



**DIRECTOR  
OF PUBLIC  
PROSECUTIONS**  
NORTHERN TERRITORY

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**DIRECTOR OF PUBLIC PROSECUTIONS  
NORTHERN TERRITORY OF AUSTRALIA**

**A N N U A L   R E P O R T**

**2020-2021**

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**DIRECTOR OF PUBLIC PROSECUTIONS**

**NORTHERN TERRITORY**

**THIRTY-FIRST ANNUAL REPORT**

**FOR YEAR ENDED 30 JUNE 2021**

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DIRECTOR  
OF PUBLIC  
PROSECUTIONS  
NORTHERN TERRITORY

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Director – WJ Karczewski QC

24 September 2021

Ms Selena Uibo MLA  
Attorney-General and Minister for Justice  
Parliament House  
State Square  
DARWIN NT 0810

Dear Attorney-General

### **ANNUAL REPORT 2020-2021**

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In accordance with the requirements of section 33 of the *Director of Public Prosecutions Act 1990*, I submit to you a report on the performance of the functions of the Director of Public Prosecutions for the period 1 July 2020 to 30 June 2021.

Yours sincerely

WJ KARCZEWSKI QC



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## OFFICE LOCATIONS

### 1. **NORTHERN REGIONAL OFFICE DARWIN (Head Office)**

Level 3, Old Admiralty Tower  
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DARWIN NT 0800  
GPO Box 3321  
DARWIN NT 0801

Telephone: (08) 8935 7500  
Fax: (08) 8935 7552  
Free Call: 1800 659 449

### 2. **SOUTHERN REGIONAL OFFICE ALICE SPRINGS**

1st Floor, Centrepont Building  
Cnr Hartley Street & Gregory Terrace  
ALICE SPRINGS NT 0870  
PO Box 2185  
ALICE SPRINGS NT 0871

Telephone: (08) 8951 5800  
Fax: (08) 8951 5812

### 3. **KATHERINE OFFICE**

Ground Floor, (Rear) Randazzo Building  
Katherine Terrace  
KATHERINE NT 0850  
PO Box 1295  
KATHERINE NT 0851

Telephone: (08) 8973 8813  
Fax: (08) 8973 8866

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# MISSION STATEMENT

## MISSION

The mission of the Director of Public Prosecutions is to provide the Northern Territory community with an independent, professional and effective criminal prosecution service.

## VISION

The vision of the Director of Public Prosecutions is to provide the highest quality prosecution service to Territorians.

## GOALS

Achieving the following goals is recognised as being fundamental to achieving our mission and vision:

- *To operate with integrity*
- *To deliver an independent, professional and efficient service*
- *To operate as a committed and dedicated team of professionals*
- *To provide a fair and just service to victims and the accused, and*
- *To be respectful to the needs of victims, witnesses and to the interest of the community.*

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## DIRECTOR'S OVERVIEW

In my first Annual Report I spoke to my predecessor's concerns regarding the continuing failure of respective Commissioners of Police to sign a new Service Level Agreement (SLA) with this Office.<sup>1</sup> The original agreement which dealt with these issues (called a Memorandum of Understanding) was signed on 11 February 1998 and its terms were reproduced in the 1998-1999 DPP Annual Report.<sup>2</sup> I did not pursue this issue following my appointment because of the civilianisation process that the Office was about to undertake. Since then, there has been steady progress on the development of a SLA and I am pleased to report that after many years of hard work and discussion, the SLA between this Office and the Commissioner of Police has been finalised and was signed by myself and the Commissioner of Police on 8 June 2021. The SLA signifies a recognition of the shared responsibilities for the administration of criminal prosecutions within the Northern Territory. The SLA regulates the respective responsibilities and commitments of the Police and this Office in the conduct of summary prosecutions and reflects the unique positions within each of the three main regions: Alice Springs, Katherine and Darwin. I would like to acknowledge the significant cooperation and input from the Judicial Policy Unit of the Northern Territory Police Force<sup>3</sup> and the support of the Commissioner of Police in bringing this project to its completion.

In my second Annual Report, I spoke of a significant project which had been undertaken by this Office in that reporting year, namely, the civilianisation of the Police Prosecutions Unit in the Darwin Region (the CoPPs Project).<sup>4</sup> The rationale for the CoPPs project was government's decision to re-align police resources with mainstream police functions. In other words, the object of the exercise was to save money. The initiative to civilianise was that of the then Commissioner of Police<sup>5</sup> who, I understand, submitted to government that it was cheaper to employ lawyers than it was to employ members of the Police Force to prosecute in the summary courts. I was not consulted. When I was given the direction to civilianise by the Attorney-General,<sup>6</sup> I was led to believe that civilianisation in locations other than Darwin was dependent upon the success of the CoPPs project in Darwin. The project was completed on 2 December 2013 at which time police prosecutors ceased to exist in the Darwin Local Court.

Whether or not civilianisation achieved its purpose is not known to me. If the project achieved its purpose, it is puzzling as to why the initiative has not been renewed in the other major urban centres, Alice Springs and Katherine. If the CoPPs project failed to achieve its sole purpose, then it is unclear why it has been continued in Darwin. I have raised the civilianisation issue with the Commissioner's representatives on numerous occasions and I understand that a report is being prepared for the Commissioner's

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<sup>1</sup> 2012-2013 DPP Annual Report at page 11.

<sup>2</sup> at pages 87-91.

<sup>3</sup> The Judicial Policy Unit was previously called the Judicial Operations Section.

<sup>4</sup> 2013-2014 DPP Annual report at page 9.

<sup>5</sup> John McRoberts.

<sup>6</sup> John Elferink.

consideration on the issue. Putting to one side the success or otherwise of the project, the existence of three different business models governing the relationship between this Office and Police, one for Darwin where civilianisation has taken place, and two others for Alice Springs and Katherine where civilianisation has not taken place, creates its own administrative problems.<sup>7</sup> The difference in operational processes in the three regions is unsatisfactory and requires consolidation if efficiencies are to be achieved.

A word of caution. If civilianisation is to take place in the two other major centres, the operational costs<sup>8</sup> associated with providing the service have to be accurately identified and an appropriate level of funding transferred from Police to the DPP for that purpose. If the purpose of future civilianisation is to save money, there is little point in going through the exercise if all that is achieved is shifting cost from the Police to the DPP. When civilianisation took place in Darwin in 2013, while every effort was made to identify the costs involved in Police providing the service, upon funds being transferred to the DPP it was soon realised that the resources transferred to the DPP were inadequate. This had an immediate negative impact on the DPP's budget which continues to this day

There was a marked increase in work during the reporting year. The number of Supreme Court trials held increased from 50 in the previous year to 72 in the current reporting year. While at first glance the figures in Table B on page 21 of this report might suggest there was a slight decrease in the number of appeals heard by the Court of Criminal Appeal / Court of Appeal from the previous reporting year,<sup>9</sup> what the figures do not show is that the Court reserved its decision in another nine appeals argued during the current reporting year.

During the reporting year, delays in recruiting suitable staff to fill vacancies, some of which occurred at short notice, resulted in a large number of matters having to be briefed out to local counsel at considerable expense to the office. Where necessary, briefing out to interstate counsel was compounded by difficulties associated with COVID 19 border restrictions. The combination of these factors resulted in the workload on existing staff increasing dramatically. It is anticipated that a number of further vacancies which were flagged to occur at the end of the reporting year or early in the 2021-2022 reporting year will further exacerbate an already stressful situation.

It is of interest to note that during the reporting year there were three referrals of proceedings by trial judges to the Full Court of the Supreme Court pursuant to s 21 of the *Supreme Court Act 1979* and one referral of a question of law by a trial judge to the Court of Criminal Appeal pursuant to s 408 of the *Criminal Code*.

Section 21 allows a judge to refer a proceeding or part of that proceeding to the Full Court for determination.<sup>10</sup> The Full Court may accept, decline to accept, or accept in part only a reference made to it. The Full Court accepted each of the three references made to it.

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<sup>7</sup> For example, there are five summary prosecutor positions in Alice Springs; four are funded by the DPP and one is funded by the Police. There are two summary prosecutor positions in Katherine; one is funded by the DPP and one is funded by the Police on a three year funding cycle, with the current funding round due to end 30 June 2022.

<sup>8</sup> Operational costs include travel expenses for witnesses and staff, other witness expense claims, transcribing services, ICT services, personnel on-costs, office facilities and administrative support staff.

<sup>9</sup> The figures in Table B only show decisions actually delivered by the Court.

<sup>10</sup> The Full Court is the Supreme Court constituted by not less than three judges.

Acceptance of the references resulted in the proceedings before the trial judge having to be adjourned until such time as the Full Court had heard argument and delivered its decision for the trial judge to follow. The point of such referrals is to obtain a binding decision at the outset of proceedings thus avoiding an appeal at the conclusion of proceedings.

Section 408 of the *Criminal Code* allows a trial judge of his own initiative at any time before verdict to reserve any question of law that arises on the trial for the consideration of the Court of Criminal Appeal (CCA). A trial judge has no discretion and must reserve a question of law for consideration of the CCA if requested to do so by counsel for the accused. However, s 408 does not allow the Crown to make an application to the trial judge to reserve a question of law for the consideration of the CCA.

The question referred under s 408 of the Code concerned the admissibility of evidence which the Crown proposed leading at trial. The CCA delivered its decision which binds the trial judge and the parties in the conduct of the trial. Again, the procedure avoids an appeal at the conclusion of proceedings.

In 2013, in response to an invitation from the Director, Legal Policy, Department of the Attorney-General and Justice on the issue of whether the Crown should have the right to institute interlocutory appeals, this Office submitted the Crown should have that right. The need for reform in this area is driven largely by pre-trial rulings made by trial judges on the admissibility of evidence. Pre-trial legal arguments on the admissibility of evidence have become common since the *Evidence (National Uniform Legislation) Act 2011* came into operation. If evidence is ruled inadmissible, the only remedy the Crown has to test the correctness of the ruling is to refer a point of law to the Court of Criminal Appeal following the accused's acquittal. A successful referral cannot affect the outcome of the trial. If the accused is found guilty at trial, the finding of guilt, including any ruling on the admissibility of evidence, can be challenged by the accused on appeal. The Crown has no right of appeal against an acquittal.

The purpose of interlocutory appeals is to give the Crown the ability to challenge the correctness of a trial judges' decision to exclude evidence before the trial proper commences. Just as with the referral of proceedings to the Full Court pursuant to s 21 of the *Supreme Court Act 1979* or the reservation of a question of law for consideration by the CCA pursuant to s 408 of the *Criminal Code*, the obtaining of a binding appellate ruling on the admissibility of evidence at an early stage enables the trial to proceed on an equal footing for both parties. Neither party suffers from the advantage or disadvantage of an erroneous ruling which may irreparably and unfairly affect the outcome of the trial.

Although the recommendation made by this Office in 2013 to give the Crown the right to appeal from interlocutory rulings has been renewed from time to time, the recommendation has not been acted upon. I strongly urge government to give this issue urgent consideration.

A Media Release issued by the Department of the Attorney-General and Justice on 4 June 2021 advised that I would be taking extended personal leave from 30 June 2021 with a view to retiring as Director later in the year. As at 30 June my retirement date had not been decided. The same Media Release advised of the resignation of Deputy Director Matthew

Nathan SC and of the appointment of Ms Victoria Engel as Deputy Director. A copy of the Media Release is at Appendix A.

Details of Mr Nathan's work history and appointments can be found in previous Annual Reports<sup>11</sup> and in Appendix A. Mr Nathan, a native New Zealander, was head-hunted by a New Zealand law firm which conducts criminal prosecutions on behalf of the Crown.<sup>12</sup> The fact that Mr Nathan was head-hunted for a senior position of Special Counsel speaks volumes of his reputation and ability. He will be sorely missed. My staff and I wish Mr Nathan and his family all the very best in the next chapter of their lives.

The reporting year also saw the retirement of Crown prosecutor Mr John Ibbotson and the resignation of two other senior staff members, Ms Lena Korn the Katherine Witness Assistance Service Coordinator and Mr Stephen Geary senior Crown prosecutor. Mr Geary's departure in April 2021, was in order to take up an appointment as a judge of the Northern Territory Local Court. Mr Geary originally commenced with the DPP as a Crown prosecutor in October 2001 and was appointed a senior Crown prosecutor in 2010. Mr Geary worked in both the Darwin and Alice Springs offices. Mr Geary brings to the Local Court a wealth of experience in the criminal law. My staff join me in wishing him well in the discharge of his functions as a judicial officer.

As this will be my final Report, I would like to thank all members of staff for the support you have given me over the last eight years during my term as Director. I extend special thanks to the managers of the units who collectively make up the Director's Executive Committee which meets every Thursday morning to problem solve, develop policy and to deal with all manner of issues affecting Office operations.<sup>13</sup> The dedication and professionalism of all staff, irrespective of where they work in the organisation, has enabled the Office to achieve its mission which is to provide the Northern Territory community with an independent, professional and effective prosecution service.

Section 26 of the *Director of Public Prosecutions Act* (the Act) provides that the Director is not subject to direction by the Attorney-General or any other person in the performance of the Director's functions.

Section 28 of the Act permits the Attorney-General, after consultation with the Director, to issue to the Director directions as to the general policy to be followed in the performance of a function of the Director. Every such direction must be in writing and must be included in the Director's Annual Report. A direction may not be issued in respect of a particular case.

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<sup>11</sup> 2015-2016 DPP Annual Report at page 11, 2017-2018 DPP Annual Report at page 11.

<sup>12</sup> New Zealand does not have a DPP. The law firm of Meredith Connell is well known for its 100 years of service as Office of the Crown Solicitor at Auckland, conducting criminal prosecutions in New Zealand's largest city on behalf of the Solicitor-General since 1921.

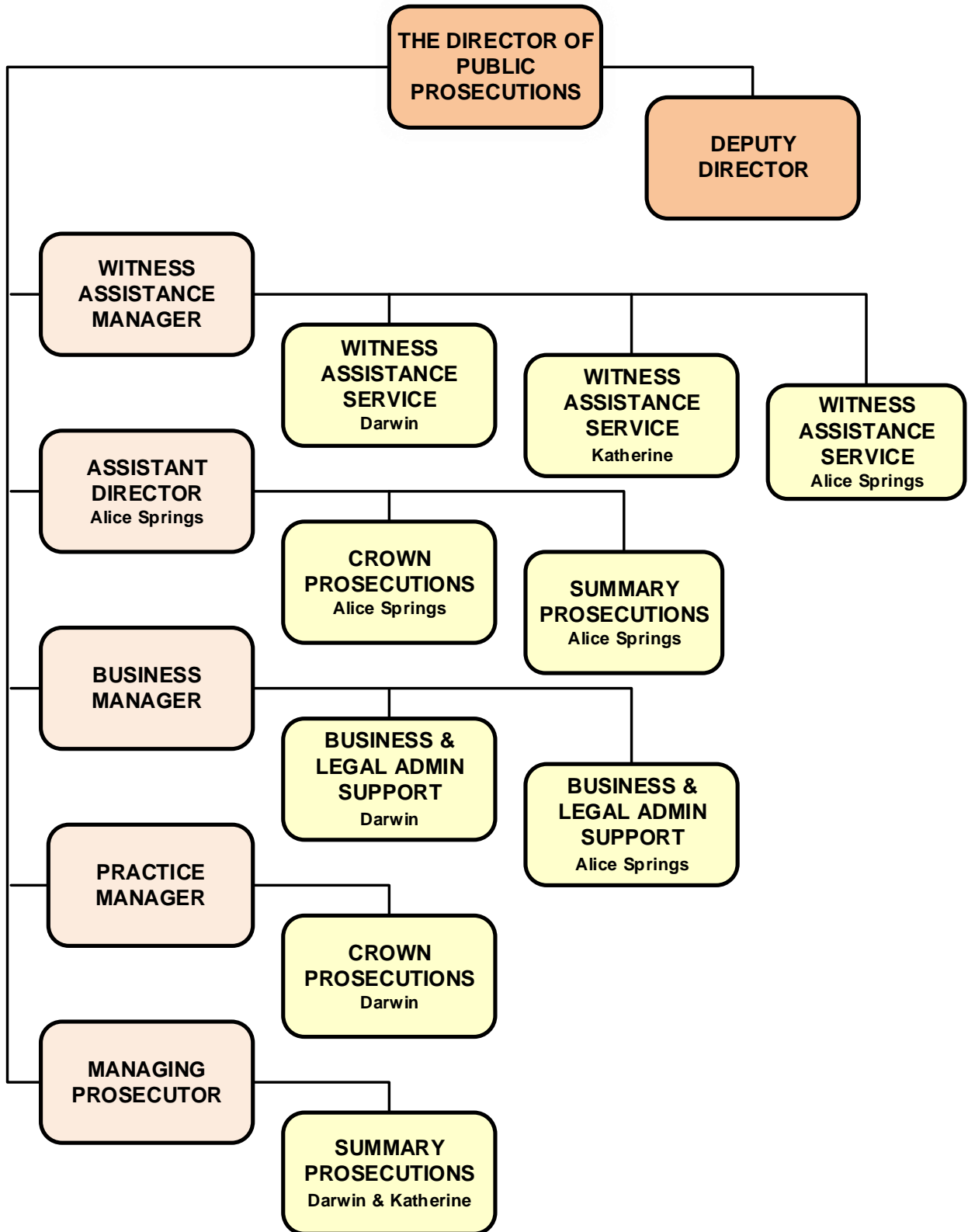
<sup>13</sup> The Executive Committee comprises the Director, the Deputy Director, the Business Manager, the Office Manager, the Crown Practice Manager Darwin, the Managing Prosecutor Summary Prosecutions Darwin, the Practice Manager Alice Springs and the Manager of the Witness assistance Service. The Practice Manager Alice Springs attends by way of AVL.



During the reporting year:

- no directions were issued to me by the Attorney-General or by any other person under s 26 of the Act; and
- no directions were issued to me by the Attorney-General under s 28 of the Act.

# ORGANISATIONAL CHART



## FUNCTIONS OF THE DIRECTOR OF PUBLIC PROSECUTIONS

The functions of the Director of Public Prosecutions (hereinafter referred to as the DPP) are set out in Part 3 of the *Director of Public Prosecutions Act 1990* (hereinafter referred to as the DPP Act). These functions are as follows:

- (a) the preparation and conduct of all prosecutions in indictable offences;
- (b) the preparation and conduct of committal proceedings;
- (c) to bring and conduct proceedings for summary offences;
- (d) the assumption where desirable of control of summary prosecutions;
- (e) to institute and conduct prosecutions not on indictment for indictable offences including the summary trial of indictable offences;
- (f) the power to institute and conduct or take over any appeal relating to a prosecution or to conduct a reference under s 414 of the *Criminal Code*;
- (g) the right to appeal against sentences imposed at all levels of the court hierarchy;
- (h) the power to grant immunity from prosecution;
- (i) the power to secure extradition to the Northern Territory of appropriate persons;
- (j) the power to participate in proceedings under the *Coroners Act 1993* and, with the concurrence of the Coroner, to assist the Coroner if the Director considers such participation or assistance is relevant to the performance of some other function of the Director and is justified by the circumstances of the case;
- (k) the power to conduct proceedings under the *Criminal Property Forfeiture Act 2002* and if, as a result of the proceedings a person becomes liable to pay an amount to the Territory or property is forfeited to the Territory under a court order, it is a function of the Director to take any further proceedings that may be required to recover the amount or enforce the forfeiture or order;
- (l) to provide assistance in the Territory to other State or Commonwealth Directors of Public Prosecutions;

- (m) to institute, intervene in and conduct proceedings that are concerned with or arise out of any function of the Director, or to otherwise do anything that is incidental or conducive to the performance of the function of the Director;
- (n) the power to furnish guidelines to Crown Prosecutors and members of the police force related to the prosecution of offences; and
- (o) to require information or to give directions limiting the power of other officials.

### General Powers

The Director has power to do all things that are necessary or convenient to be done for the purpose of performing the functions of the Director and may exercise a power, authority or direction relating to the investigation and prosecution of offences that is vested in the Attorney-General.

## REPORT ON PROSECUTION FUNCTIONS

### Output Reporting

Key Deliverables	Current Year		Previous Years Actuals		
	2020-21 Budget	2020-21 Actual	2019-20	2018-19	2017-18
New Matters	9,400	9,039	9,312	8,998	9,686
Finalisations					
- Supreme Court pleas	450	325	356	389	418
- Supreme Court trials	60	72	50	55	64
- Supreme Court withdrawn	40	26	35	22	22
- Not committed to Supreme Court	N/A	N/A	N/A	N/A	N/A
- Local Court hearings/pleas	7,000	6,386	6,498	7,037	6,738
- Local Court withdrawn	800	507	461	585	841
- Appeals at all levels	60	46	60	83	59
Findings of guilt (including guilty pleas)					
- In Supreme Court	94%	95%	97%	98%	97%
- In Local Court	97%	97%	98%	97%	97%
Convictions after trial or hearing	97%	91%	91%	92%	97%
Witness Assistance Service clients	1,730	2,155	1,855	1,891	2,216

### Charges requiring DPP's consent or signature

Certain offences cannot be commenced without the consent of the DPP or a Crown Law Officer which term is defined to mean the Attorney-General or the DPP and includes a person authorized under a law of the Territory to exercise a power or perform a function in

the name of or on behalf of a Crown Law Officer.<sup>14</sup> Similarly, indictments charging certain offences and documents evidencing significant prosecutorial decisions can only be signed by the DPP or a Crown Law Officer.

Pursuant to s 10(2) of the DPP Act, a Deputy DPP may exercise the powers and perform the functions of the DPP. However, the exercise of the powers and functions by a Deputy DPP is subject to the direction and control of the DPP.

The more important provisions are identified and reported against below.

A Table of Comparison Data for the last five years is at Appendix B.

### **Conspiracy**

Section 43BJ of the *Criminal Code* creates the offence of conspiracy. Section 43BJ(10) provides that proceedings for an offence of conspiracy must not be commenced without the consent of the DPP.

During the reporting year one consent to commence proceedings for this offence was given.

### **Criminal Defamation**

Part VI Division 7 of the *Criminal Code* creates the offences of unlawfully publishing defamatory matter and publishing or threatening to publish defamatory matter with intent to extort money.<sup>15</sup>

Section 208 of the *Criminal Code* provides that a prosecution of an offence against Division 7 cannot be begun except by the direction of a Crown Law Officer.

During the reporting year no directions to commence proceedings for an offence against this Division were sought or given.

### **Distributing Intimate Images**

Part VI Division 7A of the *Criminal Code* creates offences relating to the distribution of intimate images.<sup>16</sup>

Section 208AD of the *Criminal Code* provides that a prosecution of a child for an offence against Division 7A must not be commenced without the consent of the DPP.<sup>17</sup>

During the reporting year no consents to commence proceedings for this offence were sought or given.

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<sup>14</sup> See definition of Crown Law Officer in s 1 of the *Criminal Code*.

<sup>15</sup> Sections 204 and 205 of the *Criminal Code*.

<sup>16</sup> Sections 208AB and 208AC of the *Criminal Code*.

<sup>17</sup> A child is a person under the age of 18 years. See the definitions of adult and child in s 1 of the *Criminal Code*.

## **Money Laundering**

Part VII Division 3A of the *Criminal Code* creates offences relating to money laundering. Section 231E of the *Criminal Code* provides that a prosecution for an offence against Division 3A must not be commenced without the consent of the DPP.

During the reporting year 18 consents to commence proceedings for this offence were given.

## **Maintaining a relationship of a sexual nature with a child under 16**

Section 131A(2) of the *Criminal Code* creates the offence of an adult maintaining a relationship of a sexual nature with a child under the age of 16 years. Section 131A(9) provides that an indictment charging this offence must be signed by the DPP.

During the reporting year one indictment charging this offence was signed.

## **No True Bill**

Section 297A of the *Criminal Code* provides that when a person charged with an indictable offence has been committed for trial and it is not intended to put him on trial, a Crown Law Officer shall issue a certificate to that effect and deliver it to the person committed. The effect of the document is that any conditions of bail cease to have effect or, if the committed person has not been released on bail, the warrant of commitment ceases to have effect.

The filing of a No True Bill is the alternative to the filing of an indictment.

During the reporting year four No True Bills were issued.

## **Ex-officio indictments**

When a person charged with an indictable offence has been committed for trial and it is intended to put him on his trial for the offence, the charge is to be reduced to writing in a document that is called an indictment. The indictment is to be signed by a Crown Law Officer.<sup>18</sup>

Section 300 of the *Criminal Code* provides that a Crown Law Officer may sign an indictment against any person for any offence whether the accused person has been committed for trial or not. These indictments are called ex-officio indictments.

In the normal course of events, ex-officio indictments are signed at the request of an accused person with a view to by-passing the preliminary examination procedure in the

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<sup>18</sup> Section 298 of the *Criminal Code*.

Local Court and expediting a plea of guilty in the Supreme Court.<sup>19</sup>

In the reporting year three ex-officio indictments were signed and filed in the Supreme Court.

### **Nolle Prosequi**

Section 302 of the *Criminal Code* provides that after an indictment charging an accused person with an offence has been filed in the Supreme Court, a Crown Law Officer may inform the Court that the Crown does not intend to proceed further upon that indictment, or in relation to a charge contained in the indictment, then pending in the Court. The manner in which the Court is informed is by the filing of a document called a nolle prosequi.

In the reporting year 16 nolle prosequis were signed and filed in the Supreme Court.

### **Taking over proceedings**

Section 13 of the DPP Act provides that it is a function of the DPP to take over a prosecution, not on indictment, for an indictable offence brought by another person and to take over and conduct proceedings in respect of a summary offence.

Section 14 of the DPP Act provides that it is a function of the DPP to take over an appeal relating to a prosecution which has instituted by another person.

No prosecutions or appeals were taken over by the DPP in the reporting year.

### **Indemnities and undertakings**

Section 21(2) of the DPP Act provides that the DPP may grant an indemnity from prosecution, whether on indictment or otherwise and may give an undertaking that an answer given or a statement or disclosure made by a person will not be used in evidence against the person.

No indemnities were granted or undertakings given during the reporting year.

### **Joint trial arrangements with Commonwealth DPP**

There exists between the Commonwealth DPP and the Territory DPP an arrangement for the conduct of Territory prosecutions by the Commonwealth DPP, and for the conduct of Commonwealth prosecutions by the Territory DPP.<sup>20</sup>

The arrangement is given effect by each DPP delegating to the other the power to sign and present indictments, including ex-officio indictments, in respect of an offence against the law of the conferring jurisdiction and to conduct on behalf of the DPP for the conferring

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<sup>19</sup> The advantage for the accused in consenting to proceeding by way of ex-officio indictment is to maximise discount on sentence. The Northern Territory Court of Criminal Appeal has held that pleas of guilty or indications of pleas of guilty at the earliest possible opportunity accompanied by true remorse are entitled to attract a greater reduction than late pleas which are not accompanied by true remorse. *Wright v The Queen* (2007) 19 NTLR 123 at 125 [32].

<sup>20</sup> Similar arrangements exist between other State and Territory DPPs and the Commonwealth DPP.

jurisdiction the trial on such an indictment. The arrangement also deals with the conduct of summary prosecutions, preliminary examinations and appeals.

The purpose of the arrangement is to facilitate a single prosecution of an accused person who has been charged with both Commonwealth and Territory offences. Without the arrangement, separate trials would have to be held for the Commonwealth offences and for the Territory offences. A common situation which enlivens the arrangement is when an accused person is charged with possessing child abuse material, an offence against Territory law,<sup>21</sup> and making available child pornography material using a carriage service and / or accessing child pornography material using a carriage service, both of which are offences against Commonwealth law.<sup>22</sup>

The arrangement requires consultation between the Territory and Commonwealth DPPs in order to determine the question of which jurisdiction should prosecute all of the offences.

In the reporting year consultation between the Commonwealth DPP and the Territory DPP took place on four occasions resulting in the Commonwealth DPP prosecuting three cases on behalf of the Territory and the Territory prosecuting one case on behalf of the Commonwealth.

## Appeals

It is a function of the Director of Public Prosecutions to:

- (i) institute and conduct, or conduct as respondent, any appeal or further appeal relating to prosecutions upon indictment in the Supreme Court;
- (ii) request and conduct a reference to the Court of Criminal Appeal under s.414(2) of the *Criminal Code*; and
- (iii) institute and conduct, or to conduct as respondent, any appeal or further appeal relating to prosecutions not on indictment, for indictable offences, including the summary trial of indictable offences.

An explanation of the appeal process can be found on the DPP website under the Appeals tab.

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<sup>21</sup> Contrary to s 125B(1) of the *Criminal Code* (NT).

<sup>22</sup> Contrary to s 474.19(1) of the *Criminal Code* (C'th).



**TABLE A** below contains the results of applications for leave to appeal determined by a single judge *on the papers* during the reporting period.

*NB: The figures in brackets in each of the tables below are for the period 1 July 2019 to 30 June 2020.*

**TABLE A**

**Outcome of defence applications for leave to appeal from the Supreme Court to the Court of Criminal Appeal determined by a single judge *on the papers* 2020-2021**

	Conviction		Sentence	
Granted	1	(0)	2	(6)
Refused	1	(0)	3	(4)
Discontinued	1	(0)	0	(5)
<b>Total</b>	<b>1</b>	<b>(0)</b>	<b>5</b>	<b>(15)</b>

**TABLE B** below summarises the results of appeals from the Supreme Court to the Court of Criminal Appeal and Court of Appeal decided during the reporting period.<sup>23</sup> **TABLE B** also includes rulings of an interlocutory nature made by single judges exercising the powers of the Court of Criminal Appeal in matters such as applications for an extension of time within which to apply for leave to appeal and applications for bail where written reasons for decision have been published by the Court.

**TABLE B**

**Outcome of defence appeals from the Supreme Court to the Court of Criminal Appeal/ Court of Appeal/Full Court 2020-2021**

	Conviction		Sentence		Other	
Allowed	1	(2)	4	(8)	0	(0)
Dismissed	0	(3)	4	(4)	0	(0)
Discontinued	0	(0)	0	(0)	0	(0)
<b>Total</b>	<b>1</b>	<b>(5)</b>	<b>8</b>	<b>(12)</b>	<b>0</b>	<b>(0)</b>

<sup>23</sup> Table B only shows decisions actually delivered by the Court. It does not show cases which were argued during the reporting year and the decision reserved. Nine appeals were argued in the reporting year in which the Court had reserved its decision and had not delivered its decision as at 30 June 2021.

**Outcome of prosecution appeals and references from the Supreme Court to the Court of Criminal Appeal/Court of Appeal/Full Court  
2020-2021**

	Sentence		Other	
Allowed	0	(3)	0	(1)
Dismissed	0	(4)	1	(0)
Discontinued	1	(0)	0	(0)
<b>Total</b>	<b>1</b>	<b>(7)</b>	<b>1</b>	<b>(1)</b>

One question of law was reserved by a trial court for the consideration of the Court of Criminal Appeal pursuant to s 408 of the *Criminal Code*.<sup>24</sup>

Three proceedings were referred by a single judge to the Full Court for consideration or determination pursuant to s 21 of the *Supreme Court Act 1979*.<sup>25</sup>

No point of law following the acquittal of a person after his trial on indictment was referred to the Court of Criminal Appeal for its consideration and opinion by the DPP pursuant to s 414(2) of the *Criminal Code*.

**TABLE C** below summarises the results of appeals from the Local Court to the Supreme Court decided during the reporting period.

**TABLE C**

**Outcome of defence appeals from the Local Court to the Supreme Court at Darwin  
2020-2021**

	Conviction		Sentence		Other	
Allowed	1	(1)	7	(9)	0	(0)
Dismissed	3	(1)	7	(8)	0	(0)
Discontinued	0	(1)	10	(17)	0	(0)
<b>Total</b>	<b>4</b>	<b>(3)</b>	<b>24</b>	<b>(34)</b>	<b>0</b>	<b>(0)</b>

<sup>24</sup> Publication of details suppressed until further order

<sup>25</sup> *R v JHW* [2021] NTSCFC 1, *Lorenzetti v Brennan* [2021] NTSCFC 3, *R v Calica* [2021] NTSCFC 2

**Outcome of prosecution appeals from the Local Court to the Supreme Court at  
Darwin  
2020-2021**

	Dismissal of Charge		Against Inadequacy of Sentence		Other	
Allowed	1	(0)	1	(3)	2	(0)
Dismissed	0	(2)	4	(1)	0	(0)
Discontinued	0	(0)	2	(2)	0	(1)
<b>Total</b>	<b>1</b>	<b>(2)</b>	<b>7</b>	<b>(6)</b>	<b>2</b>	<b>(1)</b>

**Outcome of defence appeals from the Local Court to the Supreme Court at  
Alice Springs  
2020-2021**

	Conviction		Sentence		Other	
Allowed	8	(1)	3	(5)		(0)
Dismissed	2	(0)	0	(3)		(0)
Discontinued	3	(2)	2	(1)		(1)
<b>Total</b>	<b>13</b>	<b>(3)</b>	<b>5</b>	<b>(9)</b>		<b>(1)</b>

**Outcome of prosecution appeals from the Local Court to the Supreme Court at  
Alice Springs  
2020-2021**

	Dismissal of Charge		Against Inadequacy of Sentence		Other	
Allowed	0	(0)	0	(0)	0	(0)
Dismissed	0	(0)	1	(0)	0	(0)
Discontinued	1	(0)	0	(0)	0	(0)
<b>Total</b>	<b>1</b>	<b>(0)</b>	<b>1</b>	<b>(0)</b>	<b>0</b>	<b>(0)</b>

## Crown Appeals

One Crown appeal was instituted in the Court of Criminal Appeal (“CCA”) and heard during the reporting year.<sup>26</sup> The CCA also delivered its reserved decision in respect of a Crown appeal instituted and argued in the previous reporting year.<sup>27</sup>

In ***R v Bennett***, the offender was sentenced to 18 months imprisonment, suspended after the respondent served one month of actual imprisonment and on the respondent entering into a home detention order pursuant to s 44 of the *Sentencing Act 1995* (“Sentencing Act”), for a period of 12 months. The issue in the appeal was whether the sentencing Judge erred in finding that the power in s 44 of the Sentencing Act to sentence an offender to a period of home detention can be exercised by a partially, rather than a wholly, suspended sentence of imprisonment. The appeal involved a question of statutory construction. The Crown argued that there was no power in s 44 to partially suspend a sentence of imprisonment, with the consequence that home detention was only available as a sentencing option if the sentence of imprisonment was wholly suspended. This would preclude home detention as an option where the mandatory sentencing provisions in the Sentencing Act require an offender to serve an actual term of imprisonment.

The CCA dismissed the appeal holding that the proper construction of s 44(1) of the Sentencing Act is that it permits a court to sentence an offender to a term of imprisonment and to make an order suspending the whole or a part of that term of imprisonment on the offender becoming subject to and bound by (entering into), either: (a) forthwith (in the case of a wholly suspended term); or (b) after service of part of the term (in the case of a partially suspended term), a home detention order.

***R v Simpson*** was a Crown appeal against the inadequacy of a sentence of three years imprisonment following the offender’s plea of guilty to one count of unlawfully causing serious harm. The sentencing judge ordered that the sentence be suspended on conditions after the offender had served nine months.

The respondent and a co-offender went into Darwin City to celebrate an occasion. They both became very intoxicated and the respondent was also under the influence of drugs. After leaving the licensed premises at which they had been drinking, they saw the victim and his girlfriend having an argument in Shadforth Lane. This argument resulted in the victim either slapping or kicking his girlfriend, causing her to fall to the ground and scream for help. The respondent and co-offender approached the victim and the respondent said, “*What are you doing? That’s not on.*” The co-offender pushed the victim to the ground. The victim got up and swung a fist at the respondent. The respondent then punched the victim in the face more than once, causing him to fall to the ground again. The respondent and co-offender then kicked and punched the victim to his head and body a number of times. While they were punching and kicking him, the victim became unconscious. The respondent and co-offender stopped and left the area and as they were leaving, one of them yelled out, “*Sorry, he deserved it.*”

The victim sustained severe traumatic brain injury. He was on life support for 13 days. As a consequence, he suffered permanent disabilities: impaired memory function; loss of all

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<sup>26</sup> *R v Bennett* [2021] NTCCA 2.

<sup>27</sup> *R v Simpson* [2020] NTCCA 9.

hearing in his left ear and tinnitus; problems with his balance; loss of fine motor skills in his left hand; altered sense of taste; and visual field loss in his right eye, resulting in his constantly bumping into things on his right side. He remained in hospital for over eight weeks, and after leaving hospital it was necessary for him to undertake physiotherapy to re-learn, among other things, how to eat and walk. The victim also experienced severe financial difficulties. He was unable to work for ten weeks, during which he did not receive an income. He has had substantial out of pocket expenses which resulted in him falling behind on his financial responsibilities. Additionally, as a result of the loss of his peripheral vision, he is unable to return to his former career as he was no longer permitted to drive. He also experienced severe emotional consequences.

The offender was aged 22 years, and had numerous prior convictions including one for assault occasioning actual bodily harm.

At the hearing of the appeal, the Crown identified the points of principle as the maintenance of sentencing standards in serious offences of violence and to establish the weight to be given to the seriousness of the victim's injuries (that being a defining feature of the offence of unlawfully causing serious harm) in determining the objective seriousness of an offence.

In allowing the appeal, the Court unanimously held that:

1. Where, as in this case, a defining feature of the offence is the harm to the victim, the seriousness of the harm caused must play a significant role in determining the objective seriousness of the offence. Even where the accused did not intend to cause the injuries that were actually caused, the fact that the offender did not foresee the precise nature, or extent, of the injuries actually inflicted will not ordinarily reduce the offender's culpability.
2. The case should be seen as in the middle range of seriousness for such offences.
3. Given the objective seriousness of the offence and the maximum penalty of 14 years' imprisonment, the starting point of four years' imprisonment adopted by the sentencing judge was disproportionate to the objective circumstances of the offending and both the head sentence and the time to serve were manifestly inadequate. A starting point of six years was indicated.
4. There was nothing to warrant the exercise of the residual discretion so as to leave a manifestly inadequate sentence undisturbed.

The offender was re-sentenced to four years and six months imprisonment suspended after 18 months.

## HIGH COURT OF AUSTRALIA

The Office was involved as respondent in one application for special leave to appeal to the High Court of Australia during the reporting year.

**Morton v The Queen**      **Bell & Steward JJ**  
**12 February 2021**  
**[2021] HCATrans 025**

On 15 May 2017, an Alice Springs jury found the applicant guilty of the murder of his wife.

The victim and the applicant had been in a domestic relationship for a number of years. At trial, the Crown case was that the applicant beat the deceased and caused numerous injuries. The offender told police that he and the deceased had been drinking alcohol, that the deceased was drunk and began to take off her clothes and run outside, that he told her not to do that but she wouldn't listen to him, that she started to make him angry so he picked up a knife and stabbed her in the bum and the leg and her hand.

The applicant also said that the deceased was being silly so he grabbed his axe and hit her on the arm, the leg and the top of the head. The applicant told police where to find the axe and knife.

The applicant told police that the deceased had initially taken the axe from a cupboard, that he had taken the axe from the deceased and struck her with it, but that, when he was using it, he thought the axe was a stick. Somewhat inconsistently with that assertion, he claimed that he used the purported stick against the deceased "*from this side ... not the sharp way, this way*", suggesting that he was actually aware he was using an axe, but not the blade. The applicant said that he used the axe to hit the deceased a total of three times: on the head, shoulder/arm and leg, and that he had used the blunt or flat side of the axe. He also claimed that the deceased was cutting herself with the axe, to the back of her left hand and on her leg, and on the right side of her "bum", and had even hit herself in the back with the axe.

A forensic pathologist gave evidence that the deceased had sustained *at least 28* impacts to her head and body, all of which contributed to her death. The deceased died due to a combination of loss of blood from her injuries (including bruising and other forms of internal bleeding), and breathing complications caused by the fractured ribs.

The Crown case was that at the very least the applicant intended to cause serious harm.

At trial, the applicant conceded much of the Crown case, but argued that he did not intend to cause serious harm to the deceased and that he should be found guilty of manslaughter. As mentioned above, the jury found the applicant guilty of murder.

The applicant subsequently applied to the Court of Criminal Appeal for leave to appeal against the finding of guilt. On 11 December 2017, leave to appeal was refused by a single judge exercising the powers of the Court of Criminal Appeal. The applicant then filed an application to have his application heard and determined by the Court of Criminal Appeal constituted by three judges.

On the hearing of the application, the applicant contended that the trial judge misdirected the jury in respect of (i) the burden and standard of proof, (ii) applicant's belief that the axe was a stick, and (iii) intoxication. The Court of Criminal Appeal concluded that the applicant had not established that the directions given by the trial judge were attended by error or gave rise to any miscarriage of justice. Leave to appeal was granted but the appeal was dismissed. See **Morton v The Queen** [2020] NTCCA 2

On 15 June 2020, the applicant applied to the High Court for special leave to appeal against the decision of the Court of Criminal Appeal. The applicant asserted that the CCA erred in holding that the trial judge did not err in respect of the directions given to the jury bearing on the burden and standard of proof. The special leave questions were said to be:

1. Was it erroneous for the trial judge to direct the jury that they should determine the applicant's extent of intoxication, and
2. Was it erroneous for the trial judge to direct the jury that they must decide whether the applicant was telling the truth in his record of interview?

At the hearing of the application, the Crown was not called upon to make any oral submissions.

The Court dismissed the application holding that there were insufficient prospects that an appeal would succeed if leave to appeal were granted.

In the current reporting year, the High Court delivered its reserved decision in the matter of *Singh v The Queen*, an appeal which was argued in the 2019-2020 reporting year.

**Singh v The Queen**            **Kiefel CJ, Bell, Gageler, Keane, Nettle,  
Gordon & Edelman JJ**  
**16 August 2019, 17 March & 5 August 2020**  
**[2020] HCA 25**

The above appeal was argued in the High Court on 17 March 2020 together with the appeal in the matter of **Van Dung Nguyen v The Queen** [2020] HCA 23 as the issues raised in both cases were the same. In the matter of **Singh**, special leave to appeal had been granted on 16 August 2019.

The Court reserved its decision on both cases.

The appellant Singh passed away in May 2020 before the Court had delivered its decision in either case.<sup>28</sup>

The appellant's solicitors wrote to the High Court advising of Mr Singh's passing and asked the court to deliver its judgement in his appeal notwithstanding his passing.

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<sup>28</sup> The High Court delivered its decision in the matter of *Nguyen v The Queen* on 30 June 2020. See *Nguyen v The Queen* [2020] HCA 23.

The Court then sought further written submissions from the parties as to whether the appeal had abated with the death of the appellant. The appellant submitted that it had not. The respondent submitted that it had. The Court then invited submissions from each of the Attorneys-General as to the effect of the death of a party on an appeal under s 73 of the Constitution.

The only A-G to file written submissions was the A-G for the ACT. The ACT A-G, inter alia, agreed with the respondent's submissions.

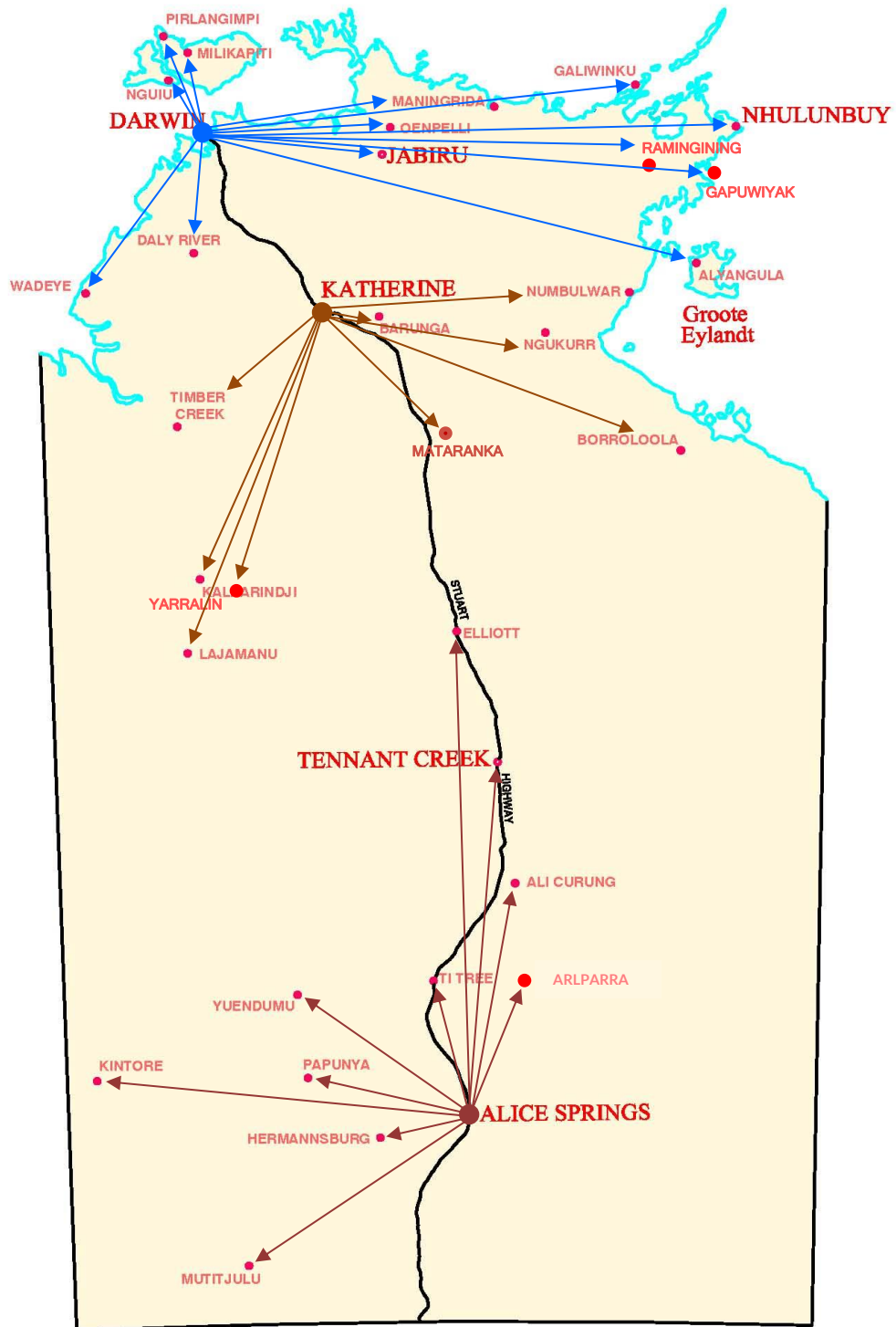
The Court did not require oral submissions and determined the issue on the papers.

The High Court delivered its decision on the abatement issue on 5 August 2020. The Court revoked the grant of special leave to appeal to Mr Singh holding that:

*"It is no longer possible to make the order sought by him, that is, an order quashing his conviction and ordering a retrial. No other order is appropriate. Accordingly the Court revokes special leave to appeal."*



# NT COURT LOCATIONS





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# SUMMARY PROSECUTIONS

The Summary Prosecutions Unit of the DPP is responsible for the conduct of prosecutions and prosecution-related activities in the Local Court and the Youth Justice Court.

Summary Prosecutions sections exist in three geographical locations:

- Summary Prosecutions Darwin (SPD);
- Summary Prosecutions Katherine (SPK); and
- Summary Prosecutions Alice Springs (SPA).

Each section is staffed by civilian lawyers employed by the DPP (“summary prosecutors”).

For all Darwin matters, summary prosecutors appear at each stage of the criminal proceedings initiated by the laying of charges by Police. In addition to prosecuting matters referred to them by Police, summary prosecutors also appear on instructions from Northern Territory Correctional Services and Territory Families in relation to various kinds of breach proceedings.

In Katherine and Alice Springs, and at all of the various Northern Territory circuit courts, Police prosecutors appear in the initial stages of “bail and arrest” and case management procedures of criminal matters. Summary prosecutors then assume responsibility for the matters at the *voir dire* and / or hearing stage, or when they are requested to take carriage of complicated or sensitive plea hearings or applications.

SPD, SPK and SPA have individual responsibility for designated circuit courts over large geographical regions within the Northern Territory. The circuit court serviced by each section appear on the map at page 29 of this Report. Summary prosecutors appearing in circuit courts are also expected to provide support and assistance to the remote stationed police members with respect to all aspects of criminal prosecution.

## DARWIN

The Darwin Summary Prosecution unit is supervised by the Summary Prosecutions Manager who is responsible for approximately 15 professional staff and 2 administrative staff in Darwin and 2 professional staff in Katherine, with overall oversight for the division by the Deputy Director.

In the current reporting year SPD maintained workable staffing levels and I am pleased to report that staff recruited to the senior positions in the last reporting year have been retained and have played key roles in mentoring and developing staff at more junior levels to increase both the individuals and overall team’s capacity. In Katherine the resignation of one prosecutor in the reporting year<sup>29</sup> will have an impact upon SPD resources due to

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<sup>29</sup> The P2 prosecutor resigned with effect from 14 June 2021.

the need to staff that position from Darwin. It is anticipated that this will have long term effects for staffing levels in SPD due to the difficulties associated with attracting staff to work in remote areas.

It was reported in last year's Annual Report that the impact of the COVID-19 pandemic had a significant effect on the way Summary Prosecutions were conducted in the Northern Territory. As outlined in last year's Annual Report the Office moved from a purely paper based, face-to-face business model to a model that was almost entirely electronic and online.<sup>30</sup> The transition from a paper-based system to an electronic environment continued to progress in the current reporting year. Summary Prosecutions have moved to a paperless prosecution model in the Youth Court, Bail and Arrest and Direction Hearings Lists using a program called Evidence.com. Summary Prosecutions is also working closely with the Local Court to trial the use of Evidence.com in the Preliminary Examination Mention lists and summary hearings. It is hoped that this trial will allow the prosecution to transmit relevant documents to the court electronically, play CCTV or Body Worn Video to the court via a secure online medium and allow for the tendering of material electronically between the courts, defence and the prosecution.

## **KATHERINE**

The significant challenges faced by SPK were the subject of comment in the 2018-2019 Annual Report.<sup>31</sup> In last year's Annual Report it was reported that the Office had redirected funding from SPD to establish a P2 Prosecutor position in Katherine. As stated above, the P2 position is currently vacant and resources will need to be deployed from Darwin to support SPK until that position can be filled.

In last year's Annual Report I reported that the Katherine Government Centre refurbishment plans had been finalised and that the project was to commence in October 2020.<sup>32</sup> Due to the circumstances mentioned on page 40 of this Report, work on the KGC refurbishment was delayed until March 2021. It is anticipated that the work will be completed in September 2022.

## **ALICE SPRINGS**

At the beginning of the 2020 reporting year, the Alice Springs Summary Prosecution Unit was fully staffed. The team consisted of four summary prosecutors with the addition of a Senior Summary Prosecutor. The Senior Summary Prosecutor was introduced to provide guidance and support to more junior prosecutors and manage workflow within the unit. The position was a resource missing for a number of years and the introduction saw a significant improvement in the operation of the team. Despite the increase in resources, the hearing load for summary prosecutors remained high, with prosecutors routinely being allocated more than one hearing per day. Additional support was required with Crown prosecutors assisting by undertaking several complex co-offender hearings in the first half of the financial year.

In August 2020, the Practice Manager South was appointed within the office. This role was new to the structure and in addition to providing prosecutorial services, has the additional

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<sup>30</sup> 2019-2020 DPP Annual Report at pages 41-42

<sup>31</sup> See the 2018-2019 Annual Report at pages 35-36.

<sup>32</sup> See the 2019-2020 Annual Report pages 53

responsibility for managing the daily operations of the office. A review of the practices and procedures was the priority for this newly created position however, as a result of the case load and lack of resources in Crown, the review process has taken longer than anticipated. While the completion of the review is pending, a number of areas for improvement were identified early in the process. These included:

- The routine utilisation of tendency and relationship evidence in domestic violence matters;
- a greater emphasis on the prosecution of co-offender matters which cause significant damage to property, personal injury to community members and a significant drain on police resources; and
- Identification of opportunities for summary prosecutors to instruct on Crown matters.

The Failed Prosecution Panel was established by Police and summary prosecutors contribute by assessing the outcomes of hearing files, and providing feedback to Police for training purposes.

The ongoing positive relationship with the Women's Safety Service of Central Australia court officer continued throughout the year, with a mutual focus on victim support and safety in court hearings.

A number of departures in April 2021, resulted in the Summary Prosecution Unit being understaffed once again. Recruitment and retention of staff will be a priority for the upcoming financial year, and will feature prominently in the ongoing review.

## **YOUTH MATTERS**

Amendments to the Bail Act 1982 came into effect in June 2021. The amendments were designed to target repeat offenders by decreasing the circumstances in which youth offenders can obtain bail.<sup>33</sup> The consideration of bail for youths has now become a more complex and protracted process and will increase the workload of the youth prosecutors.

## **WORKING WITH POLICE**

The Summary Prosecutions units and Police, in particular in Katherine and Alice Springs, continue to have a close working relationship. This partnership based on open communication and serving the public interest is crucial to maintain an effective and just criminal justice system. The work of the Judicial Policy Unit within NT Police<sup>34</sup> continues to play an integral role in this relationship ensuring that there is a clearly identified communication pathway between this Office and operational police for advice and assistance.

In the current reporting period the Judicial Policy Unit and Summary Prosecutions commenced the Failed Prosecution Review Panel. The purpose of this panel is to gather information about failed prosecutions with the ultimate goal of identifying training requirements and to address systematic issues between processes within the DPP and NTPFES.

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<sup>33</sup> Explanatory Statement Youth Justice Amendment Bill 2021

<sup>34</sup> The Judicial Policy Unit was previously called the Judicial Operations Section

Another key achievement and testament to the partnership between this Office and Police in this reporting year was the signing of the Service Level Agreement (SLA). This issue is discussed on page 9 of this Report.

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## WITNESS ASSISTANCE SERVICE

The Witness Assistance Service (WAS) provides an individualised service to support victims, witnesses and their families throughout their involvement in the criminal justice process. We believe that in all prosecutions, victims of crime should be treated with courtesy, respect and dignity and to have access to certain information about the case. These rights are set out in the Director of Public Prosecutions Guidelines for prosecutors and in the Northern Territory Charter for Victims of Crime.

WAS staff are based in Darwin, Katherine and Alice Springs and provide services in the Local and Supreme Courts, as well as regularly traveling to regional and remote court locations as shown on the map on page 29.

The usual FTE is 9.5 WAS officers located at:

- Darwin – Manager and 4 WAS Officers who service the Northern Region and East Arnhem Land;
- Katherine – 1 WAS Coordinator and 0.5 Professional Assistant who service the Katherine Region; and
- Alice Springs – 1 WAS Coordinator and 2 WAS Officers who service the Alice Springs and Barkly Regions.



Staffing changes during the reporting year included the resignation of Lena Korn, the Katherine WAS Coordinator. Lena joined us in 2016. Lena and her family are leaving the NT to travel indefinitely and we wish them well.

*Lena's farewell with some of the Darwin WAS team, L – R Jenny Davie, Colleen Burns, Vanessa McConville, Lena Korn.*

### **Service provision**

The WAS team provided a service to 2,155 clients across the NT during the reporting year; an increase from the 1,855 clients serviced the previous year. A total of 410 victims were assisted with their Victim Impact Statements, and 291 of these were presented to the Court during the reporting year.

During the reporting year, WAS staff travelled to the following regional and remote court locations:

Tennant Creek  
Numbulwar  
Gapuwiyak  
Oenpelli  
Borroloola

Yuendumu  
Yarralin  
Nhulunbuy  
Ramingining  
Alyangula

Mutitjulu  
Ngukurr  
Wadeye  
Wurrimiyanga  
Barunga



*Numbulwar airport, during a break at Barunga court, horse seeking entry into Numbulwar court.*

The email to text initiative flagged in previous annual reports, was rolled out in Darwin in 2021. This involves an automated notification process for victims in Local Court matters at an early stage of the court proceedings. Previously, victims in Local Court matters were referred to WAS in contested hearings only where the victim was considered particularly vulnerable or distressed. In order to make victims feel more involved in the criminal justice process and to provide assistance to a wider range of victims, an automated text message will be sent to any victim where a mobile number has been provided by the officer in charge of the case. The message will invite victims to contact WAS for information and assistance at an early stage in order to prepare them for the journey through the criminal justice system. During the reporting period, 31 victims were notified.

### **Client feedback**

*I would not have made it through the week without your constant care. Your presence, caring and constant communication all week gave me the strength and determination to keep going. You helped me not only mentally but spiritually and physically. You reminded me to take care of myself and constantly checked I was ok even when your work day had finished. You were honest and clear from the start and you helped me understand exactly what was happening without all the confusing law language! You went above and beyond and there are no words that could ever describe how truly grateful I am! You allowed me to be myself with no expectations and held space for me when I really needed it. I did not feel alone at all because I had you!! Thank you for allowing me to cry and release when it was all over and for checking on me all weekend even though court was over. Amy*



*Amy*



## Interagency activities and networks

WAS continued to work with key stakeholders including the Women's Safety Services of Central Australia, Victims of Crime NT (VOCNT), Domestic Violence Legal Service, and Crime Victims Services Unit to ensure victims are receiving an integrated and responsive service. WAS staff have contributed to key projects aimed at improving victims' experiences including the Alice Springs Domestic Violence Court Specialist Approach, the VOCNT court house support pilot and the Local Court video conferencing pilot at Borroloola.

WAS staff attended and presented to the NT Police detective course to promote the service, build partnerships and advocate for victims.

WAS representatives regularly attend and participate in the Crime Victims Advisory Committee (CVAC) whose function is to advise the Attorney General and Minister for Justice on matters affecting the interests or rights of victims. In the reporting year, the frequency of CVAC meetings was impacted by COVID 19.

## Public Sector Management Program and Vicarious trauma

The WAS Manager, Vanessa McConville, was supported by the Northern Territory Government to participate in the Public Sector Management Program (PSMP). Delivered nationally by the Queensland University of Technology. The program is targeted to mid-level managers in the Australian public service and non-government organisations. Participants earn a Graduate Certificate in Business (Public Sector Management) on completion, and the culmination of learnings is demonstrated through a workplace project. Vanessa's project was an investigation to identify strategies to support the wellbeing of staff working for the DPP, focussing on reducing the risk of vicarious trauma. The DPP staffing group is a mix of professional, paraprofessional and administrative staff, who are all, to varying degrees, exposed to traumatic content on a daily basis. The effects of this can be experienced on a continuum; *"first, there's compassionate fatigue, then there's burnout – and at the end of the spectrum is vicarious trauma,"* (Cohen, quoted by the NSW Law Society, 2020).

When an organisation-wide approach is adopted to mitigate this risk for all staff, vicarious trauma can be reduced, and the effects will be easier to identify and manage earlier. A further aim is to reduce staff attrition and absences and improve operational effectiveness, workplace culture and job satisfaction.

In February 2021, the recommendations based on the investigation which were tabled at EXCO and accepted by all participants. The recommendations can be grouped into the categories listed below and are being implemented through a staged approach:

- Developing orientation,
- Investing in training,
- Improving collegiality,
- Raising awareness,
- Embedding supervision and mentoring,
- Additional actions for management including celebrations, debriefs and events.



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# **BUSINESS & LEGAL ADMINISTRATIVE SUPPORT**

## **BUSINESS SUPPORT**

The Business Support team consists of 4.5 full time equivalent staff; a Business Manager, Assistant Business Manager, Darwin Office Manager, Travel Clerk and part-time Alice Springs Office Manager. Staffing levels have remained steady throughout the year.

Business Support is responsible for the delivery of a range of services to all DPP staff as well as ensuring the division meets its corporate responsibilities.

Services include human resource and financial management, information technology, records and information management, continual business improvement, corporate citizenship, staff and witness travel and administrative services.

## **COVID-19**

COVID-19 continues to have an impact on DPP operations, particularly in relation to managing travel arrangements for witnesses. Availability of accommodation was severely affected in the final quarter due to the higher than usual influx of tourists. Accommodation tariffs increased dramatically during the months of May and June contributing to an increase of witness expenses of approximately 15% over the previous financial year.

Last minute declarations of COVID-19 hot spots and flight cancellations were prevalent, particularly during the second half of the year. Convolved credit processes and additional charges for changes saw financial losses beyond the control of the division. These issues are expected to continue through the next financial year.

As a result of lockdowns in greater New South Wales, external counsel engaged to appear in a major trial were not able to travel to the NT. This resulted in a number of travel arrangements being cancelled and additional financial costs in relation to mandatory quarantine.

## **ICT**

DPP staff continue to support the VERITAS project, through the provision of two Subject Matter Experts (SMEs) to assist with the configuration of Attorney Manager.

The introduction of Attorney Manager as a replacement case management system for the aging CaseNet system is scheduled for March 2022. As a result of COVID-19, and in preparation for Attorney Manager, business units are transitioning to the use of electronic files. This has caused a significant increase in work for the administrative legal support

staff as the DPP is required to maintain both manual paper based files in addition to managing electronic information. The duplication of processes will continue to have a negative impact on workloads until the transition to electronic filing is complete.

During the year, Business Support embarked on a project to upgrade from desktop computers to laptops for all DPP prosecutors and legal administrative support staff. This project stalled due to a worldwide shortage of computer chips which has affected the availability of new hardware. Replacement units were limited to those laptops with faults that cannot be fixed and to new starters.

## **KATHERINE GOVERNMENT CENTRE**

Refurbishment of the Katherine Government Centre has progressed with plans for the project being signed off in late 2020.

Prior to the commencement of planned works, the remaining tenants of the Katherine Government Centre were required to undertake a transitional move.

Due to the unsuitability of the area originally identified by NT Property Management for the transitional move, several divisions were required to undertake an interim move. DPP was included in the process and while the space was newly fitted out, it is smaller and less functional than the original office.

As a result of the unplanned additional moves, the commencement of capital works was delayed until March 2021, with an estimated handover of the new office facility now scheduled for the end of September 2022. At the time of writing this report, the project was on schedule according to the new timeline.

## **BUDGET**

As highlighted in the last annual report, the DPP received additional ongoing funding of \$800k. An additional \$1.5 million was provided in the 2020/21 reporting year to cover the anticipated increase in matters briefed to the private bar during the year. This was in response to several cases involving a conflict of interest and two major cases requiring the focus of a number of DPP resources.

As support for the VERITAS project, AGD provided an additional \$200K to cover the SMEs while they participate in the configuration stage of Attorney Manager. This funding was used to employ several temporary employees to manage the increased administrative practices associated with the transition to electronic filing.

## **REGISTRY**

As identified in last year's report, Registry staff were required to reduce the need for face to face contact with stakeholders including Police, defence counsel and courts due to COVID-19.

The transition to electronic filing has continued through the year which has created a dramatic increase in workload. As reported earlier, courts have yet to transition to electronic filing resulting in a number of manual paper based practices having to remain in place.

Nevertheless, a slight decrease in the use of paper within the office during the year was noticeable.

2020-2021 saw the departure of several staff from within the Registry team. Recruiting to short term positions continues to be difficult due to the lack of suitable applicants.

## **PROFESSIONAL LEGAL ASSISTANTS**

For the majority of the year it was business as usual for the Professional Legal Assistants. The team has remained constant with no staff departures during the year.

A report into operational practices prepared in February 2020, outlined a number of recommendations on how to improve efficiencies within the business unit. Further consideration of the recommendations was delayed as a result of COVID-19. The subsequent introduction of AXON Evidence and the ongoing transition to electronic filing will require a broader and more in-depth restructure and any changes to operational processes will be dealt with during the second and third quarters of next reporting year. It is envisioned that recommendations from the report will be considered during the restructure.

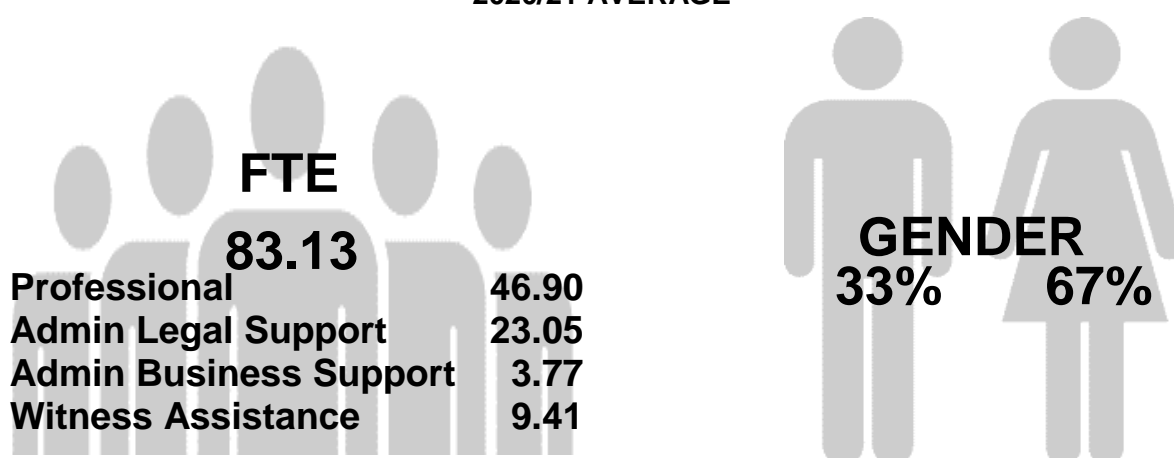
## FINANCE

### EXPENDITURE 30 JUNE 2021

Budget	\$14,379,000
Revenue	\$6,256
Personnel	\$10,942,593
Operational	\$2,985,806
Non-discretionary	\$34,076
Surplus	\$420,781

## HUMAN RESOURCES

2020/21 AVERAGE



## STAFF TRAINING & CONFERENCES

	Activities	Attendees
Professional Development (CPD)*	16	278
Recruitment/Staffing	1	2
Wellbeing	3	4
Corporate	9	38
Conferences**	1**	3**
<b>Total</b>	<b>29</b>	<b>325</b>
<b>Total Expenditure</b>		<b>\$17,275</b>

\*Professional legal staff are required to have achieved a minimum of 10 Continual Professional Development points throughout the calendar year to maintain their eligibility to hold a Practising Certificate within the NT.

\*\*The conference reported also qualifies as a CPD activity.

A breakdown of all staff training activities can be found at Appendix C.

## **CONFERENCES**

### **Australian Directors of Public Prosecutions**

The Directors met on two occasions during the reporting year; in October 2020 and in April 2021. The October meeting was virtual and took place by way of AVL. The April meeting was held in Adelaide. Both meetings were attended by the NT Director.

### **National Executives**

The annual conference of national executives did not proceed for a second year because of travel restrictions associated with COVID-19.

### **Australian Association of Crown Prosecutors**

The annual conference which was to have held in Darwin did not proceed for a second year because of travel restrictions associated with COVID-19.

## **CORPORATE CITIZENSHIP**

### **Presentations and Training Programs provided by the DPP**

Prosecutors from the DPP provided training to the following agencies:

#### **NT Police**

- Moot Court sessions to the NT Police Constable Recruit Squad from 24-26 May 2021.
- Investigators Course in Alice Springs on 18 & 27 May 2021. The training covered the topics of the Criminal Code and Giving Evidence.
- Detective Training Course on 26 & 29 July and 3 & 12 August 2021. The training covered the topics of the Criminal Code, Rules of Evidence, Sex Offences and Homicide & Death.

#### **NT Corrections**

A DPP presentation was given to new Probation and Parole Officers on 1 December 2020 and 25 May 2021. The topics covered were the Role of the DPP, Sentence and Breaches, Court Proceedings and Evidence.

#### **Work Experience**

The DPP provides work experience opportunities to Year 10 students. The placement is for one week and is designed so that a student can gain an insight into the operations of the DPP and the working environment of lawyers.

As our work is often of a sensitive and confronting nature, care is taken in the selection of cases that the students are exposed to. Students are given the opportunity to shadow a

prosecutor during the week and attend court with the prosecutor. The student can ask questions about the prosecution process generally and observe basic office and practice skills.

The Darwin office of the DPP provided work experience to one year 10 student from Marrara Christian College. This was less than the usual number of placements due to the impact of COVID-19 on the work experience programme.

### **Solomon Islands – Northern Territory Twinning Program**

The Twinning Program did not proceed for a second year because of travel restrictions associated with COVID-19.

Discussions took place during the reporting year between the Office and representatives from the Solomon Islands Justice Program during which the Office expressed its commitment to continue with the program once international travel restrictions no longer apply.



# Media release



Department of Attorney-General and Justice

## Director of Public Prosecutions - Senior staff movements

4 June 2021

### Director of Public Prosecutions, Jack Karczewski QC

Director of Public Prosecutions, Jack Karczewski QC will be taking extended personal leave from Wednesday 30 June 2021 with the view of stepping back from his role to retirement later in the year.

Mr Karczewski has dedicated the last 37 years of his career to justice in the Northern Territory. He began employment with the Prosecutions Division of the Northern Territory Department of Law in June 1984 and was admitted to practice as a Legal Practitioner of the Supreme Court of the Northern Territory in August 1984. He was appointed Senior Crown Prosecutor for the Northern Territory in September 1991. He transferred to the Policy Division in the Attorney-General's department in December 1993 and was employed as a policy law officer until November 1997. He was the Acting Director of the Policy Division from March 1997 to September 1997. Jack transferred back to the Office of the Director of Public Prosecutions in November 1997 and took up the position of Assistant Director, Darwin. He was appointed a Queen's Counsel in December 2001, appointed Deputy Director of Public Prosecutions in June 1998 and Director of Public Prosecutions in February 2013.

Acting CEO, Gemma Lake says, "I ask that Mr Karczewski's privacy is respected while he is on personal leave. Arrangements for an Acting Director are underway and Victoria Engel stepping in as Deputy Director will ensure the OPP continues with strong and stable leadership".

### Deputy Director of Public Prosecutions, Matthew Nathan SC

After almost 13 years with the DPP, Deputy Director of Public Prosecutions, Matthew Nathan SC is leaving his role on Friday 25 June. Matthew has accepted a new role with a prosecution firm and is returning to New Zealand with his family.

Mr Nathan moved to Darwin in September 2008 to take up his role as Senior Crown Prosecutor. In 2012 Mr Nathan was appointed as the Sexual Assault Senior Crown Prosecutor being responsible for the prosecution of serious sexual offences in the jurisdiction as well as training and policy liaison regarding legislative amendment. Mr Nathan was appointed Senior Counsel in 2015 before being appointed as Deputy Director of Public Prosecutions for the Northern Territory in 2018.

Mr Nathan said, "The decision to leave my role was not made lightly. I am passionate about the work that I do and feel pride in being part of an organisation that assists and supports the most vulnerable members of our society. However, the opportunity to raise my children in my homeland where they can connect with their culture and family was too great an opportunity to miss".

Acting CEO, Gemma Lake says, "Matthew is an excellent lawyer and advocate and I wish him well in his new role. I thank him for his years of dedicated service. Victoria Engel has stepped into the role of Deputy Director and I look forward to working with Victoria.

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**TABLE OF COMPARISON DATA FOR CHARGES REQUIRING THE DPP'S CONSENT OR SIGNATURE**

<b>Offence / Function</b>	<b>20 - 21</b>	<b>19 - 20</b>	<b>18 - 19</b>	<b>17 - 18</b>	<b>16 - 17</b>	<b>15 - 16</b>
Conspiracy s 43BJ(10) Code	1	0	0	0	~	~
Criminal defamation s 208 Code	0	0	0	0	0	0
Distributing intimate images s 208AD Code	0	0	0	0	x	x
Money laundering s 231E Code	18	4	2	0	~	~
Maintaining a relationship of a sexual nature with a child under 16 s 131A Code	1	0	5	3	~	~
No true bill s 297A Code	4	2	6	4	0	19
Ex-officio indictment s 300 Code	3	2	3	5	10	18
Nolle prosequi s 302 Code	16	20	14	17	26	24
Taking over proceedings for summary offence s 13 DPP Act	0	0	0	0	0	1
Taking over appeal s 14 DPP Act	0	0	0	0	0	0
Granting immunities and undertakings s 21 DPP Act	0	0	0	0	~	~
Joint trial arrangements with C'th DPP	4	7	9	8	~	~

x This provision came into existence on 9 May 2018.

~ Data on this offence / function was not previously kept.

APPENDIX C

DPP 2020-21 TRAINING					
Description	Type	Date/s	Provider	CPD Points	Attendees
Communicate with Influence	Corporate	09/07/2020	OCPE	No	2
Boss of the Busy	Corporate	20/07/2020	OCPE	No	1
Trauma Informed Care	Corporate	23/07/2020	NT Redress	No	1
Senior First Aid	Corporate	24-25/07/2020	St Johns	No	1
Dealing with the Tough Stuff	Corporate	31/07/2020	OCPE	No	1
Trauma Informed Care	Wellbeing	18-20/08/2020	NT Redress	No	2
AXON Evidence.com	Corporate	02/09/2020	DPP In-house Training	No	13
CPD: The three pillars of trial presentation	Legal	19/11/2020	DPP In-house Training	Yes	14
Annual Children's Court Practitioners Conference	Legal	19-20/11/2020	NT Courts	Yes	3*
AIS Training	Corporate	23/11/2020	DPP In-house Training	No	14
Merit Selection Training	Recruitment	23/11/2020	OCPE	No	2
CPD: Bail Applications and Reviews	Legal	26/11/2020	DPP In-house Training	Yes	21
CPD: How to best use the ENULA	Legal	03/12/2020	DPP In-house Training	Yes	15
Trauma Responsive Leadership Webinar	Wellbeing	03/02/2021	Blue Knot	No	1
CPD: Proving documents - ENULA ss 69-71	Legal	16/02/2021	DPP In-house Training	Yes	17
CPD: DNA - What's The Facts? Forensics Forum	Legal	18/02/2021	DPP In-house Training	Yes	16
CPD: Appellate Court Learnings	Legal	25/02/2021	DPP In-house Training	Yes	10
CPD: How to make your file work for you	Legal	04/03/2021	DPP In-house Training	Yes	21
Results through people - getting great performance	Corporate	04-05/03/2021	OCPE	No	1
CPD: Evidence-in-chief, how to get best from witness	Legal	11/03/2021	DPP In-house Training	Yes	17
CPD: Prosecutions Staff Meeting	Legal	12/03/2021	DPP In-house Training	Yes	30
CPD: Common Purpose - Part IIAA future and RIP	Legal	18/03/2021	DPP In-house Training	Yes	16
CPD: Changes to Coincidence and Tendency Evidence	Legal	25/03/2021	DPP In-house Training	Yes	30
Creating Safety and Connection	Wellbeing	14/04/2021	Blue Knot	No	1
CPD: Cross Examining Expert Witnesses	Legal	15/04/2021	DPP In-house Training	Yes	20
CPD: Not Hostile Just Unfavourable - s.38 ENULA	Legal	29/04/2021	DPP In-house Training	Yes	17
CPD: Photoboard & Identification Evidence	Legal	10/06/2021	DPP In-house Training	Yes	12
CPD: Prosecuting Sexual Offences	Legal	24/06/2021	DPP In-house Training	Yes	22
Fire Warden Training	Corporate	29/06/2021	AGD Governance	No	4