

Postal service of prosecution documents by local governments

By Peter Gillett

The Supreme Court recently handed down its decision in *Stewart v City of Belmont* [2016] WASCA 5 in which it considered the service of prosecution notices by local governments. It has been suggested the decision will have a significant impact on the service of prosecution notices by local governments. That is not correct.

In *Stewart*, the prosecution documents were sent by post to Mr Stewart at the address of the property the subject of the charges. Mr Stewart was the sole registered proprietor of the property. The City had not had any contact whatsoever with Mr Stewart prior to commencing proceedings and, while the City was aware Mr Stewart was not living at the property at the time the prosecution documents were served, he had not provided the City with any other residential address.

Mr Stewart did not attend the Magistrates Court on the first hearing date for the charges and was convicted in his absence pursuant to s.55 of the *Criminal Procedure Act 2004 (Act)*, the Court having been satisfied the prosecution documents had been served in accordance with the Act. The certificate of service filed with the Court showed the prosecution notice and court hearing notice for the charges had been sent by post to the address of the property the subject of the charges and of which Mr Stewart was the registered proprietor.

The City also had anecdotal evidence that a relative of the accused had been living at the property and that the accused had been receiving documents sent to the property address.

On appeal, the Supreme Court noted that where prosecution documents are served by post, the Act requires the documents to be posted to the address where an accused was last known 'to reside, work or conduct a business' as opposed to the 'last known address'. While in most cases the last known address and the address where a person was last known to reside will be the same, in *Stewart* the City was aware Mr Stewart was not in fact residing at the address to which the prosecution documents were sent. As a result, the Court correctly held the prosecution documents had not been served in accordance with the Act.

The circumstances in *Stewart* were, however, unusual. In most cases, a local government will have had contact with an accused person prior to commencing prosecution proceedings. That contact will usually result in the local government having some evidence as to where an accused person is living, working or conducting a business and that address will be sufficient for the purposes of serving prosecution documents. While we understand some local governments may have served prosecution documents by post to a PO Box address that has never constituted proper service of prosecution documents under the Act.

In view of the above, we recommend local governments continue to use the address shown on its records as the residential address for a person for the purposes of serving prosecution notices. That address will be sufficient unless of course the local

government is aware the person does not actually reside at that address. We do not recommend local governments adopt a 'scatter gun' approach of sending copies of prosecution notices to every address where an accused person might be. Proceeding in that manner would simply highlight that the local government has no idea where an accused person actually resides.

Rather, provided a local government can show the address to which the prosecution documents were sent was the address on the local government's records where that person was last known to reside, work or conduct a business then service in accordance with the Act will have been achieved. That address may well be the address shown on a local government's rates record. For example, if a local government's records show that rates notices have been sent to a particular residential address for an accused person and those rates have been paid, then it will be appropriate for the local government to consider the person was known to reside at that address. In most circumstances, however, a local government will have had some contact with an accused person prior to the service of any prosecution documents. That contact will almost always result in the local government knowing where the person resides, works or conducts a business.

Where an accused person is convicted in their absence pursuant to s.55 of the Act, the accused person may apply under s.71 of the Act to have the conviction set aside. If an accused person can satisfy the court they did not actually receive the prosecution documents, whether or not they were living, working or conducting a business at the address to which the documents were sent, and the court is satisfied it is in the interests of justice to do so, the court may set aside the conviction. That will occur from time to time where prosecution documents are served by post as there is always the possibility that, despite having been served in the correct manner, an accused person will not actually receive the documents.

The decision in *Stewart* will not result in convictions being set aside more readily as there is no new principal in that decision. Rather, the decision highlights the need for local governments to have some contact with an accused person prior to commencing prosecution proceedings. That has always been an important factor in ensuring success in prosecutions by local governments and the decision in *Stewart* does not change that position.

For further information in regard to the above, contact Peter Gillett on 9424 6229 or pgillett@mcleods.com.au. The information contained in this update should not be relied upon without obtaining further detailed legal advice in the circumstances of each case.