



**DIRECTOR
OF PUBLIC
PROSECUTIONS**
NORTHERN TERRITORY

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

A N N U A L R E P O R T

2014-2015



DIRECTOR
OF PUBLIC
PROSECUTIONS
NORTHERN TERRITORY



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TWENTY-FIFTH ANNUAL REPORT

FOR YEAR ENDED 30 JUNE 2015



DIRECTOR
OF PUBLIC
PROSECUTIONS
NORTHERN TERRITORY





30 September 2015

Mr John Elferink MLA
Attorney-General and Minister for Justice
Parliament House
State Square
DARWIN NT 0800

Dear Attorney-General

ANNUAL REPORT 2014-2015

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 Director of Public Prosecutions for the period 1 July 2014 to 30 June 2015.

Yours sincerely

W.J. KARCZEWSKI QC



DIRECTOR
OF PUBLIC
PROSECUTIONS
NORTHERN TERRITORY



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DIRECTOR
OF PUBLIC
PROSECUTIONS
NORTHERN TERRITORY





OFFICE LOCATIONS

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

Level 5, Old Admiralty Tower
68 The Esplanade
DARWIN NT 0800
GPO Box 3321
DARWIN NT 0801

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

2. **SOUTHERN REGIONAL OFFICE ALICE SPRINGS**

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

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

3. **KATHERINE OFFICE**

Level 1, Ground Floor (Rear)
Randazzo Building
Katherine Terrace
KATHERINE NT 0850
PO Box 1295
KATHERINE NT 0851

Telephone: (08) 8973 8813
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DIRECTOR
OF PUBLIC
PROSECUTIONS
NORTHERN TERRITORY



MISSION STATEMENT

MISSION

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

VISION

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

GOALS

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

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



Mission Statement in Kriole

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

In the overview to the 2012-2013 Annual Report, I traced the history of amendments to the **Evidence Act** in 2004 the stated purpose of which was to reduce the trauma experienced by child witnesses and other vulnerable witnesses in criminal proceedings for sexual offences.¹ The amendments allow a prosecutor to adduce pre-recorded evidence of a witness instead of the vulnerable witness giving oral evidence at the trial. I noted that in 2007 further amendments were made to ensure that the number of times a child was required to give evidence was minimised. I expressed my concern that on two separate occasions in that reporting year the evidence given by three child complainants in the Supreme Court, at a special hearing for the specific purpose of capturing the evidence of the child at an early stage, had not been recorded by audio-visual means as required by law². I noted that each complainant agreed to return to Court at a later date to give evidence a second time. I expressed the view that such failures were unacceptable and that steps needed to be taken to ensure that such failures do not occur in the future.

No such failures occurred in the 2013-2014 reporting year.

At a special sitting of the Supreme Court in Darwin in June 2015, four vulnerable witnesses gave evidence, a female complainant and three other witnesses, all under the age of 18 years. Only part of the complainant's evidence was audio-visually recorded and no visual recording was made of the three subsequent witnesses. As a result of these failures, the evidence of all four witnesses was inadmissible and the only way to rectify the matter and progress the trial was to require the complainant and each of the three witnesses to give evidence again. When the complainant was advised of the failed recording and of the need to evidence again, she was devastated and indicated that she could not, and would not, subject herself to the ordeal again.

As there was no viable Crown case without the evidence of the complainant, the proceedings were terminated by the filing of a Nolle Prosequi and the accused was discharged.

A request made by me of the Court as to the reason for the failures to record the evidence audio-visually went unanswered. Thus the explanation given to the complainant by this Office as to why the system failed her was devoid of content.

¹ At pp11-12

² One incident occurred in Alice Springs and one in Darwin

I would like any criticism on this issue to be constructive. For example, if it was a case of faulty or outdated equipment, I would support any call for additional funding to rectify the situation. If it was a case of operator error, I would urge that staff operating the equipment be properly trained. Whatever the problem, it needs to be identified and addressed.

In last year's Annual Report I announced that work was underway to develop an electronic Brief of Evidence (eBrief). This was to be an exciting project. The purpose of the project was to eliminate the paper-based Brief of Evidence prepared by the police and delivered to this Office for further copying and distribution, and to allow for the electronic service and exchange of documents between Police, DPP, Courts and defence counsel. The benefits of the eBrief were said to be reduced paper usage within the office and a reduction in the time spent by administrative staff in photocopying the Brief of Evidence (both by the Police and by this Office).

Unfortunately this project came to a halt during the reporting year when Police withdrew their support for it. It is understood that Police support for the eBrief was dependent upon them continuing to use their current operating system PROMIS. As police decided to replace PROMIS, any enhancements to it such as the eBrief were seen as having a short and unnecessarily expensive life. The eBrief project has been shelved indefinitely.

From time to time assertions are made by or through the media that a sentence imposed in a particular case is low and ought to be appealed by the prosecution. These assertions are sometimes accompanied by inaccurate or incomplete reporting, with the unsatisfactory result that the public is misinformed. One of the problems, it seems, is a general lack of understanding of the principles involved in the sentencing process and the principles which are applied by the Court when dealing with a Crown appeal against inadequacy of sentence.

There are a number of basic propositions which must be understood and applied to every case in which consideration is being given whether or not to appeal.

- When a judge sentences an offender he or she is exercising a discretionary judgement. The discretion which the law commits to sentencing judges is of vital importance in the administration of our system of criminal justice. What is required is that the sentencer must take into account all relevant considerations (and only relevant considerations) in forming the conclusion reached.
- The High Court of Australia has pointed out more than once that there is no single correct sentence. Judges at first instance are to be allowed as much flexibility in sentencing as is consonant with consistency of approach and as accords with the statutory regime that applies.
- The reason for the flexibility is because sentencing involves a process of 'instinctive syntheses. In that process, greater and lesser weight will be allocated to some factors depending on their relevance to the person convicted and his or her crime. Ultimately the process of translating

community and legal values into a number of years, months and days must involve an instinctive judgment. As four Justices of the High Court of Australia said in their joint judgment³ in *Veen v The Queen [No 2]*:⁴

"[S]entencing is not a purely logical exercise, and the troublesome nature of the sentencing discretion arises in large measure from unavoidable difficulty in giving weight to each of the purposes of punishment. The purposes of criminal punishment are various: protection of society, deterrence of the offender and of others who might be tempted to offend, retribution and reform. The purposes overlap and *none of them can be considered in isolation from the others when determining what an appropriate sentence is in a particular case*. They are guideposts to the appropriate sentence but sometimes they point in different directions."

- The presumption is that there is no error in sentencing; an appellant must demonstrate that the sentencer erred, either in acting on a wrong principle or in misunderstanding or wrongly assessing some salient feature of the facts.
- It may not appear how the sentencer reached the result embodied in the order but, if on the facts it is unreasonable or plainly unjust, the appellate court may infer that in some way there has been a failure properly to exercise the discretion which the law reposes in the court of first instance. In applying these principles to submissions that the sentence is "manifestly inadequate" it is for the appellant to show that the nature of the sentence itself affords convincing evidence that in some way the exercise of the discretionary sentencing power was unsound. To do so, the appellant must show that the sentence was clearly and obviously, and not just arguably, inadequate.
- An offender's prospects of rehabilitation must never be undervalued. The protection of the community is contributed to by the successful rehabilitation of offenders. This aspect of sentencing assumes particular importance in the case of first offenders and others who have not developed settled criminal habits. Where an offender has made progress towards rehabilitation and a period of imprisonment or further imprisonment would interrupt that progress, it would be counter-productive to require him or her to return to prison and it would not be in the interests of either himself or herself, or the community, for that to occur.
- A court of criminal appeal dealing with any appeal against sentence is not a court hearing the matter afresh, and is not entitled to substitute its own opinion for that of the sentencing judge merely because the appellate court considers the sentence inadequate or excessive, or would have exercised its discretion in a manner different from that in which the sentencing judge exercised his or her discretion.

³ Mason CJ, Brennan, Dawson and Toohey JJ

⁴ (1987-1988) 164 CLR 465 at 476

- An appellate court has an over-riding discretion which may lead it to decline to intervene, even if it comes to the conclusion that error has been shown in the original sentencing process.

It should be noted that in the reporting year the Crown instituted four appeals against inadequacy of sentence in the Court of Criminal Appeal. All four appeals were successful.⁵

A further explanation of the appeal process appears at Appendix A.

The 2014-2015 reporting year saw a marked increase in core business activities when compared with the previous reporting year. In the Supreme Court, the number of trials prosecuted increased from 43 to 57 and the number of pleas of guilty prosecuted increased from 275 to 436.⁶

Somewhat surprisingly, despite the increased number of cases prosecuted in the Supreme Court, there was a decrease in appellate activity in the Court of Criminal Appeal. The number of defence applications for leave to appeal against conviction dropped from 7 to 1, the number of applications for leave to appeal against severity of sentence dropped from 18 to 7 and the total number of appeals heard and determined by the Court of Criminal Appeal dropped from 25 to 14.⁷

In the Court of Summary Jurisdiction the total number of hearings and pleas of guilty prosecuted increased from 4372 to 6450. Consistent with the increased number of cases dealt with in the Darwin Court of Summary Jurisdiction, there was also an increase in the number of appeals from the Court of Summary Jurisdiction to the Supreme Court.⁸

The 2014-2015 reporting year was a busy and, in some respects, difficult year in respect of non-core business.

Staff were involved in a large amount of recruitment which, in the main, was related to (i) finalising the issue of ongoing employment associated with the Civilianisation of Police Prosecutions and (ii) the establishment of a temporary Fraud Team.

During the reporting year the Office was involved in extensive liaison with other stakeholders in project and committee work. As an example of the former, the Deputy Director, the Business Manager, the Crown and Summary Registry Managers in Darwin and numerous other registry staff, professional assistants and WAS officers worked closely with the Department of the Attorney-General's IT Division in developing, testing and implementing of the CaseNET/ IJIS interface. Much of the testing had to be done outside normal office hours. The task was trying and time consuming, and is ongoing.

Much time and effort was also put into the (now abandoned) eBrief project.

⁵ *R v Cavanagh-Novelli* [2014] NTCCA 21, *R v Amital* [2015] NTCCA 1, *R v Duncan* [2015] NTCCA 2, *R v Rudd* [2015] NTCCA 3

⁶ See Output Performance Measures at page 30

⁷ See Tables A and B at pages 33 and 34

⁸ See Table C at page 35

Staffs have been actively involved in a number of internal and external committees and working groups which are listed on page 22 of this report.

This year also saw the development and implementation of the employee well-being program which was delivered to both the Darwin and Alice Springs offices.

The office has also been increasingly involved in providing advice of a technical nature to the Legal Policy Division of the Attorney-General's Department.⁹

All these functions have been resource intensive and have been undertaken by staff in addition to their core functions.

I wish to take this opportunity to thank all staff members for their dedication and professionalism. It is because of them and their values that the Office is able to provide a high standard of prosecutorial services to the people of the Northern Territory. I am grateful to be able to work alongside such a dedicated team.

Section 26 of the **Director of Public Prosecutions Act** provides that the Director is not subject to direction by the Attorney-General or any other person in the performance of the Director's functions. Section 28 of the **Director of Public Prosecutions Act** permits the Attorney-General, after consultation with the Director, to issue to the Director directions as to the general policy to be followed in the performance of a function of the Director. Every such direction must be in writing and must be included in the Director's Annual Report. A direction may not be issued in respect of a particular case.

No directions were issued by the Attorney-General to me during the reporting year under either section 26 or 28.

⁹ The number of comments or advices provided increased from 24 in the previous reporting year to 34 in the current reporting year.

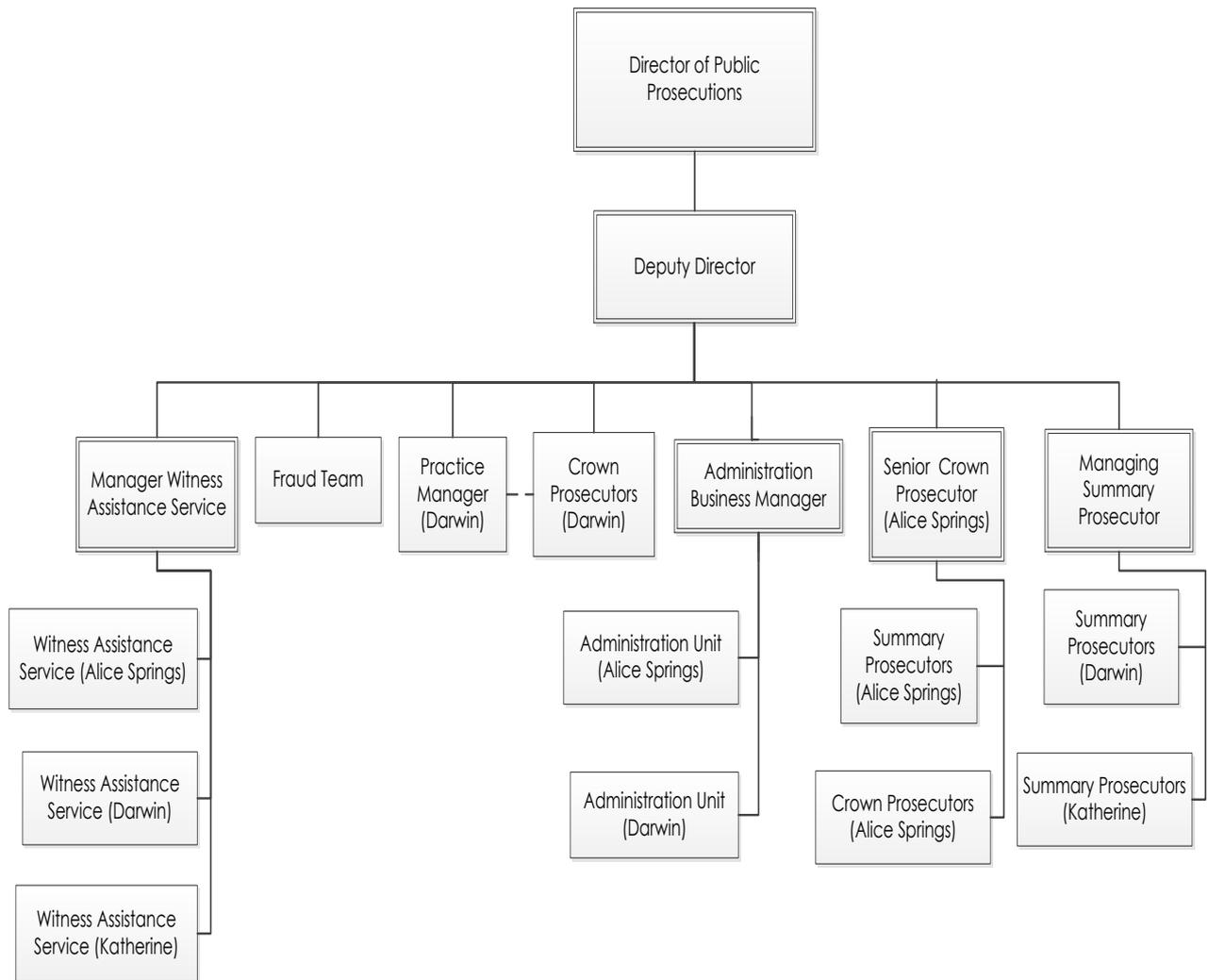


DIRECTOR
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DPP ORGANISATION CHART





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FUNCTIONS OF THE DIRECTOR OF PUBLIC PROSECUTIONS

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

- (a) the preparation and conduct of all prosecutions in indictable offences;
- (b) the preparation and conduct of committal proceedings;
- (c) to bring and conduct proceedings for summary offences;
- (d) the assumption where desirable of control of summary prosecutions;
- (e) to institute and conduct prosecutions not on indictment for indictable offences including the summary trial of indictable offences;
- (f) the power to institute and conduct or take over any appeal relating to a prosecution or to conduct a reference under s.414 of the ***Criminal Code***;
- (g) the right to appeal against sentences imposed at all levels of the court hierarchy;
- (h) the power to grant immunity from prosecution;
- (i) the power to secure extradition to the Northern Territory of appropriate persons;
- (j) the power to participate in proceedings under the ***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 forfeited to the Territory under a court order, it is a function of the Director to take any further proceedings that may be required to recover the amount or enforce the forfeiture or order;
- (l) to provide assistance in the Territory to other state or Commonwealth Directors of Public Prosecutions;

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

General Powers

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



HUMAN RESOURCE MANAGEMENT AND DEVELOPMENT

As at 30 June 2015 the total number of staff was 89.6. The increase in the number of Full Time Equivalent (FTE) from previous years was a result of the creation of a temporary Fraud Team to advise upon and prosecute matters arising out of Police Operation 'Subutai' and the back filling of seven (7) staff on maternity leave.

Position Level	Total FTE	Female	Male
Director	1		1
Legal Staff			
ECO4	1		1
ECO2	1		1
ECO1	3		3
SP2	5	3	2
SP1	7	3	4
P3	10.6	7	3.6
P2	13	7	6
AO7	1		1
Graduate	1	1	
Total Legal Staff	43.6	21	22.6
Witness Assistance Service (WAS)			
SAO2	1		1
P3	1	1	
P2	2	2	
AO5	4.5	3.5	1
AO3	1.5	0.5	1
Total WAS Staff	10	7	3
Administrative Staff			
SAO1	1	1	
AO6	4	4	
AO5	6	5	1
AO4	6	6	
AO3	19	17	2
Total Administrative Staff	36	33	3
TOTAL FTE	*89.6	61	28.6

*Total number of FTE includes:

3x Part time employees;

7x Full time employees on 12 months or more maternity leave;

2x Casual employee and;

4x Staff allocated to the temporary Fraud Team.

Administration

The DPP was successful in implementing initiatives that focused on staff, technology and work processes. All initiatives were designed to improve productivity and advance the provision of prosecutorial services throughout the Northern Territory. Highlights and achievements are outlined below.

Recruitment

2014-15 saw a reduction in the number of fixed term employees and an increase in the number of ongoing employees. This was a direct consequence of the finalisation of the organisational structure for Summary Prosecutions, Darwin.

As at 30 June 2015 there were 61 ongoing employees and 17 fixed term employees.¹⁰

Training

During the year staff participated and attended a number of training programs and conferences.

The DPP also conducts regular in-house legal training with a view to ensuring that prosecutors are kept abreast of current developments and that they are provided with an opportunity to meet their annual Law Society continuing legal education obligations.

In addition to training expenses, the DPP covers costs associated with renewal of annual practicing certificates for all its prosecutors.

Direct expenditure on external training for 2014-15 was \$52,150. There was also considerable in-house and on-the-job training which is not costed. All internal training sessions were video-linked to the Alice Springs office.

¹⁰ 2013-14 44 ongoing , 32 fixed term
2014-15 61 ongoing, 17 fixed term

The following table contains the professional development and training activities supported by the DPP in 2014-2015 and the number of staff who participated.

2014 - 15 Courses and Conferences Attended	
COURSE / CONFERENCE	Number of Staff Attended
Australian Association of Crown Prosecutors (AACP)	4
Accounting for Non-Accountants	1
Bar Readers Course	17
Boxi HR (AGD)	1
Business Writing	1
Conference of Australian Directors (CADs Hobart)	1
Conference of Australian Directors (CADs Perth)	1
Chemical Criminalistics	14
Cost in the CSJ-Last gasp of a failed case	8
Criminal Lawyers Association Northern Territory Conference	18
Cross Cultural Training	30
Dealing with Challenging Situations	2
Drug Awareness	15
Effective Communication	1
Emotional Intelligence and Leadership	3
Emotional Resilience in the Workplace	14
Flight Centre Management (FCM) travel On-line	3
Fire Warden Training	10
First Aid Course	1
Freedom of Information	1
Frontline Complaint Handling	2
General Ledger & Standard Class training	2
GST Basics -online	2
Hearsay Evidence Workshop	12
Human Resources Forum	2
Individual Performance Reviews and Senior Officer Pay Progression	2
Info Session-HR Tools-Boxi; e-Recruit; Job Evaluation System	5
Information session - Bullying and Harassment	32
Law Week Lunch	5
LYNC Training	1
Misuse of Drugs Act	14
National Australian Women Lawyers Conference	1
National Executive Meeting	2
National Witness Assistance Services and Managers Conference	3
Neurobiology of Complex Trauma	2
New Supervisor Training Course	1
Practice Management & Business Skills	10
Recruitment and Selection	9
Responding to Trauma	5
Simplified Recruitment	7
Submissions in Reply	15
Suicide Prevention Conference	2
Traditional approach to Trauma provision	1
Unfavourable Witnesses	11
Women of the World Conference	1

Recognition of Service

Five employees received recognition of service awards presented by the Attorney-General. Two were recognised for 10 years of service, two for 20 years of service and one for 30 years of service.

Membership and working groups

The DPP has representatives on the following committees and working groups:

- AGD Audit Committee.
- AGD People Matter Working Group.
- AGD White Ribbon Committee.
- Community Helping Action Information Network.
- Crimes Victim Advisory Committee.
- Criminal Court Users Forum.
- Domestic Violence Local Reference Group, Alice Springs.
- Executive Leadership Group.
- Information Management Committee.
- Ktown Social Workers Network.
- Mandatory Sentencing Data Capture Committee.
- ODP National Executives Meeting.
- Sexual Assault Network Darwin.
- Summary Case Management Working Group.
- Veritas Committee.
- Victim Support and Advocacy Service.
- Work, Health Safety Committee.

Presentation and training programs

During the 2014-15 reporting year the DPP provided a number of presentations and training programs to the following organisations:

- Community Corrections and Prison Officers
 - Presentation on the role of the DPP, what is evidence, court proceedings and breaches of suspended sentences
- Graduate Diploma Legal Practice Students.
 - Placement within the Office for periods of three months
- NT Police
 - Evidence and the ***Evidence (National Uniform Legislation) Act***;
 - Child Forensic interviews and brief presentation to the Sex Crime Unit and Child Abuse Taskforce;
 - Evidentiary issues regarding co-accused;
 - Role of the DPP and Criminal Justice System to Police Investigators training;
 - Police Moot Court Training; and

- Witness Assistance Service.
- Sexual Assault Referral Centre
 - Preparing to giving evidence;
 - Amendments to the Sexual Assault Investigation Kit; and
 - Witness Assistant Services.
- North Australia Aboriginal Family Legal Aid Services
 - Witness Assistance Services.
- The Supreme Court Open Day
 - Witness Assistance Service manned an information stall at the Darwin Supreme Court on 9 August 2014.

Interstate and Overseas Conference

Australian Association of Crown Prosecutors

The Australian Association of Crown Prosecutors ('the AACP') is an association of Australian prosecutors who are regularly engaged as advocates conducting criminal trials and appeals in the superior Courts around Australia. It includes Prosecutors from every state and territory, as well as the Commonwealth and the Office of the Director of Military Prosecutions. Most of the Crown Prosecutors conduct jury trials and appeals in criminal cases where accused persons are charged with serious criminal offences. At present there are about 500 Crown Prosecutors around Australia. The Northern Territory DPP is an organisational member of the AACP.

The objectives of the AACP include promoting the professional, educational, vocational and industrial interest of Prosecutors; fostering connections between the Prosecutors of different jurisdictions in Australia and overseas (particularly Pacific Island nations); promoting prosecutorial standards; protecting the independence of Prosecutors; advancing views on law reform; and participating in justice reform projects both in Australia and overseas.

The most important activity of the Association is its Annual Conference, which is held in a different state or territory each year and which now attracts up to 100 delegates from around Australia and the Pacific Island nations.

In 2014-2015 the Annual Conference was held in Sydney from 2-4 July 2014 in conjunction with the 9th Asia Pacific and Middle East Regional Conference of the International Association of Prosecutors. Five Crown Prosecutors from the Northern Territory attended the conference.

Criminal Lawyers Association of the Northern Territory (CLANT)

The biennial CLANT Criminal Law Conference 'Curing Injustice' was held at the Sanur Beach Hotel, Sanur, Bali from 20-25 June 2015. It was attended by 18 Prosecutors from the DPP, two of whom gave presentations entitled 'All's fair in love and war – relationship evidence' and 'The right to silence'.

ODPP National Executives Meeting

The ODPP National Executives Meeting is comprised of DPP representatives from New Zealand and from each of the Australian states and territories. The annual conference is hosted on a rotational basis by each Australian jurisdiction. The conference considers current issues in practice management, administrative practices including information technology, budgets and human resourcing issues. In April 2015, the Managing Prosecutor, Summary Prosecutions, Darwin and the Business Manager attended this meeting on behalf of the Office.

Witness Assistance Service National Conference

The Australian State and Territory Witness Assistance Services (WAS) hold a national conference every two years hosted by a state or territory on a rotational basis. The conference was hosted by South Australia and held in Adelaide in June 2015. The conference was attended by 26 WAS officers from across Australia.

The theme of this year's conference was 'Practice, Policy and Politics' and presentations covered areas such as vulnerable witness provisions, cross-jurisdictional collaboration, WAS promotion and managing risk in domestic violence matters for witnesses and victims. A presentation by the South Australian Commissioner of Victim's Rights on 'National and International Trends in Victim Support and Assistance' examined the role and importance of witnesses and victims in the court process and how their role had increased.

The conference provided an opportunity to share information on best practice measures when working with witnesses and victims, and discussions on the effective use of resources.

The conference was attended by three Northern Territory WAS officers who delivered two presentations: 'Vulnerability and Isolation of International Tourists Affected by Crime in Central Australia' and 'WAS Assistance to Bush Circuit Courts: Overcoming the Difficulties'. Both presentations were very well received, with many participants recognising the uniqueness of the provision of service by WAS in the Northern Territory.

The next conference will be held in New South Wales in 2017.

Intra/Inter-Agency Cooperation

Department of the Attorney-General and Justice – Legal Police

During the reporting year the Office responded to 34 requests from the Legal Policy Division of the department. Given the independence of the DPP, any advice given or comments provided by the Office is restricted to advice of a technical nature. In the main the advice sought concerned new legislation or amendments to existing legislation.

Work Experience

The DPP provides work experience opportunities to both tertiary and secondary students. The placements usually run for one week and are designed so a student can gain an insight into the operations of the DPP and the working environment of lawyers.

As our work is often of a sensitive and confronting nature, care is taken in the selection of cases that the students are exposed to. Students are given the opportunity to shadow a Prosecutor during the week and attend court with the Prosecutor. The student can ask questions about the prosecution process generally and observe basic office and practice skills.

The Darwin office of the DPP provided work experience to five high school students from Darwin High School, NT Christian College, MacKillop Catholic College, O'Loughlin College and Pembroke School. The Alice Springs office of the DPP provided work experience to two high school students from St Philips College.

Information Technology

Casenet enhancements

The DPP maintains a computerised Case Management system (CaseNET) to track and update files for matters which did not have an interface to the Integrated Justice Information System (IJIS) updated by Police and Courts. The CaseNET system required manual entry of all new files, daily updates of court outcomes and did not have the ability to merge details or addresses of victims and witnesses, resulting in the witness details for every subpoena and summons having to be individually entered.

In November 2014 the CaseNET enhancement was deployed to merge all witness details into the summons and subpoena templates. Further enhancements to populate mandatory fields required from Police to summary CaseNET were also introduced.

In May 2015 the DPP began to import data from IJIS into the CaseNET system. The data included Magistrates Court outcomes and Police information, including charges which related to the matter.

This was an exciting development as it was the first time that Court and Police data had been electronically imported into the DPP management system. The automated system updates outcomes from IJIS for both the Summary and Crown matters across the Northern Territory. The system also provides for Witness Assistance data to be updated from IJIS.

The interface underpins the capability and capacity to process information of outcomes efficiently, dramatically reducing duplication of data entry. The integrity of the information is critical and updated information is transferred from IJIS into CaseNET twice daily. Standard operating procedures will now be developed in the first half of the 2015-16 financial year.

Project Veritas

The objective of the project is to remove the duplication, redundancy and information integrity issues that currently exist across the justice environment and develop a model that provides an authoritative source of truth for data exchange. The model is intended to streamline the business processes and information flows within the Courts, DPP and Fines Recovery Unit domains of the IJIS continuum.

Electronic File Sharing (EFS) is a sub-project within Veritas, its key objective being to provide a reliable, secure platform for delivery and sharing of digitised evidence information between NT Police, DPP, Courts, Defence counsel and any other external parties (the eBrief). This sub-project has been suspended until NT Police consider alternatives to a PROMIS replacement with EFS capacity.

Health and wellbeing

The Office continues to be focused on providing initiatives that improve the health and wellbeing of our staff. Emotional resilience workshops were conducted in March and April 2015. The Office will provide further workshops for staff that were unable to attend.

Other health and wellbeing programs directed through the Department of the Attorney General and Justice include:

- Work Health and Safety Program;
- Employee Assistance Program; and
- Influenza vaccinations.

These programs reinforce the Office's commitment to the prevention and management of psychological injury, and improving general physical wellbeing.



OUTPUT PERFORMANCE MEASURES

Key Deliverables	Current Year		Targets	Previous Years	
	2014 - 15 Estimate	2014 - 15 Actual	2015 - 16 Estimate	2013 - 14 Actual	2012 - 13 Actual
New matters ¹	8,400	8,551	9,400	8,180	1,906
Finalisations:					
- Supreme Court pleas ²	300	436	450	275	341
- Supreme Court trials	50	57	60	43	53
- Supreme Court withdrawn ³	50	36	40	25	45
- Not committed to Supreme Court	10	1	0	0	0
- Summary hearings/pleas ¹	6,400	6,450	7,000	4,372	972
- Summary charges withdrawn ¹	480	728	800	504	249
- Appeals at all levels	75	62	60	56	62
Witness Assistance Service clients	1,450	1,717	1,730	1,643	1,822
Duty prosecutors days ⁴	650	1,036	0	787	886
Findings of guilt (including guilty pleas):					
- in Supreme Court	90%	93%	94%	94%	94%
- in Court of Summary Jurisdiction	90%	98%	98%	94%	89%
Convictions after trial or hearing	90%	97%	97%	95%	90%
Filing of indictments within 28 days of committal	65%	55%	63%	71%	57%
Supreme Court matters withdrawn less than 28 days before a trial was to commence	65%	50%	52%	53%	69%

¹Increases reflect civilianisation of police prosecutions in Darwin effective from 2 December 2013.

²Increasing number of indictable offences being prosecuted in the Supreme Court.

³Includes Nolle Prosequis and section 297A certificates.

⁴ Duty prosecutor days are now predominantly provided in Alice Springs and Katherine. The increase is associated due to an additional position in Alice Springs in 2014-15 financial year. Estimate for duty prosecutor for next year is not applicable.



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PROFESSIONAL ACTIVITIES

General Workload

WORKLOAD OVERVIEW	2014 - 15	2013 - 14	2012 - 13
MATTERS COMPLETED IN THE COURT OF SUMMARY JURISDICTIONS (CSJ) AND THE YOUTH JUSTICE COURT (YJC)			
Guilty (including guilty pleas)	6,450	4,372	972
Committed	700	389	334
Not Guilty/Not Committed	157	155	87
Withdrawn	728	504	249
Total CSJ & Youth Matters	8,035	5,420	1,642
MATTERS COMPLETED IN SUPREME COURT			
Pleas	436	275	341
Trial guilty	24	20	25
Trial not guilty	31	20	21
Trial Mistrial	2	3	7
Ex Officio indictment	25	28	59
Nolle Prosequi	23	19	35
Section 297A certificates (no true bill)	12	6	11
Total (not including section 297A certificates)	541	365	488

Appeals

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

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

An explanation of the appeal process can be found at Appendix A.

A summary of decisions of the Court of Criminal Appeal, Court of Appeal and Full Court for the reporting year can be found on the DPP website.

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

NB: The figures in brackets in each of the tables below are for the period 1 July 2013 to 30 June 2014.

TABLE A

Outcome of defence applications for leave to appeal from the Supreme Court to the Court of Criminal Appeal determined by a single judge *on the papers* 2014/2015

	Sentence		Conviction	
Granted	2	(7)	1	(5)
Refused	4*	(10)	1	(1)
Discontinued	1	(1)	1	(1)
Total	7	(18)	1	(7)

* Three applicants applied to have their applications re-heard and determined by the Court of Criminal Appeal constituted by three judges. None of the applications were heard in the reporting year.

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

TABLE B

**Outcome of defence appeals from the Supreme Court to the
Court of Criminal Appeal/ Court of Appeal/Full Court
2014/2015**

	Conviction		Sentence		Other	
Allowed	0	(3)	6*	(6)	1	(0)
Dismissed	2	(6)	1*	(7)	0	(0)
Discontinued	0	(0)	0	(1)	0	(0)
Total	2	(9)	7	(14)	1	(0)

* These were re-hearings of applications by the Court of Criminal Appeal constituted by three judges where the applications for leave to appeal against severity of sentence were refused by a single judge in the previous reporting year. The applications were determined following oral argument. As the applications were argued as if they were an appeal, the result has been included in Table B. Two applications were successful, leave to appeal granted and the appeals allowed. One application was unsuccessful and leave to appeal was refused.

**Outcome of prosecution appeals and
references from the Supreme Court to the
Court of Criminal Appeal/Court of
Appeal/Full Court
2014/2015**

	Sentence		Other	
Allowed	4	(2)	0	(0)
Dismissed	0	(3)	0	(0)
Discontinued	1	(0)	0	(0)
Total	4	(5)	0	(0)

**Outcome of referral of question of law to Full
Court pursuant to section 21
of the Supreme Court Act
2014/2015**

Decided in favour of prosecution	0	(0)
Decided in favour of defence	0	(0)

Table C below summarises the results of appeals from the Court of Summary Jurisdiction to the Supreme Court decided during the reporting period.

TABLE C

**Outcome of defence appeals from the Court of Summary Jurisdiction to the Supreme Court at Darwin
2014/2015**

	Conviction		Sentence		Other	
Allowed	4	(4)	18	(12)	1	(0)
Dismissed	7	(2)	12	(7)	0	(0)
Discontinued	6	(1)	9	(10)	0	(0)
Total	17	(7)	39	(29)	1	(0)

**Outcome of prosecution appeals from the Court of Summary Jurisdiction to the Supreme Court at Darwin
2014/2015**

	Dismissal of Charge		Sentence		Other	
Allowed	0	(0)	0	(0)	1	(0)
Dismissed	3	(1)	1	(0)	0	(0)
Discontinued	1	(0)	4	(1)	0	(0)
Total	4	(1)	5	(1)	1	(0)

TABLE C

**Outcome of defence appeals from the Court of Summary Jurisdiction to the Supreme Court at Alice Springs
2014/2015**

	Conviction		Sentence		Other	
Allowed	0	(1)	4	(6)	0	(0)
Dismissed	0	(3)	2	(0)	0	(0)
Discontinued	2	(1)	0	(1)	0	(0)
Total	2	(5)	6	(7)	0	(0)

TABLE C

Outcome of prosecution appeals from the Court of Summary Jurisdiction to the Supreme Court at Alice Springs 2014/2015

	Dismissal of charge		Sentence		Other	
Allowed	0	(1)	0	(1)	0	(0)
Dismissed	2	(0)	2	(2)	0	(0)
Discontinued	0	(0)	0	(1)	0	(0)
Total	2	(1)	2	(4)	0	(0)

High Court

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

Murdoch v The Queen

A Darwin Supreme Court jury found the appellant guilty of two counts of indecent dealing with a child under 16 and one count of having sexual intercourse with a child under 16. The appellant was acquitted on a single count of indecent dealing with a child under 16. All the offences related to the step-granddaughter of the appellant who was aged between 4 and 11 during the period of offending.

The offending involved ongoing sexual abuse of the victim with particularised instances of simulated intercourse and cunnilingus. The appellant was sentenced to 6 years imprisonment with a non-parole period of 4 years and 3 months.

The appellant appealed against his conviction on the basis of the alleged wrongful admission of evidence. The grounds of appeal, which involved the interpretation and application of several sections of the ***Evidence (National Uniform Legislation) Act***, were that the trial judge erred:

1. in admitting evidence of previous representations made by the complainant, namely, complaints to a friend and to members of the complainant's family.
2. in respect of the directions given to the jury about the evidence of previous representations made by the complainant, namely the complaint evidence which was the subject of ground 1.
3. in admitting tendency evidence, namely evidence of an incident after the charged acts in which the appellant ran his hand up the leg of the complainant.

On 19 December 2014 the Court of Criminal Appeal unanimously dismissed each ground of appeal. See *Murdoch v The Queen* [2014] NTCCA 20, a summary of which can be found on the DPP website under the heading Decisions Delivered 1 July 2014-30 June 2015.

The applicant then applied to the High Court for special leave to appeal from the decision of the Court of Criminal Appeal on the grounds that the Court of Criminal Appeal erred in admitting complaint and tendency evidence, as well as the finding of sufficiency in relation to directions regarding complaint evidence at first instance.

The grant of special leave was opposed by the Crown. As at 30 June 2015, the application had not been determined by the High Court nor had the application been listed for hearing.



SUMMARY PROSECUTIONS

The Summary Prosecutions section of the Director of Public Prosecutions is responsible for the conduct of prosecutions and prosecution related activities in the Court of Summary Jurisdiction ('the CSJ'). Summary Prosecutions sections exist in three geographical areas: Summary Prosecutions Alice Springs (SPAS), Summary Prosecutions Katherine (SPK) and Summary Prosecutions Darwin (SPD). Each section is staffed by civilian lawyers employed by the DPP.

In addition to matters referred to them by police, Summary Prosecutors also appear on instructions from Department of Correctional Services in relation to breaches of suspended sentences, home detention orders and good behaviour bonds.

Until 2 December 2013 all three prosecution sections provided a uniform range of prosecution services on behalf of the NT Police, mainly the prosecution of matters referred by the Officer in Charge of Police Prosecutions, including contested hearings and pleas of guilty of a complex or sensitive nature. Police prosecutors appeared in all bail and arrest matters in the Court of Summary Jurisdiction and in the Youth Justice Court and appeared in the majority of plea matters in both courts and on contest mentions.

Summary Prosecutions Darwin (SPD)

SPD operates as a division within the DPP and has complete prosecution responsibility for all charges laid by members of the Police within the SPD geographical area. The work unit has an establishment of 19 civilian lawyers and 6 administrative positions.

Following the civilianisation of prosecutions in the Darwin region in December 2013, police made various operational changes to the way they interact with this Office. As reported in last year's Annual Report, the most significant of these changes were (i) shifting the responsibility for the laying of charges from the former Police Prosecutions Unit back to the investigating member, (ii) establishing a Judicial Operations Section (JOS) to be the primary liaison unit for the DPP, and (iii) changing the structure of the police brief of evidence provided to this Office so as to reflect proposed amendments to the case management process in the Court of Summary Jurisdiction.

The establishment of JOS was welcomed and has proved to be a vital component in ensuring the successful transfer of prosecution files to SPD for conduct through the Court process. As indicated in last year's report it was anticipated that JOS would provide a single point of contact for this Office in respect of the myriad of issues which arise on a daily basis in relation to the prosecution process generally and which, in the ordinary course of events, need to be addressed quickly. In turn, it was intended to give the police hierarchy a clearer

overview of matters such as the standards of briefs of evidence presented to this Office for prosecution and the ability to identify issues in respect of which remedial action, such as training, is required.

By way of update, I am pleased to report that the relationship between JOS and SPD has proved a successful one and the nature and scope of the interaction has been expanded to improve prosecution services generally.

Last year I reported that police intended to shift the responsibility for the laying of charges back to the investigating member and that did occur. JOS members worked effectively as a liaison between investigators and SPD to ensure that charges filed were accurate and filed in a timely manner. However, in the early part of 2015, JOS commenced a process of taking back charging duties with a view to implementing the new procedures in July 2015.

As noted, throughout the reporting period the Managing Prosecutor met with JOS members weekly to discuss issues affecting both police and SPD and continued with the collaborative 'Failed Prosecution Review' during which unsuccessful prosecutions are discussed and assessed with a view to identifying systemic or procedural deficiencies affecting the conduct of matters. Although not officially part of SPD, contested matters unsuccessfully prosecuted in Katherine are also included in the review process.

JOS has also proved to be a valuable liaison with Police generally in relation to the participation of prosecutors in Police training and also facilitating training and development of prosecutors in relation to investigations, forensics and other matters.

The various processes implemented to improve services reinforce the desirability and need to have JOS working collaboratively with SPD.

The day-to-day management of prosecutors in SPD rests with the Managing Prosecutor, who in turn reports to the Deputy Director.

The Deputy Director meets with the Managing Prosecutor SPD, the Officers in Charge of the Police Prosecutions Units in Alice Springs¹¹ and Katherine¹² and with representatives from JOS on a weekly basis.

The Managing Prosecutor SPD also attends the Director's weekly Executive Committee meeting and the Director's weekly meeting with the Office Business Manager, Assistant Business Manager and the Crown Practice Manager.

SPD also serves the Court of Summary Jurisdiction in the following remote communities:

Alyangula – three days each month
Daly River – one or more days each month
Galiwinku – one day every third month
Gapuwiyak – one or more days each month
Jabiru – one or more days every two months
Maningrida – three days each month

¹¹ By way of video link

¹² By way of telephone conference

Nhulunbuy – three or more days each month
Numbulwar – one day every two months
Oenpelli – two days each month
Pirlingimpi – one day every four months
Ramingining – one day when required
Wadeye (Port Keats) – three or more days each month
Wurrumiyanga (Nguiu) – two days each month.

Over the last financial year, due to the significant workload of the single civilian lawyer employed in Katherine, SPD has also serviced courts in Ngukurr and Borroloola on a monthly basis.

Summary Prosecutions – Alice Springs (SPAS)

Summary Prosecutions Alice Springs (SPAS) is staffed by four civilian prosecutors who have no administrative support. The SPAS prosecutors appear in the Court of Summary Jurisdiction in Alice Springs and the following communities:

Ali Curung – one day every two months
Papunya – one day every two months
Tennant Creek – one week twice a month
Ti Tree – one to two days every two months
Yuendumu – two days every two months
Yulara – one day every two months
Kintore – one day every two months
Elliott – one day every three months
Hermannsburg – one day every month

Summary Prosecutions Katherine (SPK)

Summary Prosecutions Katherine (SPK) is staffed by one civilian Summary Prosecutor located within the Katherine Police Prosecutions Unit, and has no administrative support. The SPK prosecutor supports the resident Magistrate in Katherine by prosecuting contested matters before him or her. A second magistrate attends Katherine for one week per month to preside over 'DPP matters' [mainly preliminary examinations (committal hearings)] and to pick up any overflow of any summary matters. The committal hearings are prosecuted by a Crown Prosecutor who travels from Darwin for that purpose.

The SPK prosecutor appears in the Court of Summary Jurisdiction Katherine and in the following remote communities:

Lajamanu – one day every two months
Yarralin – one day every two months
Timber Creek – one day every four months
Barunga – one day every two months



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WITNESS ASSISTANCE SERVICE

The role of Witness Assistance Service (WAS) is to provide support to victims, witnesses and their families throughout the Court process.

WAS provides victims and witnesses with:

- Information;
- Support;
- Referrals; and
- Assistance with Victims Impact Statements.

The WAS unit employs 8.5 Witness Assistant Officers located in:

- Darwin – 4.5 staff who service the Northern Region and East Arnhem Land;
- Katherine – 1 staff who services the Katherine region; and
- Alice Springs – 3 staff who services the Alice Springs and Barkley regions.

During the reporting year, WAS released a new DVD entitled 'Telling Your Story'. The DVD has been placed on the DPP website where it can be accessed by the general public. One version shows what happens when a matter goes to the Supreme Court and the other version shows what happens when a matter is dealt with in the Court of Summary Jurisdiction.

The original DVD was created in 2004 and updated in 2013 to incorporate a contemporary remote community story line in a 'Bush Court' setting. The new DVD highlights the interpreter services and the provision of Victim Impact Statements. The updated DVD, which was developed with the assistance of Judges, Magistrates, Court staff, Police, prosecutors and WAS staff, reflects current court procedures and processes.

The DVD will be used by WAS staff as a promotional/educational tool in providing support to witnesses prior to becoming involved in a court matter. The DVD will be provided to remote community police stations and community-based legal, social welfare and other support organisations to inform and assist in the referral process for witnesses and victims.

During the reporting year:

- WAS participated in the Supreme Court open day on 9 August 2014 to promote the role of WAS with WAS officers manning a booth to answer queries and provide information to members of the public.

- WAS officers delivered information sessions to organisations within the Darwin region such as the Northern Territory Legal Aid Commission, Domestic Violence Women Legal Service and Sexual Assault Referral Centre and to women's centres in Maningrida and Wadeye. Information sessions were delivered in the Katherine and Alice Springs regions as required.

During the reporting year 874 new cases were referred to WAS involving 1717 individual clients.

EXPLANATION OF THE APPEAL PROCESS

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

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

Some explanation of these functions is required.

As to (i), pursuant to s.414(1)(c) of the **Criminal Code**, the Director may appeal to the Court of Criminal Appeal against any sentence imposed by the Supreme Court following prosecution upon indictment. The Director is not required to obtain the leave of the Court to appeal against sentence. The appeal lies as of right. The Director cannot appeal against a jury verdict of not guilty.

By way of contrast, a person found guilty on indictment in the Supreme Court may appeal to the Court of Criminal Appeal:

- against the finding of guilt on any ground that involves a question of law alone;
- with the leave of the Court, against the finding of guilt, on any ground that involves a question of fact alone or a question of mixed fact and law; and
- with the leave of the Court, against the sentence passed on the finding of guilt.

Although the Court of Criminal Appeal is the Supreme Court constituted by not less than three judges and/or an uneven number of judges, the **Criminal Code** provides that certain powers of the Court of Criminal Appeal can be exercised by a single judge. Relevantly, a single judge is permitted to grant leave to appeal and to extend the time in which to give notice of appeal or notice of application for leave to appeal.¹³

An appeal against conviction on the ground that the verdict is *unsafe and unsatisfactory* or that the verdict *is unreasonable or cannot be supported having regard to the evidence*, involves the Court of Criminal Appeal in deciding a question of fact. Accordingly, leave to appeal is required.

¹³ **Criminal Code** s.429(1)

Certain applications to be determined *on the papers*

The procedure governing applications for leave to appeal and applications for an extension of time is contained in the Supreme Court Rules.¹⁴ These are the most common applications made to the Court. The Rules were amended in May 2000 and now provide that these applications are to be determined by a single judge upon written submissions filed by the parties and without hearing oral submissions, i.e., the applications are determined *on the papers*. The Rules provide that a party is not entitled to make oral submissions in relation to these applications although the judge may hear oral submissions if he or she thinks it necessary to do so. This rarely happens. A judge who determines an application *on the papers*, is not required to give reasons for his or her decision.

In the event of a single judge refusing all or part of an application *on the papers*, the unsuccessful applicant is entitled to have the application(s) re-heard and determined by the Court constituted by three judges.¹⁵ If the unsuccessful applicant does not apply to have the application(s) determined by the Court constituted by three judges, the refusal by the single judge is final.

The purpose of the application for leave to appeal is to weed out the obvious cases where it is plain that the appeal cannot succeed. In order to obtain leave, the applicant must show that there is an arguable case that the sentencing discretion reposed on the trial judge has miscarried or that there is a real possibility that the applicant might suffer injustice by the refusal. The argument must be sufficiently strong to call for a response.

If the application for leave to appeal is successful, the appeal is then heard and determined in open court by the Court constituted (normally) by three judges. A re-hearing of an unsuccessful application for leave to appeal by the Court of Criminal Appeal, constituted by three judges, is heard by the Court as if it were an appeal.

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

As to (ii), the Director may, in a case where a person has been acquitted after his trial on indictment in the Supreme Court, refer any point of law that has arisen at the trial to the Court of Criminal Appeal for its consideration and opinion thereon. Although the acquitted person is entitled to make submissions to the Court, the opinion of the Court upon the reference cannot affect the trial in respect of which the reference was made or any acquittal in that trial.

As to (iii), pursuant to s.163(1) of the **Justices Act**, both the Director and the offender may appeal to the Supreme Court against any sentence imposed by the Court of Summary Jurisdiction following conviction for a minor indictable offence. A person found guilty of having committed a minor indictable offence in the Court of

¹⁴ RSC Order 86

¹⁵ **Criminal Code** s.429(2)

Summary Jurisdiction may appeal to the Supreme Court against that finding of guilt. Leave to appeal is not necessary. The appeal lies as of right. In September 2001, s.163(3) of the **Justices Act** was amended to give the prosecution a right of appeal from an order or adjudication of the Court of Summary Jurisdiction dismissing a charge of a minor indictable offence. Leave to appeal is not necessary. The appeal lies as of right.

A judge of the Supreme Court hearing an appeal from the Court of Summary Jurisdiction may refer the whole or part of that proceeding to the Full Court of the Supreme Court for determination.

An unsuccessful appellant to the Supreme Court may appeal the decision of that court to the Court of Appeal. Leave to appeal is not necessary. The appeal lies as of right. The prosecution, as of right, can appeal against an order of the Supreme Court quashing the finding of guilt made by the Court of Summary Jurisdiction and the Court of Appeal is empowered to quash the order of the Supreme Court and reinstate the conviction recorded in the Court of Summary Jurisdiction.

The Court of Criminal Appeal, the Court of Appeal and the Full Court are each constituted by not less than three judges of the Supreme Court.

Tables B in this report summarises the results of appeals from the Supreme Court to the Court of Criminal Appeal, Court of Appeal and Full Court during the reporting period.

Table C in this report summarises the results of appeals from the Court of Summary Jurisdiction to the Supreme Court decided during the reporting period.

Prosecution appeals against inadequacy of sentence

The Director's Guidelines, which deal with appeals against inadequacy of sentence, remind prosecutors that appellate courts have long maintained that prosecution appeals should be a rarity, instituted for the purposes of enabling the courts to maintain adequate standards of punishment, to correct idiosyncratic views of individual judges as to particular crimes or classes of crime, and to remedy those sentences which are so disproportionate to the seriousness of the offence as to shock the public conscience.¹⁶

In 2000, the High Court of Australia in ***Dinsdale v The Queen***¹⁷ affirmed the proper role of prosecution appeals against sentence in the following terms:

For reasons of legal history and policy, the position of Crown appeals against sentence has long been regarded, in Australia and elsewhere, as being in a class somewhat different from that of an appeal against sentence by a

¹⁶ Guideline 17.5(1)

¹⁷ 202 CLR 321 at paragraph 62 per Kirby J

convicted offender. When first introduced, Crown appeals were considered to cut across "time-honoured concepts" of the administration of criminal justice in common law legal systems. For this reason, it has sometimes been said that, as a "matter of principle", such appeals should be a comparative rarity. The attitude of restraint reflected in such remarks has often been justified on the basis that a Crown appeal against sentence puts the prisoner in jeopardy of punishment for a second time, a feature that is ordinarily missing from an appeal, or application for leave to appeal, brought by those who have been sentenced. The consequence is that where the Crown appeals, it is normally obliged to demonstrate very clearly the error of which it complains. The further consequence is that, where such demonstration succeeds, it is conventional for the appellate court to impose a substituted sentence towards the lower end of the range of available sentences. This convention tends to add an additional restraint upon interference, given the strong resistance that exists against appellate "tinkering" with sentences.

The convention referred to in the underlined passage is commonly referred to as *double jeopardy*. The nature of *double jeopardy* was addressed in the Northern Territory case of ***R v Tait***¹⁸ where the Court (Brennan, Deane and Gallop JJ) observed:

Although an error affecting the sentence must appear before the appellate court will intervene in an appeal either by the Crown or by a defendant, a Crown appeal raises considerations which are not present in an appeal by a defendant seeking a reduction of his sentence. Crown appeals have been described as cutting across "time-honoured concepts of criminal administration". A Crown appeal puts in jeopardy "the vested interest that a man has to the freedom which is his, subject to the sentence of the primary tribunal". The freedom beyond the sentence imposed is, for the second time, in jeopardy on a Crown appeal against sentence. It was first in jeopardy before the sentencing court. (References omitted)

In 2011, s.414(1)(c) of the ***Criminal Code***, which gives the Director of Public Prosecutions the right to appeal against any sentence imposed by the Supreme Court following prosecution upon indictment was amended by the ***Criminal Law Amendment (Sentencing Appeals) Act 2011***¹⁹ by the insertion of s.414(1A) which provides:

(1A) In exercising its discretion on an appeal made under subsection (1)(c) involving a sentence imposed after the commencement of this subsection, the Court must not take into account any element of double jeopardy involving the respondent being sentenced again when deciding whether to do either or both of the following:

(a) allow the appeal;

¹⁸ (1979) 46 FLR 386 at 388

¹⁹ The Act commenced on 27 April 2011

(b) *impose another sentence.*

Section 414(1A) was considered by the Court of Criminal Appeal in ***R v Wilson***²⁰ where the Court, after opining that the expression 'double jeopardy' in s.414(1A) of the ***Criminal Code*** means the element of distress and anxiety to which all respondents to a Crown appeal are presumed to be subject,²¹ went on to hold that s.414(1A) of the ***Criminal Code*** has the following effect upon Crown appeals in the Northern Territory:

- (a) The section removes any need for the Court of Criminal Appeal to give consideration to ensuring that Crown appeals are "rare and exceptional". Responsibility in that regard rests with the Director of Public Prosecutions.
- (b) The Court must not take into account any element of double jeopardy involving the respondent being sentenced again when deciding whether or not to allow a Crown appeal.
- (c) The Court must not take into account any element of double jeopardy involving the respondent being sentenced again when deciding whether to impose another sentence.
- (d) The Court must not reduce the sentence which it otherwise believes to be appropriate on the basis of double jeopardy arising from the respondent being sentenced again.
- (e) Apart from double jeopardy considerations, the Court retains a residual discretion to determine that, despite error having been established and being satisfied that a different sentence ought to have been passed, a Crown appeal should be dismissed or a reduced sentence should be imposed.
- (f) Factors that may be relevant to the exercise of the residual discretion to dismiss an appeal, despite inadequacy of sentence, include the presence of unfairness arising from such matters as delay, parity, the totality principle, rehabilitation and fault on the part of the Crown.²²

²⁰ [2011] NTCCA 9, 30 NTLR 51

²¹ At paragraph [26]

²² At paragraph [27]