences

Apart from the requirement that the prosecution must prove each of the elements (or ingredients) of an obscene exposure charge beyond reasonable doubt, defendants may also seek to rely upon [legal defences of duress or necessity](#).

### **Nude bathing**

It should be noted that section [633\(2\) of the Local Government Act 1993](#) prescribes a maximum penalty of \$1,100 for being 'in public view in the nude in any place (other than a designated beach)'

At present, the only 'designated beaches' in NSW (also known as 'nudist beaches') are:

- Lady Bay (Lady Jane) Beach,
- Cobblers Beach,
- Obelisk Beach,
- Werrong Beach, and
- Samurai Beach.

Clothing is optional at those beaches.

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# Rugby League Players Charged with Obscene Exposure

Two Canterbury-Bankstown NRL players will face [Downing Centre Local Court](#) over their actions on 'Mad Monday', and a third has been given a [criminal infringement notice](#) (CIN) after allegedly being photographed and videoed naked, drunk and vomiting at the Harbour View Hotel at The Rocks in Sydney.

## Criminal charges

Adam Elliott and teammate Asipeli Fine have been [charged with obscene exposure](#), while the player who received the CIN has not been named.

The licensee of the hotel has also been issued with five penalty notices under the Liquor Act, including two for permitting indecent behaviour on licensed premises.

## Hefty financial penalties

The club itself imposed fines on four players: Elliott and Fine have each been fined \$25,000 (with \$10,000 suspended), while Marcelo Montoya and Zac Woolford received fines of \$10,000 (with \$5000 suspended).

The incident has also resulted in a significant financial blow to the club, with the NRL imposing a record fine of \$250,000 for bringing the game into disrepute. It [has also lost major sponsor in Jaycar](#) and a deal that's reportedly worth around \$500,000.

## Too harsh?

A number of sports commentators are shaking their heads at the

severity of the consequences for the players themselves, pointing out that more serious acts have resulted in substantially lower fines.

One of those events [involved NRL players and a dog](#), another of [accusations of gang rape](#) and yet another of [wife-beating](#).

There are continual episodes of [on-field violence](#) as well as drug scandals and allegations of [match fixing](#), all of which do reflect well upon players or the game as a whole.

Some might even suggest that players should be given some leeway after a high-pressured season, and that their antics aren't much worse than some corporate Christmas Parties.

Nevertheless, Bulldogs chief [Andrew Hill has acknowledged the conduct was a 'poor reflection of both the club and the game'](#), adding that 'these are good people who have acted in an immature and juvenile way. They have accepted responsibility for their actions and have apologised to the club for their behaviour'.

Mr Hill has pledged to 'put steps in place to make sure that this situation never happens again.'

The NRL has issued a statement saying the fine of \$250,000 sends a strong signal that such conduct will not be 'tolerated on this occasion – or in the future.'

### **Is alcohol to blame?**

Some might say that is rhetoric that we've heard before. Undoubtedly, excessive alcohol consumption played a role in the men's misconduct on Mad Monday.

This is in spite of the NRL [has implemented an alcohol management strategy](#) with the help of the Australian Drug Foundation to ensure 'a whole of game approach to responsible drinking, from the grassroots clubs through to the NRL.'

But the fact of the matter is that the NRL still attracts large sums of money from alcohol sponsorship, from ads during play and in the breaks in between, in signage and on the field – and by and large the community is increasingly uncomfortable, not just with alcohol sponsorship in sport, but seeing players adversely affected by the drug.

### **Serious consequences for players**

For Adam Elliott and Asipeli Fine, the party might have been fun, but the hangover continues.

Both are due to appear in the Downing Centre Court in Sydney on 24 October, and many will be keeping a keen eye on the outcome.

### **Obscene Exposure in NSW**

[Section 5](#) of the Summary Offences Act 1988 (NSW) makes it an offence punishable by up to 6 months' imprisonment and/or a fine of \$1,100 for a person to 'wilfully and obscenely expose his or her person... in or within view from a public place or school'.

To establish the offence, the prosecution must prove the players:

- Exposed themselves in an obscene manner, and
- Did so within view of a public place or school.

Bodily exposure [is regarded as 'obscene' if it is offensive](#) by the standard of a reasonable person at the time. The nature of exposure considered to be obscene can change over time – so whereas it might have extended to a thong bikini at the turn of the century, it would not do so in the present day.

Obscene exposure is not necessarily limited to the genitals, and the prosecution is not required to prove that a person actually saw the conduct.

A 'public place' is broadly defined by [section 3](#) the Act to encompass premises open to or used by the public, regardless of whether they are:

- ordinarily open to the public; or
- payment is required to enter; or
- open to only a class of persons.

The definition certainly extends to licensed premises.

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# Wife of Terrorist Recruiter Found Guilty of 'Disrespectful Behaviour'

By Sonia Hickey and Ugur Nedim

In the first case prosecuted under [new provisions](#) that make it a crime to act disrespectfully in court without necessarily going so far as to act in [contempt of court](#), a devout Muslim woman has been [found guilty of engaging in disrespectful behaviour](#) after repeatedly refusing to stand for a judge.

Moutiaa El-Zahed's prosecution was brought in the wake of legislation introduced in 2016 which makes it an offence to engage in conduct such as refusing to stand in court, yelling at judges and ignoring their directions.

The NSW law was the first of its kind in Australia. It comes with a maximum penalty of 14 days in prison and/or a \$1,100 fine and is embodied in the following legislation:

- [Section 131](#) of the Supreme Court Act 1970,
- [Section 200A](#) of the District Court Act 1973,

- [Section 24A](#) of the Local Court Act 2007, and
- [Section 103A](#) of the Coroners Act 2009.

[The provisions were introduced](#) after a number of Islamic defendants refused to stand for judges in court, on the basis of their beliefs that they are only required to stand before God.

### **Circumstances of the case**

Ms El-Zahed is the wife of convicted Islamic State recruiter Hamdi Alqudsi, who is currently serving a prison sentence for arranging seven men to travel to Syria to fight for extremists.

She was charged last year with [nine counts of engaging in disrespectful behaviour](#) on the basis that she did not stand when [District Court](#) Judge Audrey Balla came in and out of court during a civil hearing in 2016.

Ms El-Zahed and her sons took [civil proceedings against the Commonwealth and NSW governments for assault, false imprisonment and wrongful arrest](#) after a high-profile terrorism raid on their home 2014. She reported punched in the head during the raid and that her teenage sons were jostled violently, restrained and handcuffed in their bedrooms.

Police defended the claim and, when the case went to court, Ms El-Zahed refused to remove her niqab (a full head covering) when entering the witness stand. Judge Audrey Balla offered her opportunity to give evidence by video-link from another room, but she refused as her face would still be seen by male lawyers in the courtroom.

The judge also offered to close the court, but Ms Elzahed declined the offer and then elected not to attend court at the time she was scheduled to give evidence.

Judge Bella also challenged Ms El-Zahed for failing to follow

court protocol of standing when the judge enters and leaves the courtroom. At the time, her lawyer told the court that Ms Elzahed, “won’t stand for anyone except Allah, which I’m not particularly happy with, Your Honour.”

The judge responded with a warning that Ms El-Zahed could face criminal charges for refusing to comply.

Ms El-Zahed was later charged with nine charges of engaging in disrespectful behaviour.

### **Continuing refusal**

When the proceedings came before Magistrate Carolyn Huntsman for a defended hearing in Downing Centre Local Court, Ms El-Zahed continued her refusal to stand – remaining seated when her Honour entered the courtroom, when she exited for the morning adjournment and when she re-entered to deliver her judgment.

### **Found guilty**

Ms El-Zahed was ultimately found guilty of all nine charges.

In delivering her judgement, Magistrate Huntsman remarked: “I am satisfied the defendant repeatedly and intentionally failed to stand for the judge in District Court proceedings and in doing so intended to communicate lack of respect to the court and judge”.

“El-Zahed’s son, George, stood for the judge when she was seated behind him and the defendant well knew the expected behaviour was to stand for the judge when they entered or left the courtroom.”

“There is no evidence before this court that she genuinely held any religious beliefs [and] there is no evidence that the teachings of Islam compelled this conduct,” her Honour remarked.

The Magistrate rejected defence submissions that the legislation is unconstitutional.

The matter returns to court in June for sentencing.

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# Singer Sentenced for Exposing Himself on Red Carpet

By Zeb Holmes and Ugur Nedim

Musician Kirin J Callinan [has pleaded guilty](#) to wilful and [obscene exposure](#) after 'flashing' photographers on the Aria red carpet.

The 32-year-old Australian singer lifted his kilt and exposed his penis after being encouraged to do so on the Arias Red Carpet.

The paparazzi recorded the moment outside Star Casino in Sydney, and Callinan subsequently received a notice to attend [Downing Centre Local Court](#) to answer the charge.

## Consequences

Callinan's impulsive act had consequences over and above the criminal proceedings.

Brisbane rapper Sian Vandermuelen, who performs as Miss Blanks sought the singer's removal from the summer Laneway festival.

Callinan was dropped from the lineup as a result, with Vandermuelen telling Triple J's Hack program such conduct "shouldn't be tolerated" and that the decision to remove his was "great".



“For me to be the first trans woman of colour in a festival that’s been running for ten years, to be touring it nationally in all cities, it’s important to me that there’s safety, it’s important to my community that it’s safe,” she added.

Laneway’s triple j Unearthed competition winner for Melbourne, [Angie McMahon](#), was not surprised by Laneway’s decision.

“I think it’s a pretty understandable move for festival organisers to take off somebody who is a bit of a risk in terms of offending a lot of people,” Ms McMahon said.

Music critic, Bernard Zuel, said the removal was “unprecedented” for a festival, calling it a “harsh” punishment.

“The behaviour that supposedly initiated this at the ARIAs was in effect non-threatening, certainly not directed at anyone in particular and was seen by very few people,” he remarked.

### **Sentencing submissions**

Mr Callinan [pleaded guilty to the charge](#) and his criminal lawyer submitted that his client was remorseful for his actions – as evidenced by his early plea – that his reputation had been tarnished and that he had lost money as a result.

“He also lost the opportunity to travel through Russia [to play the FIFA World Cup] and he’s lost an opportunity with Amazon,” the lawyer added.

“He was wearing a kilt and there were some among the media group who were making light of the fact he was wearing a kilt and suggested he lift his kilt. It was momentary, it was up and down and at least one camera caught that,” he told the court.

“Why did he do it? He did it as an error of judgement, he did it in a jovial mood, he didn’t do it to shock anyone.”

## **The sentence**

Deputy Chief Magistrate Chris O'Brien was ultimately persuaded to exercise his discretion under [section 10 dismissal](#) or [conditional release order](#) of the Crimes (Sentencing Procedure) Act 1999 and not impose a criminal conviction upon Callinan, provided he enter into a 12 month good behaviour bond.

## **Obscene exposure**

[Section 5](#) of the Summary Offences Act 1988 (NSW) contains the offence of obscene conduct, providing that:

“A person shall not, in or within view from a public place or a school, wilfully and obscenely expose his or her person.”

The maximum penalty is six months in prison and/or a fine of \$1,100.

To be found guilty, the prosecution must prove all of the following ingredients beyond reasonable doubt:

- You exposed yourself in an obscene way,
- You had a requisite intention to do so, and
- You did so within sight of the public place or a school.

For exposure to be obscene, it must relate to the anus or genitalia of a male or female, or in certain circumstances the breasts of a female. The context of the exposure is important when determining whether it is obscene.

For example, the exposure of breasts at a beach is unlikely in the present day and age to amount to an obscenity. The standards of a reasonable person are relevant when making the assessment.

[Section 3](#) of the Act defines a public place as a place (whether or not covered by water), or a part of premises, “that is open to the public, or is used by the public whether or not on payment of money or other consideration, whether or

not the place or part is ordinarily so open or used and whether or not the public to whom it is open consists only of a limited class of persons”.

It is a broad definition which relates to a range of private properties including shopping centres, cinemas, religious buildings and the like.

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## **Police Officer Imprisoned for Avoiding RBT**

A Sydney police sergeant has felt the full force of the law for using her rank and authority against a junior officer to avoid a random breath test.

Downing Centre District Court judge Christopher Hoy sentenced 50-year old Sarah Johnston to [16 months in prison](#) with a non-parole period of 12 months for [attempting to pervert the course of justice](#).

Ms Johnston, who was off duty at the time she was pulled over for a random breath test, drove away from the RBT without being tested after a short conversation with a rookie officer.

She avoided the breath test by using her authority over the junior officer. During the jury trial, probationary constable Tugcan Sackesen testified that he felt ‘intimated’ when Johnston directed him not to breath test her as it would be a ‘conflict of interest’.

The court heard that the Senior Officer told the rookie: “Imagine if I blew over, which I won’t because I’m not. But imagine if I did, the awkward situation it would put you in.

Do you get what I mean?"

Having only been in the force for a year, the junior officer allowed Johnston to leave. Later that night, the senior officer bragged in a text message to a colleague: "I declined and gave the pro a lesson on RBT and in the job etiquette."

Ms Johnston had been drinking with other officers earlier in the evening, before she was pulled over for the RBT. She was not prosecuted for [driving under the influence](#), which is a charge that may be brought in the absence of a breath test.

But after complaints from others within the force and an internal investigation, a criminal prosecution was commenced for intent to pervert the course of justice – which is an offence under section [319 of the Crimes Act 1900](#) (NSW) carrying a maximum penalty of 14 years' imprisonment.

### **Bullying 'rife' in the force**

Bullying, intimidation, 'pulling rank' and coercing other officers into 'cover ups' are certainly nothing new in police forces across Australia.

Recently we reported on the case of NSW police officer [Lucie Litchfield](#), who says she was pressured to lie in court about an incident involving two other officers who responded to an urgent call that a green Holden Commodore had escaped the scene of a violent home invasion, but inadvertently pulled over the wrong car.

When one of the male officers asked the occupants if they had any weapons, a passenger in the back seat produced a plastic toy dinosaur. The man was then forcibly pulled from the vehicle, kicked in the legs, and had his face shoved into the ground before being handcuffed. A second passenger was thrown into a retaining wall, where he hit his head and lost consciousness. The man 'came to' handcuffed with his face in the dirt.

Charges brought against the men were thrown out of court after officer Litchfield testified against her fellow officers despite being told to support their version of the events. Both passengers are now suing the NSW Police Force, and Ms Litchfield says she left the force after being shunned and bullied for telling the truth and refusing to cover up the [NSW police misconduct](#).

## **National problem**

It seems that not a week goes by without reports of brutality, intimidation and cover-ups by police officers across the country, including Ballarat in Victoria, several cases in the Gold Coast – and notably that of former Queensland Police Officer [Rick Flori](#) whose battle to clear his name is still ongoing.

The Australian Federal Police is also reported to be rife with bullying and intimidation. Internal investigations last year suggested that 62% of men and 66% of women reported being bullied in the workplace within the past five years.

Many officers said they felt it was against their interests to formally complain, and several of those who did complain went on to regret it.

## **Police policing themselves**

Complaints against police officers are normally handled by internal investigators, which means that police are essentially left to 'police themselves' – a practice criticised as ineffective in dealing with mounting evidence to suggest that our police forces are collectively suffering from a lack of accountability and a toxic culture.

It is not often that an officer is tried and convicted in a court of law. In sentencing Ms Johnston, the judge described her behaviour as 'disgraceful.'

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# Corrupt Federal Police Officer Sent to Prison

By Zeb Holmes and Ugur Nedim

A former Australian Federal Police (AFP) officer has been [sentenced to twenty-two months in prison](#) after selling confidential information contained on an AFP database.

Forty-six year old Benjamin Hampton pleaded guilty to dishonestly receiving \$7000 after leaking secret intelligence to a friend, who is suspected of having links to known drug suppliers.

Judge Williams of [Sydney District Court](#), Downing Centre ordered that Hampton serve a minimum of eleven months in prison.

## Joint investigation

[A joint investigation](#) was commenced in 2013 by the AFP, the Australian Commission for Law Enforcement Integrity (ACLEI), the NSW Police Force and the NSW Crime Commission into alleged leaks of sensitive information.

Part of the investigation was into Nathan Rodgers, an associate of the Bra Boys and suspected member of a drug dealing syndicate.

On Christmas Eve that year, false entries were made into the AFP's computer intelligence system 'PROMIS', regarding a fictitious crime figure, Tiago Vasquez, who was said to be importing border-controlled drugs from South America.

A police informant then approached Mr Rodgers for information

about this fictitious Mr Vasquez and his drug supposed supply operations.

Mr Hampton was later contacted by boxing trainer and wharfie, Jayson Laing, for that information.

The officer accessed the confidential database, retrieved the entries relating to Vasquez and met Laing for a training session at a gym. During that session, Laing placed \$7,000 into Hampton's gym bag.

"There is something in your bag for ya from Nathan", Laing told the officer.

Mr Hampton did not disclose the receipt of the funds.

### **Arrested, suspended and charged**

Hampton was arrested six weeks later and suspended from his employment.

He was charged in July 2014 with corruptly receiving a benefit as a Commonwealth public official [under section 142.1 of the Criminal Code Act 1995](#).

That section makes it an offence to dishonestly:

- provide a benefit to another person; or
- cause a benefit to be provided to another person; or
- offer to provide, or promise to provide, a benefit to another person; or
- cause an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to another person;

in circumstances where:

- the receipt, or expectation of the receipt, of the benefit would tend to influence a Commonwealth public official in the exercise of his or her duties as a

public official.

The maximum penalty for the offence is 5 years' imprisonment.

Mr Hampton was re-arrested two months later when it was found he was planning to fly to Slovenia – a country that does not have an [extradition treaty](#) with Australia.

### **Submissions on sentencing**

In an attempt to keep his client out of prison, Mr Hampton's criminal defence barrister submitted there was never any expectation of payment for the information.

He said his client had "citations as long as your arm", and was "heroic", having previously protected former Prime Minister Julia Gillard and the Pope.

The Crown prosecutor countered by making submissions that the officer had grossly abused his position of trust and that his action represented an "undermining the integrity of AFP, striking at the heart of the administration of justice".

He tendered a statement from the AFP which read in part, "Our members are trusted to hold sensitive information, and the public expects and deserves that police information is never leaked to outside sources."

The Crown submitted that the only appropriate sentence was full time imprisonment.

### **The sentence**

The judge agreed with the prosecution's submissions, finding that, "The seriousness of corruption in the course of police work cannot be over-emphasised".

"Reputation and trust in the police force is far easier to lose, than to rebuild."

His Honour agreed with the defence that the offender had shown



remorse and was unlikely to reoffend, and that “His fall from grace has been considerable”, but nevertheless found that nothing other than a full time prison sentence was appropriate in the circumstances.

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## **Court Justice, 10: Sentencing Decisions**

In the final episode of this groundbreaking series, magistrates in Downing Centre Local Court heard the case of a 25-year old charged with [drug possession](#), a repeat offender charged with [weapons possession](#), and a Sydney cabbie appearing in court for his first ever traffic offence.

### **Drug possession**

In the first case, Deputy Chief Magistrate Jane Mottley heard the case of 25-year old Dylan Fricker, who pleaded guilty to possessing a small quantity of cocaine.

Mr Ficker was seen by a security office in a hotel cubicle holding a small plastic container of white paper and a rolled up five dollar note. Police were called and Fricker was arrested and charged with drug possession, an offence punishable by a maximum penalty of two years' imprisonment and/or a fine of \$2,200.

But it wasn't the young man's first time before the court – he previously pleaded guilty to drug possession less than a year earlier. Fricker's defence lawyer submitted material to the court demonstrating that a snowboarding accident had left her client seriously injured, which caused him to become unable to work, fall into debt and spiral into depression, ultimately

leading to the use of drugs.

The lawyer handed-up material showing that her client had attended a treatment programme for defendants with drug problems, ultimately persuading the magistrate to exercise her discretion under [section 10\(1\)\(b\)](#) of the [Crimes \(Sentencing Procedure\) Act 1999](#) to impose a two-year good behaviour bond without a criminal conviction.

Her Honour made it clear this was Fricker's final opportunity to get his life back on track – that such leniency would not be extended by the court again “in any circumstance”.

### **Prohibited weapon**

54-year old disability pensioner Gary Hussey pleaded guilty before Magistrate Greg Grogan to possessing a prohibited weapon.

Police were called to a domestic situation on Mr Hussey's property and found a home-made cross-bow.

Hussey's defence lawyer submitted that his client was not using the weapon, nor intending to use it, and that it was wrapped in a sheet in a spare room, not on display.

But his lawyer had a harder time explaining Mr Hussey's previous record – a pre-existing offence of possession of a dangerous weapon (a knife) and one of possessing explosives.

Mr Hussey says outside the court that both offences can be explained – he needed explosives to get rid of some tree stumps on his brother's property, and the 'weapon' was not a sharp knife, but a pair of scissors on his key chain.

The magistrate carefully considers the matter and ultimately refers the defendant to be assessed for a Community Service Order. But as Community Corrections finds that Hussey is unsuitable for community service work, His Honour instead refers him to undertake the Salvation Army's Positive

Lifestyles Programme; a 10-week course which helps offenders to move away from crime.

If Gary fails to complete the court, he may end up with a full time custodial sentence.

### [Parking fine NSW](#)

In the third and final case, a 53-year old taxi driver with a perfect traffic record for 27 years pleaded guilty before Magistrate Wahlquist to disobeying a no-stopping sign.

Sydney cabbie John Lloyd submitted he was dropping off a passenger at the Sydney Opera House when he found the entrance blocked by a bus. His passenger put her money on the console of the taxi and got out. A parking officer caught the incident on camera.

The cabbie submitted there are “extenuating circumstances”- the young lady jumped out of the cab and Mr Lloyd could not stop this, nor move while she was getting out. The Magistrate ultimately dismissed the charge under the provisions of section 10(1)(a), which means the cabbie avoids a conviction, a bond and the initial \$253 ticket.

So there it is – the fly-on-the-wall series gave viewers some insight into the goings-on inside Australia’s busiest local courthouse.

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## **Court Justice, 9: Self-Represented Defendants**

In the latest episode of Court Justice, Sydney, a young driver, a homeless man and a pensioner represented themselves

in court.

“Self-representation is an important part of the justice system,” says Chief Magistrate, [Judge Graeme Henson](#). “And it is the court’s role to make sure that someone who [represents themselves in court](#) gets exactly the same consideration as someone who has a lawyer.”

Almost half of all defendants who come before the local courts in NSW represent themselves.

[People choose to do this for a range of reasons](#) – some find themselves in the ‘justice gap, where they can’t afford a lawyer but are not eligible for legal aid. Others feel they can do a good job without a lawyer, and still others just want to the experience of going it alone.

### **The young driver**

In the first case, 19-year old barista, Deborah Sheedy elected to go to court in order to dispute a \$1200 fine issued by police for driving an unregistered and uninsured motor vehicle.

Ms Sheedy pleaded guilty to the offence of unregistered driving and not guilty to driving without insurance.

Magistrate Milledge then talked her through what would occur during the hearing, explaining that the police officer who pulled her over would give evidence, and that Ms Sheedy could then take the witness stand if she wished to do so.

After police provided their version of the events, Ms Sheedy took the witness stand.

She testified that the car was owned by her sister, and that when she got in to drive it, she believed it was both registered and insured.

She said she had evidence that the car insurance was paid, but

when she produced the paperwork, there was no receipt. Without a receipt, the court could not accept her assertion regarding the payment. Fortunately for Ms Sheedy, her mother was in court and produced a receipt.

But there remained a problem – car insurance is not valid if a car is not registered.

The Magistrate believed that Ms Sheedy made an honest mistake regarding the state of the insurance, but found that the mistake was not reasonable as required by the law.

Her Honour found the insurance offence proved, but disposed of both charges under [section 10\(1\)\(a\) of the Crimes \(Sentencing Procedure\) Act](#) – which means there was no conviction and no fine.

### **The homeless man**

The second case involved 53-year old Gary Reid, who represented himself before Magistrate Megan Greenwood.

Mr Reid was charged with unlawful possession of goods – a Mastercard, Visa card, two Woolworths cards and driver licence, which did not belong to him.

Police alleged the cards were unlawfully obtained, but when Mr Reid took the stand, the story became more complex.

He testified that he found the driver licence and did not take it to police immediately because he wanted to get to work – which was relying on the goodwill of members of the public in his preferred spot on the streets of Sydney.

He said the Mastercard, Visa card and Woolworths voucher were all dropped into his begging hat sequentially, and within minutes of each other on the same day.

He also testified that the person who gave him the Woolworths Card “could have been the CEO of Woolworths, I don’t know.”

Magistrate Greenwood found him guilty and fined him \$550.

Her Honour found that his version of events was “not believable” and did not accept it.

She also found there was a “clear” and “reasonable suspicion” that the cards were unlawfully obtained.

Mr Reid has a history of [drug offences](#) and the Magistrate cautioned that if he is caught on the wrong side of the law again, he could go to prison.

### **The pensioner**

The third case involved 83-year old grandmother Valerie Harris, who fought a \$531 fine for [failing to display a disabled parking permit](#).

Having failed to appear in court the first time, she was found guilty in her absence. She appeared before Magistrate Greg Grogan and pleaded guilty to the offence, with an explanation.

Ms Harris told the court that she did not attend her first court date because she was in hospital.

She explained that her disabled parking permit was attached to her windscreen when she left her car, but it had fallen off and onto the car seat.

Given her “unblemished driving record since 1972”, the Magistrate accepted her story. He found the offence proven, but dismissed the charge under a [section 10 dismissal](#) or [conditional release order](#).

“this was a big thing to do on my own,” Ms Harris stated. “But I have a clean driving record, and I’d like to keep it. Until the day I die.”

Magistrate Chris O’Brien says members of the judiciary need to be patient with [those who represent themselves in court](#),

adding that unrepresented defendants often become frustrated because they don't understand the processes and the formalities of the courtroom.