SOONER, LATER, NEVER: THE OLYMPIC GAMES AND THE CRIMINAL JUSTICE PROCESS

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I. INTRODUCTION

Virtually everybody in New South Wales will be affected in some way by the Olympic Games next year - and not all for the better. Some, notably government agencies not involved in Games projects, are feeling the pinch already.

When it was first suggested publicly that there may be an impact on our courts, the government (per the Attorney General) immediately and vigorously denied that there would be any changes to the courts; specifically, that any courts would close down during the Games. Calmer thoughts prevailed, however, and a committee was set up to consider the issue.

All courts will be affected, of course. Civil proceedings will merely be postponed. Is there reason to be more concerned about the criminal justice process?

There is no evidence that the Olympic Spirit, battered and bruised as it is (or even at the peak of its luminescence) has the power to banish crime. Indeed, some forms of crime seem to accompany it in its biennial peregrinations around the globe. The recent experience of Atlanta shows us that fraud of various kinds, especially, and sexual and other assaults and thefts proliferate in the shadow of the Games. On the civil side, contracts often require crucial intervention for their enforcement. Ordinary offending and civil disputation do not take a holiday, either.

II. PROBLEMS

People. The Olympic and Paralympic Games together will be the biggest public event Australia has ever held. It has been estimated that they will bring an additional 750 000 people to the streets of Sydney at peak times. In a city of

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about 4 million this will place extraordinary pressure on our transportation systems - from footpaths (thoughtfully being widened in the CBD) to roads, buses and trains. Travelling in and about the CBD and the Homebush/Parramatta area, particularly, will be slow and difficult. Priority will be given to Olympics travel, so the private and public businesses in those areas particularly, and between those areas, will be difficult to access.

The people involved, residents and visitors alike, will have the Olympics on their minds. The last thing they will want to do is to spend those days in a courtroom, even (in many cases) if their own interests are being litigated. Magistrates, judges, jurors, witnesses, legal practitioners, court officers and all the others ordinarily involved in court proceedings will also have other things on their minds - even if it is just plotting the journey home.

Foreign, interstate and country residents in large numbers will come here to see the Games. Some may become involved in legal proceedings here, as parties, witnesses or their associates. Most would no doubt prefer not to have to go to court during the Games or to prolong their stays or to return to Sydney later. On the other hand, some parties (notably defendants in criminal cases) may prefer to get the proceedings over with as quickly as possible. Not all wishes are going to be able to be satisfied.

Police vehicles will be fully deployed on Games related functions. The Corrective Services Department will not want to add to traffic congestion by having to transport prisoners to and from court.

Police officers will be specially deployed for many weeks before the Games and during them. Around 30 per cent of each Local Area Command across the State will be diverted to metropolitan Olympics duties for periods from early August to the end of October. Three thousand metropolitan officers, 1500 from country NSW and 300 from interstate, will be committed to security duty over a total period of 122 days (500 police will be staffing the Olympic Village). They will not have been able to take leave with their usual frequency. There will be much leave owing after the Games. Accordingly, for some time before, during and after the Games there will be very few, if any, police available to attend courts anywhere in the State as witnesses or to work with them in other capacities.

III. SOLUTIONS

While plans are still evolving in some areas, a few decisions have been made.

The Olympic Games will run from 15 September to 1 October 2000. The Paralympic Games will run from 18 October to 29 October. School and TAFE holidays are scheduled from 11 September to 2 October.

The Local Court has produced a detailed draft model of operations which in the Sydney metropolitan area provides for two Provincial Local Courts (Central and Parramatta - two or three courts at each venue) to operate seven days per week for extended hours (8.00am to 7.00pm), dealing principally with offenders who have been refused police bail or whose pleas of guilty can be disposed

immediately. Eight other metropolitan courts will operate in accessible locations during normal hours. Priority is expected to be given to criminal matters and to defendants in custody. Defended matters will be adjourned to dates after the Games.

Specialist Local Court operations (juvenile bail courts, urgent AVOs and search warrant applications, Family Law injunctions, Coronial services) will be available throughout the Games period. Other court registries will be open, but there will be not court sittings at those locations.

In the country, the Local Courts will concentrate on civil cases and cases in which the police are available.

The District Court has decided to take its variable mid-year (June/July) vacation from 4 to 29 September 2000. It is expected that the limited vacation sittings of past years will not be scheduled, although a final decision is yet to be made. Normal sittings will be held in June/July.

The Supreme Court has decided to fix a judicial vacation for the three weeks commencing 11 September 2000. Judges who wish to sit for that period may fix civil matters by agreement with the parties. The Court of Appeal may do likewise. Some severity appeals may also be heard by the Court of Criminal Appeal. Duty Judges and a Bails Judge will be available as in court vacations. Urgent applications may be made for bail and warrants (listening devices, telephone intercepts) and other orders.

The Compensation Court has decided to fix its variable vacation for the three weeks commencing on 11 September 2000.

The Administrative Decisions Tribunal will sit only for urgent matters during the period 14 September 2000 to 2 October 2000. The Drug Court at Parramatta will continue to sit, but no new participants will be admitted to its program during the Olympic period.

Consideration is still being given to the operations of the Land and Environment Court, Industrial Relations Commission, Residential Tenancies Tribunal and the Consumer Claims Tibunal.

IV. REMAINING PROBLEMS

The focus on the Olympic Games provides an ideal opportunity to consider a number of areas of law reform. Some work is being done on these matters within the Attorney General's Department.

It would greatly facilitate the conduct of court proceedings involving residents of foreign countries if their evidence (if they are witness) could be taken on videotape before they leave Australia or by videolink once they have returned home. Legislation permitting such a course was passed for the Atlanta Games, with a sunset clause provided. There are good arguments in favour of the omission of such a clause in Australian legislation. Foreign witnesses cannot be forcibly returned to Australia to testify. There is a precedent for the pre-trial recording of evidence in the arrangements existing in Western Australia in respect of cases involving child witnesses. We already have some provisions for

the taking of evidence interstate and internationally by videolink in civil and criminal cases (for example s 47, *Federal Court of Australia Act* 1976 and *Evidence (Audio Visual and Audio Linking) Act* 1997 (Vic)).

Foreign defendants may be held in custody or released on bail with conditions preventing their leaving the country. In reality, if they leave Australia before a hearing they will not be brought back - those who commit offences sufficiently serious to warrant later extradition (if necessary) will presumably be held in custody. Consideration is being given to diversionary schemes for adults to enable prompt alternative disposition of some cases.

For homegrown defendants and witnesses there will be delays in having matters finalised. Some defendants may be kept in custody on remand for longer periods than usual. That would seem to be an inevitable price for the unavoidable temporary disruption to the administration of the courts.

If the authorities are serious about reducing the impact of the Games on the court systems, consideration should also be given to extending the availability of legal aid to those who will appear in the courts during the altered arrangements, at least for the limited purpose of giving advice and appearing at mentions.

Forensic science services (for example drug testing) should also be made available more rapidly.

For all the adjustments able to be made, however, there must remain a lingering doubt that the criminal justice process, particularly, will be able to operate throughout 2000 with even its present level of efficiency. Some deals will be done to dispose of matters sooner than would otherwise be the case, some cases will be heard later - and in some cases justice will never be done.

Whatever measures are put in place, the backlog of cases to be heard in NSW in both criminal and civil jurisdiction will have blown out again by the date of the true beginning of the third millenium.