



THE ROLE OF THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

Introduction

This is the tenth Annual Report since the inception of the Office of the Director of Public Prosecutions. The Office was created by the *Director of Public Prosecutions Act*. It commenced operations on 21 January 1991. The principal functions of the Director are to institute, prepare and conduct criminal cases on behalf of the Crown before the Supreme Courts and the Courts of Summary Jurisdiction of the Northern Territory and the High Court of Australia. Those functions extend to all ancillary appellate work and cover the prosecution of all defended indictable matters before the Courts of Summary Jurisdiction and such other defended summary matters as are deemed appropriate. The Office has taken over most of the functions of the Attorney-General in relation to the prosecution of offences.

The prosecutor

The duties and responsibilities of the Crown prosecutor have been described in the following terms:

... the prosecutor is at all times a minister of justice, though seldom so described. It is not the duty of prosecuting counsel to secure a conviction, nor should any prosecutor ever feel pride or satisfaction in the mere fact of success. Still less should he boast of the percentage of convictions secured over a period. The duty of the prosecutor, as I see it, is to present to the tribunal a precisely formulated case for the Crown against the accused, and to call evidence in support of it. If a defence is raised incompatible with his case he will cross-examine, dispassionately and with perfect fairness, the evidence so called, and then address the tribunal in reply, if he has the right, to suggest that his case is proved. It is not rebuff to his prestige if he fails to convince the tribunal of the prisoner's guilt. His attitude should be so objective that he is, so far as is humanly possible, indifferent to the result. ... It may be argued that it is for the tribunal alone, whether magistrate or jury, to decide guilt or innocence.¹

¹ In a speech, by Christmas Humphreys, Senior Prosecuting Counsel at the Old Bailey, at the Inns of Court in 1955: [1955] CrimLR 739,740-41.

As long ago as 1865, the concept of the prosecutor as a *minister of justice* was declared. In a case where an appeal court found it necessary to criticise the actions of the prosecutor at trial, Crompton J pointed out that counsel for the prosecution should remember that they are:

*... to regard themselves as ministers of justice, and not to struggle for a conviction ... This is not the occasion to describe all of the various duties and responsibilities of this paragon of virtue who acts as a minister of justice when presenting the Crown case.*²

Role of the Office

The purpose of establishing the Office of the Director of Public Prosecutions (hereinafter referred to as the Office) was to ensure professionalism and independence in the institution, preparation and conduct of criminal prosecutions in the Northern Territory. The creation of a Director of Public Prosecutions system in 1991 was a revolution in the administration of criminal justice in the Northern Territory. The day to day control of criminal prosecutions has passed from the hands of the Attorney-General to the Director of Public Prosecutions and hence from the political to the professional arena. There is now a Director of Public Prosecutions for each State and Territory and for the Commonwealth. It is clear therefore that the institution of this statutory position has found favour with governments of all political persuasions.

Crime has increasingly become the focus of media and public attention. Politicians, victims' organisations, civil liberties and police lobby groups are all extremely vocal in commenting on the day to day operation of the criminal justice system. Hitherto, Attorneys-General have had the sole burden of making ultimate prosecutorial decisions. They have had the responsibility for determining whether to prosecute or discontinue a prosecution, whether to institute an appeal against the leniency of a sentence, whether to accept a plea to lesser or fewer charges, or whether to grant immunities from prosecution. Prosecutorial decisions made by politicians both here and abroad can become subject to distortion or misconstruction if they are drawn into the ambit of party political debate. Such debate may be misconceived or allegations of bias totally groundless. Nevertheless, in either situation public confidence in the administration of the criminal law is eroded. Decisions on whether or not to prosecute politicians, police officers, senior public servants and other prominent public figures can cause particular difficulty. Not surprisingly, the public often finds it difficult to understand or accept that in his or her prosecutorial role, the Attorney-General acts completely independently from government. Hence, the appointment of an independent law officer can be seen not only to be desirable but also as a substantial safeguard of the rights of every citizen.

Independence

The Director of Public Prosecutions, as created by the Northern Territory legislation, has complete independence in decision-making. This independence has been attained by appointing the Director upon the terms and conditions of office accorded to a Supreme

² *R v Ruddick* (1865) 176 ER 662 @ 663.

Court judge and by the appointment of the Director until the age of 65 years or for a fixed term. In the latter case, the appointee is eligible for reappointment. In addition, the Office has had substantial administrative independence.

Accountability

This independence does not mean, as it should not, independence of the control of Parliament. The Director is accountable to Parliament through the Attorney-General. Except as provided in the Act there is general freedom for the Director to act independently of any direction from the Attorney-General. There are provisions which require consultation with the Attorney-General and the Attorney-General may, after consultation, issue directions as to a general policy to be followed in the performance of a function of the Director. There is a requirement that any such direction shall be in writing and shall be included in the Annual Report of the Director to Parliament. In order to maintain consistency between the Attorney-General and the Director, the Director shall not, without the consent of the Attorney-General, perform a function inconsistently with the action of the Attorney-General in relation to a function which is vested in both of them. If, in such a case, the action of the Attorney-General precluded the Director from taking any action he would otherwise have taken, the Director is obliged to refer to that occurrence in the Annual Report to Parliament.

The independent functioning of this Office is a matter of great priority. The Director believes it has not been affected or brought into question in any way during the current year.

Since the establishment of the Office, there has been no single instance where the Attorney-General of the day has exercised his authority in any matter in which there is a concurrent jurisdiction. The convention has already developed of allowing the Office to function as a separate decision-making authority. In consequence the prosecution service in the Territory has been completely independent both in practice and in theory. The Director has followed a practice of consultation with the Attorneys-General on an informal but fairly regular basis. It is a means whereby the Director can understand the policy of the government and proposals for legislation. In turn, the Director can inform the Attorney-General, and hence the Parliament if required, of the operations of the Office. Such consultations do not affect the independent performance of the functions of the Office.

In the result, the Director is able to report to Parliament that there is in existence an independent prosecution service which forms an integral part of the criminal justice system in the Northern Territory. That independence is a substantial safeguard against corruption and interference in the criminal justice system.

Professionalism

Professionalism in the Office has been achieved by staffing the Office with lawyers experienced in the criminal law whose duties involve appearing in court and the preparation and conduct of cases encompassing the full criminal calendar. To ensure that professionalism is maintained the Director has encouraged participation in and attendance at appropriate conferences and meetings. Some of those are detailed elsewhere in this Report.

The Director has endeavoured to set high and demanding standards and leadership for those engaged in the prosecution service so as to ensure above all a continued public and professional confidence in the administration of criminal justice within the Northern Territory.

Objectives

On assuming office, the first Director of Public Prosecutions set a number of objectives for this Office. These were said to be designed to assist in the improvement of the quality of life in the Northern Territory community by providing an independent criminal prosecution service which operates:

- (i) *without fear or favour*
- (ii) *in a manner which is both fair and sensitive to public interest*
- (iii) *effectively and*
- (iv) *efficiently.*

The objectives, more fully stated, are published earlier in this Report as part of the Corporate Plan. They have been maintained in conjunction with the *Mission Statement* which is also set out earlier.

Guidelines

Included with this Report are a number of separate guidelines. They deal with separate issues. They are included in this Report pursuant to section 25 of the *Director of Public Prosecutions Act*. They are intended to be followed in the performance of the Director's functions.

Issues as to whether a prosecution should proceed, a plea offer be accepted, an appeal be instituted, or an indemnity be granted arise daily for resolution by a Director of Public Prosecutions. All the Directors in Australia met on a number of occasions in the early nineties in an endeavour to reach agreement upon a common set of criteria to be used in determining the vital question as to whether or not a prosecution should proceed. As a result of those meetings, agreement was reached in formulating universal guidelines capable of consistent application throughout Australia. That agreement, to which the first Director was a party, is reflected in the guideline *The criteria governing the decision to prosecute*. All guidelines are constantly kept under revision and they will be amended or changed from time to time as the circumstances require. Where agreement is reached between the States and the Commonwealth upon common guidelines for other purposes those agreements will also be reflected in new guidelines.

These guidelines are intended to provide Crown prosecutors and others engaged in law enforcement with clear directions for the making of various decisions which arise in respect of prosecutions. They ensure a better co-ordination and more consistent approach to the prosecution of serious offences throughout the Northern Territory. They were designed, however, so as not to preclude the degree of flexibility necessary to enable prosecutors to cope with variations between individual cases.

They also set standards against which the performance of prosecutors and the operations of the Office may be measured. Additionally, they are designed so as to create a public awareness and understanding of the policies, procedures and decision-making criteria adopted by the Office. As such, it is hoped that they contribute significantly to community confidence in the administration of criminal justice.

The public is entitled to expect justice and good levels of service and has to be reassured that only those who need to enter the system should do so; that the guilty are convicted and that the innocent are acquitted. It is the constant aim to gain the wholehearted support of the public. The Office endeavours to set new standards to ensure that members of the public, whether they be witnesses, victims, jurors or defendants, all be treated fairly and courteously. We need to be, and be seen to be, efficient, courteous and just. The Director ensures that more than lip service is given to these objectives.

The guidelines and policies set out in this Report contain the principles and criteria by which it is determined whether or not someone should be prosecuted. In every case referred to this Office, the evidence is first reviewed. There must be admissible, substantial and reliable evidence, that a criminal offence has been committed by an identifiable person, and that there is a reasonable prospect of that person's conviction. Secondly, if satisfied that the evidence provides a reasonable prospect of conviction, it must be considered whether the public interest requires a prosecution.

During recent years, the Directors of Public Prosecutions have at the regular meetings often discussed the vexed question of prosecutorial *disclosure*. After much discussion, common general guidelines were arrived at and these were issued to prosecutors pursuant to section 25 of the Act early in the current reporting year. Some slight modification of the *universal* guidelines has been made to account for local Northern Territory conditions. These guidelines appear later in the Report.

The draft policy and procedures for witnesses, interpreters and translators was issued last year but has already been revised. It appears later in the Report.

In order that the reader may gain an appreciation of the role of this Office in a typical case, included in the Report is a section which charts in skeletal fashion the normal progress of a matter from the date a defendant is charged until the date of final disposition by the court.

Publication of reasons

Where the Director decides to exercise the power conferred by the Act to decline to proceed further with a prosecution reasons may be given to any enquirer with a legitimate interest in the matter. For example, the person said to be the victim of the alleged offence or those responsible for the investigation will normally be informed. It is acknowledged that the media have a legitimate interest in the administration of justice and where a person has been publicly committed for trial there usually will be no objection to the reasons for any decision not to proceed with such a trial being made public. Those reasons will be stated in general terms.

However, reasons will not be given where to do so might give rise to further harm or serious embarrassment to a victim, a witness or to the accused, or where such a step might significantly prejudice the administration of justice. Similarly, even where reasons are given it may be necessary to limit the amount of detail disclosed. Under no circumstances will the Director engage in public debate concerning the reasons.

Reasons will not normally be given for a decision to discontinue proceedings before there has been any public hearing. To do so would involve publishing allegations against members of the community in circumstances where there is insufficient evidence to substantiate them or, for some other reason, a prosecution would not be justified. This policy should not be regarded as an inflexible rule. It may be appropriate to provide reasons in some circumstances even when there has been no public hearing. Where, for example, the arrest and charge has attracted significant public interest it may be necessary to consider providing at least some explanation for the decision to terminate the prosecution.



PROFESSIONAL ACTIVITIES

There were a number of important events, conferences and activities during the year which are dealt with separately.

Criminal Lawyers' Association of the Northern Territory

Last year's Report contained a significant discussion of the activities of the Association (CLANT), concentrating on the 7th Biennial Conference held in Bali in June 1999. It was a wonderful success.

This is the **off**-year and accordingly there is no conference report. CLANT maintained its role, under new President John Lawrence, as an agitator and lobbyist for improvements and changes in the criminal justice system.

Professional staff of the ODPP and Summary Prosecutions are eligible for membership of CLANT. They are well represented both in the membership and on the Committee. They do not, however, in keeping with appropriate public service mores, take part in the public presentation of CLANT views. Membership, of course, enables prosecutors to maintain contacts with defenders, in less formal circumstances than usual, and such interchanges are invaluable.

The major undertaking of CLANT this year was the presentation of *Tuckiar* as a play during Law Week. This was a significant undertaking. The play, adapted from that written and presented by the Director at the 1999 Bali conference, was performed at Fannie Bay gaol. The cast and production team, led by Tom Pauling QC, were almost exclusively CLANT members. The play was performed over two nights before appreciative sell-out crowds and was pronounced a big success. The ODPP was well represented in both cast and audience.

It is anticipated that the 8th Biennial Conference will be held in Bali in June 2001.

Library committee

We have continued to refine our collection with an emphasis on specialised trial and criminal holdings. To that end we have obtained a complete set of Queensland Reports for the Darwin Office so that there is now access to both common law and Griffith Code jurisdiction reports in both Alice Springs and Darwin.

There has been a change of personnel. We were pleased to have Heidi Snell with us as our part-time librarian and were very sorry to see her next career move take her to Melbourne. We have welcomed Daniel Garton, a Northern Territory University law student, to the position.

Legislative review

Members of the staff of the Office are in an ideal position to observe the operation of the criminal justice system and the relevant legislation. From time to time anomalies in the law become apparent, whereupon the necessary advice is given to the Attorney-General. This has occurred on a number of occasions during the year under review. The ODPP has, inter alia, made significant submissions in relation to the topic of *unfitness to plead*. This has emerged as an area of some importance. A number of relevant cases have arisen in Central Australia. The Office is also represented on various committees looking at matters touching law reform and contributing to the development of new policy initiatives. Some of these activities and possible deficiencies in the law which have been identified are listed later in the Report in a separate section under this heading.

Continuing legal education

In accordance with the policy of the Office to maintain the provision of proper continuing legal education to all staff, the professional staff held their biennial conference in Darwin from 17 to 19 March 2000. The theme of the conference was directed towards (although not exclusively about) scientific evidence, its analysis and presentation. The conference was opened by the Chief Minister & Attorney-General.

The conference differed from other conferences in that it was more selective in catering to the needs of various groups within the Office.

The topics open to all participants in the Office were:

- Section 31 of the *Criminal Code* presented by Michael Carey
- The use of research materials presented by Shane McGrath
- Fitness to plead and s.357 of the *Criminal Code* presented by Dr Nanette Rogers
- Interpreter issues presented by Colleen Burns
- Diligent prosecutorial preparation presented by His Honour Justice Riley
- Common purpose in non-conspiracy cases presented by Alexis Fraser
- Relationship evidence presented by Jenny Blokland.

On the afternoon of Saturday 18 March 2000 the conference split into two sections, one section covering matters relating to the Victim Support Unit, and the other section open to the remainder of the conference delegates. The VSU discussed the recently completed review of the unit and its future directions. The VSU also discussed the Sexual Assault Law Reform Committee report and its implications for the unit. The other conference delegates attended a seminar on DNA evidence conducted by Dr Henry Roberts of the Forensic Science Unit in Melbourne and Joy Kuhl from the Forensic Science Laboratory in Darwin. Joy outlined the chemical composition of DNA. Dr Roberts looked at the statistical basis of DNA and how such statistical evidence might be presented in court.

Dr Thatcher, Director of the Forensic Science Laboratory of the Northern Territory Police, Fire & Emergency Services and other members of the laboratory spoke about various aspects of forensic science.

On Sunday 19 March 2000 David Prowse gave an overview of the work of the fingerprint section, concentrating on the advances over the years in fingerprint analysis.

Ian Rowbottam discussed the High Court decision of *Dietrich* and the cases thereafter.

Summary prosecutors then attended a workshop conducted by Chris Roberts and Ian Rowbottam. They concentrated on submissions in sentence and how they relate to justices' appeals and submissions in reply, respectively. Other conference delegates attended a seminar on the reform of sexual assault laws presented by John Adams.

In addition to the biennial conference, the Office was also able to secure the services of forensic psychologist, Mike Tyrell. He gave prosecutors a valuable insight into various psychological profiles.

The Office conducted a series of seminars relating to *R v Stokes*. Various matters were examined and discussed by prosecutors. The topics included DNA evidence, *Apostilides* and the need to call irrelevant witnesses, the general order of presentation of the Crown case, videotaped evidence of the pathologist and the use that may be made of graphic photographs.

The Director and Deputy Director conducted a series of advocacy seminars. The topics covered were:

- Introduction to prosecution advocacy
- Prosecutor's ethics and disclosure
- Preparation and openings
- *The Ten Commandments* (a video presentation on cross-examination by US trial lawyer Irving Younger)
- Pleas (and victim support)
- Examination-in-Chief
- Cross-examination
- The Defence and defences
- Legal submissions
- The final address.

Workload

It is interesting to note that the number of matters concluded in the Supreme Court in Darwin during 1999-00 was a good deal less than in the previous year. There were only 16 trials, compared with 20 in 1998-99, and 37 in the previous year. Pleas and Justice Appeals were also less than in the previous year (see the table which appears below).

However, the number of matters dealt with at summary level increased quite markedly. This was reflected by the greater use of Crown prosecutors at Top End bush courts namely Katherine (18), Port Keats (9), Alyangula (6), Daly River (3), Nguiu (3), Timber Creek (2), Jabiru (2) and Nhulunbuy and Oenpelli.

Similar contributions were made by the Alice Springs Office with visits to Tennant Creek, Yuendumu, Hermannsburg and Elliott. It was also necessary for Crown prosecutors to visit various locations outside the major settlements to view scenes of crimes and interview witnesses.

Additionally, the Supreme Court held two circuits in Katherine during the year. On each occasion a Crown prosecutor was in attendance.

The Office workload generally was consistent with the previous year (which was a good deal up on previous years). The individual caseload, however, was significantly increased because of the absence of members of the professional staff on long service, surplus recreational, maternity or sick leave. At times the pressure was extreme. New files opened in Darwin and Alice Springs were 679 and 389 respectively, a total of 1068 compared with last year's total of 1144. As the previous year's (1997-98) total was only 721, there has been a sharp increase.

breakdown of prosecution cases

For the period 1 July 1999 to 30 June 2000

Number of Matters dealt with by:	DARWIN		ALICE SPRINGS	
Trial	16	(20)	7	(8)
Re-trial	1	(2)	-	(-)
Plea	120	(153)	20	(37)
Justice Appeal	57	(84)	42	(24)
Case Stated	-	(1)	-	(-)
Voir Dire	8	(10)	5	(3)
297A	3	(4)	-	(-)
Nolle Prosequi	26	(18)	4	(4)
Committal	136	(159)	31	(51)
Court of Criminal Appeal	14	(19)	1	(-)
Court of Criminal Appeal (Mentions)	25	(13)	4	(-)
Court of Appeal	4	(-)	-	(-)
High Court	1	(5)	-	(-)
Summary Court Mentions*	532	(557)	794	(565)
Supreme Court Mentions**	352	(281)	102	(94)
Summary Prosecutions	252	(189)	115	(60)
Breach Supreme Court Bond	8	(15)	8	(3)
Supreme Court Warrants	7	(28)	5	(8)
Summary Court Warrants	45	(47)	85	(59)
Totals	1608	(1603)	1233	(916)

NB: The figures in brackets are for the period 1 July 1998 to 30 June 1999

* Crown prosecutors in the Alice Springs Office appear at all preliminary mentions of hearings at committals. In the Darwin Office these mentions are primarily dealt with by the bail and arrest sergeant and are not included here.

** Figures do not include arraignments.

Of those tried by jury in the Supreme Court last year 26% (compared with 39% in the previous year) were convicted and 57% (43%) acquitted. The other 17% (18%) was represented by cases in which the jury were unable to agree or the trial was otherwise aborted. Overall, when pleas of guilty and nolle prosequis are included, the conviction rate was 78% (81%) of all matters disposed of in the Supreme Court. This is an acceptable outcome, consistent with previous years.

Expedition

In earlier Reports attention has been drawn to the fact that there is a clearly established need for all persons charged with an offence in the Northern Territory to have a trial within a reasonable time. To that end, the Office operated an internal guideline that unless there are exceptional circumstances all indictments should be settled within one month of the date of committal. This has been overtaken in recent years by a Supreme Court instruction that indictments be handed up at the first arraignment date after committal. In most cases this instruction is complied with, although it does lead, in some cases, to indictments being provided at a time when the final decision as to the proper form of it has not been made. New Criminal Practice Rules of the Supreme Court have been introduced as from May 2000 which address these and other issues. Their impact has yet to be fully felt.

Last year there was again noted a considerable back-log in cases awaiting trial. The time from committal to trial was, at best, eight months and, in some cases, much in excess of that. No single reason provides the answer for this state of affairs but the shortage of available court time has been one of them, despite the lesser numbers of cases actually going to a full trial.

Conference of Australian Directors

For a number of years, Australian heads of prosecuting agencies have met informally to discuss matters of mutual interest. Due to the increase of crime which traverses State and Territory borders and the increased introduction of uniform legislation among the States and Territories of the Commonwealth, the various Directors in Australia have formed an association which meets regularly to discuss matters of mutual concern. This association meets on a more formal basis than in the past and is known as the Conference of Australian Directors. By this means the Directors are forcefully promoting consistency of the administration of criminal law in the several jurisdictions and, additionally, exchanging very useful information.

There have been two meetings of the Directors in 1999-00. The Directors have all maintained contact by mail and telephone on issues of common interest. The contacts and the information exchanged between Directors has proved to be invaluable and continues to assist us greatly in carrying out our respective functions and ensuring valuable and essential co-operation.

Heads of Prosecuting Agencies Conference (Commonwealth)

The first meeting of this group (HOPAC) took place in Sydney in 1991. Attendance at this original conference was by invitation which stated:

The aim of the conference is to give heads of prosecution agencies an opportunity to meet and to discuss matters of contemporary significance, general principle and issues of practical importance.

The conference was therefore designed to bring together heads of prosecuting agencies of Commonwealth jurisdictions for the purpose of meeting and exchanging different points of view. It was the answer to specific operational needs.

Subsequently meetings have taken place in Ottawa (1993), London (1995), Wellington (1997) and Sigatoka (1999). The Office was represented by the previous Director at the first three such conferences. Most other Australian jurisdictions attended. The current Director attended the NZ and Fiji conference.

These conferences have proved invaluable in providing a forum for:

- sharing knowledge and networking
- international co-operation
- an aid in movements towards consistency in legislation.

International Association of Prosecutors

The International Association of Prosecutors (IAP) was created in June 1995 in the offices of the United Nations in Vienna and was formally inaugurated in September 1996 in Budapest.

The IAP is the only world association of prosecutors and its membership includes individuals, prosecution services and associations of prosecuting counsel.

As a world organisation, the IAP membership is not confined to one legal system. It encompasses as many legal systems as are represented by its members. It is an alliance of both individual and corporate members who already have standing and credibility in their respective jurisdictions. It is the coming together of reputable persons to learn from and to share with one another in all areas concerned with the business of prosecution.

The role of the IAP on the international scene is an extremely broad one.

All Offices of Directors of Public Prosecutions in Australia have joined as corporate members of the organisation.

During the 1998 conference of the Association the former Attorney-General instructed the Director to offer to host the IAP conference in the year 2001 in Darwin. This offer was confirmed in the new year by the former Attorney-General and subsequently by his successor. A full submission was prepared for presentation to the Executive of the Association at its conference held in September 1999 in Beijing. The Director attended that conference, together with Jack Karczewski, the Deputy Director and Senior Sergeant Peter Thomas, the OIC of Summary Prosecutions. The Director was again asked to chair one of the workshops and appointed as one of the Conference Vice-Presidents. The two major themes for the conference were *Fraud & Corruption* and a *Code for Prosecutors*. The submission to hold the conference was unsuccessful. The Northern Territory competed against both South Australia and New South Wales. The latter was successful.

The location of the conference for the year 2000 is Cape Town. The major theme is *Human Rights*. The Director has once more been invited to chair a workshop at the conference.

The retiring president of the IAP, the Director of Public Prosecutions of Ireland, Eamonn Barnes, circulated in May a letter indicating his intention not to stand for re-election. In the course of that letter he articulated his view of the role of the prosecutor as an upholder and defender of human rights and went on to say:

It is a function which often appears to be the monopoly of defence counsel or of the many excellent organisations formed for the promotion of human rights or civil liberties. The reality is that prosecutors, by their dedication in daily practice to individual rights, whether they relate to the victims of crime, to persons suspected or accused of crime or to the community generally, are in many jurisdictions the principal defenders of those rights.

If there were to be a single hope and ideal on which I could choose to vacate my high office as your President, it would be the aspiration that at our conferences and meetings our role as defenders of human rights and civil liberties everywhere would be a theme which would underlie and inform all our deliberations and decisions. Unless we constantly rededicate ourselves to that role, our daily work and functions will become hollow in relation to our constitutional objectives and in particular in relation to the establishment and promotion everywhere of the highest standards of criminal justice. Very few jurisdictions, if any, can afford to feel complacent or superior regarding the full achievement within their own criminal justice systems of a sufficient commitment to human rights. Our solemn duty as members of the Association is to seek always to enhance those rights around the world.

Eamonn has been succeeded as president, by Nicholas Cowdrey QC, the NSW DPP. This ensures and maintains a strong recognition of Australia, its States and Territories, within the organisation.



SUMMARY PROSECUTIONS

Background

Summary Prosecutions in Darwin and Alice Springs consists of legal practitioners employed by the Office, members of the Northern Territory Police attached to the Office and employees under the *Public Sector Employment & Management Act*. This arrangement is pursuant to a *Memorandum of Understanding* between the Director and the Commissioner of Police executed on 11 February 1998 (see pg 77).

DARWIN

Functions

Summary Prosecutions carries out the following functions in the Court of Summary Jurisdiction and Juvenile Court sitting at Darwin, Daly River, Port Keats, Garden Point and Maningrida:

- receiving, recording and checking initial apprehension files from NT police
- laying charges, issuing summonses for service by police
- resisting bail applications before magistrates
- attending to all preliminary mentions of files in court
- prosecuting pleas of guilty
- prosecuting summary trials of regulatory offences, simple offences and/or minor indictable offences
- making submissions on sentence
- prosecuting breaches of community-based sentencing orders, whether consequent to further offences or otherwise
- prosecuting applications for extradition to places outside the Northern Territory under the Commonwealth *Service and Execution of Process Act*.

Also, summary prosecutors from Darwin attend circuits at Oenpelli, Jabiru, Nhulunbuy and Alyangula (Groote Eylandt) on a request basis.

Complex and/or sensitive cases are referred to the Director for allocation to a Crown prosecutor.

Summary Prosecutions carries out other functions:

- providing advice and recommendations to the Director on appeal cases
- providing visiting lecturers to the Police, Fire and Emergency Services College at Peter McAulay Centre, for both recruit and in-service training of police
- providing advice to operational police on matters of substantive law, evidence and procedure
- appearing before the Firearms Appeal Tribunal on behalf of the Commissioner of Police in appeals under the *Firearms Act*.

Location

Summary Prosecutions occupies approximately 50% of the second floor, Tourism House, Mitchell Street, Darwin - adjacent to the Director's Chambers.

Staffing

The pre-*Memorandum* staffing (less reallocated functions) was preserved. Police Prosecutions had a total staff establishment of fifteen. The actual situation was that two extra staff were on long term attachment to prosecutions to cover casual vacancies, etc.

	Establishment	Actual
Senior Sergeant	1	1
Sergeants	4	3
Senior Constables	2	5
Police Auxiliaries	2	2
AO2	3	3
Legal Practitioners	3	3
Total	15	17

There has been little turnover in the staff. Most staff have attained three years' service within Summary Prosecutions.

Training

Summary Prosecutions staff are invited to all ODPP in-service training and have a high rate of participation. All Darwin-based police prosecutors and police prosecutors from Katherine, Tennant Creek and Jabiru, and one representative from Summary Prosecutions Alice Springs attended a three-day intensive training session in March. This session had shared components with the Crown prosecutors and some components specifically designed for police prosecutors. This training was designed in consultation with Summary Prosecutions and delivered by Crown prosecutors.

Management

The officers-in-charge of Summary Prosecutions (Darwin and Alice Springs) both participate in the Executive Committee which meets weekly.

Integration

The integration of the former Police Prosecutions Unit into ODPP continues. Summary Prosecutions receives significant support from the VSU, the Senior Research Solicitor and the Chambers' Prosecutor.

The workload of the Top End circuits is shared between Summary Prosecutions and the Crown prosecutors, so as to maximise the efficient use of resources.

Caseload

The caseload of Summary Prosecutions was steady during the year. Focus throughout the year has been in improving the standard of files, reviewing contested files earlier and improving the standard of presentation and submissions in order to achieve appropriate outcomes whilst minimising public expense.

Liaison with the Northern Territory Police

In order to enhance the skills of the remaining police prosecutors (that is, those based outside Darwin and Alice Springs), the informal *Prosecutors' Development Program* has continued. Police prosecutors have attended a hands-on, in-service program in Darwin, focussing on file management and court presentation.

ALICE SPRINGS

Summary Prosecutions in Alice Springs is immediately responsible to the Crown Prosecutor-in-Charge, DPP Alice Springs.

Summary Prosecutions Alice Springs carries out the following functions :

- receiving initial apprehension files, both arrest and summonses cases
- checking and determining the appropriate charges
- laying charges in the appropriate court (Summary Jurisdiction or Juvenile Court)
- making applications to breach sentencing orders in appropriate cases
- receiving all prosecutions from Department of Correctional Services, commenced by them for:
 - breach of home detention
 - breach of community service orders
 - breach of sentencing orders
 - breach of punitive sentencing orders
- issuing summonses for service by police.
- prosecuting applications for extradition to places outside the Northern Territory under the *Commonwealth Service and Execution Act*
- all preliminary mentions of files in court
- opposing bail applications in appropriate cases
- prosecuting guilty pleas

- prosecuting all matters in the juvenile and summary jurisdiction courts with the exception of matters that:
 - are of a complex or involved nature
 - involving difficult or complex points of law
 - serious indecency offences
 - other matters considered appropriate to be handled by senior counsel.

Circuit court

Courts are held at Yulara, Yuendumu, Papunya, Hermannsburg and Tennant Creek bi-monthly. A prosecutor attends to prosecute all defended cases.

Training and advice

Summary Prosecutions provides advice and training to members at Alice Springs Station. A prosecutor attends and gives lectures as required.

Advice is given to police members carrying out prosecution duties at Yulara, Yuendumu, Papunya, Hermannsburg and Tennant Creek.

Advice is given to members at those stations mentioned above and Harts Range, Kulgera and Ti Tree on all aspects of law, evidence and procedure.

Firearms Appeal Tribunal

A prosecutor appears before the Firearms Appeal Tribunal on behalf of the Commander of Police under the *Firearms Act*.

Location

Summary Prosecutions is located on the top floor in the Centrepoint Building on the corner of Gregory Terrace and Hartley Street. The area is adjacent to the ODPP Office.

Liaison Officer

A police auxiliary performs the duties of liaison between police and prosecutors, both Summary Prosecutions and ODPP. The duties of the liaison officer include:

- issue summonses for all witnesses in both summary and committal proceedings in Alice Springs and Tennant Creek
- be responsible for the service of all Supreme Court subpoenas for the Alice Springs district
- arrange travel, both domestic and international, for all summary court and Supreme Court witnesses and be available for afterhours call-out for such duties
- arrange appropriate and suitable accommodation for all summary court and Supreme Court witnesses and be available for afterhours call-out for such duties

- collect or arrange for collection of all witnesses from the airport, or point of arrival, to their accommodation and then to the DPP Office for interview and/or proofing and be available for afterhours call-out for such duties
- be responsible for all financial and associated accounting aspects of witnesses travel and accommodation including petty cash, sundry travel costs, incidental expenditure, loss of wages and professional services
- during sittings of the Supreme Court in Alice Springs, be available to escort and assist all Crown witnesses for the duration of the sittings
- assist, where appropriate and necessary, the Victim Support Unit with liaison, travel and transport of Aboriginal witnesses
- be responsible for the travel and accommodation arrangements of the Northern Territory Forensic Pathologist
- monitor and arrange requisition and supply of all stores and stationery in the Summary Prosecutions office, Alice Springs
- other police duties as required.

Staffing

	Establishment	Actual
Senior Sergeant	1	1
Sergeant	2	2
Senior Constable	1	1
Auxiliary	1	1
AO2	1	1
Total	6	6

General comment

A continuous and harmonious working relationship with the ODPP has been maintained.

The Southern Region Coroner's Constable has his office in the Summary Prosecutions area. The incumbent is Senior Constable Allan Duncan. The Coroner's Constable provides administrative assistance to Summary Prosecutions during staff shortages. The Prosecutions Constable and Coroner's Constable are cross-trained and each is able to undertake the duties of the other, expanding the flexibility of both positions.

On 30 June 2000 the Officer-in-Charge of Summary Prosecutions Alice Springs, Senior Sergeant Len Pryce, retired from the Northern Territory Police Force after 33 years service. Len had a great deal of experience as a prosecutor and his depth of knowledge, expertise and humour will be greatly missed. The Director and staff wish him the best of luck and hope he enjoys his retirement.

His replacement will be Senior Sergeant Robert Burgoyne, with Sergeant Craig Ryan acting in the position until mid-August 2000.

Workload has remained steady, but high. A submission has been made for another prosecuting sergeant to conduct contested hearings, bringing the establishment to three sergeants.

Significant factors for the increase in the number of files set for a defended hearing are:

- mandatory sentencing
- diligence of current legal aid solicitors.

Whilst many files are set for hearing, very few actually go to hearing. The main reasons for this are:

- negotiated pleas
- failure of defendant to appear
- defended matter turning into a guilty plea.

Notwithstanding the lack of files actually going to hearing, many of the files are required to be brought to a hearing standard. Prosecutors are required to spend inordinate amounts of time on bringing some files, firstly to a standard to commence prosecution and then to hearing standard.

Invaluable assistance has been received from the Victim Support Unit. This assistance has been in the form of:

- dealing with the many requests received for information in crimes compensation matters
- locating and dealing with victims of crime, in particular Aboriginal women.



MEMORANDUM OF UNDERSTANDING IN RESPECT OF SUMMARY PROSECUTIONS

MEMORANDUM OF UNDERSTANDING BETWEEN THE COMMISSIONER OF THE NORTHERN TERRITORY POLICE AND THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

WHEREAS:

The Northern Territory Police Force and the Office of the Director of Public Prosecutions are both concerned with the conduct and prosecution of all offences and have, to a certain degree, a complimentary role within the criminal justice system. It is acknowledged, however, that within the current context of accountability and best practice that a coordination of resources between the parties will best serve the efficient and effective prosecution of all offences.

NOW THIS MEMORANDUM WITNESSES the following understanding and arrangements:

1. Purpose

- 1.1 The purpose of this Memorandum of Understanding (MOU) is to formally acknowledge that the responsibility for the care and conduct of the prosecution of all offences rests with the Office of the Director of Public Prosecutions (ODPP).
- 1.2 The MOU will also define the respective roles of the ODPP and the Northern Territory Police Force within the ODPP.
- 1.3 The parties agree that upon signing the MOU the Darwin and Alice Springs Police Prosecutions Sections are to be renamed *The Office of the Director of Public Prosecutions - Summary Prosecutions*.
- 1.4 It is the intention of the signatories that employees of the ODPP and members of the Northern Territory Police Force will apply this MOU in a co-operative spirit and will maintain a close working relationship in order to ensure the effective

performance of the duties of each of the parties towards the proper conduct of all prosecutions.

- 1.5 It is recognised that the Northern Territory Police Force has a key role to play in the care and conduct of the prosecution of summary offences. The ODPP, however, will maintain overall responsibility of all prosecution matters in addition to the functions outlined in Part III of the *Director of Public Prosecutions Act*.
- 1.6 While this MOU has been developed for use in Darwin and Alice Springs, it is intended that all police prosecutors throughout the Northern Territory will have equal access to advice from the ODPP and that they will perform their duties in accordance with the guidelines of the ODPP.

2. Interpretation

- 2.1 In this MOU, unless the contrary intention appears:
 - (a) *Commissioner* means the Commissioner of Police appointed under section 7 of the *Police Administration Act*.
 - (b) *Director* means the Director of Public Prosecutions appointed under section 4 of the *Director of Public Prosecutions Act*.
 - (c) *ODPP* means The Office of the Director of Public Prosecutions.

3. Functions of the Northern Territory Police Force

- 3.1 Police members will continue to be responsible for the following functions:
 - (a) office management
 - (b) general administrative duties
 - (c) bail and arrest and associated court attendance
 - (d) juvenile prosecutions
 - (e) Crown Law liaison
- 3.2 It is agreed that for the time being the establishment of police staff will be maintained at the current level but subject to review. A possible option may include replacement, where appropriate, with qualified lawyers. Such an option is to be considered on a case by case basis. Members in the following police positions will be attached to the ODPP - Summary Prosecutions on a long-term basis:

Darwin Police Prosecutions:

- (a) Officer-in-Charge, Senior Sergeant
- (b) Administration Sergeant
- (c) Two Bail and Arrest Sergeants
- (d) Juvenile Prosecutor, Sergeant
- (e) Bail and Arrest Constable

- (f) Summons Constable
- (g) Crown Law Liaison Officer, Police Auxiliary
- (h) Administration Support, Police Auxiliary

Alice Springs Police Prosecutions:

- (a) Officer-in-Charge, Senior Sergeant
- (b) Two Sergeants
- (c) Bail and Arrest/Summons Constable
- (d) Crown Law Liaison Officer, Police Auxiliary.

3.3 It is agreed that the establishment of civilian staff will be maintained at no less than the current level. The current level is:

Darwin Police Prosecutions:

- (a) three AO2s

Alice Springs Police Prosecutions:

- (b) one AO2.

3.4 As far as it is possible, the Officer-in-Charge of ODPP - Summary Prosecutions is to be a police officer with legal qualifications, or extensive prosecutorial experience, and proven office management skills.

3.5 The Officers in Charge will be responsible to the Director and responsible for the day to day supervision of ODPP - Summary Prosecutions.

3.6 The previous practice of attaching a TINES Officer to the Police Prosecutions Section, Darwin, will no longer apply and that position will be relocated and continue to be the responsibility of the Northern Territory Police Force.

3.7 The previous practice of attaching Coroner's Constables to the Police Prosecutions Sections will no longer apply and those positions will continue to be the responsibility of the Northern Territory Police Force.

3.8 In addition to the police officer identified as the Officer-in-Charge, the Commissioner shall nominate a Commissioned Officer to act as his direct liaison officer with the Director and the ODPP.

4. Functions of the Office of the Director of Public Prosecutions

4.1 The functions of the ODPP will include the assumption of ultimate responsibility for summary prosecutions and the management of the police and civilian staff employed in ODPP - Summary Prosecutions.

- 4.2 Subject to sub-clauses 3.2 and 3.3, staff levels will be determined by the Director consistent with the guidelines provided by the NT Government.

5. Staff entitlements and selection criteria

- 5.1 Staff entitlements for police, civilian and ODPP employees will be in accordance with their respective conditions of service provisions under the *Police Administration Act* and the *Public Sector Employment and Management Act*.
- 5.2 In consultation with the Northern Territory Police Force, the ODPP may determine the selection criteria for the positions filled by the Northern Territory Police Force members. The selection criteria will be made available to all potential applicants when these positions become vacant from time to time.
- 5.3 Currently there are three qualified lawyers employed at the P2 level within ODPP - Summary Prosecutions. They will continue to be contracted by the Director and their salaries and entitlements will continue to be paid by the Northern Territory Police Force.

6. Selection of staff

- 6.1 While the responsibility for the final selection of Northern Territory Police Force staff to be attached to the ODPP - Summary Prosecutions rests with the Commissioner, it is acknowledged that the Director will have input in this process. To this end, the Director or his nominee will be consulted prior to any transfer of police to the ODPP - Summary Prosecutions.
- 6.2 It is agreed that members attached to the ODPP - Summary Prosecutions will generally be for a minimum period of two years and that there be a period of overlap between incoming and outgoing members. This provision, however, will not limit the Commissioner's power to transfer a member on compassionate grounds or a member who has been promoted.

7. Training of staff

- 7.1 It is agreed that the Northern Territory Police Force, with the assistance of ODPP staff, will continue to provide training for police prosecutors and police members stationed in remote areas. This training should also be available to new lawyers appointed to the ODPP.

8. Budgetary and administration issues

- 8.1 Budgetary and administration issues will remain unchanged in the short term. Future changes will be as agreed between the Director and the Commissioner.

9. Access to information

- 9.1 The Director and the Commissioner maintain a continued right of access to information held by the Northern Territory Police Force and the ODPP, where appropriate, for the performance of their respective functions and duties.





VICTIM SUPPORT

Support to victims of crime, witnesses and their families has been provided within the Office of the Director of Public Prosecutions since 1995. The Victim Support Unit (VSU) was established in April 1997.

The VSU consists of five staff. In Darwin they are Nannette Hunter, VSU Co-ordinator, Colleen Burns, Aboriginal Support Co-ordinator and Kylie Dow. In Alice Springs they are Carolyn Woodman, Co-ordinator (South) and Merle Thomas.

The VSU role has been detailed in previous reports. It is repeated here to illustrate the range of services offered to victims of crime, witnesses and their families.

Support

This involves court preparation and can include court tours, demonstration of vulnerable witness facilities and observations of court sittings. Support regularly involves accompanying witnesses to court and can include being with a witness either in the closed circuit television room or behind a screen.

Information

The VSU notifies victims of crime about the service and invites them to make contact. Victims are provided with several publications at the appropriate times. These include the *Northern Territory Charter for Victims of Crime*, the VSU pamphlet and the Victim Impact Statement booklet which includes a proforma for victims who choose to prepare a victim impact statement independently.

The VSU will give information about the date, time and place of court appearances, the stage that the matter is up to and whether attendance is required.

Referral

Victims, witnesses and their families can be referred to appropriate agencies for counselling including specialist sexual assault and domestic violence counselling, psychologists, psychiatrists or solicitors for financial assistance claims. The VSU has established and maintains contact with a wide variety of agencies.

Explanation

The explanation of legal processes, language, behaviour and rules of evidence is vital. The aim is to explain technical legal language in plain English. When people have a better understanding and are given timely information about what is happening in relation to court proceedings they report a higher level of satisfaction with their experience of the criminal justice system.

Liaison

The VSU acts as a point of reference for victims, witnesses and their families. Liaison between police and victim, prosecutor and victim, police and prosecutor or counsellor and victim is a valuable function.

Victim Impact Statements

The VSU assists victims of crime to prepare victim impact statements. Victims of crime have the right to present to the court a statement detailing the effect a crime has had on their lives. Victim impact statements were introduced in the Northern Territory in March 1997. Since then many people have decided to participate in the criminal justice system by exercising that right. The VSU assisted 232 people with victim impact statements this year.

Members of the VSU participate in many committees and activities on behalf of the Office to represent the Office and to network with as many agencies as possible.

Crime Victims Advisory Committee

The VSU Co-ordinator and Aboriginal Support Co-ordinator attend the Crime Victims Advisory Committee (CVAC) meetings. This year CVAC released a new edition of the *Northern Territory Charter for Victims of Crime*. The VSU distributed the *Charter* throughout the Northern Territory. CVAC also made submissions to the public inquiry conducted by the Law Reform Committee into sexual assault laws.

Victims of Crime Assistance League

The VSU Co-ordinator attends meetings of the Victims of Crime Assistance League (VOCAL). The VSU participated in several modules of a VOCAL training course for volunteers including a mock court hearing. The VSU and VOCAL work closely together to provide a variety of complementary services to victims of crime.

Domestic Violence Prosecutions Sub-Committee

The Domestic Violence Co-ordinating Committee (DVCC) which is responsible for the Northern Territory Domestic Violence Strategy set up this sub-committee. The purpose of the sub-committee is to monitor the criminal justice response to domestic violence. The sub-committee reports to DVCC on a variety of issues including suggestions for legislative amendments and improvements to court procedures. The VSU Co-ordinator is a member of the sub-committee.

Training

Members of the VSU regularly participate in training groups of people who come into contact with victims of crime in their workplace. This year these included police domestic violence liaison officers, police officers and health workers jointly investigating child abuse matters, Northern Territory University advanced criminology law students, domestic violence workers, women's refuge workers, Northern Territory University social work students and Top End Women's Legal Service community legal officers.

Law Reform Committee - Sexual Assault Laws Inquiry

Members of the VSU participate in the Sexual Assault Committee within the Office. In April 1999 the Law Reform Committee announced a public inquiry into sexual assault laws in the Northern Territory. The VSU Co-ordinator was appointed to the sub-committee conducting the inquiry. Wide consultation with a great variety of individuals and organisations followed. Several written submissions were made to the sub-committee by the VSU. The work of the sub-committee continued until November 1999. The report was distributed in December 1999.

Publications

The VSU is responsible for two publications, a booklet *Victim Impact Statements* and a pamphlet *Support for Victims of Crime*.

The VSU section of the ODPP website received an award for academic excellence.

Evaluation

In 1999 the VSU asked for an evaluation of the first three years of its operation. A full evaluation of all facets of the VSU program was undertaken. Many people participated including judges, magistrates, police officers, counsellors and victims.

The evaluation report was published in February 2000.

Those interviewed reported the effectiveness of the VSU as high. From the viewpoint of stakeholders and clients the government investment in the VSU has been very effective. The VSU has proved an effective means of assisting with the preparation of victim impact statements.

The VSU is considering recommendations from the report to improve the service to victims of crime in the Northern Territory.

Alice Springs

The Alice Springs Office has had a busy and interesting year. Key events have been the inquiry into sexual assault laws in the NT, the evaluation of the VSU and the biennial ODPP Conference.

The report of the inquiry presented important recommendations to improve the prosecution of sexual assault crimes through the criminal justice system. The Alice Springs Office will have involvement in implementing some of the recommendations.

The evaluation made clear that both clients and colleagues gain substantial benefit from VSU services, as well as suggesting ways to refine and extend existing services.

The conference gave the VSU time to learn from each other and develop collegial relations.

This year the VSU has had the benefit of using the new data system which, despite some glitches, is a useful way of recording and managing cases as well as providing the potential for service planning and review.

Most of the work this year has been with victims of crime though the VSU continues to assist other witnesses as well as family members of victims. Crimes victims' assistance matters remain an important part of the workload.

The victim support officer continues to refine services such as to increase access to clients and ensure appropriate service provision to Aboriginal victims of crime. Support work for court proceedings has increased.

The lack of appropriate interpreting services in Alice Springs remains a problem.

The VSU has worked closely with police and Summary Prosecutions. This, among other things, is expected to increase the number of victim impact statements presented, as well as provide victim support for people giving oral evidence in court.

The VSU looks forward to improving its services and maintaining its involvement in policy development.



ABORIGINAL SUPPORT

Victim support – Aboriginal victims and witnesses

The Office deals with a large number of Aboriginal victims and witnesses. This continues to be a challenge. The VSU is becoming proactive in making initial contact with Aboriginal and Torres Strait Islander clients. This year the Aboriginal Support Co-ordinator (ASC) has worked hard to increase networks in communities and urban centres. The Aboriginal Interpreter Service has taken on the challenge of providing interpreters, sometimes at short notice, and deserves great praise.

Early this year the ASC began to increase the VSU presence at circuit courts. The cases usually involve assaults or sexual assault.

Aboriginal Interpreter Service

Statistics show a high number of crimes against and between Aboriginal people. This partly led to the setting up of the Aboriginal Interpreter Service (AIS) to cater for those Aboriginal people who speak English as a second language.

The AIS has been a significant and integral part of positive court assistance provided to Aboriginal people during the latter part of the year. The ODPP has made 59 requests to the AIS since the start of this service in March 2000.

Indigenous Family Violence Reference Group and Monitoring Committee for Indigenous Family Violence Offender Pilot Program

The ASC is a member on the Indigenous Family Violence Reference Group and the Monitoring Committee for the Indigenous Family Violence Offender Pilot Program which is funded through Partnerships Against Domestic Violence under the NT Government Domestic Violence Strategy. The Council for Aboriginal Alcohol Program Services (CAAPS) will run the pilot program within their organisation with the support of NT Correctional Services.

The Pilot Program Monitoring Committee will oversee the program implementation. The committee is made up of members from key areas of the government and non-government sectors. The project task and time line will measure and compare the effectiveness of a prison-referred and community-based program for offenders of indigenous family violence.

ODPP Conference March 2000

At the conference in March, the ASC gave a presentation on Interpreter Issues and the AIS. The ASC emphasized the need for continuous legal education of prosecutors and police in the use of interpreters. This training will enhance the skills of ODPP and police staff especially now that the AIS is in operation.

Cross Cultural Awareness

The majority of ODPP staff has participated in the cross cultural awareness course presented by various agencies.

Employment of Aboriginal and Torres Strait Islander Staff within the Office

Currently there is six Aboriginal and Torres Strait Islander staff. The Office won an award for the implementation of its Aboriginal Employment and Career Development Strategy.

The ASC has also been involved with the review of the ODPP's Aboriginal Employment and Career Development Strategy Booklet.

The ASC is a member on the Indigenous Workforce Issues Working Party which considers issues on equal opportunity, recruitment, accredited qualifications and many other employment issues that may affect Aboriginal and Torres Strait Islander public servants.

The ASC participated in various committees and attended many meetings relating to victim support work.

Overall it has been a very productive year for the VSU especially in its work with Aboriginal and Torres Strait Islander victims and witnesses.



LEGISLATIVE REVIEWS

During the year, the Office was asked to comment on a number of papers, commentaries, drafts and the like on various proposed legislation. In some cases that legislation was Commonwealth in origin. The Senior Research Solicitor, Shane McGrath, has in most cases provided draft comments for the Director. In other cases, prosecutors with some intimate knowledge of the particular legislative needs, perhaps arising from problems experienced during court proceedings or pointed out from the bench, provide the necessary submissions. In areas where victims or witnesses or indigenous interests are involved, submissions are provided by the professional members of the VSU.

The Office was represented by John Adams and Nannette Hunter on the review of sexual assaults laws conducted by the Law Reform Committee under Austin Asche QC.

Submissions were sought on a large variety of matters which, although not strictly speaking necessarily involving legislation, excited parliamentary interest.

In a number of cases the Attorney-General has been advised of difficulties involved in the application and interpretation of various legislation. Some of them have been brought to notice by judges or magistrates dealing with cases. Others have been the result of prosecutors' own research.

A number of specific proposals or references which have been made to the Attorney-General, and which have been accepted, are as follows:

- an amendment to s.302 of the *Criminal Code* to allow a nolle prosequi to be filed in respect of a particular charge on an indictment
- recommendation to repeal s.279 of the *Criminal Code* which provided a separate sentencing regime in respect of *attempted* offences
- amendments to s.130A of the *Justices Act* consistent with s.323 of the *Criminal Code*.

Unfitness to Plead

Section 357 of the *Criminal Code* is the provision in the Northern Territory which governs the procedure to be followed where an accused person is unfit to plead. The section only applies to matters laid by way of information and capable of being dealt with by the Supreme Court only. There are only three dispositions available to the court – bail, custody

and discharge. Custody has been interpreted by the courts to have a very specific meaning – only for such time as it takes for the accused to become fit to plead otherwise a person must be discharged.

Fitness to plead has emerged over the last 12 months in Alice Springs as a major issue:

- In the Northern Territory Supreme Court the legislative scheme has been utilised for four different accused persons. All four were found unfit to plead on the medical evidence and discharged. It should be noted that all four were thought by medical, psychiatric and/or psychological experts to be unlikely ever to become fit to plead. The cases involved a range of offences including murder, stealing and aggravated assault.
- In the Northern Territory Supreme Court three of these four accused persons subsequently committed further offences and were again found unfit to plead by the Supreme Court. All were discharged. All of these offences were ones of violence.
- In the Court of Summary Jurisdiction 24 matters on complaint (22 related to one person, 2 related to an accused found previously unfit to plead in the Supreme Court some months before) were withdrawn by the ODPP on the grounds that the defendant was clearly unfit to plead. These matters involved a variety of offences including assaults, stealing and trespass.

There have been various conditions on which the unfitness to plead is based – deaf and mute (see *Ebatarinja v Deland* (1998) 157 ALR 385), organic brain syndrome from epilepsy and/or petrol sniffing, organic brain syndrome with schizophrenia or with an intellectual disability.

Unfitness to plead cases appear to be more prevalent in Alice Springs than in the Top End for reasons which are unclear. In any event, prosecuting authorities must deal with these defendants. Of particular concern is the number of repeat offenders – that is, people who have been previously found unfit to plead by the Supreme Court and who continue to re-offend. It is anticipated that unfitness to plead will continue to be a very live issue in Central Australia.

Other Australian jurisdictions have a far more comprehensive legislative scheme than the Northern Territory. The present legislative scheme under s.357 is unacceptable. Changes must be made which give both the Court of Summary Jurisdiction and the Supreme Court wider powers and a greater range of dispositions. Attention should also be directed by the legislation to the supervision of an accused person by appropriate authorities to ensure adequate treatment, protection of the community and so on.

Policy personnel in Attorney General's have been extremely receptive to the ODPP's comments and recommendations in this difficult area. Such inter-agency co-operation is very much appreciated; it fosters a very practical relationship between prosecutors and policy advisers to government.

The ODPP looks forward to the urgent introduction of the new unfitness to plead legislation.