



Justice D Price AM Chief Judge of the District Court of New South Wales President of the Dust Disease Tribunal of New South Wales

An overview of early guilty pleas from the perspective of the District Court

The early involvement of Crown prosecutors in serious criminal offences by the introduction of the Early Appropriate Guilty Plea Reform package ('EAGP') is a significant improvement in the criminal justice system for State offences. There have been too many occasions in the past when neither a Crown prosecutor nor counsel for an accused has been briefed until shortly before the commencement of a trial. The consequences of late briefing include last minute plea negotiations, amendments to indictments, non-compliance with notice requirements under the Evidence Act 1995 (NSW), service of additional evidence and lack of agreement as to issues in dispute at trial. Delay in finalising criminal charges adds to the distress of victims, witnesses, accused persons, particularly those in custody, and creates additional public and private costs in trial preparation and the assembly of jury panels. Delayed plea negotiations disadvantage accused persons as the discount for the utilitarian value of the plea has been determined largely by the timing of the plea: see *R v Borkowski* (2009) 195 A Crim R 152; [2009] NSWCCA 102.

The EAGP scheme places an obligation on the Director of Public Prosecutions (which will usually be exercised by senior prosecutors) to specify the offences that are to be the subject of proceedings against the accused. The charge certification process in the Local Court undertaken under Ch 3, Part 2, Division 4 of the Criminal Procedure Act 1986 (NSW) ('the CPA') will do much to ensure that accused persons are appropriately charged and 'not overcharged' by NSW Police. It will also give case ownership Justice D Price AM Chief Judge of the District Court of New South Wales President of the Dust Disease Tribunal of New South Wales 48 [2019] (Winter) Bar News FEATURES PRACTICE & PROCEDURE Lloyd Babb SC Director of Public Prosecutions (NSW) The prosecution perspective Background When the Early Appropriate Guilty Plea reform package came into effect on 30 April 2018, it introduced the most significant changes to the criminal justice system in New South Wales since the creation of the Office of the Director of Public Prosecutions (ODPP) in 1987. Since that time, and in preparation for those changes, my Office has undergone a period of unprecedented transformation both in terms of internal processes and organisational structure. The EAGP reform, which aims to encourage the entering of guilty pleas in committal matters at an earlier stage, features several key activities which are to be undertaken while the matter is still in the Local Court. Each of these activities requires the significant involvement of Crown prosecutors and solicitors within my Office. These include: 1. the service and screening of a simplified

brief of evidence; 2. charge certification by a senior prosecutor; and 3. attendance at a mandatory case conference. In the higher Courts, the EAGP reform introduces a statutory sentence discount scheme. The changes also aim to achieve greater continuity of representation throughout the life of a prosecution. Given my Office's position at the cornerstone of each of these elements, the impact of the EAGP suite of reforms on the operations of my Office has been substantial. Most notably, the abolition of the committal decision by a magistrate has required the Crown to take on the important role of gatekeeper in determining what charges are to be committed. Benefits of the early involvement of a senior prosecutor at charge certification, case conference and beyond. As part of the EAGP changes, Crown prosecutors from all over the State have been taking ownership of serious criminal cases at the Local Court stage. When the EAGP brief arrives at the ODPP, a solicitor and senior Under EAGP, the committal process begins with an assessment of whether the originating charges as laid by police are correct. and responsibility to a senior prosecutor and solicitors from the Office of the Director of Public Prosecutions ('ODPP').

The Director's intent to give a senior prosecutor ownership of a serious criminal case from 'cradle to grave' is laudable, but I apprehend it will be difficult to achieve given the large criminal caseload.

Charge certification, the mandatory utilitarian discount of 25% for a guilty plea entered in the Local Court and the maximum cap of 10% in the District Court should focus the parties on fully understanding and identifying the issues in proceedings. With that understanding, the accused's legal representative is expected to fulfil the mandatory obligation under s 72 of the CPA to obtain instructions concerning the matters to be dealt with in the case conference held under Ch 3, Part 2, Division 5 of the CPA.

Fundamental to the success of the case conference are the adequacy and timeliness of the briefs of evidence. The requirements for prosecution disclosure are found in Ch 3, Part 2, Division 3 of the CPA. I understand that the ODPP is working closely with NSW Police to ensure compliance with the disclosure requirements and in particular towards the production of short form expert certificates in areas where delays are being experienced.

Initial results from case conferences are promising. They disclose an increase in guilty pleas and summary finalisations in the Local Court. However, it is too early to draw any definite conclusions about the success of the principal objective of the case conference, which is to determine whether there are any offences to which the accused is willing to plead guilty.

A case conference has other objectives. In particular, s 70(3)(b) provides:

(3) A case conference may also be used to achieve the following objectives:

(b) to facilitate the resolution of other issues relating to the proceedings against the accused person, including identifying key issues for the trial of the accused person and any agreed or disputed facts.

It is evident from the enquiries made during readiness hearings in the District Court that the opportunity to resolve issues in the proceedings during the case conference is often overlooked.

The identification of issues in dispute is consistent with a barrister's obligation under r 58 of the Legal Profession Uniform Conduct (Barristers) Rules 2015 (NSW) to:

- (a) confine the case to identified issues which are genuinely in dispute,
- (b) have the case ready to be heard as soon as practicable,
- (c) present the identified issues in dispute clearly and succinctly,
- (d) limit evidence, including cross-examination, to that which is reasonably necessary to advance and protect the client's interests which are at stake in the case, and
- (e) occupy as short a time in Court as is reasonably necessary to advance and protect the client's interests which are at stake in the case.

Counsel for an accused should be mindful that the identification of key issues in the trial and agreement as to facts might be of assistance on sentence should the outcome of the trial be adverse to an accused. Lesser penalties may be imposed for facilitating the administration of justice pursuant to s 22A of the Crimes (Sentencing Procedure) Act 1999 (NSW).

As to difficulties being experienced by the hours available for an accused in custody to attend a case conference by audio visual link ('AVL'), Corrective Services have been asked to extend their hours so that AVL may be available from 8am (and possibly earlier).

The EAGP scheme may provide a 'springboard' for further reform of the criminal justice system. There is both a public and private interest in reducing delays in the finalisation of serious criminal offences.
