



**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

2019-2020



**DIRECTOR OF PUBLIC PROSECUTIONS
NORTHERN TERRITORY**

THIRTIETH ANNUAL REPORT

FOR YEAR ENDED 30 JUNE 2020



Director – WJ Karczewski QC

30 September 2020

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

Dear Attorney-General

ANNUAL REPORT 2019-2020

In accordance with the requirements of section 33 of the *Director of Public Prosecutions Act*, I submit to you a report on the performance of the functions of the Director of Public Prosecutions for the period 1 July 2019 to 30 June 2020.

Yours sincerely



WJ KARCZEWSKI QC



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OFFICE LOCATIONS

1. NORTHERN REGIONAL OFFICE DARWIN (Head Office)

Level 3, 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, Centrepont Building
Cnr Hartley Street & Gregory Terrace
ALICE SPRINGS NT 0870
PO Box 2185
ALICE SPRINGS NT 0871

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

3. KATHERINE OFFICE

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

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

MISSION STATEMENT

MISSION

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

VISION

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

GOALS

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

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

DIRECTOR'S OVERVIEW

During the reporting year, the event which had the most impact on the functions of the Director of Public Prosecutions ("the DPP") was the corona virus COVID-19.

Social distancing requirements and travel restrictions had the potential to severely curtail the operations of the criminal justice system in which the DPP has a pivotal role. The DPP is considered an essential service and, as such, was required to maintain operations throughout the crisis. As the situation progressed into a worldwide pandemic, the initial focus was on ensuring the safety and wellbeing of all DPP staff. In accordance with the Chief Minister's directions. The DPP identified those staff at an increased risk and made arrangements for them to work remotely.

Business Support identified system requirements to enable staff to work remotely and began the onerous task of establishing access to the various data systems and audio visual platforms. While initially not all tasks were able to be undertaken remotely, those who were working from home were able to test systems and processes enabling issues to be addressed with limited disruption to business.

In preparation for the potential requirement for all staff to work remotely, all workflows and procedures were revised. As DPP operates in a predominantly paper-based environment, all case materials were required to be accessible in an electronic format. Registry and Summary Prosecutions staff worked closely with police and courts to develop processes for providing information electronically and protocols for receiving materials such as physical evidence that was not able to be received electronically. The disclosure of material to defence and courts was also required to be in an electronic format which caused a number of issues for some major stakeholders including the Northern Territory Legal Aid Commission ("the NTLAC") and the North Australian Aboriginal Justice Agency ("NAAJA"), as their ICT systems were shown to be unsophisticated and unable to readily receive the increased volume of electronic data. DPP overcame some of these issues by providing NAAJA and some defence counsel with data storage hardware to ensure access to case materials was possible.

I would like to extend my gratitude to all DPP staff for their efforts during this unprecedented and extraordinary world event. Without the teamwork and professionalism displayed by everyone, the DPP would not have been able to continue the high standard of work throughout the crisis. Special thanks must go to:

- Erin McAuley, Managing Summary Prosecutor;
- Karen Le Bretton, Supervisor/Trainer;
- Jacqui Walker, Information Manager; and
- Mark Seiler, Supervising Summary Prosecutor,

for their additional effort in working with stakeholders and developing processes required to enable DPP staff to operate successfully in a non-contact environment.

COVID-19 also affected court listings. In the Darwin Supreme Court, 13 trials were vacated and adjourned to a later date. In Alice Springs 9 trials were vacated. Other proceedings such as appeals, pleas of guilty, breaches of court orders, mentions etc., were conducted by way of audio-visual link (AVL) with all participants appearing from different locations. The success of appearances by way of AVL coupled with the electronic filing and service of documents has paved the way for the future. The efficiencies expected from reliance on these means of electronic communication include significant cost savings to government. Consequently, any up-front costs involved in enhancing the existing systems should be weighed against the long term savings to be made.

Unfortunately as a result of travel restrictions, COVID-19 has also had negative impacts on DPP operations, with a number of important activities not being able to take place this year. These include:

- the Solomon Islands–NT Twinning Program,
- the Conference of Australian Directors of Public Prosecutions,
- the Australian Association of Crown Prosecutors Conference, and
- the National Executives Conference.

Participation at these events is considered vital to maintaining jurisdictional relationships and keeping abreast of contemporary practices. Travel restrictions as a result of COVID-19 are expected to continue to affect activities in the 2020-21 financial year.

COVID-19 aside, the volume of work through the reporting year has remained on par with previous years with the exception of the caseload in the High Court where there was a significant increase in activity. As outlined at pages 32-39, the office was involved in six applications for special leave and three appeals to the High Court. Two decisions delivered by the High Court are of considerable importance in that they enunciate principles of criminal practice and procedure applicable throughout Australia. The decision in **Cumberland v The Queen**¹ illustrates the broad extent of the court's residual discretion when considering whether to allow a Crown appeal against sentence where error has been shown and the decision in **Nguyen v The Queen**² deals with the obligation of the Crown to tender as part of its case, "mixed" statements made by the accused, that is, statements which are both inculpatory and exculpatory. Until the decision in **Nguyen**, there were conflicting judicial pronouncements and differing practices between jurisdictions as to whether such statements could or should be admitted into evidence as a matter of law. The decision settles the law to be applied by all prosecutors throughout Australia. Such statements are admissible and should be tendered.

The past year saw three DPP team members achieve their 10 year service milestones; PA Supervisor/Trainer Ms Karen Le Bretton, Deputy Director Mr Matthew Nathan SC and Witness Assistance Officer Mr Phillip Edgar

Karen originally commenced her NTG career in 1987 at the Royal Darwin Hospital and eventually joined DPP in 1994 as a Professional Assistant providing administrative support to Crown Prosecutors. Karen left to join the Commonwealth DPP in 2005 returning to the

¹ [2020] HCA 21, 94 ALJR 656

² [2020] HCA 23, 94 ALJR 686

NT DPP in early 2008. Karen's career with the DPP could be considered predestined as her mother also worked as a Professional Assistant with the DPP.

Phill commenced on a temporary contract with the DPP in 2011 after originally taking up the role of Pool Safety Officer within the Water Safety Branch in 2008. In 2012 Phill was permanently appointed to the position of WAS Officer. Previous to his employment with the NTG, Phill held the position of Public Places Program Liaison Officer at the Darwin City Council for nine years.

Matt moved to Darwin from Queensland to assume the role of Senior Crown Prosecutor in 2008. He was then appointed as the Principal Crown Prosecutor Sexual Assault in 2012. Matt's experience and standing within the legal fraternity was recognised by his appointment as Senior Counsel in September 2015, at the same time being promoted to the position of Deputy Director DPP.

I am pleased to have these three experienced NTG employees working within the office, and congratulate them on their achievements.

On the staffing front, I am pleased to report that the two vacant resident summary prosecutor positions in Katherine were filled in the reporting year. Further details appear on page 41 of this report.

It is also pleasing to report that plans for the new DPP / Police Prosecutions office in the soon to be renovated Katherine Government Centre were finalised in the reporting year.

Once again, I sincerely thank all my staff for the tremendous effort they have put in to service the courts and the community in what has been a very difficult year. They have discharged their obligations professionally and admirably.

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

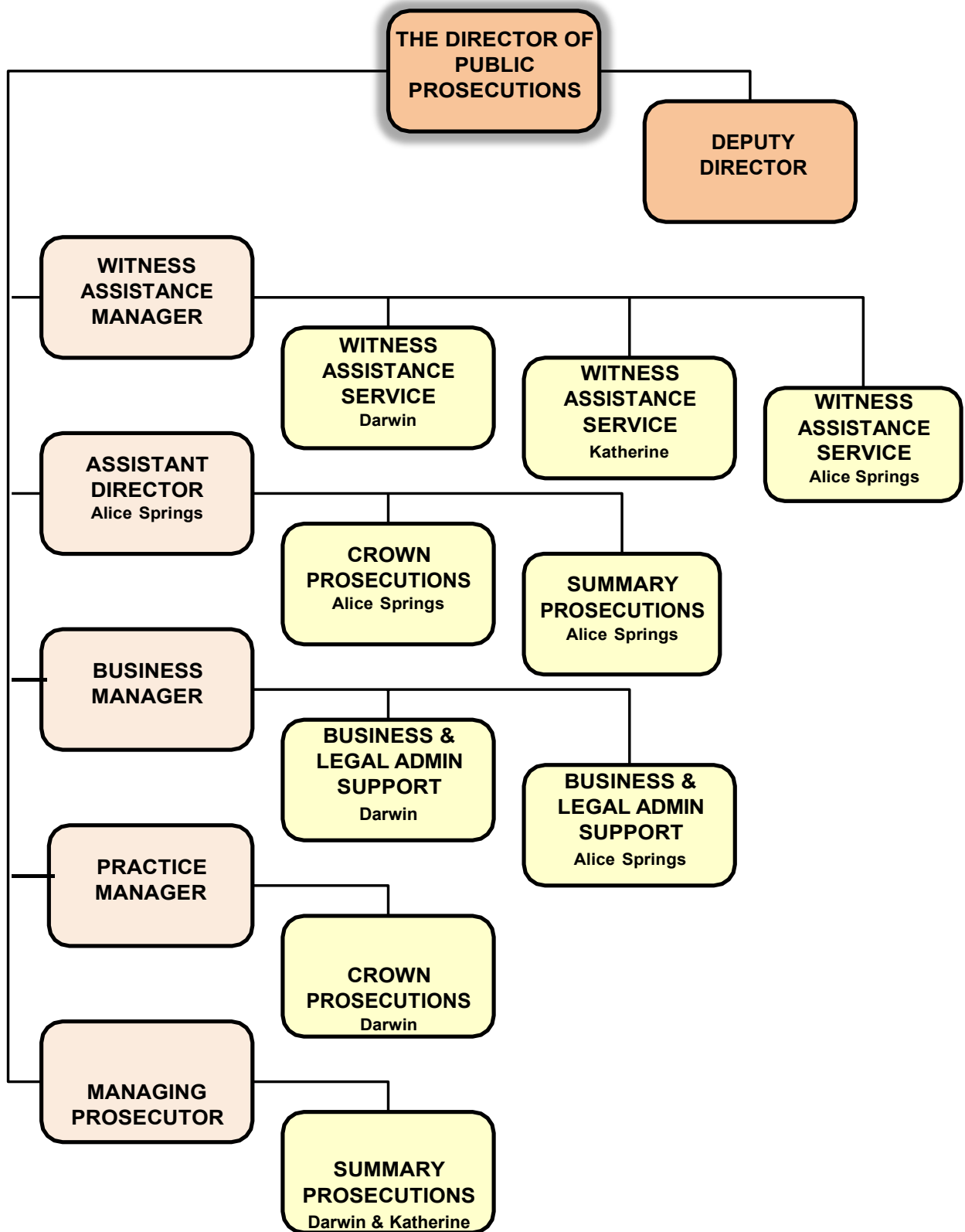
Section 28 of the Act permits the Attorney-General, after consultation with the Director, to issue to the Director directions as to the general policy to be followed in the performance of a function of the Director. Every such direction must be in writing and must be included in the Director's Annual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

During the reporting year:

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



ORGANISATIONAL CHART



FUNCTIONS OF THE DIRECTOR OF PUBLIC PROSECUTIONS

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

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

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

General Powers

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

REPORT ON PROSECUTION FUNCTIONS

Key Deliverables	Current Year		Previous Years Actuals		
	2019-20 Budget	2019-20 Actual	2018-19	2017-18	2016-17
New Matters	9,400	9,312	8,998	9,686	9,214
Finalisations					
- Supreme Court pleas	450	356	389	418	426
- Supreme Court trials	60	50	55	64	69
- Supreme Court withdrawn	40	35	22	22	45
- Not committed to Supreme Court	N/A	N/A	N/A	N/A	N/A
- Local Court hearings/pleas	7,000	6,498	7,037	6,738	6,483
- Local Court withdrawn	800	461	585	841	814
- Appeals at all levels	60	60	83	59	63
Findings of guilt (including guilty pleas)					
- In Supreme Court	94%	97%	98%	97%	96%
- In Local Court	97%	98%	97%	97%	97%
Convictions after trial or hearing	97%	91%	92%	97%	97%
Witness Assistance Service clients	1,730	1,855	1,891*	2,216	1,934
* Staff shortages including recruitment to the WAS Manager's position directly impacted on the number of clients assisted.					

Charges requiring DPP's consent or signature

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

the name of or on behalf of a Crown Law Officer.³ Similarly, indictments charging certain offences and documents evidencing significant prosecutorial decisions can only be signed by the DPP or a Crown Law Officer.

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

The more important provisions are identified and reported against below.

A Table of Comparison Data for the last five years is at Appendix A.⁴

Conspiracy

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

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

Criminal Defamation

Part VI Division 7 of the *Criminal Code* creates the offences of unlawfully publishing defamatory matter and publishing or threatening to publish defamatory matter with intent to extort money.⁵

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

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

Distributing Intimate Images

Part VI Division 7A of the *Criminal Code* creates offences relating to the distribution of intimate images.⁶

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

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

³ See definition of Crown Law Officer in s 1 of the *Criminal Code*.

⁴ The Table is incomplete as historical data on some of the matters now being reported on was not previously kept.

⁵ Sections 204 and 205 of the *Criminal Code*.

⁶ Sections 208AB and 208AC of the *Criminal Code*.

⁷ A child is a person under the age of 18 years. See the definitions of adult and child in s 1 of the *Criminal Code*.

Money Laundering

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

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

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

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

During the reporting year no indictments charging this offence was signed.

No True Bill

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

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

During the reporting year two No True Bills were issued.

Ex-officio indictments

When a person charged with an indictable offence has been committed for trial and it is intended to put him on his trial for the offence, the charge is to be reduced to writing in a document that is called an indictment. The indictment is to be signed by a Crown Law Officer.⁸

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

In the normal course of events, ex-officio indictments are signed at the request of an accused person with a view to by-passing the preliminary examination procedure in the Local Court and expediting a plea of guilty in the Supreme Court.⁹

⁸ Section 298 of the *Criminal Code*.

⁹ The advantage for the accused in consenting to proceeding by way of ex-officio indictment is to maximise discount on sentence. The Northern Territory Court of Criminal Appeal has held that pleas of guilty or indications of pleas of guilty at the earliest possible opportunity accompanied by true remorse are entitled to attract a greater reduction than late pleas which are not accompanied by true remorse. *Wright v The Queen* (2007) 19 NTLR 123 at 125 [32].

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

Nolle Prosequi

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

In the reporting year 20 nolle prosequis were signed and filed in the Supreme Court.

Taking over proceedings

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

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

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

Indemnities and undertakings

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

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

Joint trial arrangements with Commonwealth DPP

There exists between the Commonwealth DPP and the Territory DPP an arrangement for the conduct of Territory prosecutions by the Commonwealth DPP, and for the conduct of Commonwealth prosecutions by the Territory DPP.¹⁰

The arrangement is given effect by each DPP delegating to the other the power to sign and present indictments, including ex-officio indictments, in respect of an offence against the law of the conferring jurisdiction and to conduct on behalf of the DPP for the conferring jurisdiction the trial on such an indictment. The arrangement also deals with the conduct of summary prosecutions, preliminary examinations and appeals.

The purpose of the arrangement is to facilitate a single prosecution of an accused person who has been charged with both Commonwealth and Territory offences.

¹⁰ Similar arrangements exist between other State and Territory DPPs and the Commonwealth DPP.

Without the arrangement, separate trials would have to be held for the Commonwealth offences and for the Territory offences. A common situation which enlivens the arrangement is when an accused person is charged with possessing child abuse material, an offence against Territory law,¹¹ and making available child pornography material using a carriage service and / or accessing child pornography material using a carriage service, both of which are offences against Commonwealth law.¹²

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

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

Appeals

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

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

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

¹¹ Contrary to s 125B(1) of the *Criminal Code* (NT).

¹² Contrary to s 474.19(1) of the *Criminal Code* (C'th).

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

NB: *The figures in brackets in each of the tables below are for the period 1 July 2018 to 30 June 2019.*

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*
2019-2020**

	Conviction	Sentence
Granted	0 (2)	6 (8)
Refused	0 (5)	4 (11)
Discontinued	0 (4)	5 (3)
Total	0 (11)	15 (22)

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** also includes rulings of an interlocutory nature made by single judges exercising the powers of the Court of Criminal Appeal in matters such as applications for an extension of time within which to apply for leave to appeal and applications for bail where written reasons for decision have been published by the Court.

TABLE B

**Outcome of defence appeals from the Supreme Court to the
Court of Criminal Appeal/ Court of Appeal/Full Court
2018-2019**

	Conviction	Sentence	Other
Allowed	2 (3)	8 (7)	0 (0)
Dismissed	3 (7)	4 (5)	0 (0)
Discontinued	0 (0)	0 (1)	0 (0)
Total	5 (10)	12 (13)	0 (0)

**Outcome of prosecution appeals and
references from the Supreme Court to the
Court of Criminal Appeal/Court of
Appeal/Full Court
2018-2019**

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

No questions of law were reserved by a trial court for the consideration of the Court of Criminal Appeal pursuant to s 408 of the *Criminal Code*.

No proceedings were referred by a single judge to the Full Court for consideration or determination pursuant to s 21 of the *Supreme Court Act*.

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

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

TABLE C

**Outcome of defence appeals from the Local Court to the Supreme Court at Darwin
2018-2019**

	Conviction		Sentence		Other	
Allowed	1	(3)	9	(9)	0	(0)
Dismissed	1	(6)	8	(10)	0	(0)
Discontinued	1	(3)	17	(9)	0	(0)
Total	3	(12)	34	(28)	0	(0)

**Outcome of prosecution appeals from the Local Court to the Supreme Court at
Darwin
2018-2019**

	Dismissal of Charge		Against Inadequacy of Sentence		Other	
Allowed	0	(3)	3	(5)	0	(0)
Dismissed	2	(1)	1	(0)	0	(0)
Discontinued	0	(1)	2	(0)	1	(0)
Total	2	(5)	6	(5)	1	(0)

**Outcome of defence appeals from the Local Court to the Supreme Court at
Alice Springs
2018-2019**

	Conviction		Sentence		Other	
Allowed	1	(0)	5	(1)	0	(0)
Dismissed	0	(0)	3	(2)	0	(0)
Discontinued	2	(3)	1	(1)	1	(0)
Total	3	(3)	9	(4)	1	(0)

**Outcome of prosecution appeals from the Local Court to the Supreme Court at
Alice Springs
2018-2019**

	Dismissal of Charge		Against Inadequacy of Sentence		Other	
Allowed	0	(1)	0	(2)	0	(0)
Dismissed	0	(0)	0	(1)	0	(0)
Discontinued	0	(0)	0	(0)	0	(0)
Total	0	(1)	0	(3)	0	(0)

Crown Appeals

In the 2014-2015 Annual Report as a result of what appeared to be 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, I set out a number of basic principles which had to be applied in every case in which consideration was being given whether or not to appeal.¹³ One of the principles mentioned was:

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

This principle is commonly referred to as the exercise of the court's residual discretion. The rigour with which the principle is to be applied was highlighted by the High Court in the matter of **Cumberland v The Queen**¹⁴ a note of which appears on pages 34-35 of this Report. In **Cumberland** the appellant was originally sentenced to four years and six months, suspended (subject to certain conditions) after two years with an operational

¹³ 2014-2015 DPP Annual Report at pp 10-12

¹⁴ [2020] HCA 21, 94 ALJR 656

period of three years after release. Following a successful Crown appeal he was re-sentenced to eight years' imprisonment with a non-parole period of five years, five months and one week. There was a delay of 10½ months between the announcement by the Court that the appeal was to be allowed and the making of orders re-sentencing the appellant. Even though the delay was in no way attributable to the Crown, it was held that proceedings in the Court of Criminal Appeal were flawed because, prior to re-sentence, the appellant was not given the opportunity to place material before the Court of Criminal Appeal as to his progress in custody, nor to make submissions on re-sentence or dismissal of the appeal in the exercise of the Court's residual discretion.

In its decision, the High Court placed considerable weight on the delay in the appeal process which it noted "*was of a marked degree.*" Regardless of the appellant's situation at the time of the hearing of the appeal 11 months earlier, the delay necessitated consideration of the residual discretion to dismiss the Crown appeal. At all times, the onus was on the Crown to negate the existence of any reason why the Court of Criminal Appeal should decline to interfere notwithstanding that the Court of Criminal Appeal was satisfied that the sentence was manifestly inadequate.

Although the circumstances which presented themselves in **Cumberland** are unlikely to arise again, the decision serves as a stark reminder as to the rigour to be applied in the decision-making process both by the Crown when deciding whether or not to institute an appeal and by the Court in deciding whether or not to allow the appeal notwithstanding a finding by the Court that the sentence appealed against was manifestly inadequate.

The exercise of the court's discretion to dismiss a Crown appeal is not a novel concept. The Northern Territory Court of Criminal Appeal has, both before and after the decision in **Cumberland**, dismissed a Crown appeal against inadequacy of sentence in the exercise of its residual discretion notwithstanding a finding that the sentence was manifestly inadequate. For examples in the current reporting year see **The Queen v Mamarika**¹⁵, **Rigby v Benfell**¹⁶ and **The Queen v Irwin**¹⁷

In **The Queen v Mamarika**, the offender was sentenced to imprisonment for two years and three months (after a 25% discount for his plea of guilty) for the offence of unlawfully causing serious harm. It was ordered that the sentence be suspended after the offender had served nine months. The Crown appealed against the inadequacy of the sentence.

On appeal the Court held that the starting point of three years imprisonment used by the sentencing judge was disproportionate to the objective seriousness of the offending and that "*a starting point of somewhere between five and six years was indicated.*"¹⁸ Also, the suspension of the sentence after the offender had served only nine months was also manifestly inadequate.

Notwithstanding these errors, the Court dismissed the appeal in the exercise of its residual discretion because of a delay in having the matter heard because of difficulties in serving the offender with appeal papers. By the time the appeal was heard, the offender had been back in the community for almost eight months. A compliance report ordered by the Court

¹⁵ [2019] NTCCA 24 delivered 30.12.2019

¹⁶ [2020] NTCA 9 delivered 26.06.2020

¹⁷ [2020] NTCCA 3 delivered 11 June 2020

¹⁸ [2019] NTCCA 24 at [12]

stated that the offender's compliance had been excellent. The Court was of the view that to resentence the offender by imposing more prison time would disrupt a demonstrably successful rehabilitation process which would cause the offender significant confusion and give rise to unfairness.

In ***Rigby v Benfell***, the offender pleaded guilty to the offence of driving with a medium range breath or blood alcohol content contrary to s 22 of the *Traffic Act 1987*. The Local Court found the offence proved, *convicted* the offender, and imposed a fine of \$500 with a victim's levy of \$150. The offender was also disqualified from driving for the minimum period of six months by operation of s 22(3) of the *Traffic Act*.

The offender then appealed to the Supreme Court. That appeal was successful. The sentence imposed by the Local Court was quashed and the offender was re-sentenced to a fine of \$1000 *without conviction*. The disqualification of the offender's driver's licence for six months was affirmed.

The prosecution then appealed to the Court of Appeal.

The major issue in the Supreme Court and the Court of Appeal was whether the Local Court had erred in recording a *conviction* after the finding of guilt.¹⁹ The Court of Appeal found that the recording of a conviction by the Local Court was clearly and obviously within the bounds of the sentencing discretion and that the Supreme Court was wrong in allowing the appeal to that Court.

The Court of Appeal then turned its mind to the exercise of the residual discretion and to the element of double jeopardy.

The Court dismissed the appeal notwithstanding the errors identified in the decision of the Supreme Court. Reasons given for dismissing the appeal were (i) by the time the appeal was heard the offender had moved on with his life in the understanding that no conviction had been recorded against him, (ii) the moderating effect of the principle of double jeopardy was such that there was no call for the reinstatement of the conviction, (iii) the consequences of the error by the Supreme Court were not so serious that the public conscience required a reversal of those consequences, except in relation to the question of costs, and (iv) the reasons for decision of the Court of Appeal were sufficient to lay down principles for the governance and guidance of lower courts on the issues raised by the appeal in vindication of the Crown interest.

In ***The Queen v Irwin*** the offender was sentenced to a total effective sentence of three years imprisonment suspended after the offender had served six months. The suspended portion of the sentence was subject to conditions. The head sentence consisted of a sentence of two years and six months for the offence of unlawfully causing serious harm and a partly concurrent sentence of 12 months imprisonment for the offence of assault aggravated by causing harm. The Crown appealed against the inadequacy of the sentence imposed for the offence of unlawfully causing serious harm.

On appeal the Court held that the starting point of 40 months imprisonment used by the sentencing judge (reduced to 30 months on account of the offender's plea of guilty and

¹⁹ The determination of whether to record a conviction is dealt with by s 8 of the *Sentencing Act 1995*

associate remorse) and the period of six months actual imprisonment were plainly unjustly disproportionate to the objective seriousness of the offending and that a starting point of at least five years imprisonment was indicated. However, given that (i) the offender had already been released from prison, (ii) he had made substantial progress towards rehabilitation, and (iii) the detrimental impact that resentencing the offender was likely to have on his prospects of rehabilitation, the Court dismissed the appeal in the exercise of its residual discretion.

Other considerations which the Crown/prosecution must take into account when deciding whether or not to institute an appeal and indeed which may operate so as to inhibit the institution of a prosecution appeal against inadequacy of sentence have recently been emphasized by the High Court. These considerations are directed to the purpose of prosecution appeals. The High Court has stated that:

“... an appeal by the Attorney-General should be a rarity, brought only to establish some matter of principle and to afford an opportunity for the Court of Criminal Appeal to perform its proper function in this respect, namely, to lay down principles for the governance and guidance of courts having the duty of sentencing convicted persons.”²⁰

And:

“The primary purpose of appeals against sentence by the Attorney-General or Director of Public Prosecutions (Crown appeals) under s 5D of the *Criminal Appeal Act 1912* (NSW) is “to lay down principles for the governance and guidance of courts having the duty of sentencing convicted persons” (36). That purpose distinguishes Crown appeals from appeals against severity of sentence by convicted persons, which are concerned with the correction of judicial error in particular cases. The Court of Criminal Appeal of New South Wales, in the exercise of its jurisdiction under s 5D, has a discretion to decline to interfere with a sentence even though the sentence is erroneously lenient. That discretion is sometimes called the “residual discretion”. In Crown appeals, circumstances may combine to produce the result that if the appeal is allowed the guidance provided to sentencing judges will be limited and the decision will occasion injustice. Relevant circumstances include consequential disparity relative to an unchallenged sentence imposed on a co-offender and delay in the appeal process which may be associated with disruption of the offender’s progress towards rehabilitation. In such cases it may be appropriate for a court of criminal appeal, in the exercise of its residual discretion, to dismiss a Crown appeal.

The High Court has clarified that:

- (i) the reference to “*matter of principle*” “*must be understood as encompassing what is necessary to avoid ... manifest inadequacy or inconsistency in sentencing standards*”, and

²⁰ *Griffiths v The Queen* (1977) 137 CLR 293 at 310 per Barwick CJ, affirmed in *CMB v Attorney-General (NSW)* (2015) 256 CLR 346 at [35] per French CJ & Gageler J

- (ii) the above explanation of the nature of an appeal under s 5D of the *Criminal Appeal Act 1912* (NSW) represents “*general and authoritative guidance to the Courts of Criminal Appeal of this country*”.²¹

In summary:

“if [the Court of Criminal Appeal] is to accede to the Crown’s desire that the respondent be sentenced more heavily, it must surmount two hurdles. The first is to locate an appellable error in the sentencing judge’s discretionary decision. The second is to negate any reason why the residual discretion of the Court of Criminal Appeal not to interfere should be exercised.”²²

In the current reporting year the Crown instituted five appeals against inadequacy of sentence in the Court of Criminal appeal with the following results.

R v Ryan²³

The offender was sentenced to five years imprisonment suspended after he had served two years following his pleas of guilty to (i) aggravated robbery, (ii) unlawfully causing serious harm to LV, (iii) aggravated unlawful assault on MK, and (iv) aggravated unlawful assault on DH. The individual sentences imposed prior to adjustment for concurrency were; three years and nine months for the robbery (reduced from a starting point of five years before discount), three years and nine months for unlawfully causing serious harm (reduced from a starting point of five years before discount), six months for the assault on MK, and nine months for the assault on DK.

It was ordered that one year of the sentence for unlawfully causing serious harm on LV be served cumulatively on the sentence for the robbery thus making a total of four years and nine months for these two offences. These two offences occurred during the course of a robbery at a service station. The victim was the service station attendant. The remaining offences occurred after the offender and his co-accused left the service station. The assaults were totally unprovoked.

In respect of offences (iii) and (iv), the offender was sentenced nine months imprisonment (reduced from a starting point of 12 months before discount) with three months to be served cumulatively on the sentences for (i) and (ii) making a total of five years imprisonment.

The Crown appealed against the total effective sentence of five years asserting that it was manifestly inadequate.

The offender and his co-accused, both heavily intoxicated and affected by alcohol and methamphetamine, drove to a service station for the purpose of stealing alcohol from its liquor outlet. When LV confronted the offender and attempted to prevent the offender from leaving the store with the alcohol without paying, the offender and his co-offender assaulted LV. The offender threw a full bottle at LV from close distance hitting LV in the head. He then punched LV to the floor and stomped on LV’s head with full force three times.

²¹ **CMB v Attorney-General (NSW)** (2015) 256 CLR 346 at 359 [35] per French CJ & Gageler J

²² **R v Hernando** (2002) 136 A Crim R 451 at 458 [12 per Heydon JA. Approved by the High Court in **CMB v Attorney-General (NSW)** (2015) 256 CLR 346 at 359 [34] per French CJ & Gageler J

²³ [2019] NTCCA 20

Shortly thereafter and as LV was trying to get up off the floor, the offender stomped on his head again and then kicked him in the face with full force.

As a result of the assaults LV suffered fractured cheekbones on both sides of his face; fractured eye sockets to both eyes; a fractured nose and a fractured skull with air on the brain. He was initially unable to provide a statement of complaint due to the seriousness of his injuries. LV required maxillofacial surgery and still had not returned to work by time of the sentencing hearing, some seven months after sustaining his injuries. In his victim impact statement he spoke of the significant effect upon the lives of him and his wife, and in particular upon her mental health. From being a happy confident young couple they have lost all confidence and feel very unsafe. He experienced flashbacks, trouble sleeping and headaches. He felt guilty that he could not give his wife the support that he felt she needed.

The Court of Criminal Appeal allowed the appeal holding that the total effective sentence was manifestly inadequate. Specifically, the Court considered the total of four years and nine months for the conduct involved in counts (i) and (ii) to be manifestly inadequate. The Court found that the sentencing judge erred in ordering such a large degree of concurrency between the two individual sentences.

The Court re-iterated the importance of protecting vulnerable workers such as taxi drivers, shopkeepers, garage attendants and workers at fast food outlets who are required to work alone, and who may be unable to defend themselves or to seek or get help, when threatened with or subjected to violence. The Court affirmed that denunciation, specific and general deterrence, and community protection are significant sentencing factors in these kind of cases where the victim or victims fall into that category.

In re-sentencing the offender the Court noted the importance of avoiding punishing the offender twice for the same conduct which was common to offences (i) and (ii); once for the violence which was an element of the offence of robbery, and again for same violence which caused the serious harm.

The Court re-sentenced the offender to a total effective sentence of six years and six months imprisonment. A non-parole period of three years and three months was fixed.

R v Travis Gurruwiwi.²⁴

The case was concerned with maintain proper sentencing standards when sentencing offenders for having committed sexual offences against young children.

The offender, a 25 year old male, was sentenced to seven years and six months imprisonment with a non-parole period of five years and three months following his plea of guilty to one count of having sexual intercourse with a 12 year old female without her consent. The sole ground of appeal was that the sentence was manifestly inadequate. On appeal the Crown argued that the sentencing judge's reliance on the sentencing range discussed in an earlier decision of the Court of Criminal Appeal decision²⁵ was misplaced because the victim in the earlier decision was an adult. That submission was successful.

²⁴ [2019] NTCCA 23

²⁵ *Gilligan v The Queen* [2007] NTCCA 8

The Court allowed the appeal holding that the sentencing judge's starting point of 9 years imprisonment was manifestly inadequate because it did not properly take into account the age and vulnerability of the child victim, and did not sufficiently reflect the sentencing objectives of punishment, denunciation and general deterrence.

In resentencing the offender, the Court of Criminal Appeal took as its starting point a term of imprisonment of 12 years which was then discounted by three years to reflect the guilty plea. The offender was resentenced to a term of nine years imprisonment. A non-parole period of six years and four months was fixed.

R v Wilton Lam²⁶

In September 2019, the respondent transported 55 pounds (25.08 kilograms) of cannabis plant material (**cannabis**), packed in two suitcases, from Adelaide to Darwin. The respondent was apprehended at the Darwin Airport after a drug detector dog reacted to the suitcases. The respondent answered "no comment" to all questions asked and did not otherwise assist police in any way. The respondent pleaded guilty to supplying a commercial quantity of cannabis, contrary to section 5(1) of the *Misuse of Drugs Act*. He was sentenced to 3 years imprisonment, reduced from 5 years for the plea, with a 70% non-parole period.

The Crown appealed the sentence on two bases, firstly that the sentencing judge had erred by applying a 40% reduction to the head sentence for the plea and secondly that, in all the circumstances, the sentence was manifestly inadequate. The respondent cross-appealed on the basis that the sentencing judge erred in finding a partly suspended sentence was not available and by imposing a non-parole period.

The Court of Criminal Appeal allowed the appeal, holding that the sentence was manifestly inadequate. The Court resentenced the respondent to 4 years and 9 months imprisonment, reduced from 6 years imprisonment, to be suspended after 2 years and 9 months. Having re-sentenced the respondent in that way, the cross-appeal was dismissed. The Court held that it was not necessary to decide ground 1, relating to the 40% reduction, but noted there had been no basis for that discount.

R v Lee Irwin²⁷

A note of this case appears on pages 29-30 of this report.

This was one of two appeals instituted in the current reporting year the purpose of which was to establish proper sentencing standards for the offence of unlawfully causing serious harm, the maximum penalty for which is imprisonment for 14 years.²⁸

While at a hotel and after consuming alcohol, the offender became involved in a fight with another patron V1. Bouncers at the hotel separated them and the offender was escorted out of the hotel. The offender remained outside in close proximity to the hotel. While outside he sent a threatening Facebook message to V1 who did not reply. Some 30 minutes later V1 left the hotel with his friends including V2.

²⁶ Extempore judgement delivered 17 April 2020

²⁷ [2020] NTCCA 3 delivered 11 June 2020

²⁸ The other appeal was that of ***R v Simpson*** a note of which immediately follows

As they walked through a car park the respondent ran from the side of the building towards V1 and yelled at him. He threw a number of punches at V1 none of which connected. V1 then threw a number of punches at the offender. V2 then stepped between the offender and V1 to stop them fighting. The offender pulled a small knife out of his pocket and stabbed V2 to the upper left side of his abdomen. The offender and V1 then continued to throw punches at each other until bouncers from the hotel intervened. One bouncer tackled the offender, and another bouncer restrained V1. A friend of the offender, JC, then sat on him. The offender handed his knife to JC. He got off the respondent and threw the knife down a drain before the police arrived and arrested the respondent.

V2 sustained a stab wound to his left upper abdomen/lower chest which punctured his lung. He was taken by ambulance to the Royal Darwin Hospital. He was diagnosed as suffering a traumatic haemopneumothorax. There was air and blood in his chest cavity. As V2's lung had partially collapsed, a chest drain was inserted to avoid life-threatening complications. He remained in hospital for five days. The insertion of the chest drain was extremely painful. After leaving hospital it was necessary for V2 to undertake physiotherapy. V2 continued to experience ongoing sharp pains and numbness at the site of the medical intervention.

V2 experienced severe financial difficulties. He was unemployed for seven months. As he was a casual employee at the time of the assault, V2 was not entitled to sick pay or holiday pay. He was on a low income and had no savings. He went from consistently working and living independently to receiving no income. He was unable to obtain assistance from Centrelink. Since the attack V2 experienced severe anxiety and stress. He suffered from reactive depression.

The Court of Criminal Appeal was of the view that the offending was objectively serious involving the use of a concealed knife which the offender had taken to a public place. V2 was like a Good Samaritan merely attempting to stop the offender from attacking V1 again. V2 did nothing to provoke the attack upon him. The offender deliberately waited outside for almost half an hour so that he could pick another fight with V1. He stabbed V2 in a vulnerable part of his body. The offender showed no remorse at the time; he gave the knife to a friend so he would not be caught with it. V2 sustained a very serious injury which was life threatening and he experienced significant financial and emotional hardship. Such offending was prevalent in the NT and general deterrence was significant.

As noted in the above case note, the appeal was successful in so far as the Court held that both the head sentence of 30 months and the minimum term of six months of actual imprisonment before suspension were manifestly inadequate and that a starting point of at least five years imprisonment was indicated.

However, the Crown was unable to overcome the second hurdle present in Crown appeals, namely, it was unable to persuade the Court not to exercise its residual discretion to dismiss the appeal. The offender had served the minimum term of six months and had been out of prison for six weeks and the Court had material before it to the effect that the offender had made substantial progress towards rehabilitation. The Court was of the view that returning the offender to prison was likely to severely disrupt his rehabilitation.

The appeal was dismissed.

R v Tony Simpson²⁹

This was the second of two appeals instituted in the current reporting year for the purpose of establishing proper sentencing standards for the offence of unlawfully causing serious harm.

The offender was sentenced to three years (reduced from four years) with the sentence to be suspended on conditions after the offender had served nine months. The sole ground of appeal was that the sentence was manifestly inadequate.

The offender and a co-offender assaulted the victim initially to stop the victim from assaulting his girlfriend. During the course of the assault, they kicked and punched the victim to his head a number of times. They stopped and left when the victim became unconscious. The offender and the co-offender were very intoxicated and the offender was also under the influence of drugs.

The victim sustained extensive injuries as a consequence of the assault including a severe traumatic brain injury resulting in permanent disabilities: impaired memory function; loss of all hearing in his left ear and tinnitus; problems with his balance; loss of fine motor skills in his left hand; altered sense of taste; and visual field loss in his right eye, resulting in his constantly bumping into things on his right side. He remained in hospital for over eight weeks, and after leaving hospital it was necessary for him to undertake physiotherapy to re-learn, among other things, how to eat and walk. The victim also experienced severe financial difficulties. He was unable to work for ten weeks, during which he did not receive an income. He incurred substantial out of pocket expenses following the assault which resulted in him falling behind on his financial responsibilities. Additionally, as a result of the loss of his peripheral vision, he was unable to return to his former career as he was no longer permitted to drive. He was on a high income prior to the assault, and following the assault was in receipt of work insurance at a rate far less than his previous income. He also experienced severe emotional consequences.

The offender was aged 22 at the time of the offending and 23 at the time of the appeal. He had numerous prior convictions including a conviction for assault occasioning actual bodily harm in New South Wales.

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

The Court accepted the Crown's submission that where (as in this case) a defining feature of the offence is the harm to the victim, the seriousness of the harm caused must play a significant role in determining the objective seriousness of the offence.

The Court was of the view that the case should be seen as in the middle range of seriousness for such offences.

²⁹ [2020] NTCCA 9 delivered 15 July 2020

The Court allowed the appeal holding that:

- (1) The starting point of four years imprisonment adopted by the sentencing judge was disproportionate to the objective circumstances of the offending and both the head sentence and the time to serve were manifestly inadequate. A starting point of six years was indicated.
- (2) A point of principle did arise in this case; namely, the need to maintain sentencing standards in objectively serious cases of unlawfully causing serious harm and to emphasise the importance to be attached to the level of harm suffered by the victim in determining the seriousness of the offence. In this case the victim suffered catastrophic injuries with permanent consequences.
- (3) The Crown had discharged the burden of proving that the Court's residual discretion should not be exercised. There was nothing to warrant the exercise of the residual discretion so as to leave a manifestly inadequate sentence undisturbed.³⁰

The sentence at first instance was quashed and the offender was sentenced to imprisonment for four years and six months. It was ordered that the sentence be suspended (on conditions) after the respondent had served 18 months.

HIGH COURT OF AUSTRALIA

The Office was involved as respondent in six applications for special leave to appeal and three appeals to the High Court of Australia during the reporting period.

Kinkade v The Queen

Keane & Edelman JJ
13 November 2019
[2019] HCASL 361

The detail of the litigation history in this case leading to the proceedings in the High Court is set out in the decision of the Court of Criminal Appeal in **Kinkade v The Queen** [2018] NTCCA 4.

In brief, at his original trial 2009, the applicant was found guilty of committing a number of offences of a sexual nature against the daughter of his de facto partner. The applicant brought an appeal against those convictions and, in October 2010, the Court of Criminal Appeal ordered a retrial.

Following the retrial in October 2011, the applicant was found guilty of seven counts and not guilty on one count. The jury was unable to reach a verdict in relation to one count. The applicant was sentenced to 12 years imprisonment. A non-parole period of eight years and six months as fixed.

³⁰At paragraph[41] of its Reasons for Decision the court observed that:

"The appeal has been brought and determined promptly; it is not a case where the respondent has been released into the community and taken positive steps towards rehabilitation in the meantime; no issues of parity or totality arise, and the respondent's rehabilitation will not be adversely affected in any real and substantial sense. Nor was the learned sentencing judge misled by any submissions of the Crown at the time of the hearing of the plea which resulted in an inadequate sentence being imposed."

In November 2011, the applicant lodged a notice of appeal against conviction on numerous grounds. In April 2012, the Court of Criminal Appeal delivered its decision dismissing the appeal. See **A v the Queen** [2012] NTCCA 9.

In March 2017, the applicant made an application for an extension of time within which to bring a further appeal and an application for leave to appeal. In June 2017, the applications were refused by a single judge following which the applicant applied to have the applications heard and determined by the Court constituted by three judges. During the course of the hearing, the applicant pressed four grounds, one of which had been dealt with by the court in the first appeal and three of which were found by the court to be without foundation. The court also dealt with the threshold issue of whether the applicant could bring a second appeal against conviction.

In respect of this threshold issue the court noted that the right of appeal is a creature of statute and that courts governed by similar legislation to that in the NT had consistently held that there is a right to only one appeal. The court followed this line of reasoning and held that the statutory provisions governing appeals to the Court of Criminal Appeal in the NT ought to be construed in the same way. The applications were dismissed. See **Kinkade v The Queen** [2018] NTCCA 4 delivered 13 March 2018.

In September 2019, the applicant applied to the High Court for an extension of time in which to apply for special leave to appeal asserting that the Court of Criminal Appeal was in error in dismissing his applications for an extension of time and for leave to appeal.

The High Court dismissed the application on the papers holding that the decision of the Court of Criminal Appeal was plainly correct and that an appeal would enjoy no prospects of success.

The applicant represented himself throughout all proceedings except for the first trial in 2009 on which occasion he was legally represented.

Roy v O'Neill

Bell, Gordon & Edelman JJ
20 March 2020
HCATrans 43

In the course of proactive domestic violence policing, members of the Northern Territory Police attended the applicant's home to check compliance with the terms of a domestic violence order (the DVO) she was subject to, and to check the welfare of her partner who was a protected person under the DVO. The police entered onto the respondent's premises (a unit in a block of units) via a public pathway, and knocked on her front door, calling her to the door for the domestic violence check. In the course of this interaction, a breath test was administered, which returned a positive result, whereupon the applicant was charged with breaching the terms of the DVO.

At the hearing before the Local Court the evidence gathered by the police was held inadmissible on the basis that the police did not have any power under either the *Police Administration Act 1978* (NT) or the *Domestic and Family Violence Act 2007* (NT) to attend the residence and check that the applicant was complying with the terms of the DVO. There was no consideration as to whether the police officers' entry was permitted pursuant to an

implied licence. The evidence obtained by police was excluded and the applicant was found not guilty.

The prosecution appealed the decision of the Local Court to the Supreme Court. The appeal was dismissed. See **O'Neill v Roy** [2019] NTSC 23. The focus of the reasons was the issue of whether the Local Court ought to have been satisfied that the police approach to the premises was pursuant to an implied licence. The Supreme Court concluded that absent a clear and express statutory power to do so, neither the police nor anyone else has an implied invitation to enter private property, or the threshold of a person's home, for the mere purpose of investigating whether a breach of the law has occurred or for the purpose of gathering evidence of criminal activity by the occupier, in circumstances where there was no basis for believing or suspecting that an offence has been or is in the process of being committed, absent an express invitation by the occupier to do so.

The prosecution appealed the decision of the Supreme Court to the Court of Appeal. The Court of Appeal unanimously allowed the appeal holding that the Supreme Court had erred in concluding that, in the circumstances of the case, there was no implied invitation to these visitors (albeit police officers) to walk up the path leading to the entrance to the dwelling (the threshold of the home) in order to knock on the door and undertake lawful communication with someone within the dwelling.

The Court of Appeal held that the police had an implied license to walk up the path to the entrance of the applicant's unit in order to knock and undertake lawful communication with the occupants of the respondent's unit. The approach for the dual purpose of determining whether the terms of the DVO were being honoured and to check on her partner's well-being was a lawful communication conducted for a legitimate purpose.

The Court noted that the police officers did not seek to go beyond the threshold of the premises or to enter the premises. Their actions did not involve interference with the occupier's possession, or injury to the person or property of either occupier. While it was open to one or other occupier to revoke or negate the implied license by telling the police to leave, they did not do so. See **O'Neill v Roy** [2019] NTCA 8.

The applicant subsequently applied to the High Court for special leave to appeal against the decision of the Court of Appeal. Special leave was granted on 20 March 2020 following oral argument. See **Roy v O'Neill** [2020] HCATrans 43.

The appeal had not been listed for hearing as at 30 June 2020.

Cumberland v The Queen

Bell, Gageler and Nettle JJ
15 April, 3 June 2020
[2020] HCA 21, 94 ALJR 656

The appellant pleaded guilty in the Supreme Court of the Northern Territory to supply of cannabis to a child, together with associated counts of receiving sums of cash, the proceeds of drug supply. After making allowance for the guilty plea the primary judge sentenced the appellant to imprisonment for four years and six months, suspended (subject to certain conditions) after two years with an operational period of three years after release. The sentence was backdated to allow for pre-sentence custody and time spent on strict bail conditions.

The Crown appealed to the Court of Criminal Appeal against inadequacy of sentence. While Cumberland contended that his sentence was not erroneously lenient, his counsel did not submit at the hearing that there were grounds to exercise the court's residual discretion to dismiss the appeal. Written submissions were made in connection with a retrospective amendment to the *Sentencing Act 1995* (NT), s 55, which mandated a minimum non-parole period for certain "specified offences", including two of the supply counts for which the appellant had been convicted before the amendment was enacted.

When the appeal was next listed, the court announced that the appeal would be allowed for reasons to be published "in due course" and determined that questions concerning interpretation of the *Sentencing Act* would be referred to a five-member bench. Seven months elapsed before the matter was listed again and almost four more before judgment was delivered. Immediately after judgment on the question of construction was handed down³¹, the Court of Criminal Appeal reconstituted as a three-member bench and proceeded to resentence the appellant to eight years' imprisonment with a non-parole period of five years, five months and one week without hearing further submissions on his behalf.³²

The appellant then applied to the High Court of Australia for special leave to appeal. Special leave to appeal was granted on 11 December 2019. The application was determined on the papers.³³

At the hearing of the appeal the appellant contended that the Court of Criminal Appeal had not accorded him procedural fairness and had erred in not taking relevant factors into account, including developments occurring after the original sentencing and the fact that the custodial component of the original sentence had almost expired by the time the resentencing decision was handed down. The Crown conceded that the Court of Criminal Appeal had erred in failing to give the appellant an opportunity to place material before it as to his progress in custody prior to being re-sentenced. The Crown submitted however, that despite the procedural unfairness there was still no requirement for the exercise of the residual discretion to be exercised due to the degree of manifest inadequacy of the original sentence (the Court of Criminal Appeal effectively doubled the sentence imposed at first instance) as well as the uncertainty around any demonstrated rehabilitation by the appellant. The Crown submitted that the most appropriate course in all of the circumstances was to remit the matter to the Court of Criminal Appeal for resentence and allow the appellant to place any further material before the court for consideration in the resentencing exercise.

The Court allowed the appeal holding that:

- (1) In the way that the proceedings were finalised in the court below, the appellant was not given the opportunity to place material before the Court of Criminal Appeal as to his progress in custody, nor to make submissions on resentence or dismissal of the appeal in the exercise of the "residual discretion" to do so within the *Criminal Code* (NT), s 414(1A).

³¹ *The Queen v Cumberland* [2019] NTCCA 13 delivered 19 June 2019

³² *The Queen v Cumberland* [2019] NTCCA 14 delivered 19 June 2019

³³ Per Bell & Nettle JJ

- (2) While it was appropriate for the appellant's counsel to acknowledge at the hearing of the appeal that no circumstances engaged the residual discretion, matters were very different almost 11 months later when the Court of Criminal Appeal eventually delivered judgment. The delay in the appeal process was of a marked degree as, by the time the Court of Criminal Appeal came to resentence him, the appellant was within one week of automatic release under the original sentencing order. This circumstance required consideration of the residual discretion to dismiss the Crown appeal.
- (3) The onus was on the Crown at all times to negate the existence of any reason why the Court of Criminal Appeal should decline to interfere notwithstanding that the Court of Criminal Appeal was satisfied that the sentence was erroneously lenient.
- (4) The existence of the residual discretion sufficed to show that it was an error to decide to allow the appeal before the Court of Criminal Appeal was in a position to make final orders. The delay of 10½ months inevitably meant that the considerations bearing on whether the appeal should be allowed or dismissed in the proper exercise of discretion were distinctly different from those prevailing when the court announced its intention to allow the appeal. By that point, the discretionary factors against allowing the Crown appeal and increasing the sentence were overwhelming. The only proper exercise of discretion was to dismiss it.

The decision of the Court of Criminal Appeal was reversed with the consequence that the increased sentence imposed by that Court was quashed and original sentencing order reinstated.

Nguyen v The Queen

**Kiefel CJ, Bell, Gageler, Keane, Nettle,
Gordon & Edelman JJ
17 March & 30 June 2020
[2020] HCA 23, 94 ALJR 686**

The appellant was tried in the Supreme Court on charges of unlawfully causing serious harm and assault aggravated by the use of a weapon. An electronically recorded interview with police, which included both inculpatory and exculpatory statements purportedly claiming that he had acted in self-defence, was not tendered as part of the Crown case, essentially because the "mixed" statement was of no assistance to it.

The jury was unable to reach a verdict and a second trial was fixed but stayed while questions as to the admissibility of the appellant's record of interview, and the prosecution's obligations to tender it, were referred to the Full Court of the Supreme Court for consideration. The Full Court held that the mixed statement was relevant and admissible, but that the prosecution was not obliged to tender it. See *The Queen v Nguyen* [2019] NTSC 37.

The appellant subsequently applied to the High Court for special leave to appeal against the decision of the Full Court. Special leave to appeal was granted on 16 August 2019 following oral argument. See *Nguyen v The Queen* [2019] HCATrans 159.

At the hearing of the appeal the appellant contended that the prosecution's obligation of fairness in the conduct of a trial would normally require the tender of a mixed statement unless there were good reasons not to do so.

The Court allowed the appeal, the majority judgement³⁴ holding that

- (1) A Crown prosecutor has a duty to call all available material witnesses but it is not to be understood as a duty owed to the accused; it forms part of the functions of a prosecutor. The prosecution's obligation to call all material witnesses apply by analogy to the tender of all evidence that may properly and fairly inform the jury about the guilt or otherwise of the accused. The prosecutor's function is ultimately to assist in the attainment of justice between the Crown and the accused.
- (2) A prosecutor needs to consider factors about particular evidence that may properly influence the decision whether to call it; however, such circumstances may be expected to be rare. A prosecutor's refusal to call such evidence may only be warranted in circumstances where its reliability or credibility is demonstrably lacking, however this decision should be guided by the overriding interests of justice. Although forensic decisions may need to be made, it is not to be expected that they will be tactical decisions that advance the Crown case and disadvantage the accused.
- (3) The appellant's recorded interview provided his detailed account of what occurred and provided the foundation for a claim to self-defence and the basis for questioning Crown witnesses by defence counsel. The decision not to adduce it was admittedly a tactical one to favour the Crown. It did not accord with the prosecutorial obligation respecting the presentation of the Crown case and it disadvantaged the appellant.

The Court set aside the order of the Full Court to Question 2 of the questions referred to that Court and ordered that there was an obligation on the prosecution to tender the mixed record of interview.

Singh v The Queen

**Kiefel CJ, Bell, Gageler, Keane, Nettle,
Gordon & Edelman JJ
17 March 2020**

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

The Court reserved its decision on both cases. See [2019] HCATrans 159.

The appellant Singh passed away in May 2020 before the Court had delivered its decision in either case.³⁵

³⁴ Kiefel CJ, Bell, Gageler, Keane & Gordon JJ

³⁵ The High Court delivered its decision in the matter of **Nguyen v The Queen** on 30 June 2020. See **Nguyen v The Queen** [2020] HCA 23, 94 ALJR 686

The appellant's solicitors wrote to the High Court advising of Mr Singh's passing and asked the court to deliver its judgement in his appeal notwithstanding his passing. The Court then sought further written submissions from the parties as to whether the appeal had abated with the death of the appellant. The appellant submitted that it had not. The respondent submitted that it had. The Court then invited submissions from each of the Attorneys-General as to the effect of the death of a party on an appeal under s 73 of the Constitution.

The only Attorney-General to accept the Court's invitation to file written submissions was the Attorney-General for the Australian Capital Territory ("ACT") The ACT Attorney-General, inter alia, agreed with the respondent's submissions.

The filing of written submissions in reply by the appellant had not concluded as at 30 June 2020.

Robert Morton v The Queen

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

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

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

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

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

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

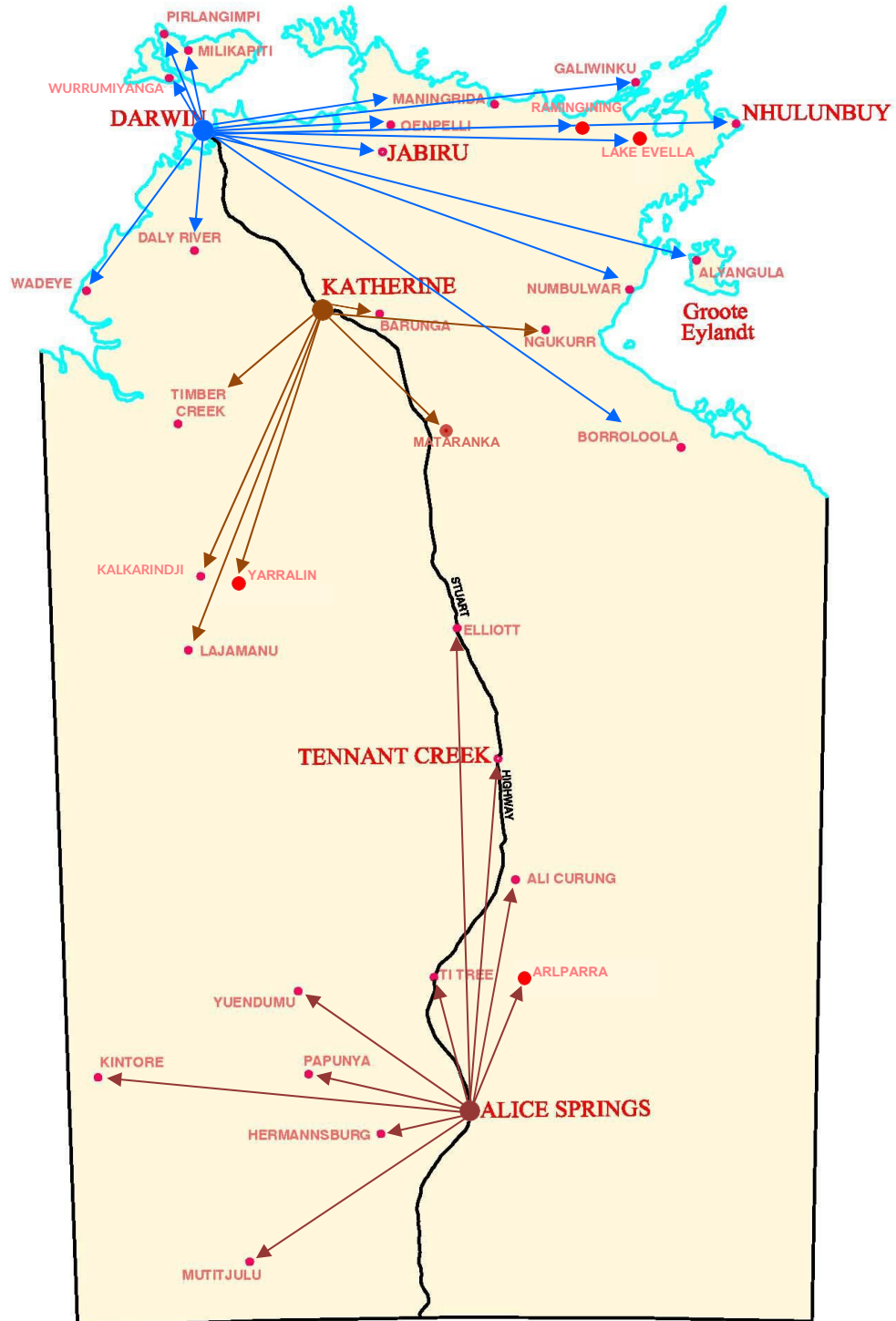
At trial, the applicant conceded much of the Crown case, but argued that he did not intend to cause serious harm to the deceased and that he should be found guilty of manslaughter. As mentioned above, the jury found the applicant guilty of murder.

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

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

On 15 June 2020, the applicant applied to the High Court for special leave to appeal against the decision of the Court of Criminal Appeal. The filing of written submissions as required by the High Court Rules had not concluded as at 30 June 2020.

NT COURT LOCATIONS



SUMMARY PROSECUTIONS

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

Summary prosecutions sections exist in three geographical locations:

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

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

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

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

SPD, SPK and SPA have individual responsibility for designated circuit courts over large geographical regions within the Northern Territory. The circuit court serviced by each section appear on the map at page 40 of this Report. Summary prosecutors appearing in circuit courts are also expected to provide support and assistance to the remote stationed police members with respect to all aspects of criminal prosecution.

The Darwin Summary Prosecution unit is supervised by the Summary Prosecutions Manager who is ultimately responsible for approximately 18 professional staff and 2 administrative staff in Darwin and 2 professional staff in Katherine, with overall oversight for the division by the Deputy Director.

As reported in previous years the main issue facing summary prosecutions has been the retention and recruitment of staff. I am pleased to report that these issues have been addressed through the recruitment of a number of staff to key senior positions in both Darwin and Katherine. The recruitment of staff to more senior roles has realised one of the key requirements outlined in last year’s Annual Report to address the capacity of staff and provide more support for junior staff to grow their capacity.

In the last quarter of the reporting year, the COVID-19 pandemic had a significant effect on the way summary prosecutions were conducted in the Northern Territory.

Summary prosecutions worked closely with the Courts, NAAJA, NTLAC and Police to initiate virtual court rooms that allowed prosecutors, defence counsel and defendants to appear before the Local Court and Youth Justice Court from different locations remote from the courthouse.

The immediate need to practice social distancing and hygiene protocols required Police and summary prosecutions to develop electronic briefs of evidence. The Court also instituted new methods for electronic filing and summary prosecutions are now disclosing evidentiary material via electronic means. These changes have ultimately led to better and faster access to evidentiary materials by all stakeholders.

The obligation to observe social distancing has led to an increase in the use of electronic media platforms in the Local Court. Evidence from witnesses in remote locations can now more easily be received through the use of media platforms such as Cisco Webex and Skype for Business. Given the ongoing difficulties with securing witnesses' attendance in Darwin or from a static AVL location, the use of portable devices such as mobile phones or tablets to give evidence in court improves access to the justice system for people living in remote locations in the Northern Territory.

KATHERINE

In Katherine, the significant challenges faced by the summary prosecutor position was the subject of comment in last year's report³⁶. To ensure appropriate levels of support for the P3 Senior Summary Prosecutor and to address the increasing workload, an additional P2 position was redirected to the Katherine office. The DPP also sought OCPE approval to pay a retention allowance in addition to salary. Approval was granted in October 2019. Both positions were successfully recruited to in February 2020, resulting in not only an increased capacity in the Katherine office but a reduction in the strain on resources caused by servicing the region from Darwin.

Another significant development in Katherine during the reporting period was an agreement reached between NT WorkSafe and summary prosecutions regarding the use of Work Safe Audio Visual Link (AVL) equipment. Access to the AVL allows witnesses to appear in Katherine in matters which are listed for hearing in both the Supreme Court and the Local Court in locations other than Katherine. The benefits of this arrangement include the increased ability for witnesses to be supported by the Witness Assistance Service based in Katherine and the greatly reduced need to transport witnesses around the Territory to appear in court.

ALICE SPRINGS

As outlined in last years' Annual Report³⁷, Alice Springs faced significant staffing challenges in the first half of the financial year.

³⁶ See the 2018-2019 Annual Report at pages 35-36.

³⁷ At page 36

A partial restructure of the office occurred with the introduction of a new Senior Summary Prosecutor position to support the existing four summary prosecutors. A number of recruitment actions saw vacant positions filled including the newly created senior role. It is anticipated that early in 2020-2021, the office will be fully staffed providing prosecutors with at least one day out of court per week to prepare for matters.

The departure from the Office of the Assistant Director South in November 2019 presented an opportunity to review the practices and procedures across the Office in order to identify areas for potential improvement. It was determined that consistent with the structure in Darwin, there should be a position of Practice Manager who would have the responsibility of overseeing both Crown and Summary Prosecutions. The recruitment process for this position had not been completed as at 30 June 2020. It is anticipated that the successful applicant will commence in August 2020 and that an early task will be to continue the review of the Office's practices and procedures.

YOUTH MATTERS

The findings and recommendations of the Royal Commission into the Protection and Detention of Children in the Northern Territory continue to have a significant influence in this jurisdiction. The unique challenges in dealing with youth offenders has been reflected in the creation of the position of Youth Team Practice Manager. The position has provided consistency in the prosecution of youth matters and allows consideration of large and complex youth files as well as the accumulation of expertise within a central function.

In addition to the inclusion of a dedicated Youth Practice Manager, summary prosecutions continue to foster relationships with partner organisations such as Territory Families, Jesuit Social Services, Victims of Crime and the Department of Education Youth Court Liaison. These relationships have improved the sharing of information and assist to achieve positive outcomes in the Youth Justice Court.

WORKING WITH POLICE

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



WITNESS ASSISTANCE SERVICE

The Witness Assistance Service (WAS) provides an individualised service to support victims, witnesses and their families throughout their involvement in the criminal justice process. We uphold the rights of victims set out in the Director of Public Prosecutions Guidelines for prosecutors and in the Northern Territory Charter for Victims of Crime.

In August 2019, after a period of consultation and review, the Attorney-General and Minister for Justice issued a new Charter of Victims' Rights. The Charter establishes the manner and principles about how the justice system supports victims of crime. The WAS team uphold these principles on a daily basis by treating victims with courtesy, compassion and respect, keeping victims informed throughout the process, providing early referral to other support services and ensuring that the victim's voice is heard by the justice system. WAS actively promotes the Charter in all written communication with victims and continues to embed the rights into practice.

WAS staff are based in Darwin, Katherine and Alice Springs and provide services in the Local and Supreme Courts, as well as regularly traveling to regional and remote courts as shown on map on page 40.

The usual FTE is 9.5 WAS officers located at:

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

Staffing changes during the reporting year included:

- The appointment of a new Manager in September 2019;
- The appointment of a new WAS officer in Darwin in November 2019; and
- Katherine WAS Coordinator returned from maternity leave in April 2020.

SERVICE PROVISION

Despite periods of under-staffing and the impact of Covid-19, the WAS team provided a service to 1,855 clients during the 2019/20 financial year, which was comparable to the previous year. A total of 441 victims were assisted with their Victim Impact Statements (VIS), and 345 VIS were presented to the Court during this period.

As reported on page 38 of the 2018-19 Annual Report, the email to text initiative, designed to reach victims earlier in the criminal justice process, was to be rolled out in the Darwin area this financial year.

Unfortunately due to consultation processes taking longer than expected and issues with the aging CaseNet system, the initiative was deferred. It is envisioned that the automated process will be introduced in late 2020.

PRESENTATIONS, NETWORKING AND ADVOCACY

WAS staff attended and presented to a number of different agencies and organisations over the last financial year to promote the service and build partnerships, including:

- Elders Visiting Program and Roper Gulf Conference;
- NT Police;
- Relationships Australia;
- CatholicCare;
- North Australian Aboriginal Justice Agency;
- Victims of Crime NT; and
- Wadeye Women's Safe House.

WAS continued to work with key stakeholders including the Women's Safety Services of Central Australia, Victims of Crime NT, Domestic Violence Legal Service, and Crime Victims Services Unit to ensure victims are receiving an integrated and responsive service. WAS staff have contributed to key projects aimed at improving victim's experiences including the Alice Springs Domestic Violence Court Specialist Approach and the Domestic Violence Justice Reform Network.

WAS representatives regularly attend and participate in the Crime Victims Advisory Committee (CVAC) whose function is to advise the Attorney General and Minister for Justice on matters affecting the interests or rights of victims. In the reporting year, CVAC have provided input into the Aboriginal Justice Agreement and legislative amendments to expand the use of video conferencing in court and enhance the protections for vulnerable witnesses in sexual and domestic violence proceedings.



WAS Team members Lena Korn and Pam Stanley participating in the Katherine Local Court Open Day event.

NATIONAL WAS CONFERENCE

In August 2019, the Witness Assistance Service National Conference was hosted by the NT WAS team. Representatives from Witness Assistance Services in NSW, Tasmania, South Australia, Victoria, ACT, Queensland and the Commonwealth attended the two day event, held in Darwin. The National Conference is held every two years and provides the opportunity to share research and practice to enhance service delivery to victims and witnesses. The theme of the conference was 'Change: Meeting the Challenge and New Horizons', with a focus on the impact of the Royal Commission into Institutional Responses to Child Sexual Abuse.

Highlights included:

- Presentations from South Australia and Victoria on utilising support dogs for victims in court;
- Presentation from the NT Crime Victims Services Unit regarding the Redress Scheme in the NT; and
- Panel discussion on how each jurisdiction has responded to the Royal Commission and outcomes for victims.



Attendees of the 2019 Witness Assistance Service National Conference

Attendees at the conference were also privileged to hear from three generations of the Christopherson / Paterson family who presented their experience of the justice system after surviving a violent assault and then participating in the successful prosecution of the offender. Valuable insights were gained into how the system supported them as well how fragmented services and a myriad of different agencies made it very difficult. This led to the family advocating to the Minister and Parole Board for improvements to the parole system in particular, to protect victims by strengthening reporting conditions. Key messages from a victim perspective were to have courage, learn about how the justice system works, persevere and use the victim impact statement to have their voice heard.

It was also pleasing to hear from the family that “the NT Witness Assistance Service gave us courage and the information about the structure of the system that assisted us to seek justice for our family when the system failed us”. We thank the Christopherson / Paterson family for generously sharing their story with us.

STAFF MILESTONES

In November 2019, the Office celebrated the 10 year service milestone of WAS Officer, Phillip Edgar who actually commenced with the Northern Territory Government on 30 September 2008. Phil joined the WAS team in July 2011 and is renowned for his ability to build an instant rapport with everyone he works with and remain calm in any given situation. Phil's natural communication style and extensive knowledge of victim's needs means he is a WAS officer in high demand. Over the years Phil has worked extensively in remote locations including Wadeye, Alyangula and Nhulunbuy and has developed networks and contacts across the NT. He is a strong advocate for the victims and witnesses he works with and we value his commitment and passion for the work that he does and everything he brings to the role.



Phill Edgar



Debbie Ledbetter

The Alice Springs team and WAS officer Debbie Ledbetter were recognised as being an integral support to a victim of a sexual assault. In her victim impact statement tendered to the Supreme Court, the victim referred to the amazing people who supported her, including the Witness Assistance Service. This was noted in the sentencing remarks and reported in the media. As Debbie responded, "We all do such an amazing job, advocating for victims and witnesses, providing support, understanding and sometimes, simply showing kindness to people who need it the most. We are all a part of an amazing, strong and committed team."



BUSINESS AND LEGAL ADMINISTRATIVE SUPPORT

The DPP consists of four separate business units.

- Crown Prosecutions
- Summary Prosecutions
- Witness Assistance Service
- Business Support & Legal Administration

BUSINESS SUPPORT

The Business Support team consists of 4.5 full time equivalent staff; a Business Manager, Assistant Business Manager, Darwin Office Manager, Travel Clerk and part-time Alice Springs Office Manager.

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

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

COVID-19

As with the entire division, COVID-19 created a significant body of work for the Business Support team in the latter part of the year. In an effort to ensure the safety of those staff identified as vulnerable or at greater risk from COVID-19, work was undertaken to enable full remote access to relevant NTG and DPP systems. As the threat from the virus increased, direction from the Chief Executive was for those divisions classed as essential services to expand remote access capability to the entire workforce. With more than 30% of staff not having a government issued laptop or access to suitable personal devices, an assessment was undertaken to determine overall hardware requirements. A combination of virtual private networks and remote desktop access was established to allow staff required to work from home to access all programs. To accommodate the shift to the use of electronic documentation, a large number of staff were also furnished with software applications which allows for the manipulation of PDFs (Portable Document Format). While there were some connection issues early in the process, the exercise was largely successful. AGD corporate support were able to furnish the DPP with additional hardware to enable those few staff without either an NTG issued laptop or personal equipment at home the ability to connect to the required services.

Ensuring the workplace was safe and that staff were made aware of social distancing and hygiene practices was equally challenging and has given rise to what we know as the “new normal”.

While some restrictions eased in late June 2020, the practice of limiting the number of people and time staff spend in meetings, and maintaining 1.5 meters distance will continue into the foreseeable future as will the need to limit personal contact and manage personal hygiene practices such as regularly sanitising hands and workstations.

As DPP have a reception desk attended by a Frontline Services Officer, protocols were also put in place to ensure the safety of both DPP staff and members of the public attending the office.

BUDGET

Last year I reported that DPP received a budget top up of \$1 million ongoing. Due to the costs incurred by AGD as a result of COVID-19 and the potential for financial impacts to be felt in 2020-2021 and beyond, DPP was required to return \$200,000 to the department for redistribution. As a result of a number of vacancies carried throughout the financial year, this did not have a great impact with the DPP ending the year under budget. At the point of drafting this report, it was unknown if the 2020-2021 budget will be reduced by the same amount however, with the likelihood of 90-95% of positions being filled, a 2020-2021 budget surplus in relation to personnel costs is unlikely.

Travel and witness expenses continue to be a huge drain on financial resources. This is one area where there is little opportunity to make savings as the responsibility to facilitate the movement of witnesses lies with the DPP.

Travel restrictions for the last quarter did result in some savings although it is likely there will be some increased travel expenses when service providers recommence travel to remote communities.

The Machinery of Government changes during the year caused some confusion regarding responsibility for some aspects of corporate support previously provided by AGD. A number of services have been pushed back to agencies and, in turn, to divisions. With a limited number of resources, the Business Support unit struggled to manage various reporting requirements and obligations within allocated resources.

ICT

As reported in previous years Attorney Manager, as part of the Odyssey system, will see the replacement of the failing CaseNet system and the introduction of an end to end electronic case management process.

The responsibility for the project was moved from AGD to DCIS as part of the machinery of government changes and scoping of requirements recommenced late in the financial year. DPP participated in a number of working groups culminating in the identification of high level requirements of the system. This information is to be presented to the developers early in 2020-2021, to allow planning of the next phase of the project. Subject Matter Experts (SMEs) have also been identified, and will be responsible for configuring Attorney Manager according to DPP requirements. It is expected that at least one SME will be required for a minimum of six months.

WELLBEING INITIATIVES

During the reporting year, a scheme was introduced which provides limited financial support to employees who engage in activities aimed at improving health and wellbeing. Staff have engaged in activities such as exercise programs and remedial massage, with some employees also opting for gym memberships.

KATHERINE GOVERNMENT CENTRE

Over the past several years the DPP has been in negotiations with DIPL regarding the allocation of office space in the soon to be refurbished, Katherine Government Centre. Early in the financial year a specific area in the northern corner of the first floor was allocated to the DPP and Katherine Police Prosecutions. The DPP participated in a number of conceptual design meetings including representatives from Police, with the final layout being decided in late March 2020. Detailed requirements for items such as the location of electrical and data services were finalised late in the reporting year, with final sign off of plans expected to take place early in the first quarter of the 2020-2021 reporting year.

Commencement of the project is due in October 2020, with completion anticipated to be December 2021. To ensure staff are accommodated in an appropriate environment until the commissioning of the new office, the current office located on the ground floor of the Randazzo Building in Katherine Terrace, received a makeover. This included some minor repairs, painting and an industrial clean. Unserviceable, broken and old equipment such as furniture, computers and printer/scanners were also upgraded.

LEGAL ADMINISTRATION

Registry

Staffing levels have remained fairly constant throughout the year with changes in relation to the electronic handling of documentation being the main difference in operations for staff.


Having established processes for transferring hard copy material into an electronic form, DPP was then required to identify a way to enable contactless sharing of that material with defence and the court. In consultation with the Department of Corporate and Information Services, DPP was able to secure the use of a rudimentary File Transfer Protocol server. The system was able to be introduced quickly and provided the ability to move large volumes of material out of the division. While the server enabled DPP to disclose material electronically, it has its limitations. Information is still required to be manipulated through the use of several external programs before it can be considered ready for disclosure or for use in court by prosecutors. The processes involved with preparing the information to the required standard is extremely labour intensive and creates additional strain on already limited resources. DPP will be looking to maintain the electronic processes rather than reverting back to physical files and more effective and efficient systems will be investigated in early 2020-2021.

Professional Legal Assistants

The development of the DPP Resource Model was completed in November 2019. The model enables the accurate prediction of the resources required in response to changes in demand. Due to the interdependent nature of some aspects of administrative support provided by the professional legal assistants, a more detailed investigation was required. A subsequent report was provided by Diacher Consulting in February 2020, outlining recommendations on how to improve efficiencies. Further consideration of the recommendations was delayed as a result of COVID-19. It is anticipated that the report will be revisited in late 2020.

FINANCE

EXPENDITURE 30 JUNE 2020

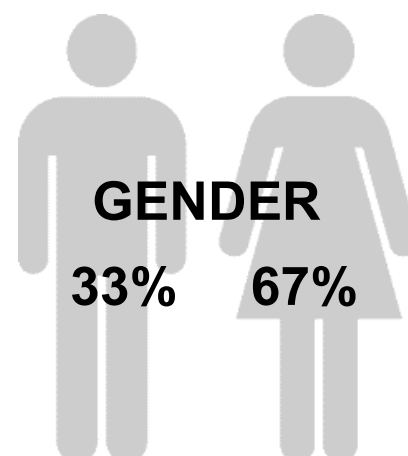


Budget	\$12,843,000
Personnel	\$9,667,000
Operational	\$2,723,000
Non-discretionary	\$37,000
Surplus	\$416,000

HUMAN RESOURCES

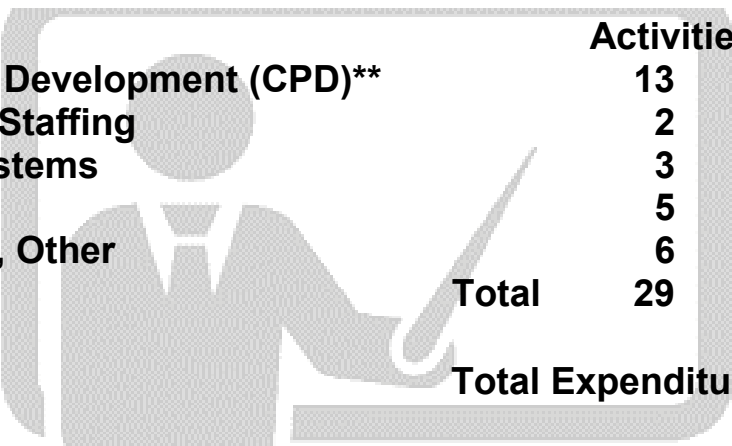


FTE	81.21
Professional	44.00
Admin Legal Support	24.94
Admin Business Support	3.87
Witness Assistance	8.40



GENDER
33% 67%

STAFF TRAINING & CONFERENCES*



	Activities	Attendees
Professional Development (CPD)**	13	122
Recruitment/Staffing	2	5
Business Systems	3	5
Corporate	5	63
Conferences, Other	6	17
Total	29	212
Total Expenditure		\$16,820

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

**Professional legal staff are required to have achieved a minimum of 10 Continuing Professional Development (CPD) points during the CPD year (1 April in a year ending on 31 March in the next year) to maintain their eligibility to hold a Practising Certificate within the NT. Some CPD activities are also represented in the total for Conferences.

CONFERENCES

National Executives Conference

The National Executives Conference is held annually and this year it was to be held in conjunction with the Conference of Australian Directors of Public Prosecutions scheduled to be held in Auckland, New Zealand, on 25 and 26 March 2020. The meeting was cancelled because of COVID-19.

Australian Association of Crown Prosecutors (AACP) Conference

In July 2019, four Crown prosecutors from the Darwin and Alice Springs offices attended the annual conference of the AACP hosted by the Western Australian DPP. The conference, which is hosted by a different jurisdiction each year, focuses on challenges encountered by Crown prosecutors who regularly appear in jury trials and in appeals from jury trials. The conference was held in Perth with the theme of “Prosecuting into the Future”. The speakers included the Hon Robert French AC, former Chief Justice of Australia; Amanda Forrester SC, Director of Public Prosecutions for Western Australia; and Lloyd Babb SC, Director of Public Prosecutions for New South Wales.

Presentations included the following topics:

- The reviewability of prosecutorial decisions and the public accountability of prosecutors;
- Disclosure of electronic data and covert recordings;
- Challenges posed to independent decision making in the digital age; and
- A demonstration at the Anti-Terrorism and Tactical Response Group facility in Perth.

Due to the appointment of the President of the AACP, Ms Kara Shead SC, to the District Court Bench in January 2019, the Deputy Director of the Northern Territory, Mr Matthew Nathan SC, was appointed interim AACP President in February 2019. This appointment was confirmed at the AACP AGM in July 2020.

The 2019-2020 reporting period also saw preparations made by the Northern Territory DPP to host the 2020 conference in Darwin. Unfortunately because of COVID-19 interstate travel restrictions, the conference had to be postponed until July 2021. We look forward to hosting our interstate colleagues next year.

Conference of Australian Directors of Public Prosecutions (CADs)

All Australian DPPs meet twice a year to discuss matters of mutual interest. The meetings are normally held over two days. Each jurisdiction takes turns in hosting the conference. In the reporting year, only one meeting was held in Hobart on 17 and 18 October 2019.

The NT DPP attended this meeting.

The meeting scheduled to be held in Auckland, New Zealand, on 25 and 26 March 2020 was cancelled because of COVID-19.

CORPORATE CITIZENSHIP

Presentations and Training Programs provided by the DPP

During the reporting year, prosecutors provided training / made presentations to:

- Correctional Services (Community Corrections) staff,
- the Sexual Assault Referral Centre,
- the Police Training College,

and took part in several Moot Courts designed to give doctors and nurses involved in sexual assault cases exposure to court proceeding.

Solomon Islands – Northern Territory Twinning Program

The Twinning Program which was planned to take place in May of this year did not proceed because of travel restrictions associated with COVID-19. It is the intent of the program co-ordinators in the Solomon Islands that the program resume once the COVID-19 situation improves and travel between the Solomon Islands and Australia is permitted.

STAFF ACHIEVEMENTS



Witness Assistance Service Officer, Phill Edgar, Professional Legal Assistant Supervisor/Trainer, Karen Le Bretton and Deputy Director Matthew Nathan SC with their certificates commemorating 10 years' service within the Northern Territory Government.

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

Offence / Function	19 - 20	18 - 19	17 - 18	16 - 17	15 - 16	14 - 15
Conspiracy s 43BJ(10) <i>Code</i>	0	0	0	~	~	~
Criminal defamation s 208 <i>Code</i>	0	0	0	0	0	0
Distributing intimate images s 208AD <i>Code</i>	0	0	0	x	x	x
Money laundering s 231E <i>Code</i>	4	2	0	~	~	~
Maintaining a relationship of a sexual nature with a child under 16 s 131A <i>Code</i>	0	5	3	~	~	~
No true bill s 297A <i>Code</i>	2	6	4	0	19	12
Ex-officio indictment s 300 <i>Code</i>	2	3	5	10	18	25
Nolle prosequi s 302 <i>Code</i>	20	14	17	26	24	23
Taking over proceedings for summary offence s 13 DPP Act	0	0	0	0	1	0
Taking over appeal s 14 DPP Act	0	0	0	0	0	0
Granting immunities and undertakings s 21 DPP Act	0	0	0	~	~	~
Joint trial arrangements with C'th DPP	7	9	8	~	~	~

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

x This provision came into existence on 9 May 2018.

DPP 2019-20 TRAINING

Description	Type	Date/s	Provider	CPD Points	Attendees
AACP Conference*	Conference	10-12/07/2019	Australian Association of Crown Prosecutors	Yes	4
Effective Written Submissions	Legal	25/07/2019	Law Society NT	Yes	1
Witness Assistance Service Conference	Conference	12-13/08/2019	WAS Darwin	No	6
Burnout (& Compassion Fatigue) What it is and how to Prevent it!	Legal	22/08/2019	Law Society NT	Yes	1
2019 Practical Advocacy Weekend Workshop	Legal	29/08-08/09/2019	Law Society NT	Yes	6
Provide Cardiopulmonary Resuscitation (CPR)	Corporate	30/08/2019	St John Ambulance	No	3
Merit Selection Online Module	Recruitment	4/10/2019	OCPE	No	1
Panel: Complying with FOI & Privacy legislation when representing clients	Legal	14/10/2019	Law Society NT	Yes	1
ECMS	Business Systems	15/10/2019	DCIS	No	1
Reducing Stress and Vicarious Trauma	Other	9/12/2019	NT Redress Coordination Team	No	2
Appropriate Workplace Behaviour	Corporate	30/01/2020	EASA	No	50
Back to Basics - The Role of Prosecutors in Sentencing	Legal	20/02/2020	Steve Ledek	Yes	10
Legal Research and the Portal	Legal	27/02/2020	Rebecca Everitt	Yes	15
Committal Proceedings and Procedure	Legal	5/03/2020	Steve Ledek	Yes	16
Provide First Aid	Corporate	6/03/2020	St John Ambulance	No	7
Case Theory	Legal	9/03/2020	Naomi Loudon	Yes	14
Hearsay & ENULA	Legal	9/03/2020	Matthew Nathan SC	Yes	14
Playing EROIs	Legal	9/03/2020	David Morters SC	Yes	14
Proofing, evidence-in-chief & s18 applications	Legal	9/03/2020	Steve Ledek	Yes	12
The Dark Art of Cross-Examination	Legal	9/03/2020	Mary Chalmers	Yes	14
Understanding and Building Resilience Through Positive Psychology	Other	26/03/2020	NT Redress Coordination Team	No	2
Practicing Trauma Informed Care (TIC) in the Workplace	Other	27/03/2020	NT Redress Coordination Team	No	1
Simplified Training and Special Measures Information Training Session	Recruitment	6/04/2020	OCPE	No	4
FOI Training	Legal	28-29/04/2020	Megan Carter OBM	No	2
TRIPS	Business Systems	20/05/2020	DCIS	No	2
EIMS	Business Systems	21/05/2020	DCIS	No	2
Performance Management	Corporate	16-17/06/2020	OCPE	No	1
Fire Extinguisher / Fire Warden	Corporate	22/06/2020	Fire & Safety Australia	No	2

* Included in total numbers of both conferences and CPD activities on p 43 of the report.