



**DIRECTOR OF PUBLIC
PROSECUTIONS**

**NORTHERN TERRITORY
OF
AUSTRALIA**

A N N U A L

R E P O R T

2006-2007



**OFFICE OF THE
DIRECTOR OF PUBLIC PROSECUTIONS
NORTHERN TERRITORY**

SEVENTEENTH ANNUAL REPORT

FOR YEAR ENDED 30 JUNE 2007



Printed by the Government Printer of the Northern Territory





**Director of Public Prosecutions
Northern Territory**

Richard Coates

Level 6, Old Admiralty Tower
68 The Esplanade
Darwin NT 0800
Telephone (08) 8935 7543
Facsimile (08) 8941 8345
GPO Box 3321
Darwin NT 0801
Australia

30 September 2007

The Hon Syd Stirling MLA
Attorney-General
Parliament House
State Square
DARWIN NT 0800

Dear Attorney-General

ANNUAL REPORT 2006-2007

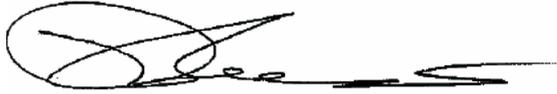
In accordance with the requirements of section 33 of the *Director of Public Prosecutions Act*, I submit to you the Annual Report on the performance of the Office of the Director of Public Prosecutions for the period 1 July 2006 to 30 June 2007.

This is the seventeenth Annual Report of the Office since its establishment in January 1991 and the second since my appointment in February 2006.

This Report does not include the complete statement of guidelines issued and published pursuant to section 25 of the *Director of Public Prosecutions Act* as these were comprehensively reviewed in 2004 and republished in their entirety in the 2005 Annual Report. The existing guidelines, in their entirety are 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.

A 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

A handwritten signature in black ink, appearing to read 'Richard Coates', with a large, stylized initial 'R'.

RICHARD COATES



TABLE OF CONTENTS

| | Page No |
|--------------------------------------------------|----------------|
| OFFICE LOCATIONS | 7 |
| MISSION STATEMENT(S) | 8-9 |
| DIRECTOR'S OVERVIEW | 11 |
| ORGANISATION CHART | 15 |
| FUNCTIONS OF THE DIRECTOR OF PUBLIC PROSECUTIONS | 17 |
| HUMAN RESOURCE MANAGEMENT & DEVELOPMENT | 19 |
| PROFESSIONAL STAFF | 23 |
| PROFESSIONAL ACTIVITIES | 27 |
| • General workload | 27 |
| • Appeals | 28 |
| SUMMARY PROSECUTIONS | 37 |
| WITNESS ASSISTANCE SERVICE | 49 |
| ABORIGINAL SUPPORT | 55 |





OFFICE LOCATIONS

1. **DIRECTOR'S CHAMBERS (Head Office)**

Level 6

Old Admiralty Tower

68 The Esplanade

DARWIN NT 0800

GPO Box 3321

DARWIN NT 0801

Telephone: (08) 8935 7505

Fax: (08) 8941 8345

2. **NORTHERN REGIONAL OFFICE DARWIN**

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

3. **SOUTHERN REGIONAL OFFICE ALICE SPRINGS**

1st Floor

Centrepont Building

Cnr Hartley St & Gregory Tce

ALICE SPRINGS NT 0870

PO Box 2185

ALICE SPRINGS NT 0871

Telephone: (08) 8951 5800

Fax: (08) 8951 5812



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

The year saw us face a number of challenges, not least of which was coping with the departure of three long serving Senior Crown Prosecutors.

John Adams who had been with this Office since it's formation decided that the time had come to try his hand at something other than the law. Therese Austin moved to Canberra after her husband secured a position with the Federal Police and Ron Noble, a Senior Crown in Alice Springs moved to Queensland, for family reasons. The Office is indebted to them for their professionalism and dedication over such a long period and I wish them all the best for the future.

Finding suitable replacements has not been easy. Most other Directors of Public Prosecutions (DPPs) in Australia are also seeking to recruit experienced Prosecutors at the present time and the conditions of employment in the Territory are no longer as competitive as they once were.

In August 2006 the Northern Territory Government commissioned the former Director, Rex Wild QC and Pat Anderson to inquire into the "extent, nature and factors contributing to sexual abuse of Aboriginal children".

This Office presented a submission to the Board of Inquiry, identifying those factors we believed contributed to the failure of a number of prosecutions involving Aboriginal children who are alleged victims of sexual abuse. The Board of Inquiry's report entitled "Little Children are Sacred" was published in June 2007.

The Board noted:

There is nothing new or extraordinary in the allegations of sexual abuse of Aboriginal children in the Northern Territory. What is new, perhaps, is the publicity given to them and the raising of awareness of the wider community of the issue.

It also came as no surprise to those of us who have worked for any time in the Territory's criminal justice system that the Board of Inquiry found:

The classic indicia of children likely to suffer neglect, abuse and/or sexual abuse, are unfortunately particularly apparent in Aboriginal communities. Family dysfunctionality as a catch-all phrase, reflects and encompasses problems of alcohol and drug abuse, poverty, housing shortages, unemployment and the like. All of these issues exist in many Aboriginal communities.

Whilst the Board of Inquiry did not respond in detail to the submissions we made on the need for procedural and legislative change, recommendation 30 directed:

The Department of Justice [to] conduct a review of all legislation relating to Court procedures for vulnerable witnesses and child victims of alleged sexual abuse... and to include consideration of the recommendations of Police and Director of Public Prosecutions to the Inquiry.

Whilst it is recommended that this review take place following the first 12 months operation of the new legislation, I would urge the Department to commence that process now.

Similar reforms have been introduced in other jurisdictions and the review would benefit from a comprehensive analysis of what is working elsewhere particularly in those states with a significant indigenous population.

Both the Police and the DPP submissions to the Board of Inquiry stressed the need for the positive recruitment and ongoing training of Aboriginal interpreters.

The Board's recommendation 34 acknowledged the importance of Government investing in the recruitment and training of Aboriginal interpreters.

It is an unfortunate reality that the need for Aboriginal interpreters in criminal proceedings is greater now than it was when I first came to the Territory thirty years ago.

Governments in the past have proceeded on the assumption that the English language skills of our Aboriginal citizens will continue to improve when in many remote communities the opposite has in fact occurred. The Aboriginal Interpreter Service was established by the Northern Territory and Commonwealth Governments only a decade ago and it is struggling to cope with the increasing demand for expert court interpreters.

Unless we can recruit and train, enough Aboriginal interpreters with sufficient expertise across all language groups to meet the increasing demand the Territory's criminal justice system will grind to a halt. There is little point in committing more Police resources to tackle crime in indigenous communities if the victims and witnesses are unable to provide any cogent account of events due to a lack of appropriately qualified interpreters.

The announcement by the Commonwealth Government that it was prepared to commit an extraordinary level of resources to address the problem of child abuse in the Northern Territory's Indigenous communities is welcomed. What has been of concern, however, is the suggestion by some within the Commonwealth that it had to directly intervene because Northern Territory Judges, Magistrates, public servants and community workers were not competent to identify or deal with the problems.

As I have mentioned earlier, there is nothing new about the allegations of sexual abuse and family violence in Aboriginal communities.

Thirty years ago Justice Muirhead warned of the "tremendous social problems"¹ faced by Aboriginal children.

In 1999 the Northern Territory Court of Criminal Appeal stated:

*The courts have been concerned to send what has been described as the correct message to all concerned, that is that Aboriginal women, children and the weak will be protected against personal violence insofar as it is within the power of the Court to do so.*²

The Northern Territory Police have a proud record of working constructively within Aboriginal communities. A number of our Prosecutors and Legal Aid Lawyers have extensive experience working with Aboriginal people and understand the problems they confront which prevent them from participating effectively in our criminal justice system.

There are many people, both Aboriginal and non-Aboriginal, working in Government and on Aboriginal communities who have worked tirelessly to achieve better outcomes for Aboriginal children. It would be a shame if all this new energy and commitment on the part of the Commonwealth comes to nought because it is not prepared to take advantage of the wealth of experience that resides within the Northern Territory.

If there is to be a lasting solution to the disadvantage and despair that infects many of our remote communities then Aboriginal men will need to take responsibility for stopping the lawlessness and violence which is victimising their women and children.

If Governments are determined to impose their own solutions without regard to the views of those they are purporting to help, then responsibility for the problem will remain with Government.

Directions

Pursuant to the *Director of Public Prosecutions Act* there is provision for the Attorney-General to provide directions to the DPP as to the general policy that we follow in the performance and function of the Director. Any such direction shall be in writing and

¹ *Jabaltjari v Hammersley* (1977) 15 ALR 94 (NT)

² *The Queen v Wurrumurra* [1999] 105 ACrimR 512 at 520

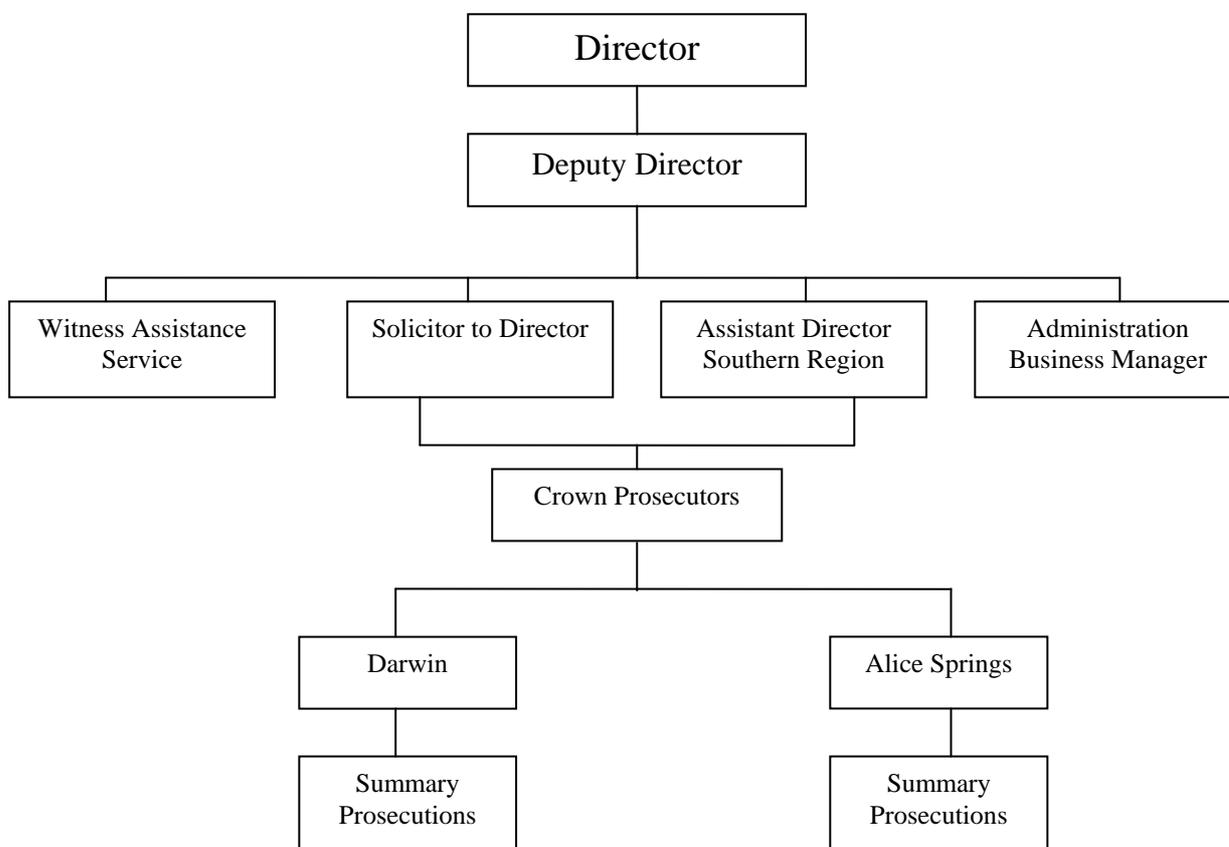
should be included in the Annual Report. I formally note that no direction has been issued by the Attorney-General during the year under review. I formally also note that the Attorney-General has not sought to interfere in the conduct of the Director's function. As a result I have been able to enjoy appropriate professional independence in exercising the powers confirmed by the *Director of Public Prosecutions Act*.

RICHARD COATES
Director of Public Prosecutions

31 August 2007



ODPP ORGANISATION CHART 2007







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 s414 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

CORPORATE SERVICES

As at 30 June 2007 the total number of staff was 58.6

| Level | Number | Female | Male |
|-------------------------|-------------|-----------|-------------|
| Director | 1 | | 1 |
| ECO4 | 1 | | 1 |
| ECO2 | 2 | 2 | |
| ECO1 | 2 | 1 | 1 |
| EO3 | 2 | | 2 |
| P4 | 5 | 3 | 2 |
| P3 | 0.6 | | 0.6 |
| P2 | 16 | 8 | 8 |
| P1 | 2 | 1 | 1 |
| GRADT | 2 | 2 | |
| Indigenous Law Cadet | 1 | 1 | |
| AO8 | 1 | 1 | |
| AO5 | 4 | 3 | 1 |
| AO4 | 5 | 5 | |
| AO3 | 14 | 12 | 2 |
| | | | |
| TOTAL | 58.6 | 39 | 19.6 |

Note: figures do not include staff on extended leave; including long service leave, leave without pay and temporary transfers outside the Office.

The Office of the Director of Public Prosecutions strives to provide a friendly and safe work environment.

The Office philosophy is underpinned by three main HR principles:

- 1) Engage with people to encourage the flow of information across the Office
- 2) Invest in people through training and
- 3) Empower staff to take responsibility and commit themselves to their work.

The Office supports staff in continuously striving to realise our corporate goals and their individual potential.

The Director encourages staff to disseminate flow of information across the Office, by issuing a weekly bulletin, which incorporates staff participation and provides updates on new legislation, training, and personalia. In addition, the Office endeavours to empower it's staff to take responsibility and commit themselves to their work. Recognition includes movie tickets or family passes to the wildlife park in both Darwin and Alice Springs. These awards align with the Office commitment to work life balance initiatives.

Encouraging staff participation in work life balance initiatives by sponsoring teams in corporate soccer, hockey, and lawn bowls.

Training and Development

As part of the Performance Management Scheme, each employee is required to have a personal development plan, which is reviewed each year following a performance assessment. If a training need is identified by either the supervisor or the employee, the DPP endeavours to ensure that training is provided as part of the performance management cycle. The personal development plans are tailored to meet the needs of the individual to ensure that the employee has the skills required for their current position and for career development. Personal development plans are also used to develop training programs and to ensure that every staff member receives a fair allocation of training resources.

The DPP conducts in-house legal training to ensure that DPP prosecutors comply with any continuing legal education requirements which apply to them. The DPP also runs an in-house advocacy training course for prosecutors.

Direct expenditure on external training for the year was \$71,206. There was also considerable in-house training and 'on the job' training which was not costed.

Workplace Diversity and Equal Employment Opportunity

It is a requirement of the *Public Service Act 1999* that every Australian Public Service workplace be free from discrimination, and recognise and use the diversity of the Australian community it serves. The DPP's Equal Employment Opportunity Management plan supports diversity by creating an environment which enables DPP staff members to realise their full potential and contribute meaningfully to the DPP's vision and mission. Essentially, the plan aims to capitalise on the contributions that people with different backgrounds, perspectives and experiences can make to the DPP workplace.

The DPP aims to integrate the principles of workplace diversity into all aspects of personnel management. This involves raising awareness of, and promoting, core values and standards of behaviour among all staff. It also involves embedding those principles into all human resource management policies and practices, including the performance management scheme, and selection and induction processes.

As at 30 June 2007, women made up 68% of DPP employees, with 44% employed within the professional stream.

The following statistics represent the diverse workforce of the ODPP in the 2006-2007 period.

| | % of Staff |
|----------------------------------------------|------------|
| ▪ Women | 68% |
| ▪ People from culturally diverse backgrounds | 14% |
| ▪ Indigenous Australians | 12% |

National Indigenous Cadetship Program (NICP)

The NICP is a career development program for indigenous people which offers financial support during their tertiary studies. The NICP is funded by the Northern Territory and Commonwealth Governments and is aimed at improving the professional employment prospects of indigenous people. The ODPP employs one Law Cadet. Continuing involvement by the ODPP in the NICP ensures on-going assistance to a Law Cadet. The NICP has allowed the Cadet to establish a network within the legal fraternity and gain access to mentors.

Reporting Against Performance Measures

| Performance Measures | | 2006-07 Estimate | 2006-07 Actual | 2007-08 Estimate |
|----------------------|------------------------------------------------------------------------------------------------|---------------------|-------------------|---------------------|
| <i>Quantity</i> | New matters ¹ | 1 060 | 1426 | 1 450 |
| | Number of Supreme Court criminal sitting days | | | 720 |
| | WAS clients | 660 | 934 | 850 |
| | Actioning matters under crimes forfeiture legislation | | | \$0.5M |
| <i>Quality</i> | Establish 'sufficient evidence' before Court of Summary Jurisdiction | 90% | 96% | 90% |
| | Findings of guilt in Supreme Court | 90% | 95% | 90% |
| | Convictions after trial or hearing | 80% | 94% | 80% |
| | WAS client satisfaction | 85% | 87% | |
| | Matters without complaints received from clients | | | 85% |
| | Random file audit to assess quality of work | | | 95% |
| <i>Timelines</i> | Filing of indictments within 28 days of committal ² | 85% | 67% | 80% |
| | Service of a section 105A Justice Act brief of evidence no later than 14 days before committal | 85% | 84% | 85% |
| | Meeting client timeframes | 80% | 80% | |
| | Number of matters that are listed for trial but do not proceed as a trial | | | 80% |
| | Random file audit to assess timeliness of work | | | 95% |

¹ The 2006/07 estimate was incorrectly calculated due to a system error.

² This estimate was not achieved partly because of delays in the receipt of committal transcript.



PROFESSIONAL STAFF

As mentioned earlier in this report, the Office lost the services of three Senior Crown Prosecutors in John Adams, Therese Austin and Ron Noble. We were however fortunate to recruit a number of new prosecutors, including:

MARK THOMAS

Crown Prosecutor

Mark Thomas, originally from Melbourne, is a graduate of Sydney University in Economics and Law. He worked as a Solicitor-advocate in the first Aboriginal Legal Service in Australia, which was based in Redfern in Sydney, from 1988 to 1996. During this time he travelled throughout NSW and appeared in more than 100 courts and more than 500 hearings and inquests (including black death in custody cases that were subject to a Royal Commission).

In 1996 he went to work at the NSW ODPP initially in a general crime group in Sydney and then from 1997 to 1999 in Prosecution Group 6, formerly Special Crime, where he was primarily involved in prosecuting police. Amongst other things he also was the Solicitor with carriage of the case of John Laws, the noted broadcaster; as well as the prosecution of an individual who was then the largest individual drug supplier in Australia

At the end of 1999 he took up a job as a Trial Advocate in the Campbelltown Office of the Director of Public Prosecutions (ODPP) where he prosecuted numerous jury trials including as his first sexual assault trial, R v MFA, which went on appeal all the way to the High Court (the convictions been held by the Crown). In 2001 he left to go travelling around the world until 2003.

On return to Australia in mid 2003 he returned to the NSW ODPP and worked variously in Sydney, Newcastle, Inverell, Taree and Lismore as either a Trial Advocate or a Solicitor Advocate. Immediately prior to working in the Northern Territory he was working as a Trial Advocate, conducting jury trials, in the Penrith Office of the NSW ODPP. He commenced work at this Office in late January 2007 as a Crown Prosecutor.

HELEN ROBERTS**Crown Prosecutor**

Helen graduated from the Australian National University (ANU) in 1996 with a Bachelor of Science and Bachelor of Laws (Honours), she also received the University Medal in Law from the ANU. She worked as tipstaff to Justice Santow of the NSW Supreme Court, and then Associate to Gleeson CJ of the High Court of Australia. She commenced practice as a solicitor with the NSW ODPP in 1999. In 2002 she moved to the NSW Crown Solicitor's Office as an inhouse solicitor-advocate, appearing in criminal, coronial and administrative law matters for government clients. In November 2004 she was appointed Deputy Coroner for the Northern Territory. Helen commenced as a Crown Prosecutor with the NT ODPP in February 2007.

ELIZABETH FARQUHAR**Prosecutor**

Liz graduated with a Bachelor of Arts and Bachelor of Laws from Charles Darwin University in 2005 while working for the NTG Department of Health and Community Services. In November 2005 she commenced with Chief Justice Brian Martin as his associate. She received a Graduate Diploma in Legal Studies from the Australian National University in 2006 and spent some time overseas before commencing a contractual appointment as a Prosecutor at the ODPP in May 2007.

KATYA SHARAFELDIN**Prosecutor**

Katya graduated from the Australian National University with a combined Bachelor of Laws (Honours), Bachelor of Asian Studies. Upon graduation she worked as a legal editor for Butterworths and Thomson Legal and Regulatory. She then worked in private practice for one year before joining the NSW ODPP in 2004 working in the Dubbo and Lismore offices. She also enjoyed a brief sojourn in the Attorney General's Department in Sydney. She commenced working with the NT ODPP in January 2007.

TOM WARR**Prosecutor**

Tom graduated with a Bachelor of Economics/Laws from the University of Sydney in 2000. Immediately following university he commenced work as a Graduate Solicitor in the Construction & Major Projects Group at law firm Clayton Utz, Sydney. Tom continued to work at Clayton Utz until March 2002. Between April 2002 and July 2004 Tom worked at the niche white-collar crime firm Bark & Co located in London's Fleet Street having gained admission as a solicitor in England & Wales. Between July 2004 and February 2007 Tom commenced work as a solicitor in the Special Crime Unit at the Office of Director of Public Prosecutions, Sydney. In February 2007 Tom commenced work as a prosecutor within this Office. Tom is currently undertaking a Masters of Laws at the University of Sydney which he hopes to complete in 2008.

NAOMI KERERU**Prosecutor**

Naomi graduated with a Bachelor of Arts in 2000 and Bachelor of Laws in 2001 from Adelaide University. She also undertook studies prior to that at Flinders University and University of South Australia for a Bachelor of Management. She moved to Mount Gambier in South Australia for her first legal position in May 2002 whilst still undertaking the graduate diploma of legal practice and worked within a small private practice in the areas of crime, family law and probate. Naomi was admitted to practice in September 2002.

Naomi returned to Adelaide in 2004 to commence a 12 month contract as a duty solicitor at the Adelaide and then Elizabeth Magistrates Court for the Legal Services Commission. She then accepted a position in Elizabeth, SA, with a private firm, Dixon Gallasch, working solely in the area of crime.

In January 2007 Naomi relocated to Alice Springs, Northern Territory, for a contractual appointment with the Crown as a prosecutor.





PROFESSIONAL ACTIVITIES

General Workload

| BREAKDOWN OF PROSECUTION CASES | | | | | | |
|------------------------------------------------------|----------------------------------|--|--|--|----------------|----------------|
| <i>for the period 1 July 2006 to 30 June 2007</i> | | | | | | |
| | | | | | <u>2005/06</u> | <u>2006/07</u> |
| | | | | | | |
| New Matters | | | | | 962 | 820 |
| New Phases | | | | | 1521 | 1426 |
| Court Appearances | | | | | 7244 | 6710 |
| Matters Completed in CSJ & S/C - Criminal | | | | | | |
| | CSJ Pleas | | | | 148 | 170 |
| | CSJ Guilty (incl pleas) | | | | 189 | 210 |
| | CSJ Committed | | | | 226 | 222 |
| | CSJ Not Guilty/ Cmtd | | | | 22 | 12 |
| | Withdrawn | | | | 77 | 63 |
| | Total CSJ (incl juv) | | | | 514 | 507 |
| | | | | | | |
| | S/C Pleas | | | | 252 | 255 |
| | S/C Trial guilty | | | | 20 | 25 |
| | S/C Trial not guilty | | | | 16 | 15 |
| | S/C Trial Mistrial | | | | 5 | 1 |
| | Nolle Prosequi | | | | 30 | 22 |
| | S297 (no true bill) | | | | 5 | 4 |
| | | | | | | |
| | Total S/C (not incl 297a) | | | | 323 | 318 |
| | | | | | | |
| ExOfficio | | | | | | |
| | Commenced | | | | 69 | 100 |
| | Completed | | | | 58 | 81 |

| | | | | | | |
|-------------------------|------------------------------------|--|--|--|----|----|
| | | | | | | |
| Justice Appeals | | | | | | |
| | Commenced | | | | 97 | 50 |
| | Completed | | | | 81 | 60 |
| CoA & CCA | | | | | | |
| | Commenced | | | | 35 | 28 |
| | Completed | | | | 35 | 29 |
| High Court of Australia | | | | | | |
| | Commenced (Incl "leave to appeal") | | | | 8 | 4 |
| | Completed | | | | 2 | 5 |
| | | | | | | |

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.

An explanation of the appeal process together with 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 ODPP 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 2005 to 30 June 2006

TABLE A

**Outcome of defence applications for leave to appeal from the Supreme Court to the Court of Criminal Appeal as determined by a single judge upon the papers
2006/2007**

| | Sentence | | Conviction | |
|-----------|----------|------|------------|-----|
| Allowed | 9 | (8) | 4 | (5) |
| Dismissed | 9* | (4) | 2# | (4) |
| Total | 18 | (12) | 6 | (9) |

* Six applicants applied to have their applications re-heard and determined by the Court of Criminal Appeal constituted by three judges

One applicant applied to have his application re-heard and determined by the Court of Criminal Appeal constituted by three judges. That application was subsequently discontinued in the reporting year.

Tables B and C below summarise the results of appeals from and to the Supreme Court 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
2006/07**

| | Conviction | | Sentence | | Other | |
|-----------|------------|------|----------|------|-------|-----|
| Allowed | 3 | (4) | 4 | (8) | 1 | (1) |
| Dismissed | 5 | (7) | 3 | (5) | 1 | (1) |
| Total | 8 | (11) | 7 | (13) | 2 | (2) |

**Outcome of prosecution appeals and
references from the Supreme Court to the
Court of Criminal Appeal/Court of
Appeal/Full Court
2006/07**

| | Sentence | | Other | |
|-----------|----------|-----|-------|-----|
| Allowed | 3 | (6) | 0 | (1) |
| Dismissed | 2 | (0) | 0 | (1) |
| Total | 5 | (6) | 0 | (2) |

**Outcome of points of law reserved for the
consideration of the Court of Criminal
Appeal by a trial judge pursuant to s.408 of
the Criminal Code
2006/07**

| | |
|----------------------------------|---|
| Decided in favour of prosecution | 1 |
| Decided in favour of defence | 1 |

TABLE C

**Outcome of defence appeals from the Court of Summary Jurisdiction to
the Supreme Court
2006-2007**

| | Conviction | | Sentence | | Other | |
|--------------|------------|------|----------|------|-------|-----|
| Allowed | 8 | (8) | 13 | (36) | 1 | (0) |
| Dismissed | 6 | (14) | 18 | (12) | 0 | (0) |
| Discontinued | 11 | (12) | 8 | (8) | 0 | (0) |
| Total | 25 | (34) | 39 | (56) | 1 | (0) |

**Outcome of prosecution appeals from the Court of Summary
Jurisdiction to the Supreme Court
2006-2007**

| | Dismissal of Charge | | Sentence | | Other | |
|--------------|---------------------|------------|----------|------------|----------|------------|
| Allowed | 0 | (2) | 0 | (0) | 0 | (1) |
| Dismissed | 0 | (0) | 0 | (3) | 0 | (0) |
| Discontinued | 0 | (0) | 1 | (0) | 0 | (0) |
| Total | 0 | (2) | 1 | (3) | 0 | (1) |

The Office was involved as respondent in one appeal and eight applications for special leave to appeal to the High Court during the reporting period. Three of the applications for special leave were initiated by unrepresented applicants and did not comply with the High Court Rules. In accordance with the Rules these applications were deemed to be abandoned. A fourth application for special leave by an unrepresented applicant was dismissed by the court upon its merits without the respondent being required to submit any written or oral argument. See *CEV v R* [2006] HCA Trans 378, 3 August 2006, affirming the decision of the Court of Criminal Appeal in *CEV v R* [2005] NTCCA 10, 18 August 2005.

The grant of special leave was opposed by the respondent in four of the eight applications. The results of the appeal and the opposed applications for special leave are set out below.

In *Leach v R* [2007] HCA 3; 232 ALR 325; 81 ALJR 598; (6 February 2007), the appellant was convicted of two counts of murder by the Supreme Court in 1984. He was sentenced to mandatory life imprisonment for life on each count. At that time, the Supreme Court was prevented by law from fixing a non-parole period.

The *Sentencing (Crime of Murder) and Parole Reform Act* 2003 commenced on 11 February 2004. Transitional provisions in the Act affected sentences passed prior to its commencement including that of the appellant. That Act fixed a non-parole period of 25 years where the offender was sentenced for two or more unlawful homicides. Section 19 of the Act also empowered the Supreme Court, on the application of the Director of Public Prosecutions, to revoke the non-parole fixed by the Act and to fix a longer non-parole period or to refuse to fix a non-parole period. The Director of Public Prosecutions made such an application in March 2004. The Supreme Court made an order revoking the 25 year non-parole period fixed by the Act and made an order refusing to fix a non parole period. See *R v Leach* (2004) 14 NTLR 44. On appeal, the majority of the Court of Criminal Appeal upheld the decision of the Supreme Court. See *Leach v R* (2005) 16 NTLR 117.

On appeal to the High Court (special leave to appeal having been granted on 1 September 2006 – see *Leach v R* [2006] HCA Trans 465) the appellant argued that both the Supreme Court and the Court of Criminal Appeal had erred (i) in its interpretation and application of s.19(5) of the Act and (ii) in failing to apply the appropriate standard of proof (that of beyond reasonable doubt) in coming to the state of satisfaction described in s.19(5) of the Act.

Section 19(5) of the Act relevantly provides that the Supreme Court *may refuse to fix a non-parole period if satisfied the level of culpability in the commission of the offence is so extreme the community interest in retribution, punishment, protection and deterrence can only be met if the offender is imprisoned for the term of his or her natural life without the possibility of release on parole.*

As to the first ground, the appellant contended that s.19(5) of the Act required the issues presented to be considered in two distinct stages. He submitted that although the primary judge concluded that the level of culpability in the appellant's commission of the two murders was *so extreme the community interest in retribution, punishment, protection and deterrence* could only be met by the appellant being imprisoned for life without the possibility of release on parole, a discretion was conferred by s.19(5) of the Act which required the Court to consider separately, and give effect to, what were described as *ordinary sentencing considerations*. The appellant submitted that this second and separate inquiry required consideration of questions about the prisoner's rehabilitation.

As to the second ground, the appellant contended that the logical extension of the reasoning of the High Court in the case of *Olbrich v R* (1999) 199 CLR 270 to the effect that a sentencing judge may not take disputed facts into account in a way that is adverse to the interests of an accused unless those facts were established beyond reasonable doubt was, that the satisfaction that the Court acting under s.19(5) must reach for the basis for a decision resulting in imprisonment for life without the potential for release must be at the highest level known to the law, namely, beyond reasonable doubt.

The High Court unanimously dismissed the appeal holding that:

- Section 19(5) is not to be read as requiring the Court to consider the exercise of some separate or additional discretion after, or despite, its having reached the conclusion that the level of the prisoner's culpability was as described in the provisions *so extreme* that the community interest in the specified considerations could *only be met* by imprisonment for life. While s.19(5) says that the Court *may* refuse to fix a non-parole period if satisfied of the matters set out in the provision, it does not follow that it then has to exercise a discretion. The word *may* in the context of s.19(5) confers a power rather than a discretion.
- The exercise of judgment pursuant to s.19(5) may raise issues of fact. Any disputed fact to be taken into account adversely to the offender's interests must be proven according to the criminal standard, ie, beyond reasonable doubt. However, once the relevant facts are established, the evaluation of culpability and

community interest, being matters for judgment, are not subject to any standard of proof.

In *Mununggurr v R* [2007] HCA Trans 51 (9 February 2007) the applicant sought special leave to appeal against the unanimous decision of the Court of Criminal Appeal dismissing an appeal by the prisoner against the severity of a sentence of 10 years and six months imprisonment with a non-parole period of seven years and six months following the applicant's plea of guilty to one count of having sexual intercourse without consent. The applicant anally raped an 11 year old boy. A summary of the decision of the Court of Criminal Appeal [*Mununggurr v R* (2006) NTCCA 16] can be found on the ODPP website under the heading Decisions Delivered 1 July 2006-30 June 2007.

The sentencing judge had found on the material before her that although the applicant was intellectual disabled, the disability was not on the scale suggested in the psychological and psychiatric reports and did not significantly contribute to the applicant's offending behaviour. On appeal, the Court of Criminal Appeal held that the sentencing judge did not err and that there was no evidence before the sentencing judge to suggest that the offending was in any way contributed to by the applicant's intellectual disability. The Court of Criminal Appeal held that the onus was on the applicant to demonstrate that his intellectual disability should be regarded as ameliorating the need for general deterrence in sentencing.

The questions of law said to justify the grant of special leave were:

- Whether a miscarriage of justice resulted from the Court of Criminal Appeal failing to find a causal link between the applicant's intellectual disability and his offending behaviour;
- Where there is such a casual link, whether that intellectual disability is a factor tending to mitigate the application of the principle of general deterrence in the sentencing of the offender, and a factor tending to lessen the moral culpability of the offender.

The High Court (Kirby, Callinan & Heydon JJ) refused special leave to appeal holding that because the Court of Criminal Appeal had applied well established sentencing principles in arriving at its conclusions, there were no reasonable prospects of success of an appeal.

In *Green v R* [2007] HCA Trans 110 (2 March 2007) the applicant sought special leave to appeal against the unanimous decision of the Court of Criminal Appeal dismissing his appeal against a sentence of 14 years imprisonment and a non-parole period of 10 years. A summary of the decision of the Court of Criminal Appeal [*Green v R* (2006) NTCCA 22, 19 NTLR 1] can be found on the ODPP website under the heading Decisions Delivered 1 July 2006-30 June 2007.

In 1998 the applicant was convicted of the anal rape of an eight year old boy and sentenced to an indefinite term of imprisonment. It was ordered that the indefinite sentence commence on the day the applicant was taken into custody. In 2004, the court ordered that the indefinite sentence be discharged and, as required by the *Sentencing Act*, proceeded to sentence the applicant for the offence. Applying sentencing standards current in 2004, the Supreme Court sentenced the appellant to 14 years imprisonment for the offence. A non-parole period of 10 years was fixed. It was ordered that the sentence and non-parole period commence on the day the applicant was taken into custody. Although the maximum penalty for the offence of rape remained the same, sentences imposed for the offence of rape had increased between 1998 and 2004.

The Court of Criminal appeal unanimously dismissed the applicant's appeal against severity of sentence holding, inter alia, that the regime established by the *Sentencing Act* requires the court to apply sentencing standards prevailing at the time of fixing the determinate sentence, ie, as at 2004 rather than as at 1998.

In the High Court the applicant contended that Court of Criminal Appeal had erred in law in finding that the sentencing standards to be applied when fixing the determinate sentence were those prevailing at the time of discharge from the indefinite sentence and not those prevailing at the time of the commission of the offence.

The High Court (Hayne & Crennan JJ) refused special leave to appeal holding that the decision of the Court of Criminal Appeal depended in important respects upon the particular legislative provisions of the *Sentencing Act*. No point of more general application would fall for consideration if special leave to appeal were granted. The court was not persuaded that there was a reasonable prospect that if special leave to appeal were granted, the High Court would set aside the orders made by the Court of Criminal Appeal.

In *Murdoch v R* [2007] HCA Trans 321(21 June 200) the applicant sought special leave to appeal against the unanimous decision of the Court of Criminal Appeal dismissing his appeal against conviction for murder, deprivation of liberty and aggravated assault. A summary of the decision of the Court of Criminal Appeal [*Murdoch v R* (2007) NTCCA 1, 167 A Crim R 329] can be found on the ODPP website under the heading Decisions Delivered 1 July 2006-30 June 2007.

The grounds upon which the applicant sought special leave related to the admissibility of the evidence of Ms Lees purporting to identify the applicant as the assailant from an image of the appellant she saw on the internet and her evidence regarding similarities between a photograph of a dog she selected from a "dogalog" and the accused's dog. The applicant also sought to argue that the Court of Criminal Appeal erred in finding that there had been no miscarriage of justice once it had found that the evidence of "body mapping" given by an expert in "facial mapping" (Dr Sutisno) had been wrongly admitted into evidence by the trial judge.

The High Court (Gleeson CJ, Hayne & Callinan JJ) refused special leave to appeal holding that there was no error in the reasoning of the Court of Criminal Appeal and that there were insufficient prospects of success on the issues raised by the applicant to warrant a grant of special leave.





SUMMARY PROSECUTIONS

DARWIN

Background

Summary Prosecutions in Darwin and Alice Springs consists of civilian legal practitioners employed by the Office of the Director Public Prosecutions (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 youths.
- 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 Youth Justice Court (YJC), for service by police
- all preliminary mentions of files in the CSJ and YJC, 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

- conducting contested hearings in the Darwin Youth Justice and Summary jurisdiction
- summoning witnesses for hearings & committals
- 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.

Since the commencement of June 2006 SPD have allocated a Summary Prosecutor to Katherine to conduct all hearing matters. This allocation of resource arose due to workload and lack of experience and knowledge of Police Prosecutors in Katherine. The

situation should be rectified by the employment of an additional Summary Prosecutor for Katherine in the early part of 2007/08 financial year.

Location

Summary Prosecutions is located on the fourth floor of Old Admiralty Tower, 68 The Esplanade, Darwin.

Staffing

| | Establishment | Actual |
|------------------------------|----------------------|---------------|
| Senior Sergeant^ | 1 | 1 |
| Sergeant^ | 5 | 11 |
| Constable & Senior Constable | 2 | 1 |
| Auxiliary | 2 | 2 |
| Legal Practitioners* | 5 | 6 |
| AO3* | 4 | 5 |
| AO2 | 1 | 1 |
| Total | 20 | 27 |

^ Incorporates staff acting at the rank

* AO3 – includes ODPP PA for Summary Prosecutors

Officer-in-Charge

The Officer-in-Charge is responsible for managing the section, answering correspondence, providing guidance to Police Prosecutors and where required assisting in court matters in Darwin and on circuit. Acting Senior Sergeant Ray Murphy is currently filling the role of OIC.

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 Youth Justice Courts and presenting evidence in contested hearings in those courts.

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

Sergeants

Dave Moore (2000)
Erica Sims (February 2005)
Stuart Davies (June 2006)
Sandi-lee Atkins (July 2006)
Ray Murphy (March 2007)

Acting Sergeants

Andrew Littman (2004)
Ivan Marinov (January 2005)
Kerry Rigby (January 2007)

Constables

Garry Johnston (January 2006)

The Police Auxiliaries' roles are to:

Auxiliary # 1

- issue, arrange service and tracking of summonses for all witnesses in both summary and committal proceedings in Darwin
- issue, arrange service and tracking of witness summonses for all committal proceedings in Daly River, Maningrida, Nguiu, Wadeye, Jabiru, Nhulunbuy, Oenpelli and Alyangula
- advise appropriate personnel of any witnesses requiring travel & accommodation arrangements
- collect and record statistical data relating to the unit's costs and workload
- compile reports as requested e.g. quarterly, annual, budget and Operational Performance Review for police and other agencies using recorded statistical data
- advise and provide training to police members at bush stations in the use of IJIS applications, particularly the Witness Menu
- co-ordinate I.T. software and hardware requirements for the unit
- co-ordinate furniture and equipment requirements for the unit
- process incoming invoices
- assist Administration Support Officers where required in progressing current work practices

Auxiliary # 2

- 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)

Senior Legal Practitioner in Charge

The role of the senior legal practitioner in charge of the Summary Prosecutions Unit is to provide professional advice and support to the summary prosecutors. In addition to their own prosecutorial duties, the senior legal practitioner is responsible for the allocation of files within the unit and the professional development of the unit's legal practitioners.

A senior legal Practitioner in Charge will commence early in the 2007/2008 financial year.

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.

As at 30 June 2007 the legal practitioners were as follows (with dates of commencement):

Timothy Smith (2002)
Martin Fisher (2003)
David Robertson (2004)
Corinna Baohm (2005)
Tom Warr (2007)
Matthew Walsh (2007)

Public Sector employees

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

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

Police professional assistants

Tiffany Kilian (2002)
Trudy Pascoe (2006)
Lynette Langley (2006)

ODPP Professional assistant to prosecutors:

Maria Pyke (2006)
Raychael Brown (2006)

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

SPD 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.

Formal and informal in-service training was provided during the year to in-service police officers regarding preparation of files for court. SPD delivered training to in-service officers at the NTPFES College. Less formally, refresher classes for general duties police were also conducted. A prosecution training component has also been incorporated in the police promotion courses with SPD conducting the training. It is anticipated this will further increase the quality of files and the understanding of the judicial process across the Police organisation.

Caseload

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

| | |
|-------------------------------------------------------------------------------|--------|
| New files received Darwin (arrest/summons): | 4,111 |
| Summary file listings in Darwin: | 13,242 |
| Matters listed for contested hearings (full hrs Dwn only): | 716 |
| Matters requiring a travelling Darwin Summary Prosecutor for bush circuit: | 575 |
| Matters listed for Contest Mention: | 817 |

General comment – Future Issues

The working relationship between the 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 developing a new MOU which properly reflects the new staffing arrangements.

ALICE SPRINGS

Summary Prosecutions Alice Springs is immediately responsible to the Assistant Director, ODPP Alice Springs. Summary Prosecutions 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 the 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 Youth Justice and Summary Jurisdiction courts except for:
 - matters which are of a serious or complex nature
 - matters involving difficult or complex points of law
 - matters involving indecency
 - other matters considered more appropriate to be handled by senior counsel

Location

Summary Prosecutions 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 Crown Office.

Staff

| | Establishment | Actual |
|---------------------|----------------------|---------------------|
| Senior Sergeant | 1 | 1 |
| Legal Practitioners | 3 | 2 |
| Sergeant | 2 | 3 (1 supernumerary) |
| Constable | 2 (1 unattached) | 2 |
| Auxiliary | 1 | 1 |
| AO3 | 1 | 1 |

| | |
|---------------------------|------------------------------------------------------|
| OIC | Senior Sergeant Rob Burgoyne |
| DPVPU Prosecutor | Currently vacant |
| ODPP Summary Prosecutor | Michael Fay |
| NTP Summary Prosecutor | Ian McMinn |
| Police Hearing Prosecutor | Sergeant Jody Nobbs |
| Bush Court Prosecutor | Sergeant Peter Nunn |
| Bail & Arrest Prosecutor | Sergeant Michael Cornford (supernumerary) |
| Bail & Arrest Prosecutor | Senior Const. Lindsay Westphal (gazetted unattached) |
| Prosecutions Constable | Senior Constable Neville Muller |
| Witness Travel | Senior Auxiliary Patricia Arnell |
| Reception/Admin AO3 | Courtney Ingham |

During the year the Unit was fortunate to maintain 2 additional police officers. A submission to validate current staffing and lift the establishment numbers to reflect the 2 additional police members (based on an independent workload analysis using IJIS), was rejected by Treasury. The Assistant Commissioner Operations has however promised to take a personal interest in staffing levels at the Alice Springs office.

Both additional police members have proved invaluable and indicate the Unit should have staffing of this nature at all times to conduct its business in a professional manner. Indeed the Magistrates in Alice Springs have requested that the Unit maintain 2 Hearing Prosecutors and 2 Bail and Arrest Prosecutors at the Alice Springs Court at all times, however on current staffing / relief arrangements this is not possible.

Relief arrangements are tenuous as Alice Springs Division currently gives a Sergeant on permanent relief and any additional relief for his absence would mean they in effect lose 2 members from uniform duties.

Duties of the Witness Travel (Crown Law Liaison) position include:

- issue summonses as required for witnesses in both summary and committal proceedings in the Alice Springs and Southern Region.
- be responsible for the service of all Supreme Court subpoenas both local and interstate.
- arrange travel, both domestic and international, for all Summary and Supreme Court witnesses and be available for after-hours call-out for such duties.
- arrange suitable accommodation for all Summary 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 witness travel and accommodation including petty cash, sundry travel costs, incidental expenditure, loss of wages and professional services
- during sittings of the Supreme Court in Alice Springs, be available to escort and assist all Crown witnesses for the duration of the sittings
- assist, where appropriate and necessary, the Witness Assistance Service with liaison, travel and transport of Aboriginal witnesses
- other police duties including compilation of IJIS documentation and reception duties.

Bush Courts

A prosecutor attends for hearings and assists with bail and arrest as required. Summary Prosecutions conducts a monthly 5 day court at Tennant Creek and during the period 5 additional weeks combined with the Elliott court nearby. Currently the Alice Springs Court, which has been reduced from 4 to 3 Magistrates, is looking at ways to deal with Tennant Creek matters so that additional courts are reduced. Bush courts are also held at

Ali Curung, Hermannsburg, Kintore, Papunya, Yulara, Ti Tree and Yuendumu bi-monthly.

Training and Advice

Advice and training in the law, procedures and the IJIS system (by the AO3) was given to police at Alice Springs and Tennant Creek and members carrying out basic prosecution duties at Ali Curung, Elliott, Hermannsburg, Kintore, Papunya, Ti Tree, Yuendumu and Yulara (Mutitjulu). Advice was also given to members at current non-court stations in the Southern area at Borroloola, Harts Range, and Kulgera on aspects of law, evidence and procedure.

Caseload

The caseload for the Unit continues to remain unacceptably high for current staffing, statistics indicate the following:

| | 2006/07 | | 2005/06 |
|---------------------------------------------|----------------|---|----------------|
| Total Summary files listed (Alice/Tennant) | 12992 | | 11648 |
| *Files found guilty Alice only (% of total) | 92 | % | 91% |
| ^New files Alice (Arrest/Summons/DVO) | 3111 | | 3094 |
| ^New files Tennant Creek | 380 | | 372 |
| #Hearings (Alice Springs) | 462 | | 449 |
| #Hearings (Tennant Creek) | 135 | | 120 |
| Bush Courts attended incl. Tennant (days) | 120 | | 116 |

* File resolved by guilty plea or finding to any charge on file.

^Alice Springs only compiles files for Alice Springs and Tennant Creek. Others, except for "in custody" bush station matters listed for Alice, are compiled by the actual stations themselves.

#Those files proceeding to the actual hearing date.

These figures show a maintained large workload, especially at Tennant Creek where actual files listed have gone from 1,865 to 2,050. The figures also measure more than favourably with Darwin.

General Comment

Current staffing with additional police members is barely adequate, however establishment numbers also need to keep pace with the increase in additional police numbers in the Southern Region as this inevitably creates more prosecution work. The inability to fill the DV Solicitor's position for the last 6 months of the fiscal year created further staffing problems.

The failure to adequately recognise the staffing requirements of the Alice Springs Office ultimately means that short cuts have to be taken, new issues take longer to be recognised, pressures on members in the office increase and as a result more mistakes are made.

Summary Prosecutions has once again asked for additional administrative support without success.

The Alice Springs Crown side of ODPP continues to give significant support to Summary Prosecutions through advice and shared facilities.





WITNESS ASSISTANCE SERVICE

Support to victims of crime, witnesses and their families have 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 Prescott (who returned in November after 12 months with another Department); Ken James and Susan Cooper (who had been replacing Christine and took maternity leave in June). In Alice Springs: Carolyn Woodman, WAS co-ordinator (South) and Ronda Ross. WAS in Darwin also has some wonderful administrative support from Kerrie Wilson.

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. 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 victims whose matters would be dealt with by Summary Prosecutions Darwin. In the past year 453 of these witnesses were contacted; nearly 3500 in total. WAS also writes to referred victims from Katherine and bush communities.

Referral

Victims, witnesses and their families can be referred to appropriate agencies for counselling including specialist sexual assault or domestic violence counselling, psychologists or psychiatrists. 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 (VIS). 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.

VIS 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. For the first time WAS assisted 400 people.

Since the beginning of this scheme WAS has assisted almost 2800 victims to prepare a VIS.

Committee work

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

Executive Committee

WAS members participate 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 some committees and activities on behalf of the ODPP to represent the ODPP and network with as many agencies as possible.

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.

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 Parole Officers and Sexual Assault Referral Centre counsellors. We regularly use the WAS DVD *Being strong, a court story* in our presentations.

Conference

In May WAS hosted the national conference for Witness Assistance Services. With 25 delegates from all States, Territories and the Commonwealth.

Papers were presented on various topics of interest. There were also some functions where delegates partook of our Territory hospitality.

We thank everyone who helped or supported WAS to make the conference a resounding success.

Parole Board

The Parole Board requests input from victims into the considerations of the Board. WAS has responded to 46 requests.

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*.

Bush Courts

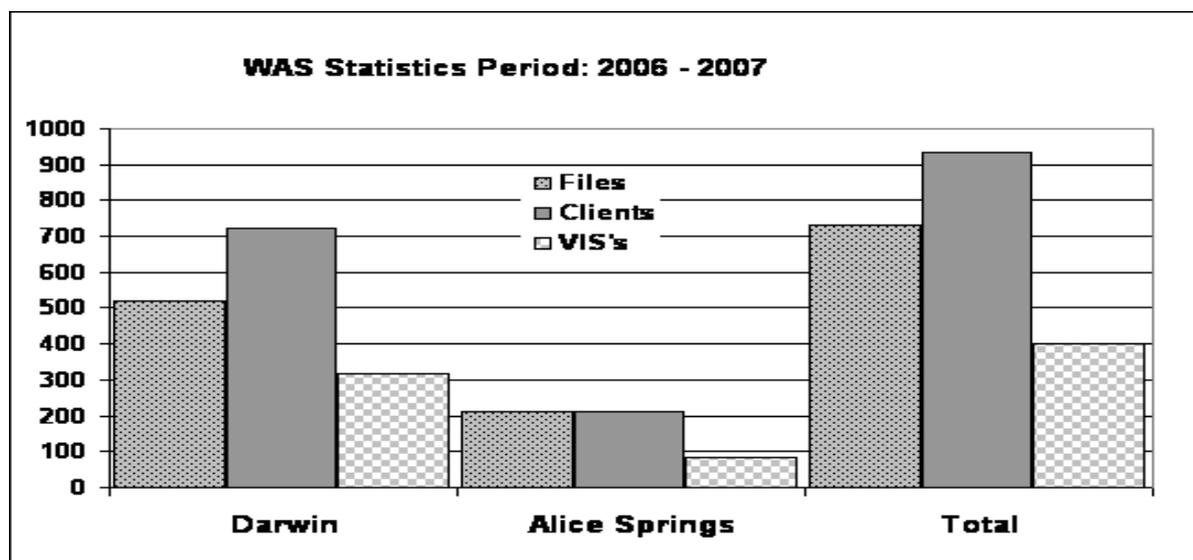
WAS officers have continued to provide services to remote communities. Each member of the WAS team has worked at a number of communities to support witnesses appearing in Bush Courts. This is demanding and time consuming aspect of our work.

WAS Statistics

The workload of WAS remained high in 2006-2007 with a slight increase over last year's numbers as measured by the statistics for clients and VIS. Growth plateaued which reiterates previous comments.

Therefore it continues to be unrealistic to expect any further growth in client numbers or more time spent out bush as all WAS officers are still working to capacity. Any future expansion of the service will need to be underpinned by an increase in staffing levels or by refocussing the work of WAS to prioritise the bush. Alice Springs has not had an increase in staff since the VSU was set up in 1997 and Darwin has been operating on four officers for some time.

WAS Statistics 2006 - 2007



ALICE SPRINGS

This has been another busy year. As usual we have focussed on the Alice Springs Courts. We nevertheless have provided a reliable service to the Tennant Creek Court and visited Kargaru, Wuppa, Tingkali, Mulga and Pony Club Community Camps.

In Alice Springs there have been visits to see witnesses at Ilperle Tyathe, Mt Nancy, Anhelke Ewlpaye, Nyewente, Yarrenyty Arltere, Inarlenge, Anthepe, Ilperenye, Ilparpa, Mpwetyerre, Ilpiye-Ilpiye, Karnte, Lhenpe Artnwe, Anhelke Irrkerlante, Ewenper-Atwa and the Alice Springs Correctional Centre.

Trips further afield to see witnesses have been to Kintore, Imanpa, Hermannsburg, Alcoota and Harts Range.

The WAS Officer has attended a NAATI Interpreters Conference and the WAS Conference in Darwin, a Sexual Assault brief training and JAQ course in Alice Springs.

The Co-ordinator attended the AGM of the Mental Health Tribunal, the WAS Conference, and Negotiation/Commercial Training (for accreditation) in Darwin.

We have been members on a rotational basis of the Executive Committee. The Co-ordinator has been a member of the Sexual Assault Committee, and in that role contributed to the Director of Public Prosecutions' submission to the Inquiry into Indigenous Children.Sexual Abuse.

We have had the first pre-recording of children's evidence in Alice Springs; since then other children have used that facility. After more than ten years vulnerable and other witnesses will soon be able to use a furnished room at the court as they wait to give their evidence.

The Agencies we have been able to use this year to generally coordinate or deliver services to particular clients were: NPYWC (Ngaanyatjarra Pitjantjatjarra Yankunytjatjara Women's Service) SARC (Sexual Assault Referral Centre, ASH (Alice Springs Hospital), The Renal Unit Flynn Drive, CAWLS (Central Australian Women's Legal Service), the DVLS(Domestic Violence Legal Service, Community Corrections, AIS (Aboriginal Interpreter Service, FACS (Family and Community Service, NT Police, Adult Guardianship, The Human Rights and Equal Opportunity Commission and CAAC (Central Australian Aboriginal Congress, Medical Centre).





ABORIGINAL SUPPORT

This year the Witness Assistance Service (WAS) staff continued to be involved in ongoing presentations of the WAS DVD; bush courts and community courts. These are duties added on to core business of providing support to victims and witnesses. In particular community courts have mainly involved indigenous clients.

In the last quarter of 2005 there was another significant promised bride case which eventually went to appeal. There were several difficulties surrounding this case due to the customary law issues that were not discussed in court and were not a part of the court process. It was difficult at times to provide adequate WAS assistance to the victim and family when there were issues that were outside core business. These issues need to be highlighted.

Bush Court Circuit

WAS has again increased its attendance at bush courts. WAS had some excellent feedback regarding our attendance at remote communities like Borroloola and Timber Creek. WAS is still looking at an increased presence in the Katherine region. This can only be done with stability of prosecution staff in that region, which in turn, will see increased referrals to WAS. In the Top End 60 bush courts were attended this year. WAS staff spent 123 days out of the office.

In Katherine four or five oral committals have been listed for one week with a WAS officer attending. This is a good practice, however the difficulties have been lack of office space for prosecutor and WAS staff with an inability to provide a safe, secure and private space to proof victims and witnesses.

Indigenous Staff

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

Networking

During the past year the Aboriginal Support Co-ordinator networked with various government and non-government agencies. In July 2005 all indigenous staff within the Department of Justice attended an Indigenous Employment Forum. One of the main issues discussed was the permanent position of an Employment Officer within this Department.

The Aboriginal Support Co-ordinator continues to strengthen the network between the Aboriginal Interpreter Service and ODPP. It was with much appreciation that I was recently asked to be a part of the interviewing panel for AIS staff. AIS has done a great job providing interpreters for court. As we are all aware, courts cannot proceed without interpreters if defendants or witnesses do not speak English.

This year has seen a strengthening of networks between WAS and non-government agencies. This is important because of the difficulties that WAS has in covering many bush courts, other agencies can be asked to assist WAS in the bush.

Community Courts

Ken James co-ordinates community courts for WAS. He does an excellent job with the assistance of Susan Cooper. They have covered most of the community courts both in Darwin and in the bush. WAS has continued to give constructive feedback regarding this project. WAS has seen the benefits of this project for victims especially when they have received an apology from the defendant at community court. It is also good to see Elders from various communities taking ownership of community problems and assisting the Magistrate to find relevant community solutions.