DIRECTOR OF PUBLIC PROSECUTIONS

NORTHERN TERRITORY OF AUSTRALIA

A N N U A L

R E P O R T

2004-2005

OFFICE OF THE
DIRECTOR OF PUBLIC PROSECUTIONS
NORTHERN TERRITORY

FIFTEENTH ANNUAL REPORT

FOR YEAR ENDED 30 JUNE 2005

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Director of Public Prosecutions
Northern Territory

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Australia

Our Ref: RW:ts:173
Your Ref:

30 September 2005

The Hon Peter Toyne MLA
Attorney-General
Parliament House
State Square
DARWIN NT 0800

Dear Attorney-General

ANNUAL REPORT 2004-2005

In accordance with the requirements of section 33 of the ***Director of Public Prosecutions Act***, I submit to you the Annual Report on the performance of the Office of the Director of Public Prosecutions for the period 1 July 2004 to 30 June 2005.

This is the fifteenth Annual Report of the Office since its establishment in January 1991 and the tenth since my appointment in February 1996. It will also be my last, as I am not seeking an extension of my term as Director beyond 31 January 2006.

This year's Report includes the complete statements of guidelines issued and published pursuant to section 25 of the ***Director of Public Prosecutions Act***. It was determined during 2004 to comprehensively review and republish the entirety of the Guidelines to ensure they were fully up to date and consistent with legislative and procedural changes affecting the criminal justice process. New or amended guidelines will continue to be published in the Annual Report, but existing guidelines will be available on the ODPP website

(www.nt.gov.au/justice/dpp) or on request. It is hoped that the information contained within the Report and on the website in respect of the Office will advance public knowledge of its operations and its role in the criminal justice system.

The statement of these various guidelines provides Crown prosecutors and others engaged in law enforcement with clear guidelines for the making of various decisions which arise in respect of prosecutions. They are intended also to inform the public generally of the considerations upon which those decisions are made.

Yours sincerely,

REX WILD

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OFFICE LOCATIONS

1. DIRECTOR'S CHAMBERS (Head Office)

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MISSION STATEMENT

The mission of the Office of the Director of Public Prosecutions is to provide the people of the Northern Territory of Australia with an independent, professional and effective criminal prosecution service that:

- *operates with integrity*
- *is fair and just to both victims and the accused and*
- *is sensitive to the needs of victims, witnesses and to the interests of the community on whose behalf it acts.*

MISSION STATEMENT
(IN KRIOL)

Wed bla DPP-mob

DPP-mob bin pudimdan dijlat wed la dijan peipa dumaji olabat wandi dalim eberibodi bla no, hau detmob wandi duwim det wek bla olabat brabli raitwei.

Det wek bla olabat, jei gada album yu bla dijkain trabul:

maiti ib pilijimen im rekin samwan bin meigim brabli nogudwan trabul, laiga ib jei merdrem o kilimbat yu; ib jei stilimbat o demijim enijing blanganta yu.

Maiti det pilijimen rekin det ting im lilbit nogudwan, wal olabat pilijimenmob teigim la kot. O maiti det pilijimen rekin det trabul im rili rongwei, wal det DPP-mob gada teigim la kot det nogudwan sambodi.

Det DPP-mob olabat teigim yu pleis la kot, seimwei laig det Liguleid teigim pleis la det sabodi weya olabat rekin imin duwim rongwan ting.

Det DPP-mob gan weistimbat taim en mani en olabat gan libim dijan hiya rul bla olabat wek:

- Ola weka onli gada woriyabat faindimbat raitwan wed bla wot bin hepin - nomo laigim yu o heitim yu o yu femli o enibodi.
  Jei gan toktok la enibodi bla yu bijnij, onli la jeya weka wen jei albumbat yu.

- Det DPP-mob wandim stap gudwan binji seimwei la yu en la det sambodi weya olabat rekin imin duwim det nogudwan ting.
  Jei wandi album yu gidim det samwan hu bin duwim det samting rong en faindat la kot raitwei bla banijim bla wot imin du.

- Olabat DPP-mob wandi meigim bla yu en en det sambodi en ola widnijmob go la kot gudwei, nomo hambag en nomo bla meigim yu fil sheim. DPP-mob duwim dijkain wek bla album eberibodi la Northern Territory jidan seifwan en gudbinjigeja.

DPP-mob bin pudim dan dislat wed la dijan peipa dumaji olabat wandim dalim eberibodi bla no, hau detmob wandi duwim det wek bla olabat brabli raitwei.

DIRECTOR'S OVERVIEW

Introduction

This is the fifteenth Annual Report of the Office of the Director of Public Prosecutions since its establishment in January 1991. It is my tenth report since my appointment on 1 February 1996. This followed a period as acting Director from 10 October 1995 on the retirement of my predecessor Mr Len Flanagan QC. He had been the inaugural Director as from 1991.

My current appointment terminates as at 31 January 2006 and I will not be seeking reappointment. There are a number of personal reasons for this, but I also think that ten years is probably about the limit for a position such as this. Although I have enjoyed the job immensely and found it very satisfying and rewarding in all sorts of ways, it is also stressful and calls for continual concentration and lateral vision; (eyes in the back of the head would also be useful). A glance at the report of other Directors around Australia, and the experience of prosecutors overseas, will confirm the nature of the job is demanding.

There is a continual balancing of competing human interests and the need, at all times, to keep in mind the purpose of the criminal justice system. The ODPP's part in that is reflected in its Mission Statement. This appears each year in the front of the Annual Report and I repeat it here.

> *The mission of the Office of the Director of Public Prosecutions is to provide the people of the Northern Territory of Australia with an independent, professional and effective criminal prosecution service that:*
>
> - *operates with integrity*
> - *is fair and just to both victims and the accused and*
> - *is sensitive to the needs of victims, witnesses and*
> - *to the interests of the community on whose behalf it acts.*

I regard it as such an important set of concepts to keep in mind that I have now incorporated it into the business cards of all new members of the professional staff.

Some Achievements over the Years

This is not intended to be a justification of my custodianship of the ODPP. However, I think it useful to repeat what I said in my first Annual Report which was tabled in October 1996.

> *As with any change in leadership, there will inevitably be some alterations to emphasis and direction. I had, at the commencement of my term of office, a number of specific objectives in mind:*
>
> - *for the Director to have a more obvious court presence*
> - *for the Office to be more responsive to the community*
> - *for the Office to have better working and personal relationships with members of the police force and our professional colleagues on the defence side*
> - *greater co-operation between the Office and police prosecutors*
> - *where appropriate to discuss and explain prosecutorial decisions of this Office (and the results in court) to police, victims, civilian witnesses and interested sections of the community, including liaising as necessary with Ministers and members of parliament*
> - *to increase cross-cultural awareness of staff members*
> - *to raise the profile of the victim support activities of the Office by appointing an appropriate permanent officer*
> - *to demonstrate the commitment to cross-cultural awareness by engaging an Aboriginal Support Co-ordinator with professional and community standing*
> - *to maintain and improve the camaraderie of the Office at all levels*
> - *to improve its relations with other agencies*
> - *more recently, consistent with budget restraints, to maintain the professional and administrative independence of the Office.*

All of these objectives have been met and compliance with them has been maintained. It is true that the administrative independence has lessened, with the change in the relationship of the ODPP with the Department of Justice as from 2001, but the professional independence has been continued throughout. As I have said regularly, of course, the biggest single challenge is to maintain the integrity and independence of the Office. This has been achieved.

(i) The Witness Assistance Service

This deserves a special mention. It is a small team that *fights over its weight.* Nannette Hunter was the first permanent coordinator of the Victim Support Unit (now WAS). A brilliant choice, if I may say so. Nannette is still with us and performing a sensitive, caring role on behalf of victims and witnesses as does all her team. Colleen Burns, the current Aboriginal Support Coordinator, who effectively succeeded Veronica McClintic in that role, has also been an excellent performer. WAS has a

high profile in the court system and provides wonderful support to prosecutors and, more importantly, its *clients*.

During the current year, Burrundi Pictures produced a training DVD/Video on behalf of WAS, to enable people in remote communities to better understand the justice process. This was launched in September 2004. It has been very well received and is an excellent product.

(ii) Relations with the Defence

This can fluctuate from time to time but the participation of ODPP staff in the activities of the Criminal Lawyers Association of the Northern Territory speaks for itself. It is the single largest group attending the biennial conferences of CLANT and makes real contributions to its affairs (except at public level, for obvious reasons). The personal relationships that are established between prosecutors and defenders make an important contribution to the smooth operation of the criminal justice system and the improvement of outcomes for all stakeholders. Sensible solutions are easier to find when opposing counsel are familiar with and respectful of each other. This *familiarity* never allows the ultimate merits of a particular case to be disregarded. *The voice of sweet reason is just as easy to hear when spoken softly*.

(iii) Memorandum of Understanding with the Police

In 1998 the Commissioner of Police and I signed an important document which has been the framework ever since for the summary prosecution service in most of the Northern Territory. Although some modification has been sought of it over the years, it nevertheless stands as an excellent example of a cooperative system using both qualified lawyers and police prosecutors.

Most of the defended and other serious summary work is now done by civilian lawyers. They are employed by the ODPP but work within the summary prosecutions units (under day-to-day police management), in both Darwin and Alice Springs. It has worked very well. In fact, so much so, that it has recently been regarded by an independent review of all Australian systems as the best available.

Because of the relative intimacy of the relationship between the police and civilian prosecutors there is a positive side affect which is that relations between the prosecutors, in all parts of the Office, and members of the police force generally is enhanced.

Significantly, it is anticipated that a review of these arrangements will take place during the last six months of 2005. The hope is that the MOU, which will be nearly eight years old by the end of the year, will be updated and adapted as appropriate.

(iv) Cross-Cultural Matters

It is well known that the work undertaken by the ODPP has a very high component of indigenous cases. That is why I have stressed the need for cross-cultural awareness of all staff and sought to increase the level of indigenous staff within the Office. I believe we have been successful in both these endeavours. Our Aboriginal Employment and Careers Development Strategy won an award in 1999 from the Institute of Public Administration Australia. It remains an important document.

We have built on that strategy. We presently have five staff members who have indigenous backgrounds and there have been a number of others during the last ten years with as many as six at one time. Prosecutors are conscious of aboriginal customary law issues and the need, of all staff, to be sensitive and sympathetic to the needs of indigenous witnesses and victims. This, of course, also extends to our dealings with alleged offenders and their legal representatives.

(v) Staff

The strength of an office such as this is its staff. The ODPP has a very professional staff, well qualified and appropriately experienced to carry out its functions. As I said in last year's Annual Report:

> *We presently have a marvellous blend of mature and experienced people with the young and enthusiastic. It is a very loyal group working with a common goal and I think it is overall as good a team as anyone could hope for.*

There have been changes during the year but I believe that those comments are just as accurate now as they were then.

It has been an absolute delight to work with them, some for the entire period of my time with the ODPP. My successor will be fortunate indeed if he or she is able to retain their services.

The Office can also be proud of its involvement in the encouragement and training of young graduates. Prior to 1996 the Office regularly took articled clerks from the Attorney-General's Department for short periods; perhaps up to three months. Since 1996 it has continued to do

so. Products of that system who are still with the ODPP include Therese Austin, Sally Ozolins and Caroline Heske.

Since 1996, however, the ODPP has had its own twelve months articled clerk. There have been eighteen of them altogether, all of whom have been admitted to practice on my application. Six have served articles in Alice Springs and twelve in Darwin.

Seven are still employed by the ODPP. Three of them have been of indigenous background and two Asian. There have been two police officers. Thirteen have been graduates of the Territory's University. There have been nine men and nine women. It is a fine record and one that personally gives me great pleasure.

Finally I might note that as at 30 June 1996 the ODPP had a total of 39 staff. This was already an increase of four or five from the previous year as the permanent position of Victim Support Coordinator and that of Aboriginal Support Coordinator had been created. At the same time the three civilian prosecutors in Darwin had been transferred from the then Law Department to the ODPP. Total staff as at 30 June 2005 is 63. This does not reflect empire building but rather the ever increasing workload of the prosecuting arm of the criminal justice system over that period.

Guidelines

The Guidelines are distilled from practice and experience and reflect the law and policy as it exists at the time of publishing. They are made public in order to promote awareness and understanding of the policies, procedures and decision making criteria adopted by the Office. They provide guidance to prosecutors in the exercise of the decisions and discretions they are called upon to make in the fulfilment of their duties. The Guidelines provide a benchmark of accountability and set the standard of performance required from both prosecutors and the Office as a whole.

As the law is constantly evolving and under review, so too must the Guidelines be reviewed and amended as circumstances require. There have been updates to individual Guidelines since they were first published, and additional Guidelines have been produced. However, in 2004 it was determined to comprehensively review and republish the entirety of the Guidelines to ensure they were fully up to date and in line with legislative and procedural changes affecting the criminal justice process.

The revised Guidelines were issued in booklet form on 31 January 2005. Of particular interest are the Guidelines which address the role and involvement in the prosecution process of the Witness Assistance Service (Guideline 11) and the role of Aboriginal customary law and its applicability to Aboriginal offenders, victims and the legal system (Guideline 20). To the best of my knowledge, both Guidelines are unique to the Territory. There have been substantial amendments to the Guideline concerning Domestic Violence (Guideline 21). These amendments address the changing attitudes of the public, the government and the courts to violence in intimate relationships.

The Guidelines are published pursuant to s.25 of the *Director of Public Prosecutions Act* 1990. Pursuant to that section any statement of Guidelines must be published in the Annual Report of the Director. In recent years I have not published them in the Annual Report unless there has been a change to them in the year of such report. They will therefore be found in this Annual Report, in their entirety, because of that legislative requirement. In the meantime, the Guidelines are freely and publicly available on the Office of the Director of Public Prosecutions website, **www.nt.gov.au/justice/dpp/**. They will continue to be updated from time to time to reflect legislative and procedural changes.

The Guidelines will assist prosecutors in the furtherance of the functions of the Office. They are designed to promote consistency and efficiency, effectiveness and transparency in the administration of justice. Reference to a prosecutor in the document is a reference to any police prosecutor or any legal practitioner representing the interest of the Crown or of the Director in criminal and related proceedings.

When I published the revised Guidelines earlier this year, I acknowledged the major contribution made to their preparation by Crown Prosecutor-in-Charge of the Alice Springs Office, Dr Nanette Rogers, and the Solicitor to the Director, Elisabeth Armitage. They worked hard together to provide the draft in time for publication and have produced a document of which they can be proud. They were ably assisted in the completion of the manuscript by professional assistant Sue Golik. I then thanked each of those staff members and I do so again.

Administration and Resources

Last year I wrote in the introduction to the Overview as follows:

> *The core business of the Office of the Director of Public Prosecution (ODPP) is prosecuting. I believe it does that job in the Northern Territory very well. The ODPP has a very professional staff, well-qualified and appropriately experienced to carry out its function. From time-to-time the Office leadership can be distracted from the key role by the concerns raised by budgetary restraints and other administrative routines. There is little doubt that the inclusion of the Office within the Department of Justice has meant more, rather than less, bureaucracy.*

> *However, with a sympathetic ear from the Chief Executive Officer of the Department of Justice, Richard Coates, and many of his staff, and the diplomacy and management skills of our Business Manager, Lilia Garard, this Office has been able to maintain a certain level of administrative and financial independence such that its essential business has not suffered.*
>
> *In the main, the ODPP has been well looked after. However, there are outstanding areas of need for further financial provision. The Witness Assistance Service (WAS), particularly in the bush springs to mind. The need for a permanent professional presence in Katherine and a dedicated team for forfeiture matters are also matters for which resources will be pursued in 2004-2005.*

Unfortunately none of those needs found favour with Government and additional resources have not been provided in these areas. Separately, however, Government on its own initiative did provide an amount of $200,000 to create a Sexual Assault Unit within ODPP.

The failure to provide financial support in respect of forfeiture matters is particularly disappointing given that potentially large amounts of property have been, and will be, restrained and forfeited. Matters are often hard-fought and are dealt with in the civil jurisdiction of the Supreme Court. Senior Counsel are often employed for respondents as difficult questions of law (and commercial considerations) are involved. It is also regarded as a major tool by the authorities to strike at criminals. That is, to hit where it hurts most by depriving them of criminally-acquired assests. Hopefully in 2005-2006 further consideration will be given to this request. As I said last year:

> *Proceedings under the Act are civil and progress independently from any related criminal matters. They represent a genuine expansion in workloads on the staff in this Office and hence the request made for an increase in resources to meet these additional demands.*

In June 2005 a unilateral review of the ODPP was completed by Corporate & Strategic Services of the Department of Justice. At the time of writing, the implications of that review are still being worked through. The findings were regarded by ODPP as inaccurate and misleading in a number of respects. They ignore the independent nature of the Office which was confirmed and stressed by the present Attorney-General in Parliamentary Debates in December 2001 and reaffirmed by him before the Estimates Committee in July 2005.

Since then a further review has been proposed. This will be carried out by an independent consultant and, hopefully, identify the proper funding and staffing needs of the ODPP.

Accommodation

One highlight of last year was seen to be the planned re-location of the actual Office in Darwin of the ODPP, the lease in respect of the current building having expired. I made this comment:

> *The re-accommodation of the ODPP in Darwin is now planned to occur by the middle of 2005 and this will be in what is expected to be excellent offices in the Old Admiralty House building. The Office will maintain its geographical independence from other areas of the Department which, it is suggested, is important.*

Unfortunately, from the ODPP's perspective, these plans changed during the year. The ODPP is no longer to have the four floors anticipated but will have three and a half floors sandwiched between Department of Justice divisions in a building which will now include most of the Department. The *geographical independence* disappears. It is sincerely hoped that the *expectation of excellence* is otherwise still met, although it is already apparent that funding for the project has been dramatically reduced. Obviously, the available funds have to be spread more thinly.
The timing of the migration has already moved from mid-year, to August, to October. For good reasons, it may well be delayed further into 2006.

Significant Cases

In February 2004, the ***Sentencing (Crime of Murder) and Parole Reform Act*** was enacted and came into operation. The effect of the Act is to provide for standard minimum non-parole periods for the offence of murder. The transitional provisions have meant that prisoners sentenced in the early eighties, and therefore due for parole consideration shortly, have been the subject of review by me. Section 19 of the Act casts this responsibility on the Director. Two applications were lodged with the Court by 30 June 2004 with another then anticipated. Applications were made by me, pursuant to the responsibility given to me by the Act, in respect of prisoners *Leach*, *Albury* and *Crabbe.* Each of the applications was defended by counsel for the relevant prisoner.

In each case, the Chief Justice – on the Director's application – *revoked the non-parole period fixed* as appropriate by the Act. In the cases of *Leach* and *Albury,* His Honour refused to fix a non-parole period thereby effectively leaving a sentence of life imprisonment without the possibility of parole. In the case of *Crabbe,* a new increased non-parole period of 30 years was fixed.

There is presently another case, of *Ahwan*, awaiting consideration by the Court. *Leach* has appealed against the decision in his matter and this is to be heard by the Court of Criminal Appeal in August 2005.

These are all significant matters and have required my involvement in the preparation and presentation of them to the Court. This, of course, is core business.

Separately, I have been involved in two major cases involving allegations of murder. Committal proceedings and voir dire hearings in the *Murdoch* matter have involved many hours of preparation. The trial is now adjourned for hearing in October 2005. Six to eight weeks have been set aside. I also prosecuted the committal and trial of offenders *Trinh* and *McLean* for the murder of two Thai women at Adelaide River in June 2004. Both men were convicted of murder, following a five week trial in February-March 2005, and were each sentenced to life imprisonment with a non-parole period of 25 years. They have both applied for leave to appeal, but no date has yet been fixed for hearings.

I mention these matters not by way of idle boast but to confirm that the business of the Director is not only *directing* the work of the Office but also being in court and leading the work of the Office in that regard.

I said this in my first Annual Report in 1995-1996:

> *I have played a relatively leading role myself in the court work of the Office. I have prosecuted a number of murder and other trials. I have appeared before the Court of Criminal Appeal in important cases, prosecuted a number of the more significant pleas and appeared in the Court of Summary Jurisdiction in Darwin, Alyangula and Port Keats.*
> *This is consistent, incidentally, with my understanding of the Government's wish that a leading court presence be undertaken by the person holding the position of Director. I almost always appear with the assistance of junior counsel where that is compatible with the day to-day needs of the Office. It is important that the more senior practitioners in the Office should assist in the in-court professional training of those who are less experienced.*

I have not, this last year, appeared in any bush courts. I have, however, appeared in the Court of Summary Jurisdiction both in Darwin and Alice Springs.

I have had wonderful support from junior counsel, legal officers, WAS and administration staff in all cases in which I have appeared.

I would have appeared in court more had time been available. It was in this connection in recent years I have sought the appointment of a senior general manager, within the ODPP, to manage administrative resources and budgetary matters. Alas, that has not come to pass.

Change Management

Late in 2004 I decided to seek professional advice to facilitate, as far as possible, a smooth transition for the ODPP on my retirement. Senior personnel and I consulted with Mr David Rolfe from the Department of the Chief Minister. His advice and report have been very helpful.

The aim has been to ensure that an appropriately qualified replacement was found and appointed so that there would be no period when an acting Director would be necessary and the work of the Office could continue seamlessly. Issues of staff morale can be very important when changes of leadership, and all that may entail, occur.

With these matters in mind, an approach was made to the Chief Executive Officer of the Department of Justice in January 2005. He was then advised that I would be retiring in January 2006. The Attorney-General has been advised and it is hoped the recruiting process will commence in August 2005.

It is desirable that the selection process be concluded well before the end of the year and the staff informed accordingly. It is plain from experience in other jurisdictions that protracted delays in replacing a retiring Director can lead to very unsatisfactory results for the staff, with loss of morale and pressures on work practices. Hopefully, the worst of those possibilities will be avoided in this instance.

Knowledge & Information Management

Flowing from the project on *Change Management*, a separate enquiry was undertaken by Mr Rolfe on this topic. The overall objectives were to:

- identify information and knowledge needs that are necessary for the effective and efficient management of the Office

- propose, in priority order, systems to be improved or developed to meet these needs.

Interviews and consultations took place with a wide range of ODPP staff in Darwin and Alice Springs (including SPD, SPAS and WAS). A final draft of the report is being considered by the Director and senior staff. The outcome will be for the Office to have:

- an agreed framework for the management of corporate knowledge and information necessary to support its operations

- a plan which will set out priorities for implementation of the framework.

In a time of change in other respects, it is important that the information needs of the ODPP be firmly established.

Acknowledgements

The support and loyalty provided to me not just over the last year but over the ten year period since 1995 has been wonderful. The work of the prosecutors in the criminal justice system is underated publicly. As Richard Refshauge SC, the ACT Director of Public Prosecutions, said in a recent address to the Australian Association of Crown Prosecutors:

> *The days, if ever they were, perhaps 150 years ago when Crown Prosecutors were first established in this fair land, when the prosecutor merely accepted the brief, refused to speak to witnesses, appeared in court, felt satisfied with the guilty verdict and the inevitable death sentence and went home to wife and kids is long past.*

I agree. The team the ODPP presently has, and those that have served over the whole period of my directorship, have done extraordinarily well. They are congratulated privately to me, by the judges and magistrates on their work in court. Public recognition in the media or in any public sense does not come, however. Nor is it, of course, sought. Readers will remember that Perry Mason and Horace Rumpole were both defence lawyers!

As I said in a letter I wrote to Richard Coates in April 2003:

> *The prosecution task is mostly thankless. (Members of) my professional staff are regularly criticised by Judges and Magistrates, victims and witnesses, the Police and Defence Counsel. They make difficult and sensitive decisions every day. They work damned hard. They are poorly paid and have poor conditions, when compared to their southern counterparts. I don't think they get any recognition at all for the fine work they do. They deserve decent support. I will keep urging its provision.*

I have also benefited from a committed and hardworking administrative staff led by Lilia Garard. I have spoken of her in past years. Readers should refer to previous annual reports to appreciate the fine work she has done over a long period.

In previous years I have specifically mentioned some other staff. This year I do not intend to do so (I will save my farewells and expressions of appreciation until 31 January 2006). One exception to this is that I must mention Jack Karczewski QC. Jack has been with the Northern Territory Prosecuting Service, by whatever name, since 1984 (except for three or four years with the Attorney-General's Department Policy area in the mid 1990s). Jack was invited by me back to the ODPP at the end of

1997 and he was appointed Deputy Director in 1998. He has done everything that could be expected. He is properly regarded as the best criminal trial and appellate lawyer in the Territory. He has sacrificed his own professional interest in court work to assist me in the management of the Office. When I am absent on leave or otherwise, I can absolutely trust his judgment on professional and administrative matters. I thank him again for the wonderful service to me, the ODPP and the Territory over many years.

Directions

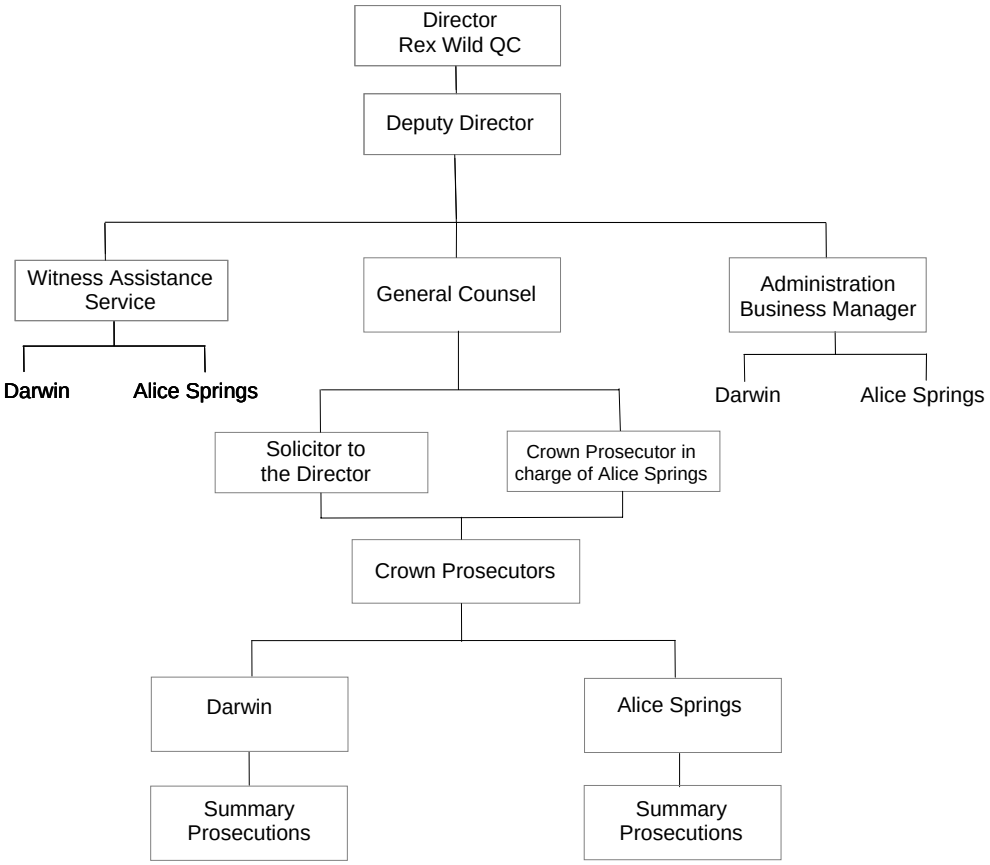
Pursuant to the ***Director of Public Prosecutions Act***, there is provision for the Attorney-General to provide directions to the Director of Public Prosecutions as to the general policy to be followed in the performance of a function of the Director. Any such direction shall be in writing and shall be included in the Annual Report.

I formally note that no direction has been issued by the Attorney-General during the year under review (and, in fact, in any previous year by any Attorney- General, to my knowledge). I formally also note that the Attorney-General has not sought to interfere in the conduct of the Director's functions. As a result, I have been able to enjoy appropriate professional independence in exercising the powers conferred by the ***Director of Public Prosecutions Act***.

REX WILD QC
Director of Public Prosecutions

22 August 2005

ODPP ORGANISATION CHART - 2005



FUNCTIONS OF THE DIRECTOR OF PUBLIC PROSECUTIONS

The major responsibilities of the Director of Public Prosecutions (hereinafter referred to as the Director) may be identified 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 ***Coroner's Act*** 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*** and if as a result of the proceedings a person becomes liable to pay an amount to the Territory or property is forfeit 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

(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.

HUMAN RESOURCE MANAGEMENT AND DEVELOPMENT

As at 30 June 2005 the total number of staff was 63.

Level	**Number**	**Female**	**Male**
Director	1		1
ECO4	1		1
ECO2	1		1
ECO1	4	2	2
EO3	3	2	1
P4	4	2	2
P3	5	2	3
P2	8	4	4
P1	8	5	3
Indigenous Law Cadet	1	1	
AO7	1	1	
AO5	4	2	2
AO4	6	6	
AO3	11	9.5	1.5
AO2	1		1
Special Prosecution Team			
ECO1	1		1
P4	1	1	
P2	1	1	
AO4	1	1	
TOTAL	63	39.5	23.5

Equal Employment Opportunity

The following statistics demonstrates the diverse workforce of the ODPP in 2004 - 2005:

- Women 62%
- People from culturally diverse backgrounds 11%
- Indigenous Australians 9%
- People with disabilities 2%

The ODPP acknowledges that efforts to increase the representation of Indigenous Australians and people with disabilities need to be increased.

Employment Initiatives

The introduction of the part-time work agreement addressed issues which the current NTPS part-time policy omitted. These issues included:

- delegation; placing the responsibility and accountability with managers
- flexibility
- ensuring the agreement is user friendly to both managers and employees.

The flexible part-time agreement has made the office more family friendly through job design, organisation of workflow and the establishment of an employee support system. At present 12% of total staff (2 males and 5 females) have successfully worked with the agreement guidelines.

In addition, the ODPP is implementing *work life balance* concepts by rewarding and recognising staff for their outstanding commitment and dedication.

These policies are family friendly and recognise the demands placed on employees with family responsibilities.

Workplace Diversity

The continuing involvement by the Office in the Indigenous Cadetship Program has ensured on-going assistance to an Indigenous Australian. In addition, the program has allowed the cadet to gain valuable paid work experience, establish a network within the legal fraternity and gain access to mentors.

Study Assistance

The ODPP's Study Assistance Scheme is available to employees wishing to enhance their career potential through formal education. Priority is given to courses which are relevant to the achievement of the Office's goals and objectives.

The commitment to learning and skill development is underpinned by Equal Employment Opportunity (EEO) principles and is reinforced through the personal development plans.

All permanent, permanent part-time and temporary employees are eligible to apply to undertake or continue an approved course of study.

The level of support is assessed on merit and based on the needs of the work area and learning outcomes identified in personal development plans.

The number of study assistance participants as at 30 June 2005 was four, which represents 7% of the staff.

Occupational Health and Safety

The Office continued its focus on preventative measures, providing staff with flu vaccinations and eye tests.

Encouraging physical fitness is also an on-going initiative with funds for staff to attend *Life Be In It* activities including lawn bowls, hockey, volleyball and corporate walk.

Learning and Development

The learning and development needs of staff are identified in the performance management process and incorporated in the individual performance management plans. These plans are reviewed on an annual basis.

Many staff members (85%) participated in at least one learning and development activity during the year.

Staff Survey

The ODPP conducts a staff survey on an annual basis. The survey is distributed to all staff. The majority of questions resulted in a high mean score (above 60% satisfaction). Team leaders in particular are to be congratulated on the results of this survey as it reflects well on their abilities to manage staff.

The Office framework is based on open communication. This survey and those we will conduct in future are important to improve the process of open communication and understanding. The information received is used to improve retention, motivation, performance and productivity.

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS
BUSINESS PLAN
2005-2006

Major Strategies	Activities	Action Plan
Maintain an effective, efficient and independent prosecutorial service to the Territory.	Conduct cases in accordance with the Director's Guidelines.	Maintain an effective management procedure.
		Reduce delays in the disposition of matters.
	Provide a cost effective prosecution service.	Monitor and analyse DPP performance measures, focusing on quality, quantity, timeliness and costs.
		Efficiently manage and monitor briefings to the private bar.
	Provide a qualified and professional service.	Provide qualified prosecutors in courts, including regional centres.
	Provide a workforce that is motivated and skilled in delivering Office outcomes.	Professional staff to participate in a Continuing Legal Education Program.
		Maintain a rotation program for summary prosecutors and legal officers.
		Professional staff to participate in biennial legal conference.
		Staff to participate in monthly meetings.
		Provide mentoring opportunities for junior lawyers.
		Recognise good performance.
	Improve the quality of legal briefings.	Assist with police training.

Major Strategies	Activities	Action Plan
	Improve the provision of service to the criminal justice system by advocating law reform, and improving management of court listings (focusing on reduction in delays).	Provide advice on existing criminal law and recommendations for its reform. Liaise with courts and court users in development of effective and efficient listing methods.
Enhance service delivery to victims and witnesses of crime.	Provide support for victims and witnesses of crime.	Ensure safe practices are maintained and improved for victims and witnesses of crime attending court. Maintain presence of WAS officers in courts.
	Provide appropriate services for Indigenous clients.	Staff to participate in cross-cultural training. Distribution of information brochures and client satisfaction survey.
	Increase community awareness of services provided to victims and witnesses.	Maintain close relationships with other agencies and bodies whose aim is to provide services to victims of crime; including Domestic Violence Services, VOC and Sexual Assault Referral Centres. Promotion of WAS operations to community and government organisations by presence at police recruits training, community development and training.

Performance Measures		2003-04 Actual	2004-05 Estimate	2004-05 Actual	2005-06 Estimate
Quantity	**New matters**	**1317**	**1045**	**1050**	**1010**
	WAS clients	**712**	**670**	**684**	**650**
Quality	**Establish 'sufficient evidence' before Court of Summary Jurisdiction**	**96%**	**85%**	**95%**	**90%**
	Findings of guilt in Supreme Court	**n/a**	**85%**	**90%**	**90%**
	Convictions after trial or hearing	**72%**	**70%**	**90%**	**80%**
	WAS client satisfaction	**97%**	**85%**	**81%**	**85%**
Timeliness	**Filing of indictments within 28 days of committal**	**n/a**	**85%**	**57%**	**85%**
	Service of a s.105A *Justice Act* brief of evidence no later than 14 days before committal	**91%**	**80%**	**88%**	**85%**
	Meeting client timeframes	**85%**	**80%**	**68%**	**80%**
Cost	**Average cost per completed matter**	**$5,743**	**$6,300**	***$7,240**	**$6,854**
	Average cost per client	**$1,180**	**$1,093**	***$1,235**	**$1,183**

Notes
* Actual output costs includes Murdoch expenses
Quantity
Witness Assistance Service (WAS) Clients
With fraud, forfeiture, opinions and child abuse material matters there will not necessarily be individual clients that require WAS assistance.

Quality
Establish 'sufficient evidence' before the Court of Summary Jurisdiction
Professional directions resulting in improved brief screening and scrutiny at an early stage. Reissued detailed prosecutorial guidelines. Increased consultation with victims and police officers in charge
Findings of guilt in the Supreme Court
Professional directions resulting in improved brief screening and scrutiny at an early stage. Reissued detailed prosecutorial guidelines. Increased consultation with victims and police officers in charge
Convictions after trial or hearing
Professional directions resulting in improved brief screening and scrutiny at an early stage. Reissued detailed prosecutorial guidelines. Increased consultation with victims and police officers in charge
WAS client survey
Measured every 12 months for a random block period

Timeliness
Filing of Indictments within 28 days or arraignment day whichever is earlier
The Supreme Court has 9 – 10 Arraignment Days per year in Darwin and every two months in Alice Springs. New procedures for filing of indictments have been introduced .

PROFESSIONAL STAFF

Again this year there has been a considerable number of changes in the professional staff. The staff of the ODPP, both professional and administrative, is its most important resource. The greatest care is therefore taken in promoting, training, nurturing and maintaining the staff. Nevertheless, of course, it is impossible to retain staff forever. Opportunities for advancement, or changes in domestic situations, have to be accepted.

The most significant change in the current year was the appointment in April 2005 of General Counsel, Michael Carey, as a Northern Territory Magistrate. Michael played a very important role as General Counsel. In that capacity, but also as a Senior Crown Prosecutor with the Office since 1992, he made a grand contribution to the professional (and social) life of the Office. He will be sorely missed. He is now sitting in Alice Springs.

Amanda Story (Clark), Summary Prosecutor from Darwin, had been on 12 months leave of absence since February 2004. At the conclusion of that period Amanda resigned from the ODPP as she and her husband resettled in South Australia. She is now with the South Australian ODPP.

Rosemary Carlin was employed for the period November 2003 to December 2004 as a Senior Crown Prosecutor. Effectively, Rosemary was employed to enable Tony Elliott to concentrate on the Murdoch prosecution. Rosemary subsequently returned to the Victorian ODPP.

Josie Burness left the Alice Springs Office early this year to proceed on maternity leave. She subsequently resigned as a Summary Prosecutor and relocated with her police officer husband, Scott, to Queensland.

Glen Dooley had been with us as a Crown Prosecutor for several years. Late last year he was appointed as the senior criminal lawyer at NAALAS. We still see a lot of him in that capacity.

Simon Lee resigned as a Summary Prosecutor in Darwin as from 30 June 2005. He has gone to the private Bar in the Northern Territory.

A matter of some significance for the Office has been the high incidence of maternity leave being taken this year. Amanda Nobbs-Carcuro (January 2005), Sally Ozolins (January 2005), Therese Austin (March 2005) and Tiarni McNamee (June 2005) all joined Josie Burness on maternity leave. Amanda and Sally are due to return in the last quarter of 2005 but on a part-time basis in each case. Therese and Tiarni are likely to be away for the whole of the 2005-2006 reporting period.

Obviously it would have been impossible to maintain an appropriate workload relationship for remaining prosecutors without additional professional help.

Separately, Crown Prosecutor Stephen Geary returned from Alice Springs to Darwin (in accordance with the agreement made with him at the time of his transfer there) and Juan Dominguez (who was fulfilling a legal officer's role in Alice Springs and helping to fill the gap left by Josie Burness), indicated he would be resigning close to the end of June for family reasons. In fact he left in July.

It was necessary to replace Stephen Geary in Alice Springs. This has been by way of secondment of Kate Ratcliffe from the New South Wales ODPP, initially for a period of one year. It is clear that this will need to be extended at least throughout the year 2006.

To assist in covering the bases in Darwin, the Office has employed Mark Heffernan as a Crown Prosecutor (again on secondment from New South Wales). We have also employed Fiona Hardy from the Western Australian ODPP as a Chambers Prosecutor. It is apparent that there is some fluidity of movement between the various offices of the Directors in Australia. This is a great benefit in what is otherwise a very difficult recruiting process at this level.

Michael Fay, Summary Prosecutor, moved from Darwin to Alice Springs in January 2005 to cover the anticipated vacancy to be left by Josie Burness. Corinna Baohm joined Summary Prosecutions in Darwin in May, nominally to replace Amanda Story. Ian McMinn, along with Gemma Beggs one of our two graduate GDLP clerks for the first half of this year, will remain with the ODPP following his anticipated admission to practice in August 2005. He will then take up the vacancy left by Simon Lee.

We have also employed Caroline Heske as a legal officer, to assist with the maternity leave dilemma, and Gemma Beggs will also be employed in a similar capacity on her admission to practice in August.

Finally we have also provided an Indigenous Cadetship to Joh-Ann Coates who is studying law at Charles Darwin University. Joh-Ann spends each Friday with the ODPP together with other periods of paid employment during the year.

The Office has recruited well and looks forward to a continuing excellent involvement with each of the new staff.

This further opportunity is taken to record the gratitude of the Director and the Office of the Director of Public Prosecutions for the excellent contribution to the work of the Office made by each of those who have departed during the last twelve months or so. We wish them well in their future endeavours, both professionally and in life, and we will follow their progress closely.

Profiles of the new professional staff appear below.

FIONA HARDY **CHAMBERS PROSECUTOR**

Fiona graduated from the University of Western Australia in 1986 with a Bachelor of Jurisprudence (Hons) and Bachelor of Laws (Hons). She was articled to the Crown Solicitor's Office. After admission, she continued working there as a prosecutor. She was part of the initial intake of prosecutors to the newly created ODPP in WA in 1992. Having worked part-time for three years, Fiona ceased practice in mid 1992 to concentrate on raising her two children. After some time in the Eastern States, Fiona returned with her family to WA and taught contract and criminal law at UWA from 1995 -1997. She also managed a medico-legal psychiatric practice from 1995-2001. She returned to the WA ODPP in October 2001, resuming work as a prosecutor. She took extended leave from WA ODPP in May 2005 to join this Office as a Chambers Prosecutor.

MARK HEFFERNAN **CROWN PROSECUTOR**

Mark graduated from the University of Sydney with degrees in Education (1983) and Law (1988). He commenced his legal career in private practice at Murray & Backhouse, Solicitors of Coffs Harbour. He thereafter worked for the NSW ODPP at Head Office in Sydney, before transferring to the Lismore Regional Office. He has been in the employ of the ODPP in NSW for over 10 years, and has in recent times acted in the position of Managing Lawyer of the Lismore Office. He has also been seconded to the Newcastle and Campbelltown Regional centres as a Trial Advocate for extended periods. He is presently seconded to the Darwin ODPP for a 12 month period, from February 2005, as a Crown Prosecutor.

KATE RATCLIFFE **CROWN PROSECUTOR**

Kate has a Masters of Law degree and a combined Economics/Law degree, both from the University of Sydney. She worked as a solicitor in general practice (litigation) for 4 years in regional NSW between 1991 and 1995. Kate then travelled overseas, working as a solicitor in London before returning to Australia. She worked for several months for the Redfern Aboriginal Legal Service in Sydney before securing a permanent position with the NSW ODPP in 1997.

She worked in the Sydney regional offices of Penrith, and Parramatta before transferring into the city where she worked in the Special Crime Unit. She accepted secondment to the NT ODPP, in Alice Springs for 12 months in February 2005. She hopes to extend.

MICHAEL FAY **SUMMARY PROSECUTOR**

Michael obtained a Bachelor of Arts from Flinders University in 1995 and graduated Bachelor of Laws from Adelaide University in 1998.

He was employed in private practice in South Australia for two years practising mainly in the area of civil litigation. In November 2001 he came to the Territory to work for KRALAS as a civil lawyer. He became involved in the criminal law side of KRALAS and was mainly practising in this area when offered a position as a summary prosecutor in the Darwin ODPP in July 2004. He has since moved, in February 2005, to Alice Springs.

CAROLINE HESKE **LEGAL OFFICER**

Caroline graduated with a Bachelor of Arts and Bachelor of Laws from Melbourne University in 2002. She joined the NT Department of Justice as administrative assistant for the Information Act Implementation Team, and then continued as assistant to the Information Commissioner. In 2004 she undertook her Articles of Clerkship with the Department of Justice, during which she completed a brief rotation at the ODPP. Caroline was admitted to practice in December 2004. She was employed briefly as a solicitor with the Policy division of DOJ before commencing a contractual appointment as a Legal Officer at the ODPP in January 2005.

CORINNA BAOHM SUMMARY PROSECUTOR

Corinna commenced employment as a Summary Prosecutor with the ODPP in May 2005. She completed a Bachelor of Laws Degree (Hons) at Adelaide University in 2003 and was admitted to practice in South Australia in December 2003. Prior to joining the ODPP, she was employed by the Legal Services Commission of South Australia in the criminal law division as a duty solicitor at Adelaide Magistrates Court and in 2005 at the Holden Hill Magistrates Court.

GEMMA BEGGS GRADUATE CLERK

Born and raised in Darwin, Gemma began a Bachelor of Arts/Bachelor of Laws at the Northern Territory University in 1999. Gemma transferred to Perth in 2001 and graduated from the University of Western Australia in 2004 with a Bachelor of Arts (Asian Studies)/Bachelor of Laws. In January 2005 Gemma moved back to Darwin to undertake a Graduate Clerkship with the ODPP. Gemma is expected to be admitted to practice in August 2005, and has accepted a contractual position with the ODPP as a legal officer.

IAN MCMINN GRADUATE CLERK

Ian accepted the opportunity to work at the ODPP while completing his Graduate Diploma of Legal Practice, starting January 2005. The course was completed by early June, allowing his admission to take place in August. Before studying law, beginning March 2002 at Charles Darwin University, Ian worked as a journalist both here and overseas. Perhaps his most memorable achievement was interviewing Colonel Ghaddaffi in 1988. He graduated with a Bachelor of Laws (Hons) in May 2005. He has accepted the offer to work as a summary prosector, to follow his admission to practice.

JOH-ANN COATES INDIGENOUS CADET

In January 2005 Joh-Ann successfully completed the Indigenous Pre Law course at Charles Darwin University. Her previous work experience at Queensland Corrective Services and at Aboriginal Legal Aid in Alice Springs and Darwin sparked her interest in the study of law. She successfully applied for a cadetship at the Office of Director of Public Prosecutions and started her Bachelor of Laws in February 2005. She is excited about her future legal studies and the chance to receive relevant work experience at the ODPP with the support of mentors and senior legal officers until the completion of her degree.

PROFESSIONAL ACTIVITIES

There were a number of important events, conferences and activities during the year which are dealt with separately below. Naturally enough, the most important professional activity is the fulfilment of the prosecutorial function. This will be dealt with first.

General Workload

This is best demonstrated in the following chart:

BREAKDOWN OF PROSECUTION CASES

For the period 1 July 2004 to 30 June 2005

		Darwin		Alice Springs	
		04-05	03-04	04-05	03-04
Court of Summary Jurisdiction (incl Juvenile Court)					
	Mentions	1135	1353	693	714
	Part heard	324	296	118	197
	Completed Summarily	72	145	75	93
	Committal Completed	143	175	64	56
	Warrants Issued	72	71	44	44
	Bail applications	39	81	53	62
	Breaches	17	17	25	18
	Withdrawn (whole matter)	53	42	34	27
Local Court					
	Forfeiture (includes Restraining Order & Objection Hearing phases)				
	Mentions	256	47	29	4
	Part heard	9	8	0	0
	Completed	87	45	15	13
Supreme Court – Criminal					
	Mentions	1032	1029	443	455
	Pre-trial conference & hearings	342	632	94	94
	Part heard	423	277	102	102
	Trials completed	41	25	10	11
	Pleas completed	163	166	67	61
	Nolle Prosequi	20	13	17	6
	Bail Applications	78	73	10	23
	Warrants Issued	18	31	10	13
	Breaches	44	47	25	10
	Fitness to plead	2	6	3	4

		Darwin		Alice Springs	
		04-05	03-04	04-05	03-04
Supreme Court - Civil					
Justices Appeals					
	Mentions	350	394	92	94
	Part Heard	15	21	9	13
	Completed	45	72	33	12
Forfeiture (incl. Restraining orders & Objection hrgs)					
	Mentions	3	2	0	0
	Part heard	0	0	0	0
	Completed	1	4	0	0
Court of Appeal and Court of Criminal Appeal					
	Mentions	86	45	0	0
	Part heard	18	18	0	0
	Completed	22	21	0	0
High Court of Australia					
	Part Heard	0	1	0	0
	Completed	2	1	0	0
Totals		4912	5158	2065	2126

The CaseNet file management system has been enhanced to provide a more comprehensive reporting system.

The workload pressure has remained constant on all staff. Given that professional, and other staff, resources have not kept pace with increased business over recent years this is not surprising. Statistically, the breakdown does not adequately reflect the nature of the cases either in a quantitative sense or in terms of gravity.

In the Annual Report of 2001-2002 it was noted:

> *One interesting development during the year was the increased use of ex officio indictments (37 in 2001-2002, compared to 24 in the previous year). This indicates a resort to best practice by both prosecution and defence representatives. This has reduced the number of committals and has the long term tendency to release some of the pressures on the courts and practitioners.*

Then last year:

> *This development has continued this year with 63 ex officio indictments filed; more than in the previous two years combined. There is a determination by the prosecution – supported by the defence – to limit the expense of the criminal justice system to the community and the parties.*

This useful trend has continued. This year there were 54 ex officio indictments filed (63, last year) which, although showing a downturn, confirms the general trend. This is a good outcome for all stakeholders.

Observations

The nearer a case comes to hearing in the Supreme Court the more likely it is that the parties will grapple with the realities of the trial process. The important numbers, to demonstrate those cases which are seriously prepared, are those for trials and pleas completed and nolle prosequis. The latter are cases in which the Crown files a document, often after the case has been fixed for hearing and substantial preparation carried out, effectively withdrawing the case. In the year of report, the total of these three categories was 318 compared with 282 in the previous year. This represents an increase of 13%. Actual trials completed increased from 36 to 51 (42%).

These figures may be usefully compared with those taken out by the Sheriff of the Supreme Court. These show, in all cases including civil matters, Supreme Court sitting days in a period to April 2005 increased by 27.5% over the corresponding period of the previous year. Most of this increase is attributed to criminal cases.

All of those trends are one-way and demonstrate an increase in the work of the criminal courts at the highest level. Obviously, it follows that the prosecutors are called on to make a bigger contribution.

The other very significant increase is in forfeiture matters (as the police have zoned in on criminals and used the new legislation to attack them where it hurts; in their pockets!) Completed matters in the Court of Summary Jurisdiction have doubled with mentions of them occupying many court (and prosecutor) hours. In the Supreme Court there are presently five matters outstanding. They are not consistently identified separately in the table above. A total of 22 forfeiture mentions are partly included in the general classification.

The Northern Territory is reaping the benefits of these attacks but at a cost to the ODPP in terms of significantly increased workloads and concomitant stress on the staff.

Results

Of those tried by jury in the Supreme Court last year 55% were convicted and 36% acquitted. The difference is represented by cases in which the accused was not acquitted outright but found not guilty by reason of mental impairment. This may be interpreted as an indication that the jury accepted the factual basis of the Crown case. Overall, when pleas of guilty and nolle prosequis are included, the conviction rate was 84% of all matters disposed of in the Supreme Court. This is a more than acceptable outcome, generally consistent with previous years.

Management

The management of the ODPP, both in a professional and administrative sense, is of course crucial. It has been discussed in resource terms elsewhere in this Report.

Each week, the Executive Committee of the ODPP meets to discuss important professional (and from time to time administrative) issues which arise. It provides an opportunity for the professional leaders to discuss legal and office policy issues which emerge, with the facility to deal with them urgently. The committee comprises the Director, Deputy Director, General Counsel, Solicitor to the DPP, the Crown Prosecutor in charge of the Alice Springs Office, representatives from the Senior and other Crown Prosecutors, legal officers and of each of the Summary Prosecutions offices and WAS.

There are also regular monthly meetings of all professional staff to discuss issues at which presentations are made from time to time on current topics. This is mirrored, by monthly meetings of the administrative staff to discuss matters relevant to their activities.

In addition to these methods of communication between management and staff, there is also a weekly bulletin prepared by the Director which is distributed to all professional and administrative staff on both the Crown and the summary side. By this means all personnel are kept advised of current legal, staffing, personnel and personal issues.

Appeals

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

(i) institute and conduct, or to 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.

In previous Annual Reports I have provided a summary of decisions and outstanding appeals in the Court of Criminal Appeal and Court of Appeal as well as matters in the High Court. Last year the summary was removed from the Report and was published, instead, on the ODPP website. It will be published again on the ODPP website this year. An explanation of the appeal process can also be found on the ODPP website.

Table A below contains the results of applications for leave to appeal determined *on the papers* during the reporting period.

TABLE A

Outcome of defence applications for leave to appeal to the Court of Criminal Appeal as determined by a single judge upon the papers 2004-05		
	Sentence	Conviction
Allowed	10	3
Dismissed	*5	*3
TOTAL	15	6

* *One applicant applied to have the application re-heard and determined by the Court of Criminal Appeal constituted by three judges*

Table B below summarises the results of appeals from the Supreme Court decided during the reporting period.

TABLE B

	Conviction	Sentence
Allowed	5 (2)	4 (5)
Dismissed	5 (6)	8 (5)
Discontinued	2 (0)	0 (1)
TOTAL	12 (8)	12 (11)

Outcome of prosecution appeals and references to Court of Criminal Appeal/Court of Appeal/Full Court 2004-05		
	Sentence	Other
Allowed	0 (5)	1 (3)
Dismissed	0 (0)	0 (0)
Discontinued	1 (0)	0 (0)
TOTAL	1 (5)	1 (3)

nb: The figures in brackets are for the period 1 July 2003 to 30 June 2004

Table C below summarises the results of appeals to the Supreme Court during the reporting period.

TABLE C

Outcome of defence Justices' Appeals 2004-05			
	Conviction	Sentence	Other
Allowed	4 (11)	12 (38)	0 (3)
Dismissed	7 (6)	29 (27)	1 (1)
Discontinued	6 (1)	29 (33)	0 (0)
Total	17 (18)	70 (98)	1 (4)

Outcome of prosecution Justices' Appeals 2004-05			
	Dismissal of Charge	Sentence	Other
Allowed	0 (1)	0 (2)	0 (0)
Dismissed	1 (1)	8 (0)	0 (0)
Discontinuance	0 (0)	0 (1)	1 (0)
Total	1 (2)	8 (3)	1 (0)

nb: The figures in brackets are for the period 1 July 2003 to 30 June 2004

The Office was involved in one matter before the High Court during the reporting period.

In ***Tipiloura v R*** [2004] HCA Trans 260, the applicant applied for an extension of time in which to apply for special leave to appeal against the unanimous decision of the Court of Criminal Appeal [***Tipiloura v R*** (1992) 2 NTLR 216] dismissing his appeal against a conviction for murder resulting from a majority verdict.

The applicant sought to explain the 12 year delay in applying for leave by claiming that his lawyer did not communicate with him regarding the appeal process, did not inform him of the outcome of his appeal, nor of his rights in relation to an appeal to the High Court.

The applicant asserted that the ***Criminal Code*** under which he was convicted is a law of the Commonwealth within the meaning of s.80 of the Constitution (as opposed to a law of the Northern Territory) and that in accordance with the decision of the High Court in ***Cheatle v R*** (1993) 177 CLR 541 (a case relating to trials in respect of Commonwealth offences) the verdict of the jury had to be unanimous and that a majority verdict could not sustain a finding of guilt. This point was not taken at the trial nor in the Court of Criminal Appeal.

In dismissing the application the court held that an extension of time after such a long delay would only be granted in exceptional circumstances. The Court noted that if the argument was successful (which the Court very much doubted) the only remedy the applicant could obtain would be an order for a new trial. The Court further noted that after the lapse of so many years, the difficulties facing the prosecution in the event of a new trial were likely to be considerable. Further, at trial, acquittal was not a live issue. The only issues at the trial were whether the applicant was guilty of murder or manslaughter. The Court was of the view that in these circumstances the interest of justice did not require the grant of an extension of time in which to apply for leave to appeal.

In last year's annual report it was noted (at pages 37-38) that the High Court had reserved its decision in the matter of ***DPP v WJI*** and that no decision had been delivered as at 30 June 2004. The decision of the High Court was delivered on 6 October 2004. See ***DPP (NT) v WJI*** 210 ALR 276, 78 ALJR 1565.

The Court, by majority of 4 to 1, dismissed the Director's appeal holding that the Court of Criminal Appeal did not err in its answers to the questions referred to it.

ODPP website

Reference has already been made to the ODPP website (www.nt.gov.au/justice/dpp). This Annual Report may be found on it together with the following separate items:

- DPP Home Page
- Office Locations
- Role of the DPP
- Guidelines
  - Roles and Duties of the Prosecutor
  - The Decision to Prosecute
  - Timeliness
  - Indictments
  - Ex Officio Indictments
  - Charge Negotiation
  - Discontinuing Prosecution
  - Disclosure
  - Indemnities & Undertakings
  - Young Offenders
  - Witness Assistance Service
  - Mental Health Issues
  - Jury Selection
  - Witnesses
  - Interpreters
  - Sentence
  - Crown Appeals Against Sentence
  - Unrepresented Offender
  - Informers
  - Aboriginal Customary Law
  - Domestic Violence
  - Retrials
  - Extradition
  - Provision of Documentation
  - Confidentiality
  - Media
  - Opinions

Appendices to Guidelines

A - Definition
B – Rules of Professional Conduct and Practice of the Law Society of the Northern Territory (Excerpts)
C – Barristers' Conduct Rules of the Northern Territory Bar Association (Excerpts)

D – International Association of Prosecutors rules
E – Northern Territory Charter for Victims of Crime
F – Convention on the Elimination of all forms of Discrimination against Women (Excerpts)
G – United Nations Convention on the Rights of the Child (Excerpts)

- Witness Policy
- Provision of interpreters
- Witness Assistance Service
- Aboriginal support
- Aboriginal Employment & Career Development Strategy 2004-2006
- Equal Employment Opportunity Management Plan
- Progress of a typical matter from charge to trial
- Memorandum of Understanding in respect of Summary Prosecutions
- Falconio matter
- Publications
- Case Summaries

Legislative review

During the year, the ODPP 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 indicated 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 WAS.

Submissions were sought on a large variety of matters which, although not strictly speaking necessarily involving legislation, excited parliamentary interest. The contribution made by the ODPP in respect of legislative reviews generally, led by Jack Karczewski QC (Deputy Director), Michael Carey (General Counsel), until his resignation and Shane McGrath is very significant in this area. It is time-consuming but, nevertheless, important work.

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. Members of the ODPP have been involved in a number of ad hoc and informal committees dealing with proposed amendments to relevant legislation.

Continuing legal education

This has not been a significant year for continuing legal education, the most recent in-house biennial conference falling in the previous year. The sixth biennial conference will be held in October 2005. It is being brought forward from the usual March time so that the current Director can participate in and host the conference. It is also foreseeable that the incoming Director may not have the opportunity to oversee such a conference so early in his or her term.

The Director has conducted a series of workshops for all professional (and interested administration staff) on Advocacy during May/June. These have been well attended and, hopefully, useful. Separate presentations were made by the Deputy Director and David Lewis.

The Director has met on a regular basis early on Monday or Tuesday mornings with the junior lawyers and graduate clerks to discuss matters relevant to their level of experience.

A number of professional staff attended conferences interstate during the year.

Community Involvement

The Director of Public Prosecutions presents the course of ***Advocacy*** at the Charles Darwin University. He is assisted by, inter alia, other staff members. Other professional staff lecture in individual subjects such as ***Evidence*** (John Adams). The ODPP Crown Prosecutors and legal officers (and WAS staff) are actively involved in providing both the public and private sector with public education.

In 2004-2005 the Office provided the following training programs and courses:

- Witness training for Probation and Parole Services
- Juvenile court procedures, rights and obligations in the criminal system for the staff at the Don Dale centre, volunteer services and community legal centres
- Counsellor confidentiality and victim impact statements for counsellors from Ruby Gaea
- Evidence and the Criminal Law for detectives
- Child Sexual Assault and Community Based policing for the NT Police
- Child Protection and Sex Offender courses for Correctional Services staff, sexual assault counsellors from both the private and public sector
- ODPP and the law generally for careers night at St Philips College, Alice Springs
- Consent and mandatory reporting for rural nursing practitioners within the southern region

- Volunteer work with Darwin Community Legal Service
- Advanced and elementary courses for Police prosecutors
- Witness training in sexual assault for health professionals, Alice Springs
- Talks to Years 11 and 12 Legal Studies students at Centralian College and St Philips College, Alice Springs
- Countless presentations by WAS staff and other ODPP representatives to bush community groups.

In addition ODPP staff participate amongst others in the following community based boards and committees:

Board of NT Carers
Crime Victims Advisory Committee
Criminal Justice Forum
Criminal Court User Group (Supreme Court)
Criminal Court User Group (Magistrates Court)
NT Law Society Criminal Law Committee
Drugs Misuse Act Reference Committee
Mental Health Review Tribunal
Reconciliation Council (NT)
Australian Law Librarian Group
Alternative Law Journal Editorial Committee
Northern Territory Law Reform Committee
Top End Women's Legal Service Management Committee
Domestic Violence Network Member
Northern Territory Reports Editorial Committee
Supreme Court Library Committee
Women's Lawyers Association

The Director was asked, and agreed, to host a meeting in July 2005 of the National Child Sexual Assault Reform Committee. This high-profile group is nearing the end of a five year project in which it will seek to make significant recommendations for reform in its area of interest. It is important work, and the ODPP is pleased to support it.

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

usefully promoting consistency of the administration of criminal law in the several jurisdictions and, additionally, exchanging very useful information.

There were two such meetings during this year. The Director attended one in Perth but, because of his unavailability through court commitments, the Deputy Director attended the February meeting, in Hobart. The Directors have also 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 each of 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), Sigatoka (1999), Edinburgh (2001) and Darwin (2003). The ODPP was represented by the previous Director at the first three such conferences. Most other Australian jurisdictions are represented at these meetings. The current Director attended the conferences in NZ, Fiji and Scotland. The Northern Territory hosted an extraordinarily successful conference in 2003.

These conferences have proved very important in providing a forum for:

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

The next conference will be held in September 2005, jointly hosted by Ireland and Northern Ireland. It promises to be another excellent meeting. The Director will attend and is to present a paper on Media Management in the Court process.

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.

The former president of the IAP, the Director of Public Prosecutions of Ireland, Eamonn Barnes, in May 2000 articulated his view of the role of the prosecutor as an upholder and defender of human rights and said:

> *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 was succeeded as president, by Nicholas Cowdery QC, the NSW Director of Public Prosecutions. This ensures and maintains a strong recognition of Australia, its States and Territories, within the organisation.

The Director and Deputy Director attended conferences in Beijing (1999) and Sydney (2001). The Director also attended the Washington conference (2003) but not that in Seoul (2004). The expense of attending international conferences is prohibitive and selectivity needs to be exercised.

This year's conference (August 2005) is focusing on witnesses and victims. It is therefore of some real significance to us in Australia and the Territory. The Director will be attending in Copenhagen which will be followed immediately by the HOPAC meeting in Ireland. He has been asked to chair the final plenary session at the IAP conference.

The conference is an ideal opportunity to make and maintain contacts at an international level which could become very useful as our world continues to contract.

Criminal Lawyers Association of the Northern Territory (CLANT)

The ODPP continues to be well represented in the membership of CLANT and its committees. Its Tenth Biennial Conference was held in Sanur, Bali, Indonesia, in July 2005 and thirteen representatives from the professional staff of ODPP participated and contributed to what was a very successful conference. The theme of this year's conference was *Trial & Error: Safety, Liberty, or Terror*. The conference had been held biennially in Bali since 1987, with the exception of 2003 (that because of the events of 12 October 2002). This conference, of course, appeals to a much wider range of delegates than those from the Territory, and there was an excellent attendance of 107.

The Director again produced a play reading for the conference. This time it was on the trial of *Rupert Maxwell Stuart* (in South Australia, in 1959) entitled *A Shining Momentin Australian Legal History?* This had a cast of twenty, including six ODPP staff. It was very well received. There were, *inter alia*, papers on *Guantanamo Bay (United States v Hicks); Habeas Corpus;Terrorism; Managing the Media in the Criminal Justice System* (presented by the Director and Anne Barnett)*; Reform of the NT Criminal Code;* and *The latest developments in the laws of evidence, court procedure,* and *sentencing.*

Highlights included the wonderful speech by Major Dan Mori of the the United States Marine Corps, who spoke passionately on the plight of David Hicks, an Australian citizen captured in Afghanistan, and detained for several years by United States'authorities in Cuba.

At the conclusion of the conference, the Director and Justice Dean Mildren were inducted as Life Members of CLANT.

It is hoped that the eleventh biennial conference will be held, once again, in Bali. It is expected to take place in June/July 2007.

Australian Association of Crown Prosecutors

On 14-16 July 2004 the Office hosted the Sixth Annual Conference of the Australian Association of Crown Prosecutors in Darwin. The Association is a national body representing Crown Prosecutors, which has been active in promoting law reform, making submissions to Government and various activities concerning the professional development of prosecutors. The Northern Territory is represented on the Executive of the Association by the Deputy Director, Jack Karczewski QC.

The annual conference was the most significant event on the Association's calendar for the year. As anticipated, the conference became the best attended in the history of the Association with 72 delegates attending.

Dr Chris Burns welcomed the delegates at a reception on the opening day on behalf of the Attorney-General. A full program of papers was delivered by speakers including The Honourable Justice Olsson from South Australia, and Crown Prosecutors from around the country and overseas. The theme of the conference was *Surviving the Difficult Prosecution.*

The conference proved to be an overwhelming success, receiving plaudits from the President of the Association and numerous delegates. Thanks go to those staff who organised this event which reflected well on the Northern Territory and the Office, in particular, Anthony Elliott and Lilia Garard.

SUMMARY PROSECUTIONS

DARWIN

Background

Summary Prosecutions in Darwin and Alice Springs consists of civilian legal practitioners employed by the ODPP, members of the Northern Territory Police Force attached to ODPP and employees under the ***Public Sector Employment & Management Act.***

This arrangement is pursuant to the *Memorandum of Understanding* between the Director and the Commissioner of Police, dated 11 February 1998 (reproduced on the ODPP website).

Functions

Summary Prosecutions, Darwin (SPD) is responsible through the Officer-in-Charge to the Director of Public Prosecutions. SPD carries out the following functions:

- receiving initial files including arrest, summons and opinion files both for adults and juveniles
- providing advice to investigating police on issues of substantive, evidentiary and procedural law in appropriate cases, these matters are referred to the *Crown side* of ODPP
- checking files and determining appropriate charges, according to the Director's Guidelines and in particular, the *reasonable prospect of conviction* and *public interest* tests. Some categories of files are referred to the *Crown side* of ODPP for advice as to charges
- issuing summonses to defendants in the Court of Summary Jurisdiction (CSJ) and the Juvenile Court (JC), for service by police
- all preliminary mentions of files in the CSJ and JC, including opposition to bail applications, setting dates for committal hearings in serious indictable matters, setting dates for hearing in minor indictable and summary matters and taking pleas of *guilty* in minor indictable and summary matters, with the exception of matters that:

are of a serious or complex nature
involving difficult or complex points of law
serious indecency offences
other matters considered appropriate to be handled by a Crown Prosecutor

- after a *finding of guilt*, making applications to breach sentencing orders or good behaviour bonds as appropriate
- receiving all prosecutions from Department of Correctional Services, for
  breach of home detention
  breach of community work orders
  breach of sentencing orders
- prosecuting applications for extradition to places outside the Northern Territory under the Commonwealth ***Service and Execution of Process Act.***

SPD services all of the circuits conducted by the Darwin-based Stipendiary Magistrates, as follows:

Port Keats – three or more days per month
Alyangula – three days per month
Nhulunbuy – three days per month
Jabiru – one day per month
Oenpelli– one day per month
Maningrida – at least one day per month
Nguiu – at least one day per month
Daly River - one day each second month and
Galiwin'ku - one day each third month.

Generally, one legal practitioner from SPD is sent to each circuit. At times a Police prosecutor will also attend to assist. Prosecutors travel the day prior to court to allow for thorough preparation.

Police stations at Adelaide River and Batchelor do not have circuits. Their prosecution files are dealt with in Darwin. Files from Pirlangimpi police station are dealt with at Nguiu.

Each *bush* station has a designated police member who acts as liaison with SPD, manages the files between circuits and attends court. These members are given the opportunity to develop their skills and progress through simple pleas to more complicated matters, as their experience permits. This informal *Prosecutors' Development Program* raises the skill levels in the bush and provides a recruiting pool for the Darwin Office.

Location

Summary Prosecutions is co-located with the Director's Chambers on the second floor of Tourism House, 43 Mitchell Street, Darwin.

Staffing

	Establishment	Actual
Senior Sergeant	1	1
Sergeant	3	4
Constable & Senior Constable	2	7
Auxiliary	2	2
Legal Practitioners	6	6
AO3	4	4
Total	**18**	**24**

Officer-in-Charge

The Officer-in-Charge is responsible for managing the section, answering correspondence, conducting mention and hearing matters in Darwin and on circuit, as required. Senior Sergeant Peter Thomas is currently the OIC and has been intermittently since May 1997. He is currently on long term sick leave and due to return in October 2005. Senior Sergeant Lorraine Carlon, and other officers, have been fulfilling the OIC duties during Senior Sergeant Thomas's absence.

Police staff

The police members are employed under the ***Police Administration Act***. They are entitled to appear in court, on the Director's behalf, pursuant to the ***Director of Public Prosecutions Act***, s.22(b). Other aspects of the role of police members attached to the ODPP are governed by the *Memorandum of Understanding* between the Director and the Commissioner of Police. There are various sub-specialties within the office. Police members are rotated through each sub-specialty with the object of producing well-rounded summary prosecutors. Their duties include file checking and charge selection, presenting pleas in the Courts of Summary Jurisdiction and Juvenile Courts and presenting evidence in contested hearings in those courts.

The police prosecutors (and their respective dates of commencement in SPD) are:

Sergeants
Peter Hales (1996)
Erica Sims (February 2005)
Gavin Kennedy (March 2005)
Mark Nash (April 2005)

Senior Constables
Mick Brennan (2003)
Ivan Marinov (January 2005)

Constables
David Moore (2000)
Karen Sanderson (2002)
Andrew Littman (2004)
Jason Rothe (January 2005)

The Police Auxiliaries' roles are to:

- issue summonses for all witnesses in both summary and committal proceedings in Darwin
- arrange the service in NT and elsewhere, of all Supreme Court subpoenas for the Darwin sittings
- arrange travel, both domestic and international, for all summary court and Supreme Court witnesses and be available for after-hours call-out for such duties
- arrange appropriate and suitable accommodation for all summary court and Supreme Court witnesses and be available for after-hours 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 ODPP for interview and/or proofing and be available for after-hours 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
- assist, where appropriate, WAS with liaison, travel and transport of Aboriginal witnesses.

The Police Auxiliaries during the reporting period were:

- Senior Auxiliary Karren Brown (1996)
- Senior Auxiliary Tony Stafford (December 2004)

Legal Practitioners

The legal practitioners' work is primarily to conduct contested hearings in summary and minor indictable matters in the CSJ. Each attends at least one circuit per month, where they are expected to advise and assist the locally based police prosecutors.

It is now recognised that a position in Summary Prosecutions can be the first rung on the ladder for junior legal practitioners who desire to explore the possibility of a career as a prosecutor, or in advocacy generally.

There are currently a pool of six legal practioners attached to SPD with one of these permanently seconded to the ODPP on rotation.

As at 30 June 2005 the legal practitioners were as follows (with dates of commencement):

John Duguid (2001)
Timothy Smith (2002)
Martin Fisher (2003)
Simon Lee (2004) (resigned as from 30 June)
David Robertson (2004)
Jodi Mather (2004)
Corinna Baohm (2005)

In addition, Gabrielle Martin of the Department of Justice was attached on secondment for three months during 2005 to broaden her experience in court matters.

Public Sector employees

One AO3 position is funded by ODPP to provide administrative support to the legal practitioners. The other three AO3 positions are employed by Police to attend to word processing, file tracking and archiving.

The Public Sector employees (and their respective dates of commencement in SPD) are:

Professional assistant to prosecutors:
Angela Davis (June 2005)
Carolyn Davis (March 2004-2005)

Police professional assistants

Karen Maher (2002),
Tiffany Kilian (2002)
Hayley Barber (2003)

Liaison with WAS

SPD continues to have close liaison with the ODPP Witness Assistance Service (WAS). WAS assists with compilation of *Victim Impact Statements* for presentation, on behalf of victims, to the courts. It also provides a support service to victims and witnesses.

Other Resources

SPD benefits significantly from access to the *Chambers Prosecutor* and the *Senior Research Solicitor*.

Training and advice

Summary Prosecutions also provides advice and training to police recruits. A prosecutor attends the Police Fire and Emergency Services (PF&ES) College and gives lectures as required. Also, the Moot Court Facility at CDU was utilised.

Advice is given to police members in the police stations included in the Darwin circuit.

The introduction of a duty prosecutor's role during the year enhanced the quality of prosecution briefs delivered to SPD. The scheme involved the rotational placement of a police prosecutor at Police HQ each evening shift to check the quality of briefs at the source and proffer advice to constables engaged in the arrest and bail process. The scheme is staffed from within the existing staff of SPD and places an additional burden on the staff but results in an enhanced and integrated experience for general duties police.

Acting Sergeant Karen Sanderson conducted a summary prosecutors course during the reporting period. The course provided the knowledge and skills to enable police officers to select appropriate charges, to prosecute pleas and bail applications, and to recognise significant issues that might require a case to be handed over to a legally qualified prosecutor. This course, of ten days duration, took place between 2 and 13 May 2005. The course was opened by the Director of Public Prosecutions. Most of the resources utilised in the course were provided by SPD and the *Crown side* of ODPP. Twenty-one participants successfully completed the course.

Formal and informal in-service training was given during the year to police officers regarding preparation of files for court. SPD delivered training to police recruits and in-service trainees at the PF&ES College. Less formally, refresher classes for general duties police were conducted.

Caseload

The caseload for SPD remains high. Statistics indicate the following:

	2003-2004	**2004-2005**
Summary file listings	13,607	13,123
Matters listed for contested hearings	683	612
Matters listed for Contest Mentions	863	795

General comment

The working relationship between summary prosecutions arm and the *Crown side* of the ODPP remain strong. The unique hybrid model employed in the ODPP continues to generate a successful partnership approach to prosecutorial matters between the ODPP and the Police Force.

New challenges lie ahead for the current year in maintaining that close working relationship and adequate staffing for SPD.

ALICE SPRINGS

Summary Prosecutions Alice Springs (SPAS) is immediately responsible to the Crown Prosecutor-in-Charge, Office of the Director of Public Prosecutions (ODPP) Alice Springs. SPAS carries out the following functions:

- receiving initial files including, arrest, summons and domestic violence order applications
- checking of files and determining appropriate charges
- issuing summonses for service by police
- making applications to breach sentencing orders as appropriate
- all preliminary mentions of files in court
- opposing bail applications in appropriate cases
- prosecuting guilty pleas in the lower courts
- receiving all prosecution briefs from Department of Correctional Services, for
  breach of home detention
  breach of community work orders
  conditional breach of sentencing orders

- prosecuting applications for extradition to places outside the Northern Territory under the Commonwealth ***Service and Execution of Process Act***
- prosecuting minor breaches of liquor licences before the Licensing Commission Tribunal
- prosecuting all matters in the Juvenile and Summary Jurisdiction courts except for:
  matters which are of a serious or complex nature
  matters involving difficult or complex points of law
  matters involve indecency
  other matters considered appropriate to be handled by senior counsel

Location

SPAS is located on the top floor in the Centrepoint Building on the corner of Gregory Terrace and Hartley Street, Alice Springs. The area is adjacent to the ODPP Office.

Staffing

	Establishment	**Actual**
Senior Sergeant	1	1
Sergeant	2	3
Senior Constable	1	1
Auxiliary	1	1
AO2	1	1
Legal Practitioners	1	1
Total	**7**	**8**

Senior Sergeant Rob Burgoyne is the Officer-in-Charge. He is responsible for managing the section, answering correspondence and as a bush and Alice Springs back up prosecutor.

Sergeant Alan (Garnet) Dixon, is designated the bush court coordinator and acts as OIC when required. He conducts hearing matters especially at the bush courts and is a back up prosecutor when available for both bail and arrest and hearings in Alice Springs.

Sergeant Kevin Winzar is a police hearing prosecutor with a wealth of experience in this area.

Sergeant Peter Nunn joined SPAS in January 2004 as a much needed supernumerary prosecutor and is assigned to the bail and arrest area.

Michael Fay commenced with SPAS in January 2005 as a civilian practitioner working for the Crown following the departure of Josie Burness.

Juan Dominguez has also given additional assistance from the staff of the Crown.

Senior Constable Neville Muller is the Prosecutions Constable and is responsible for the initial preparation of files, filing adjourned matters and liaison with the police and courts regarding files. During staff shortages he can take up the position of a bail and arrest prosecutor.

Senior Constable Robert (Bruce) Hosking is now the Southern Region Coroner's Constable, with his office in SPAS. He provides valuable administrative assistance during staff shortages. The Prosecutions and Coroner's Constables are cross-trained and each is able to undertake the duties of the other. This expands the flexibility of both positions.

Senior Police Auxiliary Pat Arnell performs the duties of witness travel. Her duties are to:

- 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 both local and interstate
- arrange travel, both domestic and international, for all summary court and Supreme Court witnesses and be available for after-hours call-out for such duties
- arrange appropriate and suitable accommodation for all summary court and Supreme Court witnesses and be available for after-hours 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 ODPP for interview and/or proofing and be available for after-hours 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, WAS with liaison, travel and transport of Aboriginal witnesses
- other police duties as required including compilation of IJIS related documentation and reception duties.

Michelle Carr currently fills the AO3 position (upgraded from AO2 in June 2005) and gives valuable reception and administrative assistance to SPAS, the Crown and bush stations where courts are conducted. The position types IJIS related documents and trains bush stations in that area, deals with correspondence and locates, maintains and tracks files as required.

The ODPP WAS continues to assist with an increased number of requests for crimes' compensation information and compilation of Victim Impact Statements.

Bush courts

A prosecutor attends for hearings and assists with bail and arrest as required. In January 2005 SPAS took exclusive control of the monthly five day court at Tennant Creek following the reassignment of the local prosecutor. Bush courts are also held at Ali Curung, Hermannsburg, Kintore, Papunya, Yulara (Mutitjulu), Ti Tree and Yuendumu bi-monthly. Additional courts were covered every three months at Elliott, Kalkaringi and Lajamanu. Kalkaringi and Lajamanu were returned to Katherine Prosecutions in May 2005 due to the uptake of Tennant Creek.

Training and advice

Due to workload, training consisted of e-mails to Southern members highlighting misconceptions with law and procedure, templates containing good précis' and a *Good File Guide.* The guide was developed for new probationary constables but needed to be promulgated widely due to the lack of experienced officers especially at the supervisor level now in the police force and corresponding increase in defective files being received.

Advice and training in the law, procedures and the IJIS system (by the AO3) is given to police members carrying out basic prosecution duties at Ali Curung, Elliott, Hermannsburg, Kintore, Papunya, Ti Tree, Yuendumu and Yulara (Mutitjulu). Due to the tyranny of distance contact with Kalkaringi and Lajamanu was very difficult through the reporting period and this, if nothing else, highlighted the need for these stations to be returned to Katherine's responsibility.

Advice was also given to members at current non-court stations in the Southern area at Borroloola, Harts Range, and Kulgera on all aspects of law, evidence and procedure.

Caseload

The caseload for the section continues to remain high given the current staff establishment. Statistics indicate the following:

	2003-04	2004-2005
Total files listed/dealt with (Alice Springs)	8964	7954
*New files (Arrest/Summons/DVO)	3588	3271
#Hearings (Alice Springs)	392	414
Bush Courts attended (days)	61	102

*Unlike Darwin, Alice Springs (due to admin staffing) only compiles bush station files for Tennant Creek and during the period, Ti Tree and others, except for in custody matters for Alice, are compiled by the stations themselves.

#Those files proceeding to the actual hearing date – they may resolve on the day but preparation time is not greatly lessened. Note that this figure does not include bush court hearings.

The above figures indicate a downward trend in fresh files and slight drop in overall mentions. This has been influenced by the introduction of *Intelligence Led Policing.* That is, recidivist offenders are proactively targeted to prevent them committing further crime and when they do, by placing police and/or court imposed sanctions that will curtail their behaviour (including curfews and/or supervision by Correctional Services).

General comment

The AO2 reception/typist position was upgraded to AO3 in June 2005. An additional half AO2 position would ensure all court related documentation in the Southern Region could be done centrally as is done in Darwin and Katherine. This would improve both administration and procedure at the bush courts where the disparate level of IJIS knowledge and use is very evident.

The Alice Springs *Crown side* of ODPP gives significant support to summary prosecutions through advice and shared facilities. This is underlined by one permanent Crown sponsored prosecutor and another hearing prosecutor used part-time by SPAS during the reporting period to assist with the large number of contested hearings.

WITNESS ASSISTANCE SERVICE

Support to victims of crime, witnesses and their families has been provided within the Office of the Director of Public Prosecutions (ODPP) since 1995. The Victim Support Unit was established in April 1997. In 2004 the name of the unit was changed to the Witness Assistance Service (WAS).

The WAS team consists of six witness assistance officers. In Darwin: Nannette Hunter, WAS co-ordinator; Colleen Burns, Aboriginal Support co-ordinator; Christine Garland and Ken James (who joined us in late 2004). In Alice Springs: Carolyn Woodman, WAS co-ordinator (South) and Ronda Ross. WAS in Darwin also has some wonderful administrative support from Kerrie Wilson. Michael Devery, WAS officer, left us in 2005 to take up a position in Katherine. We wish him well.

The WAS 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 in a closed circuit television room, behind a screen or in a closed court.

Information

WAS notifies victims of crime about the service and invites them to make contact. Witnesses are provided with several publications at the appropriate time. These include the Northern Territory Charter for Victims of Crime, the WAS pamphlet and the Victim Impact Statement booklet which includes a pro-forma for victims who choose to prepare a Victim Impact Statement independently. WAS also gives information about the time, date and place of court appearances, the stage that the matter is up to and whether attendance by the witness is required.

In December 2000 we began writing to referred witnesses whose matters would be dealt with by Summary Prosecutions Darwin. In the past year 411 witnesses were sent letters.

Referral

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

Explanation

The explanation of legal processes, language 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

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

Interpreters

WAS can assess the need for and organise the provision of interpreters to assist witnesses in their appearances before court.

Victim impact statements

WAS 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 the crime had on their lives. This can include a comment to the court on the appropriate orders that the court may make.

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 their right.

Since the beginning of this scheme WAS has assisted more than 2000 victims to prepare a victim impact statement.

Committee work

WAS fully participates in the professional business of the ODPP. This is shown by WAS membership on various internal committees.

Executive Committee

WAS members participating in the Executive Committee of the ODPP. WAS representation on the committee is rotated on a quarterly basis.

Professional Staff Meetings

WAS members attend all of these meetings.

Sexual Assault Committee

All three WAS co-ordinators are members of this ODPP committee which works to ensure that sexual assault matters are dealt with appropriately.

Members of WAS also participate in many committees and activities on behalf of the ODPP to represent the ODPP and network with as many agencies as possible.

Crimes Victim Advisory Committee

The WAS co-ordinator and Aboriginal Support co-ordinator attend the Crime Victims Advisory Committee (CVAC) meetings. CVAC continues to work on the establishment of a Victims' Register.

Domestic Violence Advisory Committee

This committee assists the Northern Territory Legal Aid Commission in the management of the Domestic Violence Legal Service. The WAS co-ordinator is a member of this committee.

Domestic Violence Network

Members of WAS regularly attend meetings of this network of service providers in the domestic violence area. Up to 17 organisations participate. It is a valuable forum to discuss issues of mutual interest.

Victims of Crime NT (VOC)

The WAS co-ordinator and the executive officer of VOC meet regularly to ensure the services are complementary and to discuss issues of mutual interest.

Community Court

WAS was involved in meetings prior to the establishment of the Community Court and also attended two mock Community Court proceedings.

Training and Community Education

Members of WAS regularly give presentations to groups of people who come into contact with witnesses in their workplace. This year this work included presentations to various groups of police officers including prosecutors, detectives, auxiliaries, the Domestic Violence and Personal Violence Unit and recruits.

WAS again participated in Law Week by talking to secondary school students.

Other presentations WAS gave included Safety Expo, law graduates' course, VOC volunteers' course, Aboriginal Interpreter Service, Top End Women's Legal Service, Domestic Violence Legal Service, Darwin Community Legal Service, Dawn House and Ruby Gaea.

DVD *Being Strong a court story*

In September 2004 we launched the WAS DVD/video *Being Strong a court story*. This production is in English and Kriol and tracks one woman's story from crime to trial. It documents the role that WAS plays in supporting people through the process. Many of the WAS presentations included playing the DVD.

Show Circuit

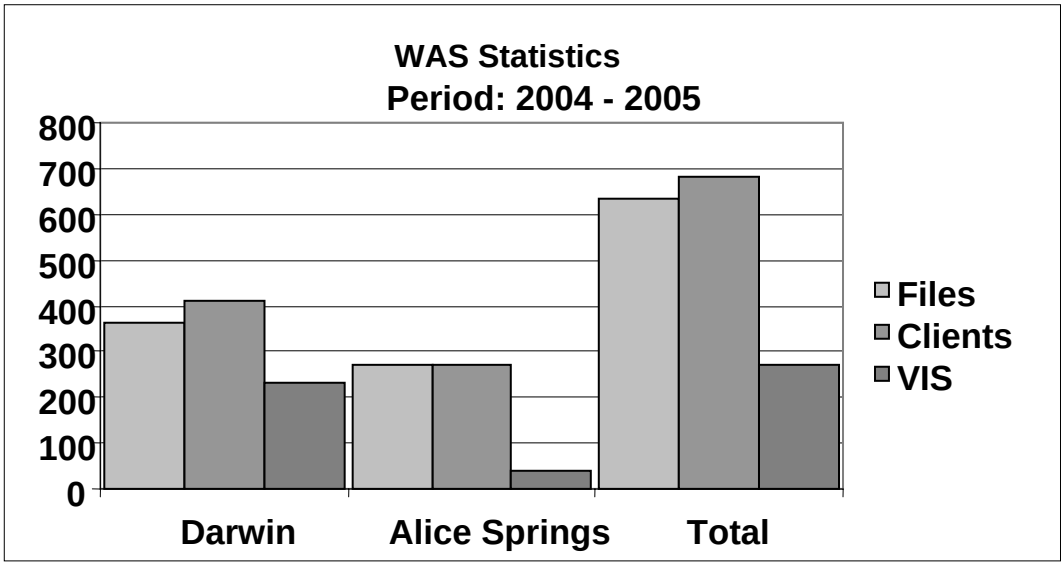
In 2004 WAS again participated in the Department of Justice Show Circuit display. WAS members attended Katherine and Darwin shows.

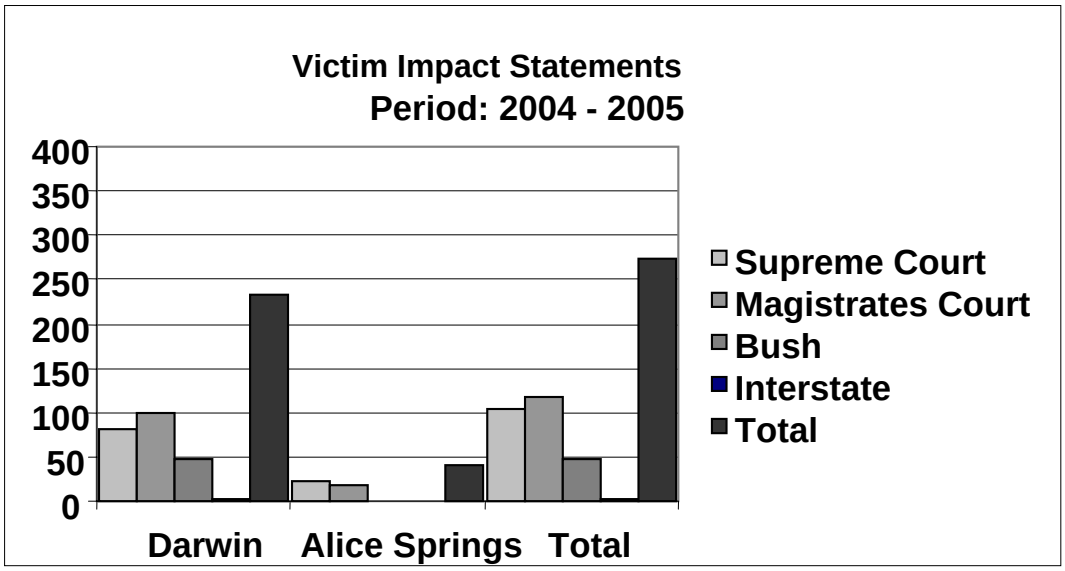
Prosecutors

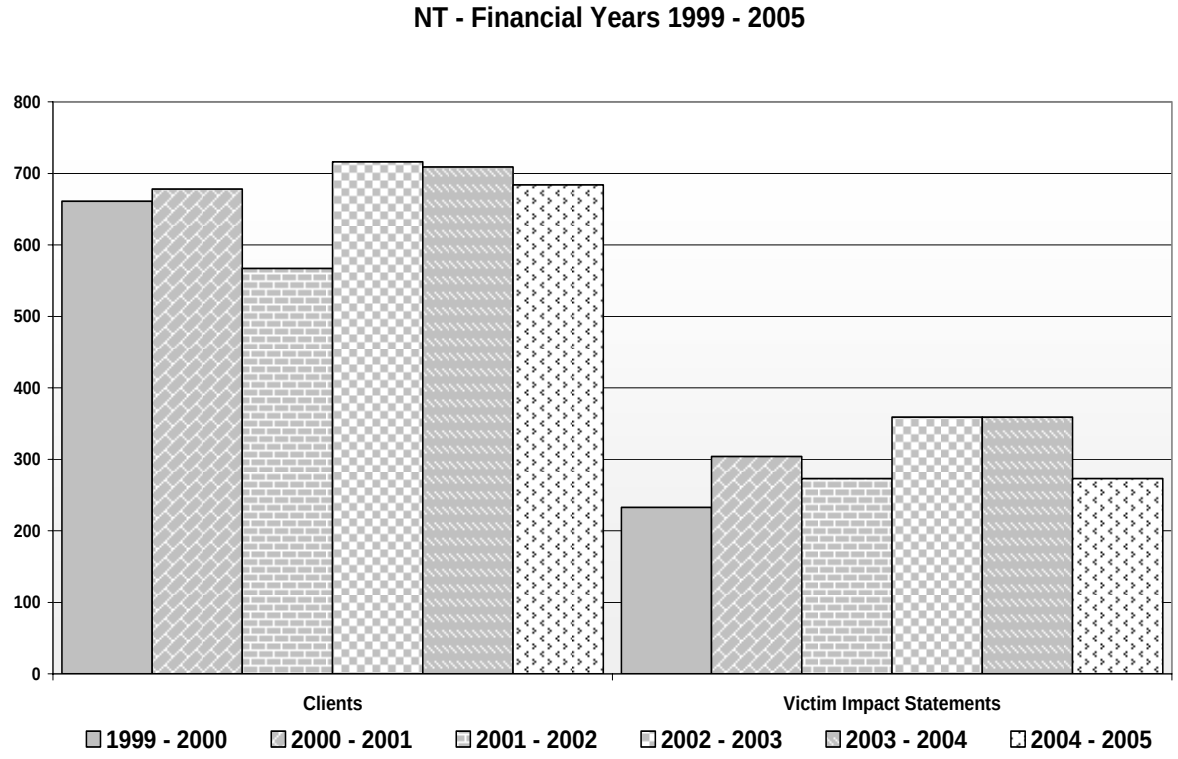
WAS gives all new prosecutors, whether recruited to SPD or ODPP, an orientation presentation about the role of WAS.

Publications

WAS is responsible for two publications, a booklet, *Victim Impact Statements* and a pamphlet, *Witness Assistance Service*.







WAS officers have continued to increase services to remote communities. Each member of the WAS team has worked at a number of communities to support witnesses appearing in Bush Courts. This is an increasingly demanding and time consuming aspect of our work. In 2001- 2002 90 days were spent in remote communities. This has increased to 149 days in 2004-2005.

It would be unrealistic to expect any further growth in client numbers as all WAS officers are working to capacity. Any future expansion of the service will need to be underpinned by an increase in staffing levels.

Client Satisfaction Survey

WAS surveyed clients from July to September 2004. There was a 26% response from those surveyed.

The results showed that 81% of clients rated the overall service as satisfactory or above.

For those victims who prepared victim impact statements 83% rated the service as satisfactory or above.

ALICE SPRINGS

We have had another busy year in Alice springs with increases in client numbers and general activities. The focus of our work continues to be the day-to-day activities involved with providing support to victims of crime, other witnesses and their families. The pattern of service delivery, largely to women and children, has been maintained this year.

Most service provision continues to be in and around Alice Springs. We have however attended courts or visited clients at Bonya, Hermannsburg, Elliott, Erldunda, Yulara and Tennant Creek. These trips have provided some interesting contexts for assisting with victim impact statements.

The co-ordinator has also made several trips to the office in Darwin.

Both staff have liaised with like services in South Australia, Western Australia and New South Wales in order to assist both their, and our, clients. There has also been considerable contact with both local and more remote services such as *Reconnect*, Women's Centres, Community Councils, FACS, hospital staff, and police officers from near and far.

We have been able to make a contribution to policy guidelines in relation to both the community court and the prosecutors' use of the Witness Assistance Service. Alice Springs WAS has also contributed, this year, to membership of the ODPP Executive committee.

Copies of the legislation relevant to WAS clients has been provided to similar services in the UK and Holland who in turn provided comparative information on how they deliver their services.

Staff have provided public education about WAS and the ODPP to school children, social workers and Remote Medical Officers who deal with domestic violence and sexual assaults.

The Aboriginal Interpreter Service continues to provide assistance. Ensuring sufficient notice assists in the timely provision of an interpreter. We nevertheless continue, on occasion, to experience delays and adjournments due to lack of available and appropriate interpreters. Interpreters are essential to the cultural requirements of witnesses (for example, language barriers, gender, kinship to either party) as well as assisting prosecutors when proofing and in court.

The Office has been substantially renovated. Work has been undertaken with some disruption and discomfort over some months. Despite this, services to those affected by crime have continued unabated and the responses we have had from those clients, who experienced the renovations, have been generally positive.

An opportunity recently presented to show the Attorney-General over the prosecution facilities at court. Following the visit we were advised that the court is to undergo substantial upgrading and that the opportunity is there to improve the facilities for witnesses. We are hopeful of seeing improvements to these in the coming year.

Clearly the coming year will provide new interests and challenges.

ABORIGINAL SUPPORT

The largest project completed by WAS this year was the DVD/video project. The story is about a young Aboriginal woman going through the court process after being seriously assaulted. The DVD was also produced in Kriol. WAS has already presented this DVD to various government, non-government agencies and communities around the Top End. It has been favourably received. The whole WAS team contributed to this project.

In September 2004 WAS officially launched the DVD.

The other new initiative introduced by Court Support Services, and funded by the now defunct ATSIS - Yilli Yreung Regional Council, was the launch of the Community Courts Pilot Project. The purpose of community courts is to recognise the need for cultural or other factors that play a significant role in reaching sentencing outcomes, especially when dealing with Indigenous clients. This Pilot Project is modelled on programs run in southern states, but has the potential of becoming a significantly innovative way of sentencing for Indigenous people in the NT. WAS has been involved in the community court by providing support to victims, whether or not they wish to attend the process.

Bush Court Circuit

WAS has stepped up its co-ordination of its staff attendance at Top End Bush Courts. Hopefully this will increase our statistics to show that more Indigenous people are seeking its assistance. During community visits the WAS staff will also network with the local agencies. The network between WAS and SPD has certainly been strengthened during this process.

WAS attendance at Bush Courts

An approximate figure for WAS Darwin attendance at bush courts during the reporting year is 149 days. The WAS team has worked extremely hard in ensuring that bush courts are attended. This has made the Co-ordinator's job easier.

Indigenous staff

There are currently five Indigenous staff employed at ODPP. They are:

Colleen Burns, Aboriginal Support Co-ordinator
Nigel Browne, legal officer,
Joh-Ann Coates, Indigenous law cadet,
Ronda Ross, WAS officer, Alice Springs,
Jack A'Hang, Indigenous liaison officer, Alice Springs

A new Indigenous law cadet, Joh-Ann Coates has joined the ODPP ranks. She will be mentored by various senior members of the ODPP.

The Department of Justice has set up a new steering committee, the Indigenous Special Project Development Unit (ISPDU) which will oversee the development, implementation and monitoring of a Department of Justice Indigenous Employment and Career Development Strategy. Two Indigenous staff members from the ODPP are on this committee.

Networking

During the past 12 months the Aboriginal Support Co-ordinator has networked with various government and non-government agencies. Most notable is the Aboriginal Interpreter Service meetings where a Memorandum of Understanding was developed.

Presentations

After the DVD was finalised WAS gave presentations far and wide. Of the presentations given; five were for Police; nine were at bush communities; two were at interstate Conferences.

There has been a significant rise in the number of presentations given. The DVD has become a very informative tool to use in the quest to get information out to remote communities. WAS has received positive feedback from these presentations. WAS looks forward to dubbing the DVD into various Indigenous languages.

GUIDELINES OF THE DIRECTOR OF PUBLIC PROSECUTIONS

1. ROLES AND DUTIES OF THE PROSECUTOR

1.1 The Office of the Director of Public Prosecutions (ODPP) is independent and represents the community and not any private or sectional interest.

1.2 The prosecutor owes a duty of fairness to the court and the community. The community's interest is two-fold: that those who are guilty be brought to justice and that those who are innocent not be wrongly convicted. The prosecutor's role is to assist the court and do justice between the community and the offender according to law and the dictates of fairness. Importantly, a prosecutor:

(1) has the duty to act fairly and impartially;
(2) has the duty of ensuring that the Crown case is presented properly and with fairness to the offender;
(3) is entitled to firmly and vigorously urge the Crown view about a particular issue and to test the case advanced on behalf of the offender by all proper means provided by the criminal trial process which is an accusatorial and adversarial procedure;
(4) must never seek to persuade a jury to a point of view by introducing prejudice;
(5) must not advance any argument that does not carry weight in his or her own mind or try to shut out any evidence that would be important to the interests of the offender;
(6) must inform the court of authorities or trial directions appropriate to the case, even where unfavourable to the prosecution;
(7) must offer all evidence relevant to the Crown case;
(8) should take care to ensure that nothing is said in the opening address which may subsequently lead to the discharge of the jury. Such matters might include:
    (a) contentious evidence that has not yet been the subject of a ruling;
    (b) evidence that may reasonably be expected to be the subject of objection;

(c) detailed aspects of a witness's evidence which may not be recalled in the witness box;

(9) has a continuing obligation of disclosure;

(10) must take care to conduct cross-examination of an offender fairly;

(11) shall comply with the Rules of Professional Conduct and Practice of the Law Society of the Northern Territory (Appendix B), the Barristers' Conduct Rules of the Bar Association of the Northern Territory (Appendix C) and the International Association of Prosecutors Rules for Prosecutors (Appendix D).

1.3 The prosecution is entitled to procedural fairness. It must maintain that right in the interests of justice. This may mean, for example, that an adjournment must be sought when insufficient notice is given of: alibi evidence, evidence regarding Aboriginal customary law on sentence, a plea and a victim impact statement or report may be required, or, any other listing where insufficient time has been provided to the Crown to properly prepare and fairly present material relevant to the matter before the court.

2. THE DECISION TO PROSECUTE

2.1 The prosecution process should be initiated or continued whenever it appears that there is a reasonable prospect of conviction and it is in the public interest. There is a continuing obligation to review the decision to prosecute in light of relevant material and information as it becomes available.

2.2 The question whether or not the public interest requires that a matter be prosecuted is resolved by determining whether:

(1) the admissible evidence is capable of establishing each element of the offence;

(2) it can be said that there is no reasonable prospect of conviction by a reasonable jury (or other tribunal of fact) properly instructed as to the law; and

(3) discretionary factors dictate that the matter should or should not proceed.

2.3 The first matter requires no elaboration: it is the *prima facie* case test.

2.4 The second matter requires an exercise of dispassionate judgment which will depend in part upon an evaluation of the admissibility and weight of the available evidence and the persuasive strength of the Crown case. The resolution of disputed questions of fact is for the court and not the prosecutor. The assessment of prospects of conviction is not to be understood as usurping the role of the court but rather as an exercise of discretion in the public interest. It is a test appropriate for both indictable and summary charges.

2.5 The third matter requires consideration of many factors. The factors that can be properly taken into account will vary from case to case and may include the following:

(1) the seriousness or, conversely, the triviality of the alleged offence; or that it is of a "technical" nature only;
(2) whether or not the alleged offence is of considerable public concern;
(3) the obsolescence or obscurity of the law;
(4) whether or not the prosecution would be perceived as counterproductive for example, by bringing the law into disrepute;
(5) special circumstances that would prevent a fair trial from being conducted;
(6) the necessity to maintain public confidence in such basic institutions as the Parliament and the courts;
(7) the staleness of the alleged offence;
(8) the prevalence of the alleged offence and any need for deterrence, both personal and general;
(9) the availability and efficacy of any alternatives to prosecution;
(10) whether or not the alleged offence is triable only on indictment;
(11) the likely length and expense of a trial;
(12) whether or not any resulting conviction would necessarily be regarded as unsafe and unsatisfactory;
(13) the likely outcome in the event of a finding of guilt, having regard to the sentencing options available to the court;
(14) whether or not the proceedings or the consequences of any resulting conviction would be unduly harsh or oppressive;
(15) the degree of culpability of the offender in connection with the offence;
(16) any mitigating or aggravating circumstances;
(17) the youth, age, maturity, intelligence, physical health, mental health or special disability or infirmity of the offender, a witness or a victim;
(18) the offender's antecedents and background;
(19) the circumstances in which the alleged offence was committed;
(20) whether or not the offender is willing to co-operate in the investigation or prosecution of others, or the extent to which the offender has done so;
(21) the attitude of a victim or in some cases a material witness to a prosecution;
(22) any entitlement or liability of a victim or other person or body to criminal compensation, reparation or forfeiture if prosecution action is taken; and/or
(23) whether or not the Director's consent is required to prosecute.

2.6 The applicability of and weight to be given to these and other factors will vary widely and depend on the particular circumstances of each case.

2.7 A decision whether or not to proceed must not be influenced by:

(1) the race, religion, sex, national origin or political associations, activities or beliefs of the offender or any other person involved (unless they have special significance to the commission of the particular offence or should otherwise be taken into account objectively);
(2) the personal feelings of the prosecutor concerning the offence, the offender or a victim;
(3) the possible political advantage or disadvantage to the government or any political party, group or individual;
(4) the possible effect of the decision on the personal or professional circumstances of those responsible for the prosecution or otherwise involved in its conduct; or
(5) any possible media or community reaction to the decision.

2.8 It is recognised that the resources available for prosecuting are finite and should not be expended pursuing inappropriate cases.

3. TIMELINESS

3.1 A fundamental obligation of the prosecution is to assist in the timely and efficient administration of justice. To this end:

(1) cases should be prepared for hearing as quickly as possible;
(2) indictments should be filed within 21 days from committal;
(3) an indictment should be communicated to the defence as soon as possible;
(4) any amendment to an indictment should be made known to the defence as soon as possible;
(5) as far as practicable, the adjournment of any trial or other listing should be avoided by prompt attention to the form of the indictment, the availability of witnesses and any other matter which may cause delay. Adjournments will not be sought by or acceded to by a prosecutor unless there are substantial reasons in favour of the adjournment; and
(6) as far as practicable, time limits as prescribed in section 3A *Sexual Offences (Evidence and Procedure) Act* are to be complied with.

4. INDICTMENTS

4.1 A decision made by a magistrate as to whether to commit an offender for trial does not absolve a prosecutor from independently reviewing the available evidence and deciding whether to indict and for what charge.

4.2. Indictments can only be signed by Crown prosecutors who have the necessary delegation.

4.3 Charges must adequately and appropriately reflect the criminality that can be reasonably proven. In cases where there have been numerous offences committed, the prosecutor should strive to charge counts that sufficiently reflect the gravity of the incidents and the course of conduct.

4.4 An indictment should be settled and presented within 21 days of committal or on or before the first arraignment day (whichever is earlier).

4.5 In all cases prosecutors must guard against the risk of an unduly lengthy or complex trial (however, there will be cases where complexity and length are unavoidable).

4.6 Substantive charges are to be preferred to conspiracy where possible. However conspiracy may be the only appropriate charge in view of the facts and the need to reflect the overall criminality of the conduct alleged. Where conspiracy is alleged the indictment shall only be signed by the Director or Deputy Director.

4.7 Pursuant to section 131A *Criminal Code* indictments for an offence of maintain an unlawful sexual relationship with child can only be signed by the Director.

4.8 Prosecutors must supply particulars if requested: section 313 *Criminal Code.*

4.9 A prosecutor may prepare an indictment charging an offence which is different to that for which the person was committed for trial provided there is evidence of such at the committal: section 299 *Criminal Code*. Where the charge is substantially different from the charges at committal then the Guidelines for ex officio indictments apply - Guideline 5: Ex Officio Indictments.

4.10 Whenever an indictment is prepared and there are outstanding charges, consideration should be given to determine whether it is appropriate for such charges to be included on the indictment or on a Form 6 schedule pursuant to section 107 *Sentencing Act* - Guideline 16: Sentence.

5. EX OFFICIO INDICTMENTS

5.1 An ex officio indictment is a bill of indictment found for an offence in respect of which there has been no committal for trial.

5.2 Prosecutors are encouraged to use ex officio indictments for pleas of guilty where it is intended to fast-track uncontested matters.

5.3 Where there have been committal proceedings, a decision whether or not to proceed by way of ex officio indictment should be made by the Director in respect of any offence which is substantially different in nature from the offence or offences committed for trial, or additional to those offences.

5.4 When the charge against an offender has been dismissed by a magistrate and consideration is being given to proceeding on that charge by way of ex-officio indictment the offender should be notified. A decision as to whether or not to proceed by way of ex officio indictment should be made within three months of the dismissal.

5.5 A proceeding such as a coronial inquest or inquiry may be regarded as a sufficient substitute for committal proceedings. In those circumstances it may be appropriate to deal with the matter by way of ex officio indictment rather than by committal proceedings.

5.6 Where appropriate the offender should be given the opportunity of making representations when consideration is being given to an ex officio indictment or count against him or her.

5.7 A decision to file an ex officio indictment in the absence of or in spite of committal proceedings will only be justified if the offender will nevertheless be afforded a fair trial.

5.8 Only the Director may sign ex officio indictments.

5.9 Where practicable Guideline 4: Indictments applies to ex officio indictments.

6. CHARGE NEGOTIATION

6.1 Negotiations between the parties are encouraged and may occur at any stage of the progress of a matter through the courts. Charge negotiations must be based on principle and reason, not on expedience or convenience alone.

6.2 In any case of complexity or sensitivity, the defence should be asked to put in writing a negotiated charge offer including their arguments in support of such an offer. Such offers will always be considered on a without prejudice basis. In some cases it may be appropriate to inform the defence that the prosecution will not consider an offer unless its terms are clearly set out in writing.

6.3 A negotiated plea of guilty may be considered if the public interest is satisfied, taking into account the following matters:

(1) whether the alternative charge adequately reflects the essential criminality of the conduct and the plea provides adequate scope for sentencing;
(2) whether the evidence available to support the prosecution case is weak in any material respect;
(3) whether the saving of cost and time weighed against the likely outcome of the matter if it proceeded to trial is substantial; and/or
(4) whether it will save a witness, particularly a victim or other vulnerable witness, from the stress of testifying in a trial.

6.4 A negotiated charge will normally not be appropriate where:

(1) its acceptance would produce a distortion of the facts and create an artificial basis for sentencing;
(2) its acceptance would render inadmissible facts essential to establishing the criminality of the conduct;
(3) the offender intimates that he or she is not guilty of the offence; or
(4) an offender will avoid a mandatory term.

6.5. In all cases, the views of the victim and the police officer-in-charge concerning the acceptance of a plea of guilty or the contents of a statement of agreed facts must be sought and will be taken into account before final decisions are made. Those views must be recorded on the file and made available to the Director's Chambers. Those views are not determinative. It is the public, not any private individual or sectional, interest that must be served.

6.6 The acceptance of a negotiated charge will only occur after all of the material has been reviewed by at least one Chambers' prosecutor. Where there are differing opinions, the matter is to be referred to the Director's Chambers for review. This process is designed to protect against capricious or other ill-considered judgments. The determination of the reviewer(s) must be recorded on file.

6.7 Where the appropriate review has occurred, been documented on the file and the plea is approved, a prosecutor may agree to a negotiated charge.

6.8 Records must be made as events occur for transparency and probity. A prosecutor is required to reduce to writing any agreement that is reached. If possible the agreement should be signed by each party. A prosecutor should be familiar with *GAS v R; SJK v R 206 ALR116.* Any offer by the defence must be recorded clearly, including any offer that is rejected.

6.9 If a version of the facts is negotiated and agreed:

(1) the prosecutor must prepare or obtain a statement of agreed facts. A copy must be kept on file;
(2) where evidence is to be omitted from a statement of facts, the views of the police officer-in-charge and the victim must be sought and noted before agreed facts are adopted;
(3) where the prosecution agrees not to rely on an aggravating factor no inconsistent material should be placed before the sentencing judge: *R v De Simoni* (1981) 147 CLR 383.

6.10 Where an earlier offer has been rejected by a prosecutor any subsequent proposal to reverse the decision (where circumstances are otherwise unchanged) should be referred to the Director's Chambers.

6.11. In cases which are serious or potentially contentious, or involving the death of any person, no acceptance of any plea offer to lesser or fewer charges shall occur without the consent of the Director.

6.12 Some charges may be suitable for inclusion on a Form 6 (Disposal of Other Pending Charges) under section 107 *Sentencing Act* where the offender admits having committed certain listed offences - Guideline 16: Sentence.

6.13 If plea negotiations relate to an offender, who is also an informer, apply - Guideline 19: Informers.

7. DISCONTINUING PROSECUTIONS

Discontinuing Court of Summary Jurisdiction Prosecutions

7.1 The prosecutor with carriage of a matter must advise the police officer-in-charge and the victim whenever the ODPP is considering whether or not to discontinue a charge in the Court of Summary Jurisdiction or to consent to an appeal in the Supreme Court. The police officer-in-charge should be consulted on any relevant matters, including perceived deficiencies in the evidence and any matters raised by the offender. One purpose of this consultation is to provide an opportunity for the police officer-in-charge and the victim to furnish additional information which may affect the decision.

7.2 Discontinuance reports must include:

(1) the charges laid by the informant and/or the charges on which the offender has been committed for trial;

(2) a summary of the facts of the case sufficient to permit a proper consideration of the application or request;
(3) a copy of the offender's criminal history;
(4) the views of the police officer-in-charge and the victim and/or a note as to attempts made to obtain those views; and
(5) the prosecutor's recommendation supported by reasons.

7.3 When it is sought by Summary Prosecutions to discontinue in the Court of Summary Jurisdiction, a report and recommendation must be referred to the officer-in-charge of Summary Prosecutions or the Director's Chambers. Discontinuation of matters involving domestic violence must only occur with the consent of the Director's Chambers.

7.4 After a decision has been made, the prosecutor with carriage of the matter must notify the police officer-in-charge, the victim, the offender and the court of the decision as soon as practicable.

7.5 In the Court of Summary Jurisdiction where a decision has been made to discontinue then the matter should be withdrawn. Matters may be re-commenced if circumstances or evidence has changed and statutory limitation periods have not expired.

7.6 Occasionally magistrates may refuse to accept a withdrawal of a complaint. If a prosecutor is forced to offer no evidence then the charge will be dismissed. This precludes the complaint from being re-laid. Normally a prosecutor is entitled to withdraw an information. If a prosecutor is forced to offer no evidence, there may still be an opportunity to re-lay the information. Accordingly, prosecutors should be aware of the legislative provisions regarding jurisdiction for certain offences (for example section 131A *Justices Act*, section 22 *Misuse of Drugs Act).*

7.7 In the Court of Summary Jurisdiction costs may be ordered whether a matter is withdrawn, no evidence is offered, or the offender is found not guilty (section 77 *Justices Act* and reg 14 *Justices Regulations*). A determination should be made as quickly as possibly if proceedings are to be discontinued to avoid or minimise costs.

Discontinuing Justice Appeals

7.8 Where a prosecutor is of the view that a Justice Appeal should be conceded (or discontinued where the Crown has brought the appeal) then approval must first be obtained from the Director's Chambers.

Discontinuing Trials

7.9 Offenders, their representatives or prosecutors may make application that a charge or charges be discontinued or varied or that a no true bill pursuant to section 297A of the *Criminal Code* be filed. If, after reviewing a case fully, the prosecutor considers that the proceedings should not continue and approval to discontinue is obtained from the Directors Chambers, then the case should be discontinued at the earliest possible opportunity.

7.10 In considering such applications regard is to be had principally to the three tests set out in Guideline 2: Decision to Prosecute, bearing in mind any additional considerations of fact or argument put forward by the defence.

7.11 In trials (and infrequently, pleas) it is the responsibility of the prosecutor, to prepare a report to the Director's Chambers. Discontinuance reports must include:

(1) the charges laid by the informant and/or the charges on which the offender has been committed for trial;
(2) a copy of the defence application or request;
(3) a summary of the facts of the case sufficient to permit a proper consideration of the application or request;
(4) a copy of the offender's criminal history;
(5) the views of the police officer-in-charge and the victim and/or a note as to attempts made to obtain those views; and
(6) the prosecutor's recommendation supported by reasons.

7.12 It is the responsibility of the prosecutor to ensure that consultations with the police officer-in-charge and victim have occurred. However, if the police officer-in-charge or victim is not able to be consulted within a reasonable time, the attempts made to contact him or her must be documented.

7.13 After a decision has been made, the prosecutor must notify the police officer-in-charge, the victim, the offender and the court of the decision as soon as practicable. Where appropriate, the police officer-in-charge and victim should also be reminded that bail conditions no longer apply.

7.14 Unless there are special circumstances, a submission to discontinue because of the triviality of the offence should be refused if the offender has elected trial on indictment for a charge that could have been dealt with in the Court of Summary Jurisdiction.

Generally

7.15 Where a direction has been given in a matter to proceed or to take no further proceedings, that direction will not be reversed unless:

(1) significant new facts warrant it;
(2) the direction was obtained by fraud or impropriety; or
(3) the direction was obtained or made on an erroneous basis, and the interests of justice require a reversal.

7.16 The procedure for discontinuing proceedings before an indictment is filed is by way of a no true bill: section 297A *Criminal Code*. The procedure for discontinuing proceedings after an indictment has been filed is by way of a nolle prosequi: section 302 *Criminal Code.*

7.17 In serious or potentially contentious cases, or cases involving the death of any person, no withdrawal shall occur without the consent of the Director.

7.18 Reasons for discontinuance will normally not be given. The Director's consent is required before reasons are disclosed.

8. DISCLOSURE

General Statement

8.1 The Crown has a continuing obligation to make full disclosure in a timely manner of the prosecution case to the offender. This includes disclosure of all material which on sensible appraisal:

(1) is relevant or possibly relevant to an issue in the case and being either inculpatory or exculpatory material;
(2) raises or possibly raises a new issue whose existence is not apparent from the evidence the prosecution proposes to use; and/or
(3) holds out a real as opposed to a fanciful prospect of providing a lead to evidence which goes to either of the previous two situations.

8.2 Inappropriate disclosure of confidential information may affect the safety or privacy of individuals, compromise ongoing investigations or undermine confidence in the Office. There will be circumstances when disclosure should be conditional, delayed or withheld. Where a prosecutor considers one or more of these options to be appropriate then the police officer-in-charge should be consulted.

8.3 Sensitive material must be carefully secured. It must not be left unattended in court, in cars or in any place where it could be accessed by unauthorised people.

Specific matters of which there should be disclosure

8.4 In all cases, disclosure should include (but is not limited to) the following:

(1) particulars of the offender's prior convictions;
(2) copies of all written statements of all witnesses to be called (addresses and telephone numbers may be deleted), a copy of an audio taped record of interview, and an opportunity to examine electronically recorded interviews;
(3) a copy of any prior inconsistent or additional statement of a witness (including any statement made in conference, recorded or otherwise and the Victim Impact Statement);
(4) a copy of any written or electronically recorded statement obtained from the offender by a person in authority;
(5) copies of any photographs, plans, documents or other representations which will be tendered by the prosecution at trial;
(6) an opportunity to examine exhibits which will be tendered;
(7) copies of statements and reports of any expert witnesses to be called and, by appointment through the prosecution, an opportunity for a defence expert from the same or similar discipline to speak with that expert pre-trial;
(8) a copy of any warrant or details of any other statutory authority used in the gathering of evidence to be adduced at trial. However, an affidavit in support of any such warrant by a police officer should not normally be disclosed;
(9) an opportunity to inspect bank records, books of account or other records or documents relevant to the prosecution case-in-chief even though they may not be introduced into evidence or relied upon;
(10) where a decision has been made not to call a witness, contact details for the witness;
(11) any information in the possession of the Crown which reflects **materially** upon the credibility of prosecution witnesses including:
    (a) a previous conviction, for example for perjury and offences involving dishonesty;
    (b) an adverse finding in other criminal proceedings or in non-criminal proceedings (such as disciplinary proceedings, civil proceedings or a Royal Commission);
    (c) evidence before a Royal Commission which reflects adversely on a prosecution witness;
    (d) any physical or mental condition which may substantially affect reliability;
    (e) any concession which has been granted to a witness in order to secure that person's testimony for the prosecution, including the details of any grant of immunity or indemnity from prosecution and discount on sentence if applicable; and

(f) where there is reason to believe that the credibility of a prosecution witness may be in issue, a request for a criminal history check should be made and any relevant convictions disclosed.

Discretion to withhold or delay disclosure on Public Interest Grounds

8.5 A prosecutor may withhold or delay disclosure of specific material where the prosecutor is of opinion that, in the public interest, the material should be immune from disclosure.

8.6 Where the prosecutor declines to disclose material, or alternatively delays disclosure of material, the prosecutor should advise the defence that material has been withheld and claim an immunity against disclosure in respect of that material.

8.7 In determining whether to claim public interest immunity, some of the factors to be considered are whether:

(1) the material is clearly irrelevant;
(2) withholding is necessary to preserve the identity of an informant;
(3) withholding is necessary to protect the safety or security, including protection from harassment, of persons who have supplied information to the police;
(4) the material is protected by legal professional privilege;
(5) the material, if it became known, might facilitate the commission of other offences or alert a person to police investigations;
(6) the material discloses some unusual form of surveillance or method of detecting crime;
(7) the material is supplied to the police only on condition that the contents will not be disclosed;
(8) the material contains details of private delicacy to the maker;
(9) the material relates to the internal workings of the police force; and/or
(10) the material relates to national or state security.

8.8 The extent to which any of these factors will affect the decision whether or not to disclose particular material will vary. Application of these factors will always be subject to the over-riding duty to ensure that the Crown case is presented with fairness. The matter should be referred to the Director's Chambers for consideration as to whether it is appropriate to delay or withhold disclosure.

8.9 In cases where a claim of immunity is pursued then the question of disclosure will be determined by the outcome of that claim.

8.10 In cases where a claim for immunity is upheld and the Director is of the view that non-disclosure could prejudice the defence at trial, the Director will determine whether the charge or charges to which the material is relevant should be withdrawn. The Director will determine whether the offender should be charged with an alternative or lesser offence, the prosecution of which will not necessitate the production of the withheld material.

8.11 In the event that a claim for immunity is unsuccessful the Director will consider, following consultation with police officer-in-charge, whether the overall interests of justice require that the material be disclosed or, alternatively, that the prosecution be abandoned.

8.12 Police should provide the ODPP with a separate schedule listing any potentially disclosable material which the police consider may be immune from disclosure to the defence on public interest grounds, together with the reasons why it is considered that the particular material is subject to public interest immunity. Examples of such material are:

(1) material relating to the identity or activities of informants, undercover police officers or other persons supplying information to law enforcement authorities;
(2) material revealing the location of any premises or other place used for surveillance, or the identity of any person allowing a law enforcement officer to use any premises or other place for surveillance;
(3) material revealing, either directly or indirectly, investigative techniques and methods relied upon by law enforcement agencies in the course of a criminal investigation (for example, covert surveillance techniques) or other methods of detecting crime;
(4) material the disclosure of which might facilitate the commission of other offences or hinder the prevention or detection of crime;
(5) material relating to national security;
(6) material received from an intelligence or security agency; and/or
(7) material given in confidence.

This list is not intended to be exhaustive.

Confidential Communications

8.13 In criminal proceedings for sexual offences communications with a counsellor are privileged to the extent provided by Part VIA E*vidence Act*. Prosecutors are to be familiar with and apply the provisions of that Part when applicable. Confidential communications are privileged and are not to be disclosed unless there is a court order for disclosure or as the provisions of the Part otherwise allow.

Legal Professional Privilege

8.14 Legal professional privilege will be claimed by a prosecutor against the production of any document in the nature of an internal ODPP (for example a submission or opinion and advice to the Director, submissions between lawyers and Crown Prosecutors). Only the Director or Deputy Director may approve the waiver of the privilege.

Conditional Disclosure

8.15 Wherever material contains an image of a person which is obscene or indecent or would otherwise violate the person's privacy: including video taped interviews with complainants of sexual offences, child pornography, police photographs of naked complainants, video tapes or photographs of sexual offences being committed and autopsy photographs, then such material:

(1) must not be copied, other than for a legitimate purpose connected with a proceeding;
(2) must not be provided to the defence but must be made available for viewing by the defence upon a request if the evidence is relevant to either the prosecution or defence case; and
(3) may be made available for analysis by an appropriately qualified expert (for the prosecution or defence) upon such conditions as thought appropriate.

8.16 In appropriate cases a prosecutor may seek an undertaking from defence that material will not be disclosed to parties other than the offender's legal advisers and the offender.

Disclosure Certificate

8.17 The duty on the prosecution to disclose material to the offender imposes a concomitant obligation on the police to notify the prosecution of the existence and location of all such material. If required police shall, in addition to providing the brief of evidence, certify that the prosecution has been notified of the existence of all such material.

8.18 Should any documentation, material or information additional to the Crown case be either sensitive or of a nature which requires protection or limited disclosure, the police officer-in-charge of the investigation should identify that information at the time it is made available to the ODPP.

9. INDEMNITIES AND UNDERTAKINGS

9.1 There are two types of immunities under section 21 *Director of Public Prosecutions Act*. There is an indemnity from prosecution whether on indictment or otherwise (section 21(2)(b)) and there is an undertaking that an answer, statement or disclosure made by a person will not be used in evidence against the maker (section 21(2)(c)).

9.2 In principle it is desirable that the criminal justice system should operate without the need to grant any concessions to persons who participate in alleged offences in order to secure their evidence in the prosecution of others. A decision whether to call an accomplice to give evidence for the prosecution frequently presents conflicting considerations calling for the exercise of careful judgment in the light of all the available evidence. Invariably, however, there will be instances where there is a weakness in the prosecution evidence that makes it desirable, or even imperative, for the prosecution to call an accomplice.

9.3 An indemnity or undertaking will only be given as a last resort. Generally an accomplice should be prosecuted (subject to these Guidelines) whether or not he or she is to be called as a witness. An accomplice who pleads and agrees to co-operate in the prosecution of another is entitled to receive a consequential reduction in the sentence that would otherwise have been appropriate. The prosecutor should obtain a signed statement from the accomplice and that statement should set out what evidence the accomplice will provide**.** The prosecutor should also disclose to the court that such a statement has been provided and indicate the level of assistance provided by the accomplice to either the prosecutor or the police.

There may be rare cases, however, where that course cannot be taken; for example, time may not permit charges against the accomplice to proceed to conviction before the trial of the principal offender, or there may be insufficient admissible evidence to support charges against the accomplice – Guideline 19: Informers.

9.4 Where an accomplice receives any concession or inducement from the prosecution in order to secure his or her evidence, whether as to choice of charge, or the grant of an indemnity or undertaking, the terms of the agreement or understanding between the prosecution and the accomplice should be disclosed to the defence and the court – Guideline 19: Informers.

9.5 A grant of an indemnity or undertaking will only be made by the Director after consideration of a number of factors, the most significant being:

(1) whether or not the evidence that the accomplice can give is reasonably necessary to secure the conviction of the offender;
(2) whether or not that evidence is available from other sources; and
(3) the relative degrees of culpability as between the accomplice and the offender.

9.6 In all cases it must be able to be demonstrated that the interests of justice require that the immunity be given.

9.7 The accomplice's statement must be in existence in some form before a request for an indemnity or undertaking is made.

9.8 Any request to the Director for an indemnity or undertaking pursuant to section 21 *Director of Public Prosecutions Act* must be made in a timely manner and the prosecutor must address the following matters:

(1) the accomplice's attitude to testifying without an indemnity or undertaking;
(2) the existing prosecution case against the offender, both with and without the evidence of the accomplice;
(3) the evidence which the accomplice is capable of giving (including the significance of that evidence for the prosecution case, an assessment of its reliability and whether or not there is evidence capable of corroborating the accomplices' evidence);
(4) an assessment of the weakness in the prosecution case being strengthened other than by relying on the evidence of the accomplice;
(5) the level of involvement and culpability of the accomplice in the offence;
(6) the general character of the accomplice together with a copy of his or her prior criminal record;
(7) the views of any other relevant Territory, State or Commonwealth investigatory or prosecuting authority; and
(8) public interest issues, including the comparative seriousness of the offending as between the offender and the accomplice, and whether or not the accomplice could and should be prosecuted (including the quality of the evidence against the accomplice, and the likely sentence).

9.9 In most cases an undertaking is to be preferred to an indemnity.

9.10 In the course of an investigation the police may identify a participant in the criminal activity under investigation as a person who is likely to be of more value as a prosecution witness than an offender. Thereafter the investigation may be directed at constructing a case against the remaining participants based on the evidence it is expected this person will give. It is prudent for the police to consult the Director as to the appropriateness of such a course.

10. YOUNG OFFENDERS

10.1 A child less than 14 years of age is not criminally responsible unless at the time of offending, he or she had the capacity to know that he or she ought not to do the act or omission. Without proof of capacity, the prosecution must fail: section 38 *Criminal Code*.

10.2 A young offender is a person under the age of 18 years.

10.3 Special considerations apply to the prosecution of young offenders and children. A prosecution of a young offender should always be regarded as a severe step, and generally speaking a much stronger case can be made for methods of disposal which fall short of prosecution unless the seriousness of the offence or the circumstances of the young offender concerned dictate otherwise. Ordinarily the public interest will not require the prosecution of a young offender who is a first offender in circumstances where the offence is not serious.

10.4 Different considerations may apply in relation to traffic offences where infringements may endanger the lives of members of the community and the young driver.

10.5 In deciding whether or not the public interest warrants the prosecution of a young offender, regard should be had to such of the factors set out in Guideline 2: The Decision to Prosecute as appear to be relevant, but particularly to:

(1) the seriousness of the offence;
(2) the age and apparent maturity and mental capacity of the young offender;
(3) the available alternatives to prosecution, such as a caution, and their efficacy;
(4) the sentencing options available to the Juvenile Court if the matter were to be prosecuted;
(5) the young offender's family circumstances, particularly whether the parents of the young offender appear able and prepared to exercise effective discipline and control over the young offender;
(6) the young offender's antecedents, including the circumstances of any previous caution the young offender may have been given, and whether they are such as to indicate that a less formal disposal of the present matter would be inappropriate;
(7) whether a prosecution would be likely to be harmful to the young offender or be inappropriate, having regard to such matters as the personality of the young offender and his or her family circumstances; and
(8) the welfare and rehabilitation of the young offender.

10.6 The above factors are also relevant when determining whether the young offender is to be sentenced under the *Juvenile Justice Act* or the *Sentencing Act*.

10.7 Serious or potentially contentious cases, or cases involving the death of any person, require the consent of the Director before any sentencing regime is accepted.

11. WITNESS ASSISTANCE SERVICE

General Statement

11.1 The Witness Assistance Service (WAS) is a unit within the ODPP and its role is to provide support to witnesses, victims and their families in the criminal justice process. A prosecutor is expected to work with and consult with the assigned WAS officer in every case until completion.

11.2 WAS allocates its resources according to need. Priority is given to *special needs witnesses,* which include the following categories:

(1) vulnerable witnesses as defined by section 21A *Evidence Act*, namely a witness who:
   (a) is a child (under 18 years of age),
   (b) suffers from an intellectual disability,
   (c) is the alleged victim of a sexual offence, or
   (d) is under a special disability (including for example a witness who suffers a physical, sensory or psychiatric disability);
(2) Indigenous witnesses or witnesses from non-English speaking backgrounds;
(3) victims of domestic violence;
(4) families of deceased victims; and
(5) elderly witnesses.

11.3 Prosecutors are required to notify WAS at the earliest opportunity whenever they identify a special needs witness in a matter in which they are involved.

Functions of Witness Assistance Service

11.4 WAS provides the following services to its clients:

(1) assisting clients to understand the court and legal process;
(2) showing clients the court and facilities for witnesses before they are required to give evidence;

(3) supporting clients in court or while waiting to give evidence;
(4) informing prosecutors, police or court staff of any special needs of the client;
(5) referring clients to appropriate welfare, health, counselling and other legal services;
(6) providing victims with information about financial assistance available under the *Crimes (Victims Assistance) Act*;
(7) booking interpreters; and
(8) assisting victims with the preparation of victim impact statements or reports.

11.5 Special needs witnesses should appropriately and at an early stage have explained to them the prosecution process and their role in it. Prosecutors are required to make contact with special needs witnesses and provide ongoing information about the progress of the case. This may be done directly by the prosecutor or with the requested assistance of an allocated WAS officer.

Information to Victims

11.6 Victims of crime should be informed in a timely manner of:

(1) charges laid against any offender for the crime, and any changes to these charges;
(2) reasons for not laying charges or for not proceeding with charges;
(3) where and when the matter is to come before court;
(4) the trial process and the rights and responsibilities of witnesses;
(5) whether or not bail has been granted and any bail conditions relating to protecting witnesses from the offender;
(6) reasons for accepting a plea of guilty to a lesser charge, and
(7) the outcome of criminal proceedings (including any appeal) and the sentence (if imposed).

Consultation

11.7 Where the offence is sexual in nature or results in bodily harm (including mental illness) to the victim, prosecutors should consider, in conjunction with the WAS officer, whether to consult the victim before any decision is made to charge, change a charge, discontinue a charge, or accept a plea to a lesser charge (unless the victim has indicated a wish not to be consulted or the whereabouts of the victim cannot be ascertained after reasonable inquiry).

11.8 WAS should be informed of any such consultation so that appropriate support to the victim can be provided. Where a recommendation is made by a prosecutor, either verbally or in writing, the recommendation will include details of contact with the victim and the victim's expressed wishes (if available).

11.9 In all cases involving indictable offences, where there is an identifiable victim it will be appropriate to seek and take into account the views of victims when making decisions about prosecutions (in particular before recommending or accepting any plea to a lesser charge or when settling a matter on negotiated facts); but those views will not alone be determinative. It is the public, not any private individual or sectional interest that must be served. Any views expressed should be recorded on the file.

11.10 Careful consideration should be given to any request by a victim that proceedings be discontinued. However, the expressed wishes of victims may not coincide with the public interest and in such cases, particularly where there is other evidence implicating the offender or where the gravity of the alleged offence requires it, the public interest must prevail – Guideline 7: Discontinuing Prosecutions.

11.11 In domestic violence offences, any request by the victim that proceedings be discontinued should also be considered in accordance with Guideline 21: Domestic Violence.

11.12 Prosecutors should be aware of legislative restrictions upon the publication of the identity of a child or adult victim of an alleged sexual assault: sections 6-11 *Sexual Offences (Evidence and Procedure) Act.*

11.13 Prosecutors should be familiar with the provisions available under Part 2 *Evidence Act* in respect of vulnerable witnesses, and the effect of those provisions should be explained to witnesses when they apply.

Victim Impact Statements/Reports

11.14 Sections 106A and 106B *Sentencing Act* impose obligations on the prosecutor to present victim impact statements or reports. Prosecutors should consult with the victim about how the victim impact statement is to be presented (orally or by tender). WAS will assist victims to prepare their victim impact statements or reports. If a plea is entered prior to the preparation of a victim impact statement an adjournment of proceedings should be sought in order to ascertain whether the victim wishes to provide such a statement. In any event, the victim is to be advised of the date for plea and/or sentence.

12. MENTAL HEALTH ISSUES

General Statement

12.1 Mentally disturbed people should not be prosecuted for trivial offences which pose no threat to the community. However a prosecution may be warranted where there is a risk of re-offending by a repeat offender, where there is no viable alternative to prosecution, and/or a further practical penalty or aspect of supervision is available following a successful prosecution.

12.2 In determining whether or not to proceed against a mentally disturbed person regard must be had to the:

(1) details of previous and present offences;
(2) nature of the offender's condition; and
(3) likelihood of re-offending.

12.3 In deciding whether to prosecute, the attitudes of the victim and the police officer-in-charge will be taken into account but will not be determinative.

Court of Summary Jurisdiction

12.4 Where an offender is charged with a summary offence and the proceedings are before the Court of Summary Jurisdiction, prosecutors should be aware of section 78 *Mental Health and Related Services Act* which allows the magistrate to dispose of the charge without a hearing if it appears that the offender is suffering from a mental illness or is mentally disturbed. Options available to the magistrate include dismissing the charge or making an admission for a treatment order under that Act.

Supreme Court

12.5 From time to time people suffering from a mental illness, intellectual impairment, brain damage or some other cognitive/psychological problem are charged with criminal offences and come before the courts.

12.6 Where a person is charged on information then mental impairment and/or fitness to stand trial may be raised pursuant to section 43A *et seq Criminal Code.* Prosecutors should be familiar with the relevant legislative provisions. Where possible matters should be brought to the Supreme Court by way of an ex officio indictment.

12.7 Questions of fitness to stand trial or a defence of mental impairment should be raised at the earliest opportunity and ideally before the person is arraigned at trial. Where appropriate, and following consultation with the Director's Chambers, the issue may be raised by the Crown.

12.8 Where the prosecutor becomes aware of the possibility of:
(1) fitness to stand trial; and/or
(2) mental impairment being raised as an issue or issues

an application should be made to the Supreme Court for a psychiatric report on the offender (section 43O(d), section 43P(3)(b) *Criminal Code* – fitness to stand trial; section 43G(b) *Criminal Code* - mental impairment).

12.9 Where a psychiatric report is either ordered by the court or requested by the Crown, a prosecutor will supply a full copy of the brief regarding the case to the court for provision to the appointed psychiatrist.

12.10 The fitness inquiry is a non-adversarial inquiry. The object of the inquiry is for the parties to place all relevant evidence before the court concerning the question of the person's fitness to be tried for the offence.

12.11 An offender can be found unfit to stand trial by agreement (section 43T *Criminal Code*). Approval is to be obtained from the Director's Chambers before agreement is given.

12.12 A plea of not guilty by reason of mental impairment can be accepted (section 43H *Criminal Code*). Approval to accept such a plea must first be obtained from the Director's Chambers.

12.13 Where the court has ordered a psychiatric report on the offender and the prosecutor wishes to accept the findings contained in that report, such acceptance should only occur after consultation with the Director's Chambers.

12.14 However, the Crown is not obliged to accept the findings of a Court-appointed psychiatrist; and a (further) psychiatric report may be commissioned. If a prosecutor determines to obtain a psychiatric report from a consultant psychiatrist then approval should first be obtained from the Director's Chambers.

13. JURY SELECTION

13.1 Selection of a jury is within the general discretion of the prosecutor. However, selection should never be exercised so as to attempt to select a jury that is not representative of the community including as to age, sex, ethnic origin, and economic, cultural or social background.

13.2 As part of the prosecutor's duty to ensure that the Crown case is presented with fairness to both the community and to the offender:

(1) where the prosecutor is aware of a particular circumstance of a selected juror which might appear to impact on the ability of that juror to act impartially (for example police officer's spouse, defence counsel's spouse) then the prosecutor may request that the selected juror stand aside pursuant to section 43 *Juries Act*; and

(2) where the prosecutor has information regarding a selected juror which leads the prosecutor to believe the juror would not act impartially, he or she may challenge that juror pursuant to section 44 *Juries Act.*

14. WITNESSES

14.1 In deciding whether or not to call a witness the prosecutor must be fair to the offender.

14.2 The prosecutor alone bears the responsibility of deciding whether a person will be called as a witness for the Crown.

14.3 The trial judge may but is not obliged to question the prosecutor in order to discover the reasons which lead the prosecutor to decline to call a particular person. The judge is not called on to adjudicate on the sufficiency of those reasons.

14.4 The prosecution should call all apparently credible witnesses whose evidence is admissible and essential to the complete unfolding of the prosecution case or is otherwise material to the proceedings. (Mere inconsistency of the testimony of a witness with the prosecution case is not, of itself, ground for refusing to call the witness). Unchallenged evidence that is merely repetitious should not be called unless that witness is requested by the offender.

14.5 Where there are identifiable circumstances clearly establishing that a witness is unreliable, a prosecutor may decide not to call that witness.

14.6 The prosecution must confer with the witness before making a decision not to call the witness – *R v Apostilides (1984) 154 CLR 563; Kneebone [1999] NSW CCA 279.*

14.7 The defence must be advised of a decision not to call a witness. If the defence requests that the witness be made available, then the prosecutor will assist by issuing a summons/subpoena for that witness, and by advising the defence of contact details for the witness.

14.8 Whenever a decision is made not to call a witness, the general basis for the decision will be disclosed (for example the witness cannot be located, evidence is repetitious, or the witness not accepted as a witness of truth). However, the unavailability of a witness to testify is not ordinarily required to be disclosed unless the matter proceeds to a contested hearing. In some circumstances, the public interest may require that no reasons be given.

14.9 In dealing with witnesses, a prosecutor must bear in mind the provisions regarding vulnerable witnesses pursuant to section 21A *Evidence Act*. Guideline 11: Witness Assistance Service is to be applied where appropriate.

14.10 There are legislative provisions applicable to the calling of evidence from children, particularly in Part 2 *Evidence Act* and Part 3 *Justices Act.* Prosecutors are to be familiar with and apply these provisions which are designed to assist children to give their evidence without delay and in a manner which minimises trauma and distress to the child.

14.11 In committal proceedings for indictable sexual offences, the prosecutor is required to present the evidence of a child by tendering either the child's written or recorded statement: section 105AA *Justices Act*.

14.12 In trials for sexual offences, certain vulnerable witnesses are entitled to pre-record either their evidence-in-chief or the entirety of their evidence (including cross-examination and re-examination). Particularly where there is potential for delay in having a matter determined by a court, prosecutors should elect to apply these provisions: section 21B *Evidence Act.*

15. INTERPRETERS

15.1 Care must be taken to ensure that every prosecution witness who needs an interpreter to testify has an appropriate interpreter.

15.2 Assistance may be offered to locate an appropriate interpreter for the defence.

15.3 When dealing with Aboriginal witnesses in the court system, prosecutors and the Witness Assistance Service must :

(1) prior to hearing, assess whether a prosecution witness, requires the assistance of an interpreter. It is to be noted that although most Aboriginal witnesses speak some English, they may not be competent in court. Interpreters should be used when English is not the first language of the witness. When required, interpreters should be used for pre-trial consultations as well as court proceedings;

(2) when engaging an interpreter, inform the interpreter of the following:
    (a) the name of the prosecution witness(es) to be assisted;
    (b) the name of offender; and
    (c) the type of crime.

This information will enable the interpreter to advise of any possible cultural conflicts that could arise. Likewise, prosecution witnesses should be advised prior to the hearing of the name of the interpreter to be used. Where there is a conflict, another interpreter should be used.

15.4 Upon engagement of an interpreter his or her services must be used, unless there is a justifiable reason for not doing so.

16. SENTENCE

16.1 The prosecution has an active role to play in the sentencing process.

16.2 It is the duty of the prosecutor to:

(1) inform the court of all relevant circumstances of the case. This will always include a careful presentation of Crown facts. Often it will also be appropriate to tender various materials including for example, the post-mortem report, medical reports, photographs, victim's (or other witnesses') statements, physical exhibits, and/or transcript of record of interview;
(2) inform the court of any relevant authority or legislation relevant to the appropriate sentence;
(3) provide an appropriate level of assistance on the sentencing range, including whether or not a custodial sentence is called for. It is not appropriate for a prosecutor to suggest or recommend a specific sentence;
(4) assist the court to avoid appellable error on the issue of sentence. If it appears there is a real possibility that the court may make a sentencing order that would be inappropriate and not within a proper exercise of the sentencing discretion, then the prosecutor must make submissions on that issue – particularly where a custodial sentence is appropriate and the court is contemplating a non-custodial penalty; and
(5) fairly test the opposing case.

16.3 The prosecution has a duty to do all that reasonably can be done to ensure that the court acts only on truthful and accurate information. Vigilance is required not just in the presentation of the Crown case but also in the approach taken to the defence case. Where facts are asserted on behalf of a convicted person which are contrary to the prosecutor's instructions or understanding, the prosecutor should press for a trial of the disputed issues (if the resolution of

such disputed facts is in the interests of justice or is material to sentence). Opinions, their underlying assumptions and factual bases should be scrutinised for reliability and relevance. If the prosecutor has been given insufficient notice of defence material and cannot properly consider the Crown's position, an adjournment should be sought in order to obtain instructions or to request that police investigate the material.

16.4 A prosecutor is entitled to request from the defence that the maker of a statement be called. Where the defence refuses to call the maker, the Crown may oppose the tender of the statement.

16.5 Sections 106A and 106B *Sentencing Act* impose obligations on the prosecutor to present victim impact statements/reports. Prosecutors should be familiar with the legislation and the application of Guideline 11: Witness Assistance Service.

16.6 The prosecution must ensure that any criminal history tendered is current as at the date of sentence. A prosecutor must be aware of the legislative provisions of sections 32, 33 and 33A *Evidence Act*, in the event the history is disputed.

16.7 The Police Warrants and Information Bureau will not forward an interstate history unless it is expressly ordered. Judgement about whether an out of state search should be conducted will depend upon the nature of the present offences and any information or suspicion that the offender had been interstate. For example:

a trivial or minor property offence would not normally justify an interstate search; however
an offence of personal violence by a mature aged person who has lived interstate would suggest a full search should be made.

16.8 A prosecutor should not in any way fetter the discretion of the Director to appeal against the inadequacy of a sentence (including informing the court or the defence whether or not the Director would, or would be likely to, appeal, or whether or not a sentence imposed is regarded as appropriate and adequate). The Director's instructions may be sought in advance in exceptional cases.

16.9 Prosecutors must be familiar with all aspects of the *Sentencing Act.*

16.10 Co-operation by convicted persons with law enforcement agencies should be appropriately acknowledged and, if necessary, tested at the time of sentencing - Guideline 19: Informers.

16.11 Prosecutors should be aware that an informer's identity may be kept confidential: section 24 *Misuse of Drugs Act* and Guideline 19: Informers.

16.12 Prosecutors should be aware of the legislative provision of section 107 *Sentencing Act* concerning offences that may be taken into account on a Form 6 schedule (Disposal of Other Pending Charges). The decision to place offences on a Form 6 should be based on principle and reason, not administrative expedience alone. A balance is to be struck between the number of counts on the indictment and the schedule. Excessive counts on the indictment can make sentence proceedings unduly lengthy and complex. On the other hand, there is a public interest in ensuring that certain offences are recorded as convictions. These include:

(1) any charges where penalties increase for second or subsequent offences such as breach of domestic violence orders (section 10(1A) *Domestic Violence Act*), drug matters (section 37 *Misuse of Drugs Act*), violent offences (section 78BA *Sentencing Act*) and sexual offences (section 78BB *Sentencing Act*);
(2) any charges where prescribed penalties apply such as traffic matters and driving offences which carry disqualification periods; and
(3) any charges relevant to the possible declaration of the offender as a drug trafficker pursuant to section 36A *Misuse of Drugs Act*.

16.13 Generally speaking the maximum penalty for offences placed on a Form 6 schedule should be less than the maximum penalty available for the principal offence. The views of the police officer-in-charge must be sought and recorded on file before any decision is made about placing offences on a Form 6 schedule. Prosecutors should be familiar with *The Queen v Charlesworth* [1999] NTCCA 26.

16.14 A prosecutor must be alert on sentence matters in appropriate cases to making an application for an indefinite sentence pursuant to section 65 *Sentencing Act*. Such applications must have the approval of the Director.

17. CROWN APPEALS AGAINST SENTENCE

17.1 The prosecutor must assess any sentence imposed. If (and only if) it is considered to be appellable or it is a matter likely to attract significant public interest, a report should be provided promptly to the Director's Chambers for determination as to whether or not an appeal will be instituted.

17.2 The report should include the transcript and sentencing remarks (if available), any medical or pre-sentence reports, the criminal history, victim impact statement and a copy of any decisions relied upon.

17.3 The Director may appeal against the inadequacy of a sentence which has been imposed. There are no time limits but, in practice, the Office commences appeals expeditiously, preferably within 28 days of sentence.

17.4 In determining whether or not to appeal against a sentence imposed by a judge or magistrate, the Director will have regard to the following matters:

(1) whether or not the sentencer made a material error of law or fact, misunderstood or misapplied proper sentencing principles, or wrongly assessed or omitted to consider some salient feature of the evidence, apparent from the remarks on sentence;

(2) manifest inadequacy of the sentence which may imply an error of principle by the sentencer;
(3) the range of sentences (having regard to comparable cases) legitimately open to the sentencer on the facts. Mere disagreement with the sentence imposed is insufficient;
(4) the conduct of the proceedings at first instance, including the prosecutor's opportunity to be heard and the conduct of its case;
(5) the element of double jeopardy involved in a prosecution/Crown appeal and its likely effect on the outcome (the probable imposition of a lesser sentence than was appropriate at first instance);
(6) the appeal court's residual discretion not to intervene, even if the sentence is considered too lenient; and
(7) whether the appeal is considered likely to succeed.

17.5 Prosecutors should be aware that:

(1) prosecution/Crown appeals are rare. They should be brought to enable the courts to establish and maintain adequate standards of punishment for crime, to enable idiosyncratic decisions to be corrected and to correct sentences that are so disproportionate to the seriousness of the crime as to lead to a loss of confidence in the administration of criminal justice;
(2) the appellate court will take into account the advantages enjoyed by the sentencer which are denied to it;
(3) the appellate court will not be concerned whether or not it would have found the facts differently, but will consider whether or not it was open to the sentencer to find the facts as he or she did;
(4) apparent leniency or inadequacy alone may not be enough to justify appellate correction; and
(5) scope must remain for the exercise of mercy by the primary sentencers.

18. UNREPRESENTED OFFENDER

18.1 A prosecutor must take particular care when dealing with an unrepresented offender. The basic requirement, while complying in all other respects with these Guidelines, is to ensure that the offender is properly informed of the prosecution case so as to be equipped to respond to it. However, the prosecutor must maintain an appropriate level of detachment from the offender’s interests.

18.2 Any face to face contact with the offender by a prosecutor should occur in the communicate with an unrepresented offender through the court.

18.3 Full notes should be promptly made in respect of:

(1) oral communication;
(2) all information and materials provided to an offender; and
(3) any information or material provided by the offender.

18.4 Any admissions made to ODPP staff or any communication of concern should be recorded and mentioned in open court as soon as possible.

18.5 The prosecutor should not advise the offender about legal issues, evidence or the conduct of the defence. However, he or she should be alert to the magistrate's or judge's duty to do what is necessary to ensure that the unrepresented offender has a fair trial. This will include advising the offender of his or her right to a voir dire to challenge the admissibility of a confession – *McPherson v R* (1981) 147 CLR 512.

18.6 In relation to child and adult complainants of sexual assault and indecent assaults, regard must be had to section 5 *Sexual Offences (Evidence & Procedure) Act*.

18.7 Where a convicted offender is unrepresented, the prosecutor should, as far as practicable, assist the court by putting all known relevant matters before the court, including such matters as may amount to mitigation.

18.8 Where the offender is unrepresented (regardless of whether or not he or she adduces evidence) the prosecutor goes first in the final address – section 363 and Schedule 4 *Criminal Code*. The prosecutor should consider whether it is appropriate in the circumstances of the case to address at all.

19. INFORMERS

19.1 An informer is a person (not being a victim in the matter) who:

(1) has given assistance to police or investigators as a consequence of knowledge that has come into his or her possession through direct personal contact with an offender; and
(2) is a co-offender, prisoner, civilian undercover operative, or a person bargaining such knowledge for the advantage of himself or herself or another person.

19.2 In every case when an informer is potentially a witness a decision must first be made whether or not an informer should be called at all:

(1) if it is contemplated that an informer be called as a witness, written approval should be first sought from the Director's Chambers; and
(2) in the case of a prison informer (a prisoner or former prisoner who provides evidence of an admission made by a fellow prisoner), the approval of the Director or Deputy Director must be obtained.

19.3 As far as is possible, care must be taken by a prosecutor to ensure that the tribunal of fact is aware of all matters that would assist the proper evaluation of the evidence of an informer. Independent evidence that supports the account given by the informer or other independent evidence proving guilt should be identified (and some independent evidence of the making of an admission will generally be required in the case of a prison informer).

19.4 The defence should be informed in advance of the trial of:

(1) the informer's criminal record;
(2) whether or not the Police or Corrective Services Department has any information which might assist in evaluating the informer's credibility, particularly as to:
    (a) motivation,
    (b) previous animosity against offender,
    (c) favourable/different treatment by Corrective Services,
    (d) mental health/reliability,
    (e) the extent to which public officers have given evidence or written reports on behalf of the informer (for example to Parole Board);
(3) whether any monetary or other benefit has been claimed, offered or provided;
(4) whether the informer was in custody at the time of giving assistance;
(5) whether an immunity has been granted or requested;
(6) whether any discount on sentence has been given for assistance in the matter; and
(7) other current or former criminal proceedings in which the informer has given evidence or is proposed to give evidence.

19.5 Public interest immunity may prevent the disclosure of the identity of an informer or may prevent disclosure of some or more of the matters outlined in paragraph 19.5 above - Guideline 8: Disclosure. Accordingly, before material is disclosed concerning an informer, the police officer-in-charge must first be consulted. Where immunity is claimed, the outcome of the claim will determine what is disclosed.

Where there is a dispute between the officer-in-charge and the prosecutor concerning disclosure, the matter is to be referred to the Director's Chambers.

19.6 Where an informer is an offender and is subject to proceedings for plea, sentence or appeal on sentence any significant assistance provided to law enforcement agencies is to be brought to the attention of the court. It is preferable that, where an informer has been charged and indicated an intention to plead guilty, he/she be sentenced prior to giving evidence against the offender. An informer who pleads and agrees to co-operate in the prosecution of another is entitled to receive a consequential reduction in the sentence that would otherwise have been appropriate. The prosecutor should obtain a signed statement from the informer and that statement should set out what evidence the informer will provide. The prosecutor should disclose to the court that such a statement has been provided and indicate the level of assistance provided by the informer to either the prosecutor or the police. Prosecutors should be aware of the provisions of sections 24 and 25 *Misuse of Drugs Act*.

19.7 Where the assistance is provided in respect of matters unrelated to the informer's proceedings, a letter outlining the assistance provided must be obtained from the police officer-in-charge and it is to be co-signed by the officer-in-charge's supervising officer. Advice must be sought from the officer-in-charge as to the level of sensitivity attached to the material contained in the letter of assistance. If the material is considered sensitive then the original letter may be produced to the court with a request that it be kept in a sealed envelope on the court file and that the contents not be disclosed without prior court order. Copies should not be provided to the defence or retained on the office file. There should be a clear file note indicating that the letter was tendered, noting the date and signatories on the letter.

20. ABORIGINAL CUSTOMARY LAW

20.1 Aboriginal people account for 29% of the total Northern Territory population yet 78% of the Territory's prison population are Aboriginal. Aboriginal people reside in both urban areas and remote communities. From time to time, Aboriginal customary law issues arise in cases involving Aboriginal offenders and Aboriginal victims.

20.2 The Guidelines regarding Aboriginal customary law must be understood within a broader context which takes into account the following three factors:

(1) Aboriginal customary law is an everyday part of the lives of Indigenous people in the Northern Territory;
(2) Aboriginal women's individual human rights to live free of violence must prevail over the minority rights of Indigenous people to retain and enjoy their culture; and
(3) violence by Aboriginal males against Aboriginal females is prevalent in the Northern Territory.

Everyday part of Indigenous lives

20.3 Aboriginal customary law is an everyday part of the lives of Indigenous people in the Northern Territory. It is an important source of obligations and rights and is the outcome of many historical, social and cultural influences. It is not a code and may vary from one community to another. Additionally, there may be disagreement within communities or groups on aspects of customary law and their application to particular circumstances. Aboriginal men and women may also interpret customary laws differently; they may have competing views regarding what should prevail in those particular circumstances.

Individual human rights

20.4 Aboriginal women's individual human rights must prevail over the minority rights of Indigenous people to retain and enjoy their culture. Any recognition of Aboriginal customary law must be consistent with universal human rights and freedoms. Indigenous people have the right to practise their own culture. Article 27 of the International Covenant on Civil and Political Rights (ICCPR) establishes minority rights:

> *In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.*

Difficulties may arise where there is conflict between Aboriginal women's or children's individual human rights, and Indigenous minority rights. International Labour Organisation (ILO) Convention [169 Articles 8 and 9(1)] and the Draft Declaration on the Right of Indigenous Peoples are not binding in Australia but establish the right of Indigenous people to retain their customs and traditions and to deal with offences subject to the requirement that this is:

> *… not incompatible with fundamental human rights defined by the national legal system and with internationally recognised human rights.*

In 1989 and 1990 the Australian Government agreed to be bound by the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child.

The principal human rights treaty in relation to women's rights is the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). The rights include freedom from discrimination; the right to freedom from violence has been accepted in the right to freedom from discrimination. Australia is a party to this Convention (Appendix B).

A prosecutor must ensure as far as possible that Aboriginal customary law is not used to curtail an Aboriginal woman's or child's right to individual safety and freedom from violence. Aboriginal women and children are Australian citizens and, as such, are entitled to the protection of the law.

Prevalence of violence

20.5 Violence by Aboriginal men against their Aboriginal female partners or ex-partners is very prevalent in the Northern Territory. High rates of homicide are paralleled by high rates of assault among Aboriginal people in the Northern Territory.

20.6 Violence should not be condoned.

20.7 In many Aboriginal communities, fighting behaviour exists. Some of that fighting behaviour is accepted as a method of redressing wrongs and restoring social harmony. This is often referred to as payback. Payback events are generally distinguishable from other violence because they are confined by limits and rules. They demonstrate a level of constraint; there is supervision and an involvement of many Aboriginal people, including the families of the offender and the victim. There is also an absence of alcohol. Such violence is also referred to as traditional violence.

20.8 The importance of distinguishing between traditional and non-traditional violence must not be overlooked:

> *When discussing violence against Aboriginal women, it should be noted that while it is important to distinguish between traditional and non-traditional violence, in practice it is often difficult to do so. Strictly speaking traditional violence refers to clearly defined and controlled punishments which were applied in cases where Aboriginal Law was broken, many of which are still in use in communities where traditional Law is followed. However, it may sometimes be used to describe violence which is not prescribed by Aboriginal law but which is condoned as a response to socially disapproved behaviour …*
>
> *One result of [Aboriginal women's changed role today compared with pre-contact times] is that they are now subject to violence from their own men of a kind which would not have been countenanced in traditional society. As one woman remarked; 'There are now three kinds of violence in Aboriginal society – alcoholic violence, traditional violence, and bullshit traditional violence'. Women are the victims of all three. By 'bullshit traditional violence' is meant the sort of assault on women which takes place today for illegitimate reasons, often by drunken men, which they then attempt to justify as a traditional right (A Bolger Aboriginal Women and Violence* Australian National University, North Australian Research Unit, Darwin NT 1991:4, 50*).*

20.9 Further non-traditional aspects that are major contributing factors to contemporary violence are alcohol consumption, cannabis consumption and petrol sniffing.

20.10 There are other types of violence that should be classified outside of the defined boundaries of traditional violence - for example, domestic violence, child abuse, adult sexual assault and child sexual assault. There is a perception that Aboriginal people culturally condone sexual activity involving young Aboriginal girls; these young girls are entitled to the same protection afforded by the criminal law as any other young girls in the wider community.

Aboriginal offenders

20.11 Aboriginal offenders are not to be treated differently from other offenders in the wider community. This means that such offenders will not necessarily receive lighter sentences because they come from deprived communities or impoverished circumstances. Offences of violence call for condign punishment. There is a need for the courts in the Northern Territory to protect the weaker members of the community, particularly Aboriginal women and children, from excessive violence - *R v Wurramara* (1999) 105 A Crim R 512.

Aboriginal customary law and the courts

20.12 There is a lengthy history in the Northern Territory of Aboriginal customary law being taken into account by the courts on sentencing issues. Less often, pleas to lesser charges have been accepted because of the manner in which Aboriginal customary law has been seen to impinge on substantive trial defences such as provocation.

20.13 Evidence sought to be led by the prosecution or the defence should be put before the courts in a proper manner. Submissions from the bar table concerning Aboriginal law and cultural practices are not appropriate – *Munungnurr* (1994) 4 NTLR 63.

20.14 Whenever there is a direct conflict between the law of the land and Aboriginal customary law, the law of the land must prevail – *Hales v Jalmilmira* (2003) 13 NTLR 14.

20.15 At trial, it may be appropriate in certain cases for a prosecutor to call evidence of Aboriginal customary law as part of the Crown case or in rebuttal. Evidence may be called by a prosecutor from Aboriginal people, anthropologists or people who have lived closely with Aboriginal people, where that witness has the appropriate knowledge about a particular community (for example customs, language) in which the offence occurred.

20.16 Where Aboriginal customary law is raised by the defence, a prosecutor is entitled to cross-examine any witness called by the defence to test the reliability of the evidence. However, it is acknowledged that this may be particularly difficult where no indication is given to the Crown by the defence of what customary law defence will be run until the actual defence witnesses give evidence in court. Consideration should be given to an application for a short adjournment to enable the prosecutor to make appropriate inquiries concerning the appropriateness or otherwise of the Aboriginal customary law content.

20.17 Aboriginal customary law is not a specific factor a Northern Territory court must have regard to on sentencing issues in the *Sentencing Act* (section 5(2)). However it is regularly regarded as falling within the category of 'any other relevant circumstance' (section 5(2)(s) *Sentencing Act*).

20.18 If Aboriginal customary law is raised by the defence on sentence then the Crown is entitled to adequate notice from the defence on this issue and prosecutors should be familiar with section 104A *Sentencing Act*. A prosecutor must make diligent inquiries from appropriate sources when notice is received from the defence that they are relying on Aboriginal customary law in such plea matters. Such sources will be Aboriginal people, anthropologists or people who have lived closely with Aboriginal people, where that witness has the appropriate knowledge of the particular community (for example customs, language) in which the offence occurred. Sources should include Indigenous women as well as men, bearing in mind that women's views are often overlooked and may vary from men's views.

20.19 It might be decided by a prosecutor, after consultation with appropriate sources, that the defence witnesses are required for cross-examination and/or it might be decided that evidence should be called by the Crown. It is important that accurate information is presented to the Court. If undue expense is to be involved (eg costly travel, an expert anthropologist's fees) then the Director's approval must first be obtained.

21. DOMESTIC VIOLENCE

21.1 This guideline applies to all criminal proceedings where the offender is or was in an intimate relationship (de facto, married, boyfriend/girlfriend) with the victim of the offence, or the victim's close relative (eg child). It applies to all offences including sexual assault, assault and property offences.

21.2 Prosecutions that involve offences committed in the context of domestic violence require special attention. This is because:

(1) victims are vulnerable to pressure from both the offender and the broader community not to give evidence in court;

(2) many victims have been subjected to ongoing violent behaviour from the offender prior to reporting an incidence of violence to police;
(3) offences of this type often include the aggravating factor of a breach of trust; and
(4) offences of this type are often defended on the basis that the victim is unlikely to appear or will be reluctant to give evidence (for example because of fear, a desire to resume the relationship, family pressures).

21.3 Because offending behaviour is often on-going, victim safety is the paramount objective. Offenders should be held accountable and should be successfully prosecuted. To this end, suitable prosecutions may proceed without the evidence of an unwilling victim. When examining a brief, a prosecutor should determine whether there is a circumstantial case based on witnesses (other than the victim) who can prove any or some of the offences charged.

21.4 The prosecutor must ensure that delays are minimised bearing in mind that delays in the prosecution of defended cases will invariably advantage an offender and disadvantage a victim.

21.5 The prosecutor or WAS should advise the victim of the various rights and protections available under the legislation - Guideline 11: WAS. Vulnerable witness applications pursuant to section 21A *Evidence Act* should be pursued where applicable. If a court does not have adequate facilities for a victim to give evidence without feeling intimidated, an application should be made for the matter to be transferred to a court where appropriate facilities are provided.

21.6 Support from WAS from the commencement of the prosecution is a practical and effective strategy to improve outcomes and to support a (reluctant) victim. WAS must be notified of all such cases - Guideline 11: WAS.

21.7 Interpreters should be used where English is not the first language of the victim to conference the victim - Guideline 15: Interpreters.

21.8 Cultural difference is not a reason for failing to protect minority ethnic or Indigenous victims of domestic violence - Guideline 20: Aboriginal Customary Law.

Discontinuance

21.9 The general rules in relation to public interest and prospect of conviction apply to these prosecutions. Generally where there is a reasonable prospect of conviction, it is in the public interest to continue with a domestic violence related prosecution. The victim's view or attitude to giving evidence is also a relevant consideration.

21.10 Where a victim indicates that she does not wish to give evidence the following should occur:

(1) the prosecutor or WAS should advise the victim of the various rights and protections available under the legislation - Guideline 11: WAS;
(2) the prosecutor must assess the on-going risk to the victim taking into account factors such as;
    (a) the offender's prior history of violence against this victim or violence against other victims;
    (b) whether or not the victim is in a continuing intimate relationship with the offender;
    (c) whether there is other adverse information about the offender for example previous complaints that did not proceed to prosecution (ascertained through consultation with the officer-in-charge);
    (d) the objective seriousness of the offending behaviour;
    (e) whether there are other safeguards in place for the victim (for example restraining order, or if the victim is a child – supervised visits by offender);
    (f) the strength or otherwise of the prosecution case, in particular whether there is corroboration or independent evidence of the commission of the offence;
    (g) the views of the police officer-in-charge.
(3) the victim should be advised of the availability of orders under the *Domestic Violence Act*; and
(4) the victim must be advised about his/her right to use a victim impact statement or victim impact report to communicate his/her attitude on sentence (section 106A(5A) *Sentencing Act*) and offered assistance with the making of the statement or report if he/she wishes to provide one.

21.11 Any decision to compel a victim to give evidence against his/her will requires serious consideration and will be used infrequently.

21.12 Any decision to discontinue must be approved in accordance with the requirements set out in Guideline 7: Discontinuing Prosecutions. That is all discontinuations are to be approved by the Director's Chambers or; if the matter is listed in the Court of Summary Jurisdiction and the officer with carriage is a summary prosecutor, the officer-in-charge of Summary Prosecutions.

21.13 When a decision is made to discontinue a prosecution, then
(1) a statement should be obtained from the victim by a police officer indicating that he/she does not wish to proceed and that she has no continuing fears for his/her safety (preferred option); or
(2) a statement to this effect should be obtained by the prosecutor directly from the victim.

21.14 Where a victim refuses to supply a statement, detailed notes of conversations with the victim must be retained on the file.

22. RETRIALS

22.1 Where a trial has ended without verdict (ie hung or aborted) consideration should be given to whether or not a retrial is required. Factors to be considered include:

(1) whether or not the jury was unable to agree (or the trial ended for other reasons);
(2) whether or not another jury would be in any better or worse position to reach a verdict;
(3) the cost of a retrial to the community and to the offender;
(4) the attitude of the victim; and
(5) the seriousness of the offence.

22.2 Where two juries have been unable to agree upon a verdict, a third or additional trial will only be directed in exceptional circumstances. Any such direction must be given by the Director.

22.3 Where a conviction at trial has been overturned and a retrial ordered, consideration should be given as to whether or not a retrial is required. Factors to be considered include:

(1) availability of witnesses;
(2) the cost of a retrial to the community and the offender;
(3) whether the sentencing disposition has been served;
(4) whether the offender contributed to the miscarriage of trial *(Paterson v R (2004) 28 WAR223;*
(5) whether or not a conviction is inevitable;
(6) the attitude of the victim; and
(7) the attitude of the police officer-in-charge.

22.4 In all cases the matter must be referred to the Director for consideration as to whether there is to be a retrial.

23. EXTRADITION

23.1 The extradition of offenders required to answer any charge of an offence or to serve a sentence imposed in the Northern Territory will always involve additional expense to the Territory.

23.2 However, that expense will generally be appropriate where there are reasonable prospects of conviction, in order to maintain confidence in the administration of the law, and to prevent offenders fleeing from justice.

23.3 When application is made to take steps to secure extradition, in addition to the assessment of the prosecution case in accordance with these Guidelines, the following factors will be relevant:

(1) any delay after discovery of the offender;
(2) the likely disposition following conviction (and where the offender is already serving a sentence in another jurisdiction this factor will have greater weight);
(3) the country or state from which the offender is to be extradited;
(4) the nationality of the offender;
(5) whether the offender is to be charged with an offence or, having been charged, has absconded;
(6) the nature and gravity of the offence or offences alleged against the offender;
(7) the existence of reasonable prospects of conviction;
(8) where an offender is in custody, whether the provisions of the *Prisoners (Interstate Transfer) Act* should be utilised;
(9) the likely cost of extradition;
(10) the existence of assets held by the offender which could satisfy an order in relation to breach of bail or a confiscation order and where such assets are to be found;
(11) whether and to what extent the offender might reasonably constitute a risk to the public, either at large or for the purposes of transportation to the Northern Territory.
(12) whether the offender should be extradited on bail or in custody. If in custody, advice should include information on the number of officers required to effect extradition and the cost of economy airfare for the offender and officer(s); and
(13) any compensation or restitution which might be ordered following conviction.

23.4 Approval for extradition may be sought by police or other relevant government agency.

23.5 Before determining a request for extradition, the Director or Deputy Director may consult with and require information from a relevant agency.

23.6 Applications for approvals for extradition should be in writing, presenting reasons for the extradition of an offender.

23.7 In urgent cases, approval may be sought and given orally. An oral approval must be followed by a report of the circumstances from the requesting agency as soon as possible.

23.8 Approval for extradition may be given by the Director or the Deputy Director.

24. PROVISION OF DOCUMENTATION IN RELATION TO CRIMES (VICTIMS ASSISTANCE) ACT APPLICATIONS

24.1 Requests may be made to the ODPP for information and access to documents concerning claims for financial assistance pursuant to the *Crimes (Victims Assistance) Act*.

24.2 Before documentation or information may be released the ODPP must first receive a request that:

(1) is in writing; and
(2) includes an "authority to release information" form signed by the applicant for compensation (if access to the applicant's statements including victim impact statements and/or medical reports concerning the applicant are sought).

24.3 Prior to completion of the prosecution (including any appeal period) and upon receipt of a written request the ODPP may provide the following material:

(1) applicant's statement(s) to police;
(2) details of charges or counts on the indictment; and
(3) the next date listed for a court hearing.

24.4 After completion of a matter before the courts and upon receipt of a written request the ODPP may provide the following:

(1) applicant's statement(s) to police;
(2) copy of SAIK (Sexual Assault Information Kit);
(3) copy of any non-contentious statement where an authority to release is provided by the maker of the statement (to be obtained, where appropriate, by the applicant's legal representative);
(4) copies of medical reports or statements concerning injuries to and treatment received by the applicant;
(5) photographs (where available) showing injuries to the applicant;
(6) after a plea of guilty, a copy of the precis or Crown facts; and
(7) details of the final result.

24.5 Copies of medical and/or psychiatric reports regarding the offender will not be provided without a signed release from the maker of the report.

24.6 No transcript of proceedings will be provided – *Copyright Act.* If requested the applicant should be referred to Court Reporting Services (NT) Pty Ltd.

25. CONFIDENTIALITY

25.1 The ODPP has obligations in respect of confidentiality and privacy pursuant to the Northern Territory Principles and Code of Conduct and the *Information Act*.

25.2 Information about a case other than what is on the public record should not be released without authority from either the Director or Deputy Director subject to the following exceptions:

(1) the release of information to victims to meet *Crimes (Victims Assistance) Act* obligations - Guideline 24: *Crimes (Victims Assistance) Act* Applications;
(2) the duty of full and early disclosure of the prosecution case to the defence - Guideline 8: Disclosure and;
(3) the release of information to the media - Guideline 26: Media.

25.3 A prosecutor may release information to police as required for investigative, prosecution and consultative processes. However internal memoranda (including opinions) should not be released without first obtaining the approval of the Director or the Deputy Director.

25.4 Any request from individuals, other agencies or the media for information (including internal office documents) which is not a matter of public record or governed by these Guidelines should be referred to the Solicitor to the Director.

26. MEDIA

26.1 In keeping with a policy of openness and accountability information may be given to the media by the prosecuting counsel appearing in a particular matter or by the Director or Deputy Director but by no other member of staff, pursuant to the following:

(1) before trial or plea information may only be given concerning:
    (a) the trial or plea date, likely length of hearing and venue; and
    (b) the charges on the indictment that have been read in open court.
(2) following a plea of guilty the following details may be given:
    (a) the charges on the indictment;
    (b) the court, judge and counsel names;
    (c) the sentence or other order; and
    (d) a copy of the Crown facts as given in court.

26.2 Matters which should not be discussed with the media include:

(1) contact details for any victim or lay witness. (If the media wish to contact a witness a prosecutor may advise the witness of the request);
(2) details of any person who is an informer or who is giving evidence at some personal risk are to be kept confidential;
(3) any matters the subject of a court suppression order or legislative order - for example, in sections 6 and 7 *Sexual Offences (Evidence and Procedure) Act*, section 24 *Misuse of Drugs Act* and section 23 *Juvenile Justice Act;*
(4) copies of or access to videotapes or audio tapes of any recorded interviews, re-enactments, demonstrations or identifications or digital photographs or recordings;
(5) the likely or actual outcome of proceedings;
(6) the intended approach of the prosecution (for example, appellate proceedings being instituted, a matter being discontinued or an ex officio indictment being filed);
(7) the correctness or otherwise of any judicial decision;
(8) any part of a trial conducted in the absence of the jury (other than to remind the media that such material should not be reported during the trial); and
(9) any comments about investigations or operational matters (if appropriate a request for such information should be referred to the Director or, in his absence, the Deputy Director).

26.3 No comment is ever to be made out of court to the media concerning a verdict or sentence or the fact that the case might or will be the subject of appeal.

26.4 In the case of Crown appeals the practice is not to release details to the media until the appeal has been filed and served on the respondent.

26.5 Where a prosecutor is requested to comment on policy, such requests should be referred to the Director or, in his absence, the Deputy Director.

26.6 Where a prosecutor is requested to comment on decisions to terminate prosecutions
such requests should be referred to the Director or, in his absence, the Deputy Director.

26.7 If it is considered that something should be done proactively with the media on behalf of the ODPP (for example the issue of a statement of some kind), the matter should be referred to the Director's Chambers.

26.8 Television stations have a legitimate interest in obtaining film of prosecutors for use in reports of cases. Prosecutors may pose for cameras in the office or elsewhere to provide television stations with file footage.

27. OPINIONS

27.1 A matter may be referred to the ODPP by Northern Territory Police or another agency for an opinion. A full brief of evidence must accompany each referral.

27.2 Advice on the outcome of the opinion will be communicated by letter or memorandum to the relevant person or agency seeking the opinion. The final determination will be disclosed such as no proceedings are recommended or charges are to be discontinued. A brief statement of reasons may be provided if for example no reasonable prospect of a conviction or insufficient evidence to commence/continue proceedings.

27.3 The opinion is subject to legal professional privilege. Neither the opinion nor detailed reasons for the opinion will be disclosed to persons outside the ODPP without the prior consent of the Director.

27.4 All opinions are to be referred to the Deputy Director or General Counsel in Darwin or the Crown Prosecutor in Charge or the Senior Crown Prosecutor in Alice Springs. Prosecutors are expected to complete their opinions within one month of receipt of the brief of evidence.

27.5 All cases involving the death of any person, must be referred to the Director.

APPENDIX A

Definition

The Director's Chambers include the Director, Deputy Director, General Counsel, Solicitor to the Director, Chambers Prosecutor, Crown Prosecutor in Charge Alice Springs, Senior Crown Prosecutor Alice Springs.

APPENDIX B

RULES OF PROFESSIONAL CONDUCT AND PRACTICE OF THE LAW SOCIETY OF THE NORTHERN TERRITORY (EXCERPTS)

Prosecutor's duties

17.46 A prosecutor must fairly assist the court to arrive at the truth, must seek impartially to have the whole of the relevant evidence placed intelligibly before the court, and must seek to assist the court with adequate submissions of law to enable the law properly to be applied to the facts.

17.47 A prosecutor must not press the prosecution's case for a conviction beyond a full and firm presentation of that case.

17.48 A prosecutor must not, by language or other conduct, seek to inflame or bias the court against the accused.

17.49 A prosecutor must not argue any proposition of fact or law which the prosecutor does not believe on reasonable grounds to be capable of contributing to a finding of guilt and also to carry weight.

17.50 A prosecutor must disclose to the opponent as soon as practicable all material (including the names of and means of finding prospective witnesses in connection with such material) available to the prosecutor or of which the prosecutor becomes aware which could constitute evidence relevant to the guilt or innocence of the accused, unless:

(a) such disclosure, or full disclosure, would seriously threaten the integrity of the administration of justice in those proceedings or the safety of any person; and

(b) the prosecutor believes on reasonable grounds that such a threat could not be avoided by confining such disclosure, or full disclosure, to the opponent being a legal practitioner, on appropriate conditions which may include an undertaking by the opponent not to disclose certain material to the opponent's client or any other person.

17.51 A prosecutor who has decided not to disclose material to the opponent under Rule 17.50 must consider whether:

(a) the defence of the accused could suffer by reason of such nondisclosure;
(b) the charge against the accused to which such material is relevant should be withdrawn; and
(c) the accused should be faced only with a lesser charge to which such material would not be so relevant.

17.52 A prosecutor must call as part of the prosecution's case all witnesses:

(a) whose testimony is admissible and necessary for the presentation of the whole picture;
(b) whose testimony provides reasonable grounds for the prosecutor to believe that it could provide admissible evidence relevant to any matter in issue;
(c) whose testimony or statements were used in the course of any committal proceedings; and
(d) from whom statements have been obtained in the preparation or conduct of the prosecution's case; unless:
(e) the opponent consents to the prosecutor not calling a particular witness;
(f) the only matter with respect to which the particular witness can give admissible evidence has been dealt with by an admission on behalf of the accused; or
(g) the prosecutor believes on reasonable grounds that the administration of justice in the case would be harmed by calling a particular witness or particular witnesses to establish a particular point already adequately established by another witness or other witnesses;provided that:
(h) the prosecutor is not obliged to call evidence from a particular witness, who would otherwise fall within (a)-(d), if the prosecutor believes on reasonable grounds that the testimony of that witness is plainly unreliable by reason of the witness being in the camp of the accused;
(i) the prosecutor must inform the opponent as soon as practicable of the identity of any witness whom the prosecutor intends not to call on any ground within (f), (g) and (h), together with the grounds on which the prosecutor has reached that decision; and

17.53 A prosecutor who has reasonable grounds to believe that certain material available to the prosecution may have been unlawfully or improperly obtained must promptly:

(a) inform the opponent if the prosecutor intends to use the material;
(b) make available to the opponent a copy of the material if it is in documentary form; and

(c) inform the opponent of the grounds for believing that such material was unlawfully or improperly obtained.

17.54 A prosecutor must not confer with or interview any of the accused except in the presence of the accused's representative.

17.55 A prosecutor must not inform the court or the opponent that the prosecution has evidence supporting an aspect of its case unless the prosecutor believes on reasonable grounds that such evidence will be available from material already available to the prosecutor.

17.56 A prosecutor who has informed the court of matters within Rule 17.55, and who has later learnt that such evidence will not be available, must immediately inform the opponent of that fact and must inform the court of it when next the case is before the court.

17.57 A prosecutor must not seek to persuade the court to impose a vindictive sentence or a sentence of a particular magnitude, but:

(a) must correct any error made by the opponent in address on sentence;
(b) must inform the court of any relevant authority or legislation bearing on the appropriate sentence;
(c) must assist the court to avoid appealable error on the issue of sentence;
(d) may submit that a custodial or non-custodial sentence is appropriate; and
(e) may inform the court of an appropriate range of severity of penalty, including a period of imprisonment, by reference to relevant appellate authority.

17.58 A practitioner who appears as counsel assisting an inquisitorial body such as the National Crime Authority, the Australian Securities and Investments Commission, a Royal Commission or other statutory tribunal or body having investigative powers must act in accordance with Rules 17.46, 17.48 and 17.49 as if the body were the court referred to in those Rules and any person whose conduct is in question before the body were the accused referred to in Rule 17.48.

APPENDIX C

BARRISTERS' CONDUCT RULES OF THE NORTHERN TERRITORY BAR ASSOCIATION (EXCERPTS)

Prosecutor's duties

1. A prosecutor must fairly assist the court to arrive at the truth, must seek impartially to have the whole of the relevant evidence placed intelligibly before the court, and must seek to assist the court with adequate submissions of law to enable the law properly to be applied to the facts.

2. A prosecutor must not press the prosecution's case for a conviction beyond a full and firm presentation of that case.

3. A prosecutor must not, by language or other conduct, seek to inflame or bias the court against the accused.

4. A prosecutor must not argue any proposition of fact or law which the prosecutor does not believe on reasonable grounds to be capable of contributing to a finding of guilt and also to carry weight.

5. A prosecutor must disclose to the opponent as soon as practicable all material (including the names of and means of finding prospective witnesses in connexion with such material) available to the prosecutor or of which the prosecutor becomes aware which could constitute evidence relevant to the guilt or innocence of the accused, unless:

   (a) Such disclosure, or full disclosure, would seriously threaten the integrity of the administration of justice in those proceedings or the safety of any person; and

   (b) the prosecutor believes on reasonable grounds that such a threat could not be avoided by confining such disclosure, or full disclosure, to the opponent being a legal practitioner, on appropriate conditions which may include an undertaking by the opponent not to disclose certain material to the opponent's client or any other person.

5B. A prosecutor who has decided not to disclose material to the opponent under Rule 66 must consider whether:

   (a) the defence of the accused could suffer by reason of such non-disclosure;

   (b) the charge against the accused to which such material is relevant should be withdrawn; and

   (c) the accused should be faced only with a lesser charge to which such material would not be so relevant.

5C. A prosecutor must call as part of the prosecution's case all witnesses:

(a) whose testimony is admissible and necessary for the presentation of all of the relevant circumstances;

(b) whose testimony provides reasonable grounds for the prosecutor to believe that it could provide admissible evidence relevant to any matter in issue;

(c) whose testimony or statements were used in the courts of any committal proceedings; and

(d) from whom statements have been obtained in the preparation or conduct of the prosecution's case; unless the opponent consents to the prosecutor not calling a particular witness;

and except where:

(e) the only matter with respect to which the particular witness can give admissible evidence has been dealt with by an admission on behalf of the accused; or

(f) the prosecutor believes on reasonable grounds that the administration of justice in the case would be harmed by calling a particular witness or particular witnesses to establish a particular point already adequately established by another witness or other witnesses; or

(g) the prosecutor believes on reasonable grounds that the testimony of a particular witness is plainly untruthful or is plainly unreliable by reason of the witness being in the camp of the accused;

provided that;

(h) the prosecutor must inform the opponent as soon as practicable of the identity of any witness whom the prosecutor intends not to call on any ground within (e), (f) and (g), together with the grounds on which the prosecutor has reached that decision.

6. A prosecutor who has reasonable ground to believe that certain material available to the prosecution may have been unlawfully obtained must promptly:

(a) inform the opponent if the prosecutor intends to use the material; and

(b) make available to the opponent a copy of the material if it is in documentary form.

7. A prosecutor must not confer with or interview any accused except in the presence of the accused's representative.

8. A prosecutor must not inform the court or the opponent that the prosecution has evidence supporting an aspect of its case unless the prosecutor believes on reasonable grounds that such evidence will be available from material already available to the prosecutor.

9. A prosecutor who has informed the court of matters within Rule 69, and who has later learnt that such evidence will not be available, must immediately inform the opponent of that fact and must inform the court of it when the case is before the court.

10. A prosecutor must not seek to persuade the court to impose a vindictive sentence or a sentence of a particular magnitude, but:

    (a) must correct any error made by the opponent in address on sentence;

    (b) must inform the court of any relevant authority or legislation bearing on the appropriate sentence;

    (c) must assist the court to avoid appealable error on the issue of sentence;

    (d) may submit that a custodial or non-custodial sentence is appropriate and;

    (e) may inform the court of an appropriate range of severity of penalty, including a period of imprisonment, by reference to relevant appellate authority.

11. A barrister who appears as counsel assisting an inquisitorial body such as the Criminal Justice Commission, the National Crime Authority, the Australian Securities Commission, a Royal Commission or other statutory tribunal or body having investigative powers must act in accordance with Rules 62, 64 and 65 as if the body were the court referred to in those Rules and any person whose conduct is in question before the body were the accused referred to in Rule 64.

APPENDIX D

INTERNATIONAL ASSOCIATION OF PROSECUTORS RULES

1. PROFESSIONAL CONDUCT

Prosecutors shall:

a) at all times maintain the honour and dignity of their profession;

b) always conduct themselves professionally, in accordance with the law and the rules and ethics of their profession;

c) at all times exercise the highest standards of integrity and care;

d) keep themselves well-informed and abreast of relevant legal developments;

e) strive to be, and to be seen to be, consistent, independent and impartial;

f) always protect an accused person's right to a fair trial, and in particular ensure that evidence favourable to the accused is disclosed in accordance with the law or the requirements of a fair trial;

g) always serve and protect the public interest;

h) respect, protect and uphold the universal concept of human dignity and human rights.

2. INDEPENDENCE

2.1 The use of prosecutorial discretion, when permitted in a particular jurisdiction, should be exercised independently and be free from political interference.

2.2 If non-prosecutorial authorities have the right to give general or specific instructions to prosecutors, such instructions should be:

- transparent;
- consistent with lawful authority;
- subject to established guidelines to safeguard the actuality and the perception of prosecutorial independence;

2.3 Any right of non-prosecutorial authorities to direct the institution of proceedings or to stop legally instituted proceedings should be exercised in similar fashion.

3. IMPARTIALITY

Prosecutors shall perform their duties without fear, favour or prejudice. In particular they shall:

a) carry out their functions impartially;

b) remain unaffected by individual or sectional interests and public or media pressures and shall have regard only to the public interest;

c) act with objectivity;

d) have regard to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;

e) in accordance with local law or the requirements of a fair trial, seek to ensure that all necessary and reasonable enquiries are made and the result disclosed; whether that points towards the guilt or the innocence of the suspect;

f) always search for the truth and assist the court to arrive at the truth and to do justice between the community, the victim and the accused according to law and the dictates of fairness.

4. ROLE IN CRIMINAL PROCEEDINGS

4.1 Prosecutors shall perform their duties fairly, consistently and expeditiously.

4.2 Prosecutors shall perform an active role in criminal proceedings as follows:

a) Where authorized by law or practice to participate in the investigation of crime, or to exercise authority over the police or other investigators, they will do so objectively, impartially and professionally;

b) When supervising the investigation of crime, they should ensure that the investigating services respect legal precepts and fundamental human rights;

c) When giving advice, they will take care to remain impartial and objective;

d) In the institution of criminal proceedings, they will proceed only when a case is well-founded upon evidence reasonably believed to be reliable and admissible, and will not continue with a prosecution in the absence of such evidence;

e) Throughout the course of the proceedings, the case will be firmly but fairly prosecuted; and not beyond what is indicated by the evidence;

f) When, under local law and practice, they exercise a supervisory function in relation to the implementation of court decisions or perform other non-prosecutorial functions, they will always act in the public interest.

4.3 Prosecutors shall, furthermore,

a) preserve professional confidentiality;

b) in accordance with local law and the requirements of a fair trial, consider the views, legitimate interests and possible concerns of victims and witnesses, when their personal interests are, or might be, affected, and seek to ensure that victims and witnesses are informed of their rights; and similarly seek to ensure that any aggrieved party is informed of the right of recourse to some higher authority/court, where that is possible;

c) safeguard the rights of the accused in co-operation with the court and other relevant agencies;

d) disclose to the accused relevant prejudicial and beneficial information as soon as reasonably possible, in accordance with the law or the requirements of a fair trial;

e) examine proposed evidence to ascertain if it has been lawfully or constitutionally obtained;

f) refuse to use evidence reasonably believed to have been obtained through recourse to unlawful methods which constitute a grave violation of the suspect's human rights and particularly methods which constitute torture or cruel treatment;

g) seek to ensure that appropriate action is taken against those responsible for using such methods;

h) in accordance with local law and the requirements of a fair trial, give due consideration to waiving prosecution, discontinuing proceedings conditionally or unconditionally or diverting criminal cases, and particularly those involving young offenders, from the formal justice system, with full respect for the rights of suspects and victims, where such action is appropriate.

5. CO-OPERATION

In order to ensure the fairness and effectiveness of prosecutions, prosecutors shall:

a) co-operate with police, the courts, the legal profession, defence counsel, public defenders and other government agencies, whether nationally or internationally; and

b) render assistance to the prosecution services and colleagues of other jurisdictions, in accordance with the law and in a spirit of mutual co-operation.

6. EMPOWERMENT

In order to ensure that prosecutors are able to carry out their professional responsibilities independently and in accordance with these standards, prosecutors should be protected against arbitrary action by governments. In general they should be entitled:

a) to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability;
b) together with their families, to be physically protected by the authorities when their personal safety is threatened as a result of the proper discharge of their prosecutorial functions;
c) to reasonable conditions of service and adequate remuneration, commensurate with the crucial role performed by them and not to have their salaries or other benefits arbitrarily diminished;
d) to reasonable and regulated tenure, pension and age of retirement subject to conditions of employment or election in particular cases;

e) to recruitment and promotion based on objective factors, and in particular professional qualifications, ability, integrity, performance and experience, and decided upon in accordance with fair and impartial procedures;
f) to expeditious and fair hearings, based on law or legal regulations, where disciplinary steps are necessitated by complaints alleging action outside the range of proper professional standards;
g) to objective evaluation and decisions in disciplinary hearings;

h) to form and join professional association sort her organisations to represent their interests, to promote their professional training and to protect their status; and
i) to relief from compliance with an unlawful order or an order which is contrary to professional standards or ethics.

APPENDIX E

NORTHERN TERRITORY CHARTER FOR VICTIMS OF CRIME

VICTIMS OF CRIME NT (PREVIOUSLY VOCAL)
First Floor, AANT Building, 81 Smith Street, DARWIN NT 0800
Phone: 8941 0995 or Free Call: 1800 672 242

RUBY-GAEA
Darwin Centre Against Rape
PO Box 42082, CASUARINA NT 0811.
Phone: 8945 0155

SEXUAL ASSAULT REFERRAL CENTRE
Territory Health Services
PO Box 40596, CASUARINA NT 0811.
Phone: 8922 7156

NT POLICE
Commissioner of Police,
Peter McAulay Centre, McMillans Road, Berrimah NT 0828
PO Box 39764, WINNELLIE NT 0821
Phone: 8922 3344

DIRECTOR OF PUBLIC PROSECUTIONS
43 Mitchell Street, DARWIN NT 0800.
GPO Box 3321, DARWIN NT 0801
Phone: 8999 7533
Centrepoint Building, Hartley Street, ALICE SPRINGS NT 0872
Phone: 8951 5800

SUMMARY PROSECUTIONS
43 Mitchell Street, DARWIN NT 0800.
GPO Box 3321, DARWIN NT 0801
Phone: 8999 7900
Centrepoint Building, Hartley Street, ALICE SPRINGS NT 0872
Phone: 8951 5795

CORRECTIONAL SERVICES
Commissioner, NT Correctional Services
66 The Esplanade, DARWIN NT 0800.
GPO Box 3196, DARWIN NT 0801
Phone: 8999 5111

CRIME VICTIMS ADVISORY COMMITTEE
c/- Department of Justice
45 Mitchell Street, DARWIN NT 0800.
GPO Box 1722, DARWIN NT 0801
Phone: 8999 7233

This booklet was written by the Crime Victims Advisory Committee and published by the Northern Territory Justice Department.

The Crime Victims Advisory Committee advises the Attorney-General on matters affecting victims of crime and is a forum for the co-ordination of initiatives involving victims of crime in the Northern Territory.

For further information, contact the Chairperson of the Committee at GPO Box 1722, Darwin NT 0801, telephone: 8999 7233.

Introduction by the Attorney-General

This is the third edition of the Charter for Victims of Crime in the Northern Territory. The first Charter has been very popular and provided much needed help and assistance to victims of crime throughout the Territory. I am proud to be associated with the Charter.

The Charter sets out in a clear and concise way the guidelines and principles governing the way in which victims of crime are to be treated in the Territory's criminal justice system. It also provides information about the various support services that are available for victims. The document has been developed with the well-being of the victim in mind. The Charter contains information about the work of the various support organisations in the community and provides details about how to contact them.

The Northern Territory Government is fully aware that we hear a lot about those people who commit crimes and all too frequently the victims are forgotten. This Government is committed, not only to continuing to provide victims with the information that they need but also to ensure that their rights are protected and that practical support and assistance is provided where possible.

I am confident that this Charter, along with other Government initiatives, will ensure that victims are acknowledged, respected assisted and protected. It is only in this way that the process of reparation can begin.

PETER TOYNE

Who is a Victim of Crime

A victim is someone who has suffered or been affected because of a crime.

As well as the victim, there may be other people, such as witnesses, family members and friends, who are indirectly affected by the same crime.

What the Charter Means

The Charter sets out the way you as a victim of crime should be treated in the criminal justice system.

You can expect to be treated in a sympathetic, constructive and reassuring manner. The Charter ensures that victims, their circumstances and their rights are acknowledged, respected and protected. This may help to repair some of the harm and distress suffered by victims of crime in our community.

The Charter sets out the information that is available from the various agencies.

Worried or Uncertain

As a victim of crime, it is likely that you will be dealing with a number of different people while the crime is being investigated and prosecuted.

You will probably have lots of questions that you want to ask. Do not feel worried or ashamed to ask. There are people who can help you.

Bail and your Protection

When an application for bail is being decided, either by the Police or by a court, your physical protection, and that of your family will be taken into account. It is important that you tell the Police if you have any concerns.

The Office of the Director of Public Prosecutions and the Police will ensure you are not intimidated by, or come into unnecessary contact with, the accused or any defence witnesses at any time during the criminal process.

Your home address or other personal details will not be revealed to anyone, unless it is absolutely necessary and you have already been notified of this.

Care and Return of your Property

Items of your property may be held by the Police or the Office of the Director of Public Prosecutions while they are investigating the crime and/or prosecuting the offender.
While it is being held, your property will be stored and handled with care.
After the hearing or trial, you should write to the Commissioner of Police or Director of Public Prosecutions asking for your property to be returned to you.

People who can Help you

Victim Support Unit

The Victim Support Unit, located within the Office of the Director of Public Prosecutions, offers support to victims of crime, witnesses and their families throughout the criminal justice process.

The unit can help you by:

- giving information about the date, time and place of the next court appearance;
- explaining the legal process, its language and rules of evidence in plain English;

- preparing you for your appearance in court;
- assisting you to prepare a victim impact statement;
- informing you about available welfare, health, counselling and legal services; and
- providing information about assistance available under the Crimes (Victims Assistance) Act.

Victims of Crime NT

Victims of Crime NT, previously known as VOCAL is a community organisation run by volunteers which provides information and support to victims of all crime. Victims of Crime NT provides:

- a 24-hour NT-wide telephone service where victim assistance workers are available if you need to talk about the crime, feelings, or to ask any questions; in person support for the victims and their families of all crimes in the Darwin and Palmerston regions;
- a 24-hour immediate support service for victims of unlawful entry and other crimes in the Darwin and Palmerston regions via police referral for call-out to victims in need;
- information and referral to specialist agencies such as counselling, support and legal services;
- information and guidance about grief and loss; and
- a toll free number which is available for calls outside the Darwin area.

Ruby-Gaea: Darwin Centre Against Rape provides:

- free confidential counselling for women and children who have been sexually assaulted or who have experienced any unwanted sexual attention;
- educational workshops and training lectures in the community on the issues of sexual violence;
- medical, legal and resource information;
- emotional and practical support during police and court proceedings and related appointments;
- support groups on issues relating to sexual violence;
- participation in public meetings and campaigns on sexual violence issues; and
- borrowing library (for members) of books, videos and articles on sexual violence and feminism.

The Northern Territory Police and the Office of the Director of Public Prosecutions

At your request, the Police and/or the Office of the Director of Public Prosecutions can tell you about the following matters:

- the progress of the Police investigations;
- charges laid against any person accused of the crime, and any changes to these charges;
- reasons for not laying charges or for not proceeding with charges;
- where and when the matter is to come before a court;
- the trial process and the rights and responsibilities of witnesses;
- whether or not bail has been granted and any bail conditions relating to protecting you from the accused;
- reasons for accepting a plea of guilty to a lesser charge; and
- the outcome of criminal proceedings and the sentence, if imposed.

Northern Territory Correctional Services

Northern Territory Correctional Services are responsible for keeping the offender in prison. At your request, they may be able to help by:

- advising you if a prisoner is going to be released on parole, the date of his or her release and any conditions of the prisoner's parole; and
- providing information about the date when the offender is due to be released from prison.

For information about parole, you should write to the Commissioner for Correctional Services.

This brochure only contains a short summary of the services and information that these agencies provide. There are other organisations and agencies that may be more appropriate for your needs.

If you need help in translating any information contained in this brochure, call 13 1450.

If you are an Aboriginal person or a Torres Strait Islander, and need more information, call the Aboriginal Support Co-ordinator at the Office of the Director of Public Prosecutions.

If you have any complaints about the manner in which you have been treated, contact the Victim Support Unit or Victims of Crime NT.

APPENDIX F

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN
[Guideline 20]

(EXCERPTS)

PART 1

Article 1

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institution the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

APPENDIX G

UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (EXCERPTS)

[Guidelines 10: Young Offenders, 11: WAS, 14: Witnesses, 20: Aboriginal Customary Law]

PART I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

17. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

18. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

19. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

PART II

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardians(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 40

1. States Parties recognise the right of every child alleged as, offender of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

   (a) No child shall be alleged as, be offender of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

   (b) Every child alleged as or offender of having infringed the penal law has at least the following guarantees:

      (i) To be presumed innocent until proven guilty according to law;
      (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
      (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
      (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
      (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
      (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
      (vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, offender of, or recognized as having infringed the penal law, and, in particular:

   (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

   (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.