



**DIRECTOR OF PUBLIC  
PROSECUTIONS**

**NORTHERN TERRITORY  
OF  
AUSTRALIA**

**A N N U A L**

**R E P O R T**

**2008-2009**

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

**NINETEENTH ANNUAL REPORT**

**FOR YEAR ENDED 30 JUNE 2009**



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**Director of Public Prosecutions  
Northern Territory**

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Australia

30 September 2009

The Hon Delia Lawrie MLA  
Attorney-General  
Parliament House  
State Square  
DARWIN NT 0800

Dear Attorney-General

**ANNUAL REPORT 2008-2009**

In accordance with the requirements of section 33 of the ***Director of Public Prosecutions Act***, I submit to you the Annual Report on the performance of the Office of the Director of Public Prosecutions for the period 1 July 2008 to 30 June 2009.

The Guidelines issued and published pursuant to s.25 of the ***Director of Public Prosecutions Act*** can be viewed on the ODPP website at [www.nt.gov.au/justice/dpp](http://www.nt.gov.au/justice/dpp), or a hard copy can be provided on request.

The Guidelines provide prosecutors with guidance on the factors to be taken into account in making the various decisions which arise in respect of prosecutions. They are intended to also inform the public generally of the considerations upon which those decisions are made.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Richard Coates', with a long horizontal flourish extending to the right.

RICHARD COATES





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## OFFICE LOCATIONS

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

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38 Katherine Tce  
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KATHERINE NT 0851

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## MISSION STATEMENT

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

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



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## MISSION STATEMENT (IN KRIOL)

### Wed bla DPP-mob

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

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

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

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

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

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

- Ola weka onli gada woriyabat faindimbat raitwan wed bla wot bin hepin - nomo laigim yu o heitim yu o yu femli o enibodi.  
Jei gan toktok la enibodi bla yu bijnij, onli la jeya weka wen jei albumbat yu.
- Det DPP-mob wandim stap gudwan binji seimwei la yu en la det sambodi weya olabat rekin imin duwim det nogudwan ting.  
Jei wandi album yu gidim det samwan hu bin duwim det samting rong en faindat la kot raitwei bla banijim bla wot imin du.
- Olabat DPP-mob wandi meigim bla yu en en det sambodi en ola widnijmob go la kot gudwei, nomo hambag en nomo bla meigim yu fil sheim. DPP-mob duwim dijkain wek bla album eberibodi la Northern Territory jidan seifwan en gudbinjigeja.

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





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## DIRECTOR'S OVERVIEW

I am pleased to report that the Office won a significant funding boost through this year's budget process. The additional funds will enable us to recruit additional prosecutors and support staff in both Darwin and Alice Springs whilst also improving the prospects of retaining our more experienced prosecutors.

The area of greatest need has been in the southern region where the Supreme Court has foreshadowed a move to back to back sittings for most of 2010. The extra sittings of the Supreme Court as well as the announcement of a fourth Magistrate for Alice Springs have clearly been necessary because of the unrelenting flow of new criminal cases in the centre.

The Assistant Director, Dr Nanette Rogers and her staff in Alice have borne the brunt of this increased activity. I am extremely grateful for their dedicated efforts and am relieved I have been able to tell them that help is on the way.

We have long recognised that the Office needed to capitalise on its knowledge base and ensure that all prosecutors were able to access relevant information from a central up dated source. In conjunction with the Department of Justice we identified Sharepoint, a knowledge management software system as an appropriate tool to meet the needs of the Office. The project was driven internally by General Counsel Paul Usher and Acting Business Manager Jason Finlay. We have now established an Office of the Director of Public Prosecutions (ODPP) Sharepoint Portal which will enable prosecutors to upload, search and share research material on relevant areas of law. It is envisaged that the Portal will enhance staff development and consequently improve the quality of prosecutions undertaken by the Office.

This is the first major utilisation of this type of portal architecture within the Northern Territory's public sector and the initial feedback has been positive and has encouraged other agencies to consider similar systems.

In last year's report I referred to structural issues which were impacting on the effectiveness of Summary Prosecutions. The Memorandum of Understanding whereby the DPP assumed responsibility for all summary prosecutions commenced in 1998. By all accounts, the arrangements worked very well for the first five years and the Territory's hybrid model of a combined Police/DPP

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summary prosecution service was viewed with interest by other jurisdictions. However over the last five years it has become apparent that the arrangement whereby the DPP assumed responsibility for all summary prosecutions when the majority of the resources involved in Summary Prosecutions were supplied by Police, was becoming increasingly unworkable.

I met with the Commissioner of Police and we agreed to engage Iain Summers a former Northern Territory Auditor-General to conduct a review of the interrelationship between Police Prosecutions and the DPP.

Both the Commissioner and I accepted the findings of the Summers' review that:

*Authority, responsibility and funding are not aligned within the current summary prosecutions arrangements and that as a consequence, responding to resource needs is not clearly the responsibility of either the Commissioner of Police or the Director of Public Prosecutions.*

We determined to embark upon a new direction and agreed that as Police conduct the majority of summary prosecutions, Police will assume primary responsibility for summary prosecutions and will establish a Northern Territory wide Police Prosecutions Division. It was further agreed that Police prosecutors would continue to be bound by the Director's Prosecutorial Guidelines and that the ODPP will retain a capacity to undertake summary prosecutions including contested hearings and other more complex matters.

I look forward to working with Superintendent Bacon, recently appointed Divisional Head of Police Prosecutions to develop a service level agreement which will document our future relationship in relation to sharing the summary prosecutions workload.

Included in the Appeals section of this report is an account of the extensive proceedings, both in the Court of Criminal Appeal and the High Court in the matter of *Bakewell*. The litigation concerned the application of the **Sentencing (Crime of Murder) and Parole Reform Act** to *Bakewell* a life sentenced prisoner who had been transferred to South Australia pursuant to the **Prisoners (Interstate Transfer) Act**.

At a speech to the Law Society on the opening of the 2006 Legal Year, my predecessor, Rex Wild QC, urged the Northern Territory Government to amend those provisions of the **Sentencing (Crime of Murder) and Parole Reform Act** which prevent the DPP making any application to increase a transitional prisoner's deemed minimum 20 year non-parole period until the 19<sup>th</sup> year of that sentence. Rex argued that it was unfair to the prisoner to be left uncertain as to his ultimate fate until the last year of his sentence and the existing regime unnecessarily limited the ability of Correctional Services to put in place effective pre-release programs.

I agree with Rex Wild on this point. I would also suggest that given the unforeseen consequences which occurred with *Bakewell's* case, it is in the interest of the community at large that transitional prisoners and the relevant authorities be apprised of the minimum sentence at a much earlier stage than is presently provided for by the legislation. I too urge Government to consider revisiting that aspect of the legislation.

## **Directions**

Pursuant to the *Director of Public Prosecutions Act* there is provision for the Attorney-General to provide directions to the DPP as to the general policy that we follow in the performance and function of the Director. Any such direction shall be in writing and should be included in the Annual Report. I formally note that no direction has been issued by the Attorney-General during the year under review. I formally also note that the Attorney-General has not sought to interfere in the conduct of the Director's function. As a result I have been able to enjoy appropriate professional independence in exercising the powers confirmed by the *Director of Public Prosecutions Act*.

RICHARD COATES  
Director of Public Prosecutions

30 September 2009

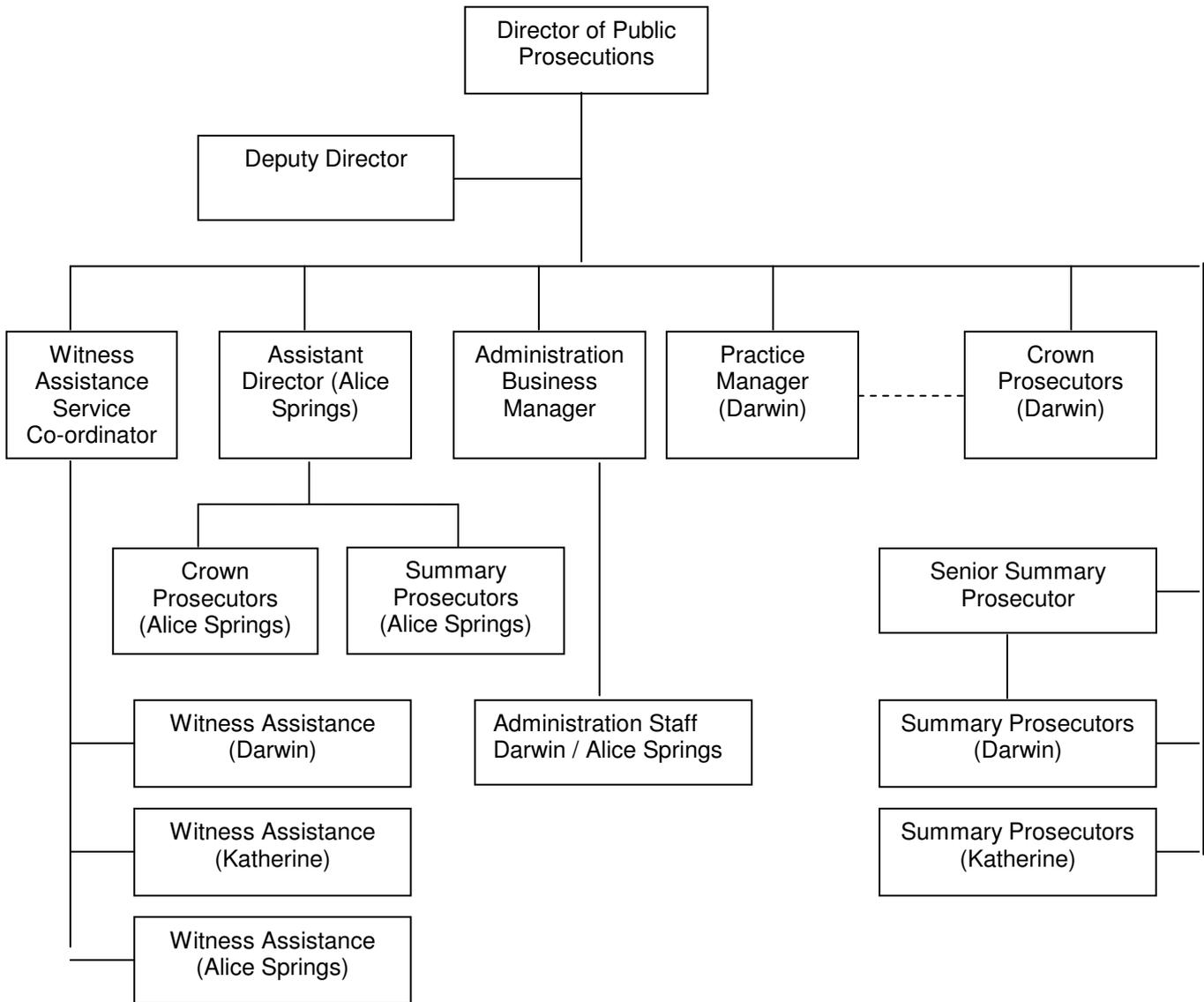




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## ODPP ORGANISATION CHART







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## FUNCTIONS OF THE DIRECTOR OF PUBLIC PROSECUTIONS

The major responsibilities of the Director of Public Prosecutions (hereinafter referred to as the Director) may be identified as follows:

- (a) the preparation and conduct of all prosecutions in indictable offences
- (b) the preparation and conduct of committal proceedings
- (c) to bring and conduct proceedings for summary offences
- (d) the assumption where desirable of control of summary prosecutions
- (e) to institute and conduct prosecutions not on indictment for indictable offences including the summary trial of indictable offences
- (f) the power to institute and conduct or take over any appeal relating to a prosecution or to conduct a reference under s414 of the ***Criminal Code***
- (g) the right to appeal against sentences imposed at all levels of the court hierarchy
- (h) the power to grant immunity from prosecution
- (i) the power to secure extradition to the Northern Territory of appropriate persons
- (j) the power to participate in proceedings under the ***Coroner's Act*** and with the concurrence of the Coroner, to assist the Coroner if the Director considers such participation or assistance is relevant to the performance of some other function of the Director and is justified by the circumstances of the case

- (k) the power to conduct proceedings under the ***Criminal Property Forfeiture Act*** and if as a result of the proceedings a person becomes liable to pay an amount to the Territory or property is forfeit to the Territory under a court order, it is a function of the Director to take any further proceedings that may be required to recover the amount or enforce the forfeiture or order
- (l) to provide assistance in the Territory to other State or Commonwealth Directors of Public Prosecutions
- (m) to institute, intervene in and conduct proceedings that are concerned with or arise out of any function of the Director or to otherwise do anything that is incidental or conducive to the performance of the function of the Director
- (n) the power to furnish guidelines to Crown prosecutors and members of the police force related to the prosecution of offences
- (o) to require information or to give directions limiting the power of other officials.

### **General Powers**

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




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## HUMAN RESOURCE MANAGEMENT AND DEVELOPMENT

As at 30 June 2009 the total number of staff was 67.1. This is an increase of eight staff with three additional Senior Crown Prosecutors (ECO), three Crown Prosecutors (P3) and two temporary administrative staff for specific projects (Sharepoint).

<b>Level</b>	<b>Total</b>	<b>Female</b>	<b>Male</b>
Director	1		1
ECO3	2		2
ECO2	2	1	1
ECO1	4	1	3
EO3	1		1
P4	3	2	1
P3	5.6	4	1.6
P2	11	5	6
P1	4	2	2
GRADT/Indigenous Cadet	2	2	
<b>Total Legal Staff</b>	<b>35.6</b>	<b>17</b>	<b>18.6</b>
P4	1	1	
P2	3	2	1
AO5	2	1	1
AO4	2	2	
AO3	1		1
<b>Total WAS Staff</b>	<b>9</b>	<b>6</b>	<b>3</b>
EO1	1		1
AO5	3	3	
AO4	6	5	1
AO3	12.5	11.5	1
<b>Total Support Staff</b>	<b>22.5</b>	<b>19.5</b>	<b>3</b>
<b>GRAND TOTAL</b>	<b>67.1</b>	<b>42.5</b>	<b>24.6</b>

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## OUTPUT PERFORMANCE MEASURES

Performance Measures		2008-09 Estimate	2008-09 Actual	2007-08 Actual	2006-07 Actual
<b>Quantity</b>	New Matters	1300	<b>1590</b>	1377	1426
	Number of Supreme Court Sitting days	685	<b>882</b>	715	N/A
	WAS Clients	1100	<b>1024</b>	946	934
	Actioning Matters under Crimes Forfeiture Legislation (\$M)	0.5	<b>0.455</b>	0.76	N/A
<b>Quality</b>	Establish 'sufficient evidence' before Court of Summary Jurisdiction	95%	<b>98%</b>	97%	96%
	Findings of guilt in Supreme Court	90%	<b>91%</b>	87%	95%
	Convictions after trial or hearing	80%	<b>90%</b>	84%	94%
	Matters without a complaint received from clients	95%	<b>96%</b>	96%	N/A
	Percentage of audited files deemed by the DPP to meet satisfactory quality standards <sup>1</sup>	95%	<b>100%</b>	90%	N/A
<b>Timeliness</b>	Filing of indictments within 28 days of committal	65%	<b>67%</b>	60%	67%
	Number of matters that are listed for trial but do not proceed as a trial	30	<b>32</b>	19	N/A
	Random file audit to assess timeliness of work <sup>1</sup>	95%	<b>100%</b>	100%	N/A

<sup>1</sup> A file audit is conducted annually





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## **PROFESSIONAL STAFF**

The Office was fortunate to be able to recruit a number of new prosecutors this year including:

### **MICHAEL STODDART**

### **SENIOR CROWN PROSECUTOR**

Mike was educated at the Universities of Queensland, Cambridge and Tasmania. He graduated in Law in April 1984 after gaining a degree of Bachelor of Arts and a Post Graduate Diploma in Criminology. He commenced work as a legal practitioner in the Solicitor-General's Office Hobart and remained there until 1991 when he transferred as Counsel in the Office of the Director of Public Prosecutions. In that office he was a Principal Crown Counsel engaged particularly in prosecuting sexual crime.

### **OLIVIA MCMAHON**

### **PROSECUTOR**

Olivia received her Bachelor of Arts and Bachelor of Laws (Honours) from Monash University in Melbourne in 2003. Olivia commenced her legal career as a solicitor in a mid level Melbourne Law firm, before moving to the Kimberly Land Council in Broome, Western Australia in 2005 where she was employed as a Native Title Lawyer. Olivia launched her career as a Prosecutor with the Darwin Office of the Commonwealth Director of Public Prosecutions in 2006. Olivia commenced as a Summary Prosecutor with the Northern Territory OPDD in February 2009.

### **KATE ELLSON**

### **CROWN PROSECUTOR**

Originally from Perth, where Kate graduated with a Commerce degree from Murdoch University in 1993, she left Western Australia in 1995 and moved to New South Wales. After graduating from Sydney University with a Masters in Labour Law and Relations in 1997, she received her Bachelor of Laws from the

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University of Technology, Sydney. Kate commenced her legal career in 1996 as a Research Associate to the Chief Justice of the Industrial Court of New South Wales before moving to the Judicial Commission of New South Wales where she worked as a Research Officer, assisting in work aimed at electronically publishing the New South Wales Criminal Trial Courts Bench Book and maintaining the Judicial Information Research System. In 2000, Kate commenced work with the Office of the Director of Public Prosecutions of New South Wales, as a Research Officer, where she finished her legal studies. In 2003, Kate took up a 12 month appointment as a Crown Prosecutor (as they then were) with the Office of the Director of Public Prosecutions for Western Australia, and returned to the New South Wales Office at the completion of her term. In September 2008 she was employed as a Crown Prosecutor with the Office of the Director of Public Prosecutions for the Northern Territory, and moved to Darwin. In March 2009, she transferred to the Alice Springs Office.

### **MATTHEW HUBBER**

### **PROSECUTOR**

In 2005 Matthew worked for Minter Ellison in the property section for 6 months in a Graduate Clerk position. In 2006 he took up a 3 month summer clerkship in New Delhi, India as a legal intern for South Asia Human Rights Documentation Centre. Matthew graduated from Charles Darwin University in 2007 with Bachelor of Laws and Bachelor of Indigenous Studies and Natural Resource Management. He commenced a graduate clerkship with Department of Justice in January 2008 and in January 2009 he commenced work with the ODPP as a Summary Prosecutor.

### **MARY CHALMERS**

### **PROSECUTOR**

Mary received her Bachelor of Laws from Northern Territory University in 2000, after having graduated with a Bachelor of Arts in 1994. She has completed Graduate Diplomas in Legal Practice at the College of Law in New South Wales and in Military Law at the University of Melbourne. Mary is close to a true Territorian having grown up in Nhulunbuy and Darwin. She worked for several years with David Francis & Associates in Darwin as a law clerk while studying, then moved to government where she worked as in-house solicitor for the Ombudsman and later NT Police. Mary has been an Army reserve legal officer since 2002. She commenced prosecuting in 2006 with a stint at Summary Prosecutions. She worked for two and a half years as a Crown Prosecutor in the Solomon Islands as part of the RAMSI Law & Justice Program, specialising in corruption matters. Mary commenced with ODPP in May this year.

**RON NOBLE****SENIOR CROWN PROSECUTOR**

Ron did his schooling in the United Kingdom but obtained his Bachelor of Laws from Auckland University in 1972 and was admitted as a Barrister and Solicitor the following year. He began his legal career in New Zealand but only began to do criminal law when he became a Crown Counsel and later Senior Crown in Hong Kong from 1977-81. His involvement with criminal law then continued back in New Zealand with prosecuting in Auckland for six months. He went into sole practice there for five years before arriving in Queensland in late 1987 and joining Legal Aid Office, Brisbane. He returned to prosecuting in Tasmania between 1990 and 1995 before coming to Darwin in 1995 as a Senior Crown Prosecutor, transferring to Alice Springs in 2002 until the end of 2006. After 2 years with Queensland ODPP in Maroochydore as a Crown Prosecutor he returned to our Alice Springs Office in February 2009 to resume his former position.

**MATTHEW NATHAN****SENIOR CROWN PROSECUTOR**

Matt graduated from Queensland University of Technology in 1999 with a Bachelor of Arts/Laws before obtaining a Post Graduate Diploma from the Legal Practice Course at the same institution. After a brief stint in a small commercial firm where he discovered his distaste for civil law, Matt commenced his employment with the Queensland Office of the Director of Public Prosecutions in 2001 in their Brisbane office. After filling a number of different positions in the office, including two years as a Sentencing Prosecutor, he was appointed a Crown Prosecutor in 2004 and a Senior Crown Prosecutor in 2007. Prior to his move to Darwin in September 2008 to take up his role as Senior Crown Prosecutor, Matt had spent the previous 12 months as the head of a Chamber Group in the Brisbane Office.

**DAVID DALRYMPLE****SUMMARY PROSECUTOR**

David Dalrymple commenced his legal career as a law clerk in Darwin in 1983 and was admitted in New South Wales in 1984. After working as a solicitor for a mid-sized Sydney general firm he moved to the Dubbo-based Western Aboriginal Legal Service. He returned to Darwin in the second half of 1986 and joined the predecessor to Northern Territory Legal Aid Commission, the Northern Territory branch of the Australian Legal Aid Office. Between 1987 and 1990 he was a legal adviser at the Northern Land Council and between 1990 and mid 1996 he undertook both criminal and civil casework at Katherine Regional Aboriginal Legal Aid Service and the North Australian Aboriginal Legal Aid Service. In July 1996 he established a small private firm, Dalrymple & Associates, which operated until the end of 2006. In 2007 he joined Myilly Point Chambers as a barrister and consultant, before commencing as a Summary Prosecutor at ODPP in October 2008.





## PROFESSIONAL ACTIVITIES

### General Workload

<b>WORKLOAD OVERVIEW</b>	<b>2008/09</b>	<b>2007/08</b>	<b>2006/07</b>
New Matters	973	780	820
New Phases	1589	1377	1426
Court Appearances	7704	6895	6710
<b>MATTERS COMPLETED IN SUMMARY &amp; YOUTH JURISDICTIONS</b>			
Guilty (including guilty pleas)	266	192	210
Committed	307	266	222
Not Guilty/Not Committed	8	14	12
Withdrawn	67	88	63
<b>Total CSJ &amp; Youth Matters</b>	<b>648</b>	<b>560</b>	<b>507</b>
<b>MATTERS COMPLETED IN SUPREME COURT</b>			
S/C Pleas	254	214	255
S/C Trial guilty	31	19	25
S/C Trial not guilty	20	26	15
S/C Trial Mistrial	9	7	1
Nolle Prosequi	40(32)	39(19)	22
S297 (no true bill)	13	9	4
<b>Total S/C (not incl 297a)</b>	<b>354</b>	<b>314</b>	<b>318</b>
<b>SUPREME COURT PLEAS COMPLETED BY WAY OF EX OFFICIO INDICTMENT</b>			
Commenced	76	65	100
Completed	70	62	81

<b>APPEALS</b>	2008/09	2007/08	2006/07
<b>JUSTICE APPEALS</b>			
Commenced	52	58	50
Completed	38	46	60
<b>COA &amp; CCA</b>			
Commenced	21	17	28
Completed	19	16	29
<b>HIGH COURT OF AUSTRALIA</b>			
Commenced (Incl "leave to appeal")	2	1	4
Completed	1	0	5

## Appeals

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

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

An explanation of the appeal process together with a summary of decisions of the Court of Criminal Appeal, Court of Appeal and Full Court for the reporting year can be found on the ODPP website.

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

**NB:** *The figures in brackets in each of the tables below are for the period 1 July 2007 to 30 June 2008*

**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 upon the papers  
2008/2009**

	Sentence	Conviction
Granted	7 (6)	1 (0)
Refused	4 (2)	1 (1)
Total	11 (8)	2 (1)

\* *One applicant applied to have his application re-heard and determined by the Court of Criminal Appeal constituted by three judges. That application was subsequently discontinued in the 2008 – 2009 reporting year.*

Tables B and C below summarise the results of appeals from and to the Supreme Court decided during the reporting period.

**TABLE B**

**Outcome of defence appeals from the Supreme Court to the Court of Criminal Appeal/ Court of Appeal/Full Court  
2008/2009**

	Conviction	Sentence	Other
Allowed	1 (1)	5 (6)	0 (0)
Dismissed	2 (1)	1 (2)	1 (0)
Total	3 (2)	6 (8)	1 (0)

**Outcome of prosecution appeals and references from the Supreme Court to the Court of Criminal Appeal/Court of Appeal/Full Court  
2008/2009**

	Sentence	Other
Allowed	2 (0)	1 (1)
Dismissed	0 (0)	0 (0)
Total	2 (0)	1 (1)

**Outcome of points of law reserved for the  
consideration of the Court of Criminal Appeal  
by a trial judge pursuant to s.408 of the  
Criminal Code  
2008/2009**

Decided in favour of prosecution	Nil Instituted
Decided in favour of defence	Nil Instituted

**TABLE C**

**Outcome of defence appeals from the Court of Summary Jurisdiction to  
the Supreme Court  
2008/2009**

	Conviction		Sentence		Other	
Allowed	6	(3)	15	(10)	1	(1)
Dismissed	8	(6)	7	(7)	0	(0)
Discontinued	4	(7)	14	(5)	0	(0)
Total	18	(16)	36	(22)	1	(1)

**Outcome of prosecution appeals from the Court of Summary Jurisdiction  
to the Supreme Court  
2008/2009**

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

**HIGH COURT**

The Office was involved in three applications for special leave to appeal to the High Court of Australia (one as applicant and two as respondent) and as respondent in one appeal during the reporting period.

The results of the applications for special leave and appeal are set out below.

## **Step v Atkins & Manager Library Services Palmerston City Council**

The applicant, who had been charged with assault at the Palmerston Public Library during working hours, issued a summons directed to the second respondent seeking production of a document being a list of the names of persons who were using the Palmerston Public Library computers over a time frame which embraced the time of the alleged offence. The purpose of the exercise was to assist the applicant identify potential witnesses to the alleged assault. The Librarian produced the list to the court but objected to the production of the list to the appellant on the basis that it was not a document for the purpose of evidence and was not a document that could be summonsed under s.23 of the **Justices Act**.

The magistrate refused to grant the appellant leave to inspect the document on the basis that the document did not meet the description required by s.23 of the **Justices Act** and that it was an attempt at discovery which was not permitted in criminal proceedings. The appellant then unsuccessfully appealed the magistrate's decision to the Supreme Court and to the Court of Appeal.

The Court of Appeal unanimously held that s.163 of the **Justices Act** pursuant to which the appeal to the Supreme Court was made permitted an appeal only from an order determining the subject matter of the complaint, that is, from a final order and not from an interlocutory order. The Court held that the magistrate's order refusing the appellant access to the document was an interlocutory order and that the appeal to the Supreme Court had been incompetent as was the appeal to the Court of Appeal. See **Step v Atkins & Anor** [2008] NTCA 5 delivered 1 August 2008. A note of that decision can be found on the ODPP website under the heading Decisions Delivered 1 July 2008-30 June 2009.

On 20 November 2008, the applicant applied to the High Court of Australia for special leave to appeal against the decision of the Court of Appeal. The application for special leave was prepared by the applicant in person and not by a legal practitioner. The High Court Rules require an unrepresented applicant to present his or her argument to the Court in the form of a draft notice of appeal and written case, which, unless the Court of a Justice otherwise directs shall not be served on any person who was a party to the proceedings in the court below. As at 30 June 2009, the Court had not made any order as contemplated by the Rules, nor had the Court determined the application for special leave.

## **R v Bakewell, Bakewell v R**

In May 1989 the appellant was sentenced to life imprisonment for a murder in the course of which he sexually assaulted the victim. There was at that time no provision for the fixing of a non-parole period for murder convictions.

On 11 February 2004 the **Sentencing (Crime of Murder) and Parole Reform Act 2003** (“the 2003 Reform Act”) came into effect, which imposed an automatic 20 year non-parole period for life sentences imposed for convictions for single murder, absent certain aggravating and other circumstances. The 2003 Reform Act provided in s.19 for the Director of Public Prosecutions (the DPP) to apply to the Supreme Court to fix a non-parole period of a least 25 years or to refuse to fix any period where aggravating circumstances were found (including, relevantly, that the murder occurred as part of a course of conduct which included sexual assault).

On 15 April 2005, in the interests of his welfare, Bakewell was transferred from the Northern Territory to South Australia to serve the remainder of his sentence there. He was transferred pursuant to s.5 of the **Prisoners (Interstate Transfer) Act (NT)** (the NT Transfer Act). Section 23 of the NT Transfer Act provides that when a prisoner is transferred to another jurisdiction, “ ... *from the time the prisoner arrives (in the other jurisdiction) every Territory sentence ceases to have effect in the Territory except for the purpose of ... an appeal against or review of a ... sentence made, imposed or fixed by a court of the Territory.*” The **Prisoners (Interstate Transfer) Act (SA)** (the SA Transfer Act) has a corresponding provision to the effect that from the time the prisoner arrives in South Australia from the Northern Territory the Territory sentence of imprisonment is deemed to have been imposed on the prisoner by a corresponding court of South Australia. Section 28 of the SA Transfer Act provides, in effect, that where a sentence or minimum term is varied or quashed on a review by or appeal to a Territory court, the sentence or minimum term is deemed to have been varied to the same extent by a corresponding South Australian court. When Bakewell was transferred from the Northern Territory to South Australia his life sentence was taken to include a non-parole period (or minimum term) of 20 years.

In June 2007, while Bakewell was serving his sentence in South Australia, the NT DPP made an application to the Supreme Court to increase Bakewell’s non-parole period from 20 to 25 years because of the existence of a specified circumstance of aggravation. The circumstance of aggravation relied upon by the DPP was that that specified in s.19(3)(b) of the 2003 Reform Act, namely, that the act or omission that caused the victim’s death was part of a course of conduct by the prisoner that included conduct, either before or after the victim’s death, that would have constituted a sexual offence against the victim. The application was opposed on the grounds that (i) s.23 of the NT Transfer Act was beyond the legislative power of the Northern Territory Parliament, (ii) s.23 of the NT Transfer Act did not apply to Bakewell as the application filed by the DPP was neither an appeal against nor a review of a sentence passed by a court of the Territory and (iii) the court had no jurisdiction to hear an application if the prisoner was not before the court at the time the application is heard by the court. Section 19(3) of the 2003 Reform Act as then in force provided that the Supreme Court “ ... *must fix a non-parole period of 25 years ...*” if any prescribed circumstances of aggravation applied to the crime of murder.

The Supreme Court (Southwood J) held that the court did have jurisdiction to hear the DPP's application and overruled Bakewell's objections. In particular Southwood J held that the DPP's application was properly characterised as a review of a sentence under s.23 of the NT Transfer Act. See **DPP v Bakewell** [2007] NTSC 49, 21 NTLR 171. Southwood J found that the aggravating circumstances having been established (that is, the sexual assault), he had no discretion but to revoke the appellant's 20 year non-parole period and impose a 25 year non-parole period. Southwood J expressed the view that if the 2003 Reform Act gave him a discretion, he would have determined that the circumstances of the offence and the offender did not call for a non-parole period longer than 20 years. In other words but for s.19(3) of the 2003 Reform Act which Southwood J viewed as being expressed in mandatory terms, he would have dismissed the DPP's application and would not have revoked the non-parole period of 20 years. See **DPP v Bakewell** [2007] NTSC 51.

Bakewell then appealed to the Court of Criminal Appeal which reversed the decision of Southwood J. The Court held that Southwood J erred in concluding he was bound to revoke the 20 year non-parole period and fix a term of 25 years once the circumstance of aggravation was found to exist. The Court held that the discretion in s.19(3) of the 2003 Reform Act to dismiss the DPP's application was unconstrained. The Court set aside the order of Southwood J fixing a non-parole period of 25 years and fixed a non-parole period of 20 years. See **Bakewell v The Queen (No 2)** [2008] NTCCA 3, 22 NTLR 164 a note of which can be found on the ODPP website under the heading Decisions Delivered 1 July 2007-30 June 2008.

The DPP then applied to the High Court for special leave to appeal from the decision of the Court of Criminal Appeal. The proposed ground of appeal was that the Court of Criminal Appeal erred in holding that a court considering an application by the DPP under s.19 of the 2003 Reform Act had a discretion to dismiss that application notwithstanding that a prescribed circumstance of aggravation was found to exist. That application was opposed by Bakewell on the ground that following the decision of the Court of Criminal Appeal in **Bakewell v R (No 2)** [2008] NTCCA 3, 22 NTLR 164 the Northern Territory Parliament enacted the **Sentencing (Crime of Murder) and Parole Reform Act Amendment Act 2008** (the 2008 Amendment Act). The purpose of the 2008 Amendment Act was to make it clear that the minimum non-parole period which must be served by prisoners who fall under the transitional provisions of the 2003 Reform Act where circumstances of aggravation accompanying the crime of murder are found to exist, is 25 years imprisonment. Section 19(9) of the 2008 Amendment Act also provided that a further application may be made by the DPP to the Supreme Court for a longer non-parole period if, before the commencement of the 2008 Amendment Act, an application by the DPP to increase a non-parole period had been dismissed by the Supreme Court in a case in which a prescribed circumstance of aggravation was, or could have been, established. Section 19(7) of the 2008 Amendment Act provided that if any of the prescribed circumstances of aggravation were established on an application

under this section, the Supreme Court's power to dismiss the application was excluded and that the Court was required to revoke the statutory non-parole period of 20 years and to fix a non-parole period of 25 years.

By the time the DPP's application for special leave was ready for hearing, the 2008 Amendment Act came into effect and pursuant to those amendments the DPP had made a further application to the Supreme Court to have the 20 year non-parole period revoked and a 25 year period fixed. Bakewell opposed the DPP's application for special leave on the ground that these developments rendered the special leave application hypothetical. The High Court accepted Bakewell's argument and refused the application for special leave to appeal on 17 October 2008. See **R v Bakewell** [2008] HCASL 551 per Gummow and Kiefel JJ.

After the 2008 Amendment Act commenced on 15 May 2008, the DPP made a second application to increase Bakewell's non-parole period from 20 to 25 years. It was common ground between the parties that the amendments made by the 2008 Amendment Act were made in response to the earlier decision of the Court of Criminal Appeal in **Bakewell v The Queen (No 2)** [2008] NTCCA 3, 22 NTLR 164 dismissing the DPP's first application. At the hearing of the second application in the Supreme Court Bakewell sought a permanent stay of the DPP's application as being an abuse of process or a contempt of the Court and sought declarations that subsections 19(3), 19(7) and 19(9) of the 2003 Reform Act as amended by the 2008 Amendment Act were invalid because they infringed the principle in **Kable v Director of Public Prosecutions (NSW)** [1996] 189 CLR 51 or otherwise constituted an unwarranted interference with the judicial power of the Supreme Court. Without deciding the issue the judge hearing the application referred to the Full Court of the Supreme Court five questions of law directed to the validity of the 2008 Amendment Act and to the application of the principle emanating from the decision of the High Court in **Kable v Director of Public Prosecutions (NSW)** (1996) 189 CLR 51 that State and Territory legislatures cannot confer upon a State or Territory Court a function which substantially undermines the institutional integrity of the court.

The Full Court, by majority, (Martin CJ & Riley J; Thomas J dissenting) accepted the DPP's argument that it remained a matter for the Court to determine whether a prescribed circumstance of aggravation as defined by s.19(3) of the 2003 Reform Act was established, and the limitation on the Court's sentencing discretion, after that determination had been made, was no different from the ordinary sentencing process following an adjudication of guilt where the applicable minimum and maximum penalties depended upon the existence or otherwise of circumstances defined in the relevant statutory provisions. Thomas J dissenting would have declared s.19(9) of the 2008 Amendment Act invalid for imposing a duty on the Court to exercise a power inconsistent with the constitutional functions of the Court. Thomas J was of the view that it would be artificial in the extreme to say that a judge could now entertain an argument that there were no aggravating circumstances as defined in s.19(3). Thomas J was of

the view that s.19(9) of the 2003 Reform Act as amended had only one purpose which was to increase the appellant's penalty without any new findings as to guilt or criminality.

The Full Court declined to answer the question as to whether Bakewell's non-parole period of 20 years fixed by s.18 of the 2003 Reform Act should be revoked and replaced with a non-parole period of 25 years, it being of the opinion that this question should be determined by the judge hearing the second application. See **Bakewell v R (No 3)** [2008] NTSC 51, 22 NTLR 174 delivered 11 December 2008.

Bakewell then applied to the High Court for special leave to appeal to appeal from the decision of the Full Court. Special leave to appeal was granted on 1 May 2009. See **Bakewell v R** [2009] HCATrans 075 per Hayne, Crennan & Kiefel JJ. Special leave to appeal was granted to argue the following question:

Whether subsections 19(9) and 19(10) of the 2003 Reform Act as amended by the 2008 Amendment Act are constitutionally invalid by conferring on the Supreme Court a function which substantially undermined the institutional integrity of the Court and which was inconsistent with the Court's role as a repository of Federal jurisdiction.

The appeal was heard by a full bench of the High Court in Canberra on 16 June 2009. Prior to the hearing of the appeal the High Court indicated that it first wished to hear argument on the issue of whether the Supreme Court of the Northern Territory retained jurisdiction to revoke Bakewell's non-parole period and to fix a new non-parole period once Bakewell had been transferred to South Australia under the NT Transfer Act. The Court heard argument on this issue which it regarded as determinative of the appeal and deferred hearing any argument on the constitutional issues raised by the special leave question until this preliminary question was answered. The Court reserved its decision. No decision had been delivered as at 30 June 2009. See **Bakewell v R** [2009] HCATrans 133.<sup>1</sup>

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<sup>1</sup> The High Court delivered its decision 7 July 2009 holding that neither s.19 of the 2003 Reform Act nor the provisions of the NT Transfer Act applied to Bakewell after his transfer to South Australia and that the Supreme Court of the Northern Territory did not have authority to revoke the non-parole period of 20 years fixed by the 2003 Reform Act and did not have authority to fix a non-parole of 25 years or any other period. See **Bakewell v R** [2009] HCA 24

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## SUMMARY PROSECUTIONS

### DARWIN

#### Background

Summary Prosecutions in Darwin and Alice Springs consists of civilian legal practitioners employed by the Office of the Director Public Prosecutions (ODPP), members of the Northern Territory Police Force attached to ODPP and employees under the **Public Sector Employment & Management Act**. This arrangement was pursuant to the *Memorandum of Understanding* between the Director and the Commissioner of Police, dated 11 February 1998.

As of the 1 February 2009 the MOU ceased to exist and the Commissioner of Police has taken responsibility for the initial prosecution of all matters in the CSJ. This change provides a clear separation to the previously *blended* structure, and therefore responsibilities are allocated to those with the appropriate ability to effectively and efficiently deal with operational issues. This new structure has resulted in the current development of a Service Level Agreement (SLA), which will replace the previous MOU, outlining clear responsibilities of the Commissioner of Police and the ODPP.

The new structure resulted in the Commissioner of Police creating a Northern Territory wide Police Prosecutions Division. Police Officers within a Prosecutions Section or Unit all answer to the Divisional Commissioned Officer, Superintendent Daniel Bacon, providing efficient and effective management across the NT.

Future Annual Reports will no longer include areas within Summary Prosecutions, where those activities are the sole responsibility of the Commissioner of Police.

ODPP Summary Prosecutions will remain responsible for the majority of hearing files and other matters of a complex and public interest nature. The new structure provides a more appropriate structure to ensure the appropriate department provides effective resources and training to those responsible for the actual duties undertaken.

## Functions

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

- receiving initial files including arrest, summons and opinion files both for adults and youths. This responsibility will now revert to Police.
- providing advice to investigating police on issues of substantive, evidentiary and procedural law in appropriate cases, these matters are referred to the *Crown side* of ODPP
- checking files and determining appropriate charges, according to the Director's Guidelines and in particular, the *reasonable prospect of conviction* and *public interest* tests. This area is predominately now the responsibility of Police, with adherence to the Director ODPP Guidelines being maintained. Some categories of files are referred to the *Crown side* of ODPP for advice as to charges
- issuing summonses to defendants in the Court of Summary Jurisdiction (CSJ) and the Youth Justice Court (YJC), for service by police. As of February 2009 this responsibility has been allocated to Police.
- all preliminary mentions of files in the CSJ and YJC, including opposition to bail applications, setting dates for committal hearings in serious indictable matters, setting dates for hearing in minor indictable and summary matters and taking pleas of *guilty* in minor indictable and summary matters, with the exception of matters that:

*are of a serious or complex nature  
involving difficult or complex points of law  
serious indecency offences*

Other matters considered appropriate to be handled by a Civilian Prosecutor

- conducting contested hearings in the Darwin Youth Justice and Summary jurisdiction
- summoning witnesses for hearings & committals.
- after a *finding of guilt*, making applications to breach sentencing orders or good behaviour bonds as appropriate
- receiving all prosecutions from Department of Correctional Services, for
  - breach of home detention
  - breach of community work orders
  - breach of sentencing orders
- prosecuting applications for extradition to places outside the Northern Territory under the Commonwealth ***Service and Execution of Process Act***.

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

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

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

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

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

Since the commencement of June 2006 SPD have allocated a Summary Prosecutor to Katherine to conduct all hearing matters. The situation was rectified by the employment of an additional Summary Prosecutor for Katherine in the 2007/08 financial year.

## **Location**

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

## Staffing

	Establishment	Actual
Senior Sergeant	1	1
Sergeant	7	6
Constable & Senior Constable	3	3
Legal Practitioners #	8	8
A06^	1	1
AO3*	8	7^^
AO2	1	1
<b>Total</b>	<b>29</b>	<b>28</b>

# 3 x P2 Summary Prosecutors are funded by NT Police

^A06 – Office Manager commenced in November 2008 due to the increasing administration requirements of the office.

\*A03 – One additional AO3 was recruited on a 12 month contract due to the impact of the Federal Government Intervention and travel requirements with witnesses are remote communities. The figure also include 1 x ODPP PA for Summary Prosecutors

^^ 1 x Sgt has been seconded to the JESSC for the entire period for development whilst other staff conducted relief within SPD.

## Officer-in-Charge

The Officer-in-Charge is responsible for managing the section, answering correspondence, providing guidance to Police Prosecutors and where required assisting in court matters in Darwin and on circuit. Senior Sergeant Jamie O'Brien has occupied the position since the 1<sup>st</sup> March 2008.

## Police staff

The police members are employed under the ***Police Administration Act***. There are various sub-specialties within the Office. Police members are rotated through each sub-specialty with the object of producing well-rounded Summary Prosecutors. Their duties include file checking and charge selection, presenting pleas in the Courts of Summary Jurisdiction and Youth Justice Courts and presenting evidence in contested hearings in those courts.

The Police Prosecutors are:

### Sergeants

Lynette Balchin (2008)

Leigh Cahill (2008)

Stuart Davies (2006)

Melinda Edwards (2008) – Seconded to Police Communications

Andrew Littman (2004)

Wayne O'Neil (2009)

Erica Sims (2005)

**Acting Sergeants**

Brett Verity (2008)

**Senior Constables First Class**

Kerry Rigby (2007)

Matthew Parsons (2009)

**Senior Constables**

Ivan Marinov (2008)

**Senior Legal Practitioner in Charge**

The Senior Legal Practitioner in Charge is responsible for the provision of leadership, professional advice and support to the Summary Prosecutors. In addition to their own prosecutorial duties, the senior legal practitioner is responsible for the allocation of hearing files and the professional development of the unit's legal practitioners within the section.

Amanda Nobbs-Carcuro commenced in the role during the 2007/08 period.

**Legal Practitioners**

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

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

There is currently a pool of seven legal practitioners attached to SPD. Two new positions were created during the period due to a police restructure, adding additional qualified legal practitioners into the section.

As at 30 June 2009 the legal practitioners were as follows (with dates of commencement);

John Duguid (2001)

Timothy Smith (2002)

Martin Fisher (2003)

David Dalrymple (2008)

Steve Ledeck (2008)

Damian Jones (2008)

Olivia McMahon (2009)

Matthew Hubber (2009)

## **Public Sector employees**

Three AO3 positions are employed by Police as Prosecution Support Officers to attend to word processing, file tracking, archiving and support to Police Prosecutors.

Two AO3 positions are employed by Police to fill the roles of Summons Liaison Officer and Travel Liaison Officer. One additional AO3 is on a 12 month contract to cover the impact of the Federal Government Intervention in relation to travel for remote courts.

Two AO3 positions, one funded by police and one funded by ODPP, provide administrative support to the legal practitioners.

### **Summons Liaison Officer:**

This position is filled by an AO3.

The Summons Liaison Officer is responsible for the following;

- issue, arrange service and tracking of summonses for all witnesses in both summary and committal proceedings in Darwin
- issue, arrange service and tracking of witness summonses for all committal proceedings in Daly River, Maningrida, Nguiu, Wadeye, Jabiru, Nhulunbuy, Oenpelli and Alyangula
- advise appropriate personnel of any witnesses requiring travel & accommodation arrangements
- advise and provide training to police members at bush stations in the use of IJIS applications, particularly the Witness Menu

### **Travel Liaison Officer:**

This position is filled by an AO3 with an additional AO3 to assist with the increase workload due to the Federal Government Intervention.

The Travel Liaison Officer is responsible for;

- arrange the service in NT and elsewhere, of all Supreme Court subpoenas for the Darwin sittings
  - arrange travel, both domestic and international, for all summary court and Supreme Court witnesses and be available for after-hours call-out for such duties
  - arrange appropriate and suitable accommodation for all summary court and Supreme Court witnesses and be available for after-hours call-out for such duties
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- collect or arrange for collection of all witnesses from the airport, or point of arrival, to their accommodation and then to the ODPP for interview and/or proofing and be available for after-hours call-out for such duties
- be responsible for all financial and associated accounting aspects of witnesses travel and accommodation including petty cash, sundry travel costs, incidental expenditure, loss of wages and professional services
- assist, where appropriate, WAS with liaison, travel and transport of Aboriginal witnesses.

## **Receptionist**

An A02 is employed as a receptionist to assist with phones, filing and office administration.

The Public Sector employees, as at 30 June 2009 (and their respective dates of commencement) are:

### Prosecution Support Officers

Tiffany Kilian (2002)  
Lynette Langley (2006)  
Hayley Kellett (2009)

### Travel Liaison Officer

Amanda Pedretti (2008)  
Melinda Hartley (2009)

### Summons Liaison Officer

Bronwyn Albanessi (2008)

### ODPP Professional assistant to prosecutors:

Maria Pyke (2006)  
Rhiannon Brown (2008)

### Receptionist

Shirley Gotting (2008)

## **Liaison with WAS**

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

## Other Resources

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

## Training and advice

SPD also provides advice and training to police recruits. A prosecutor attends the Police Fire and Emergency Services (PF&ES) College and gives lectures as required.

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

## Caseload

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

Workload	2008	2009	Increase / (Decrease)
New files - Darwin	5,161	6506	26%
Summary file listings - Darwin:	19,646	15,557*	(12.6%)
Matters listed for Alcohol Court:	64	73	14%
Matters listed for Credit Court:	107	69	(35.5%)

\*Figure does not include Summary Hearing Prosecutors from 1/2/09 – 30/6/09 due to change in structure.

## General comment – Future Issues

The formal change to structure, which commenced on the 1<sup>st</sup> February 2009, has provided clear lines of responsibility for both the Director ODPP and the Commissioner of Police. This has enabled clear identification of resource requirements and allocation of duties to the respective stakeholders.

As a result of the restructure of the Summary Prosecution area the Commissioner of Police has brought the responsibility of all prosecutions under the control of one Divisional Officer. This move has provided an efficient and effective mechanism into dealing with criminal prosecutions across the Northern Territory.

As a result the Police review more resources requirements have been identified and with for all prosecutions now coming under either, Darwin or Alice Springs Police Prosecutions Section or the Katherine Police Prosecutions Unit.

Further training has been identified for all Police Prosecutors, and is well into the development stage, with initial courses to be conducted in October and November 2009 and February 2010.

With clear increases in workload, another 26% in current reporting period, the new alignment of responsibility with summary matters ensures effective identification of resource and training requirements.

It is anticipated that a more professional, efficient and effective model at the summary level has been achieved and the future will enable a more flexible and harmonious working relationship between the ODPP and the Northern Territory Police.

## **ALICE SPRINGS**

Summary Prosecutions Alice Springs (SPAS) during the period 2008/2009 was immediately responsible to the Assistant Director ODPP Alice Springs. However as of 1<sup>st</sup> July 2009 the section will be responsible to the Superintendent Crime and Specialist Support Command. The section carries out the following functions:

- receiving initial files including, arrest, summons and domestic violence order applications
- checking of files and determining appropriate charges
- issuing summonses for service by police
- making applications to breach sentencing orders as appropriate
- all preliminary mentions of files in court
- opposing bail applications in appropriate cases
- prosecuting guilty pleas in the lower courts
- receiving all prosecution briefs from the Department of Correctional Services, for;
  - breach of home detention
  - breach of community work orders
  - conditional breach of sentencing orders
- prosecuting applications for extradition to places outside the Northern Territory under the Commonwealth ***Service and Execution of Process Act***
- prosecuting minor breaches of liquor licences before the Licensing Commission Tribunal
- appearing occasionally for other Government Departments, for example DPIF and Commonwealth DPP

- prosecuting all matters in the Youth Justice and Summary Jurisdiction Courts except for:
  - matters which are of a serious or complex nature
  - matters involving difficult or complex points of law
  - matters involving indecency
  - other matters considered more appropriate to be handled by senior counsel

## Location

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

## Staff

	<b>Establishment</b>	<b>Actual</b>
Senior Sergeant	1	1
Legal Practitioners	3	3
Sergeant	2	3 (1 supernumerary)
Constable	2 (1 unattached)	3 (1 supernumerary)
Auxiliary	1	1
AO3	1	1

OIC	Senior Sergeant Don Eaton
Police Snr Hearing Prosecutor	Sergeant Jody Nobbs
Police Hearing Prosecutor	Senior Constable Kevin Winzar (supernumerary)
Bush Court Prosecutor	Sergeant Sally Nicholas
Bail & Arrest Prosecutor	Sergeant Michael Cornford (supernumerary)
Bail & Arrest Prosecutor	Senior Const Lindsay Westphal (gazetted unattached)
DPVPU Prosecutor	Thomas Svikart
ODPP Summary Prosecutor	Ian McMinn
NTP Summary Prosecutor	Roman Micaïran
Prosecutions Constable	Constable Nicholas FERRY
Witness Travel	Senior Auxiliary Debra Pieniacki
Reception/Admin AO3	Jessica Rose

During the year the Unit was fortunate to maintain three additional police officers and as a result of the police review into police prosecutions it has been accepted and agreed that these three positions will now become permanent. It was further approved that a second AO3 position would be come available. The current situation is that the unit can cope with current workload however cannot be self relieving without relief staff. The Alice Springs station has been providing relief as required.

However it appears there is to soon be a fourth Magistrate in Alice Springs and the ability of this unit to be able to maintain two Hearing Prosecutors and two Bail and Arrest Prosecutors at the Alice Springs Court at all times may cause problems especially when bush courts are being held on the same day. It has also been advised that it is the intention of the Court to conduct an extra day's court at Ali Curung for the purposes of running a Community Court which again impacts on the ability of this section to keep up with current workload when staff are away out bush. This unit continues to send two prosecutors out to bush courts when large numbers of hearings are listed. This allows better preparation in conduct of hearings and accords with Work, Health & Safety (WH&S) best practice for long distance travel.

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

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

## Bush Courts

A prosecutor attends for hearings and assists with bail and arrest as required. Summary Prosecutions conducts a monthly five day court at Tennant Creek and during the year period five additional. Bush courts are also held at Ali Curung, Hermannsburg, Kintore, Papunya, Yulara, Ti Tree and Yuendumu bi-monthly. As stated earlier with current increases in workload and WH&S issues we will continue to send two prosecutors to most Bush Courts.

## Training and Advice

Advice and training in the law and procedures has been given to police at Alice Springs specifically as it relates to evidence, chain of evidence, statement taking and the implementation of procedures relating to hearing files. These lectures being conducted on training days by Senior Sergeant Eaton, Senior Constable Lindsay Westphal, ODP Hearing prosecutor Ian McMinn and DPVPU Prosecutor Thomas Svikart. Mention should be made of Senior Constable Westphals excellent powerpoint packages created for the Auxiliary Course conducted in Alice Springs and educating members in procedures relating to best practice when dealing with 'grog runners' into prescribed and restricted area's Education has also been delivered on a one on one basis as and when required.

## New Hearing File Procedure

The new hearing file procedure implemented mentioned in last years report has continually been reviewed and improved as time has gone on. It appears to have been accepted well by the investigators and appears to be achieving progress in the resolving of files before hearings proceed. It is also reflected in our guilty statistics that for the year averaged 94%.

## Caseload

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

<b>Alice Springs</b>	<b>2007/08</b>	<b>2008/09</b>
Total Summary files listed	12,610	12,360 minus 2%
*Files found guilty (% of total)	89 %	94%* plus 5%*
^New files (Arrest/Summons/DVO)	4,103	3827 minus 7%
#Hearings (Alice Springs)	589	483 minus 16%

<b>Tennant Creek</b>	<b>2006/07</b>	<b>2007/08</b>
		<b>Plus/minus %</b>
Total Summary Files listed	2,796	2464 minus 12%
^New files (Arrest/Summons/DVO)	868	403 minus 54%
#Hearings (Tennant Creek)	212	137 minus 35%
Bush Courts attended incl. Tennant (days)	130	136 plus 5%

\*File resolved by guilty plea or finding to any charge on file (Alice Springs only).

^Alice Springs only compiles files for Alice Springs and Tennant Creek. Others, except for "in custody" bush station matters listed for Alice, are compiled by the actual stations themselves (stats were commenced by prosecutions but only commenced as of Nov 08

#Those files proceeding to the actual hearing date.

% Totals for guilty Alice Springs – in last 6 months of 2007 were averaging 85% - as against the first 6 months of 2008 averaging 94% - this has been maintained across the year of 2008/2009. It is also reflected in the drop in matters being set for and reaching the hearing date

These figures show a decrease in workload workload, at both Tennant Creek (substantial) where actual files listed have gone from 2796 to 2464 and Alice Springs 12,610 to 12,360. Matters reaching the hearing date have lessened due in part to the new accountability measures put in place for both Prosecutors and Officers in Charge of cases from the general duty and specialist area's. The receipt of emails from defence regarding their representations on behalf of their clients has also seen a system that allows a faster approach in answering representations allowing matters to be sorted much quicker than when waiting representations by post.

### **General Comment**

As per comments in previous Annual Report, current staffing even with additional police members is barely adequate. The review has only managed to give permanency to the staffing levels with which we have had to cope. Establishment need to keep pace with the increase in additional police numbers in the Southern Region as this inevitably creates more prosecution work particularly in relation to domestic violence related offences.

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





## **WITNESS ASSISTANCE SERVICE**

### **DARWIN**

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

The WAS team consists of seven witness assistance officers.

In Darwin: Nannette Hunter, WAS co-ordinator; Colleen Burns, Aboriginal support co-ordinator; Ken James; Susan Cooper (who left the Darwin office in February) and Jenny Davie (who replaced Susan in May).

In Alice Springs: Susan Cooper, WAS co-ordinator (South) who took up the position in February and Ronda Ross.

In Katherine: Michael Devery, WAS co-ordinator.

WAS in Darwin also had wonderful administrative support from Kerrie Wilson and in Katherine from Raima Baker.

During the year, Darwin WAS was greatly assisted by Jenny Davie who joined us for five months from January to May and in Alice Springs by Treena Monroe for five months from August to December. We thank them for their assistance to WAS at a difficult time. It was greatly appreciated.

The WAS role has been detailed in previous reports. It is repeated here to illustrate the range of services offered to victims of crime, witnesses and their families.

### **Support**

This involves court preparation and can include court tours, demonstrations of vulnerable witness facilities and observations of court sittings. Support regularly

involves accompanying witnesses to court and can include being with a witness in a closed circuit television room, behind a screen or in a closed court.

## **Information**

WAS notifies victims of crime about the service and invites them to make contact. Witnesses are provided with several publications at the appropriate time. These include the Northern Territory Charter for Victims of Crime, the WAS pamphlet and the Victim Impact Statement booklet. WAS also gives information about the time, date and place of court appearances, the stage that the matter is up to and whether attendance by the witness is required. In December 2000 we began writing to referred victims whose matters would be dealt with by Summary Prosecutions Darwin. In the past year 657 of these witnesses were contacted.

## **Referral**

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

## **Explanation**

The explanation of legal processes, language and rules of evidence is vital. The aim is to explain technical legal language in plain English. When people have a better understanding and are given timely information about what is happening in relation to court proceedings, they report a higher level of satisfaction with their experience of the criminal justice system.

## **Liaison**

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

## **Victim Impact Statements**

WAS assists victims of crime to prepare victim impact statements (VIS). Victims of crime have the right to present to the court a statement detailing the effect the crime had on their lives. This can include a comment to the court on the appropriate orders that the court may make. VIS were introduced in the Northern Territory in March 1997. Since then many people have decided to participate in the criminal justice system by exercising their right. Since the beginning of this scheme WAS has assisted over 3300 victims to prepare a VIS.

## **Executive Committee**

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

## **Professional Staff Meetings**

WAS members attend these meetings.

## **Training and Community Education**

Members of WAS regularly give presentations to groups of people who come into contact with witnesses in their workplace. This year in Darwin this work included presentations to Northern Australian Aboriginal Justice Agency, Police recruits, the Law Week Tour, Dawn House and the Domestic Violence Legal Service.

## **Parole Board**

The Parole Board continues to request input from victims into the considerations of the Board.

## **Prosecutors**

WAS in Darwin gives all new prosecutors, and many other new staff members, whether recruited to SPD or ODPP, an orientation presentation about the role of WAS.

## **Publications**

WAS is responsible for two publications, a booklet, *Victim Impact Statements* and a pamphlet, *Witness Assistance Service* and a DVD in English and Kriol,

## **Bush Courts**

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

This year every bush court community was visited at least once by a WAS officer during sittings. This is a significant milestone as it is the first time WAS can claim that achievement.

## Katherine and Alice Springs

Both offices were supported from time to time by Darwin staff assisting when necessary and by visits from the co-ordinator.

## National WAS Conference

In April the three regional co-ordinators attended the national WAS conference in Perth. Susan Cooper and Michael Devery both gave well received papers and Nannette Hunter chaired the national meeting. It was an opportunity to meet and learn from peers all over Australia.

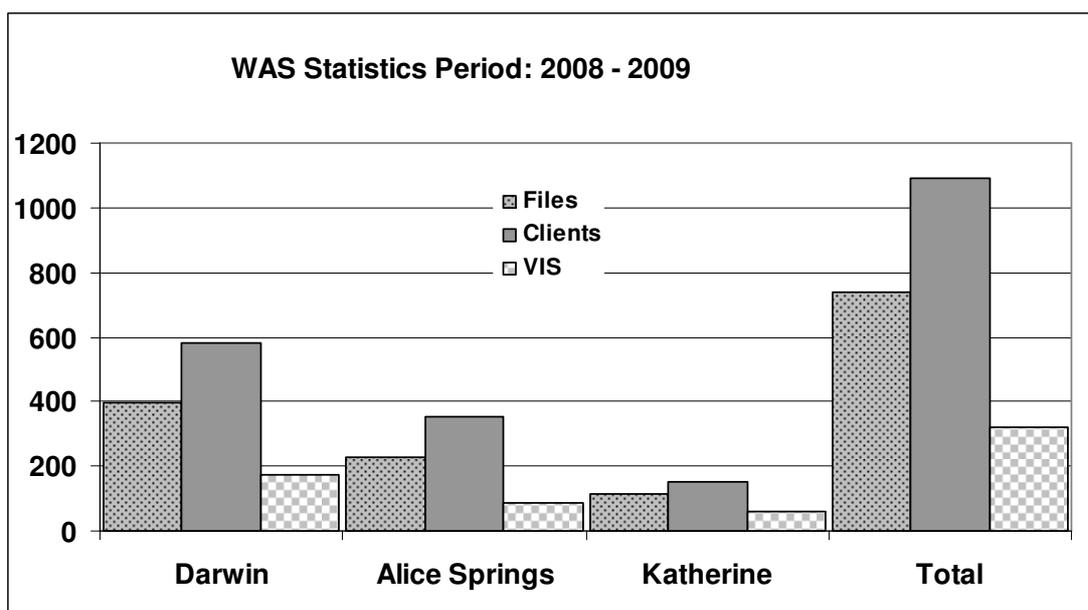
## WAS Statistics

The workload of WAS again increased in 2008-2009 as measured by the statistics for files and clients. A landmark of over 1000 clients was achieved. It is no wonder that WAS staff felt busier than ever.

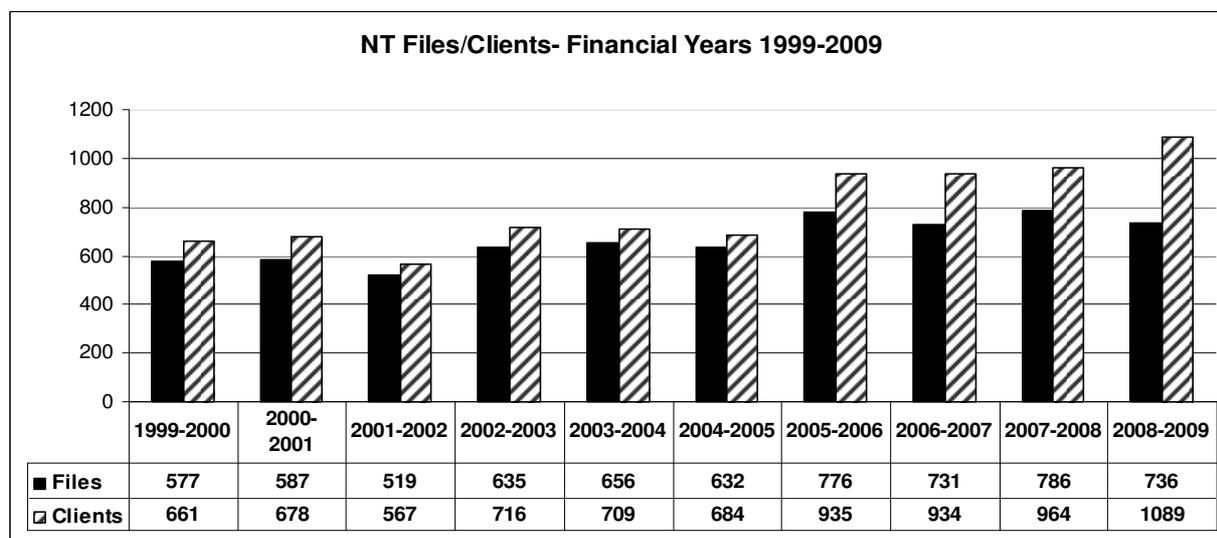
Last year WAS reported that it would be unrealistic to expect any further growth in client numbers or more time spent out bush as all WAS officers were working to capacity or above. It was felt that expansion of the service needed to be underpinned by an increase in staffing levels or by refocussing the work of WAS to prioritise the bush. Alice Springs had not had an increase in staff since the VSU was set up in 1997 and Darwin had been operating on four officers for some time.

Fortunately, this year an increase in staff was announced. WAS in Alice Springs will have an extra WAS officer and in Darwin an extra 0.5 WAS officer.

## FILES – CLIENTS – VICTIM IMPACT STATEMENTS



## 1999 – 2009



## ALICE SPRINGS

Alice Springs has been busy this year with visiting WAS officers and the employment of a permanent co-ordinator. For a brief period the Office was staffed by one employee, which meant that Darwin staff needed to visit regularly to assist. In late 2008 Alice Springs employed a temporary worker for 5 months which alleviated the need for other regional staff to visit.

With the permanent employment of a co-ordinator in April 2009 the Office has undergone a makeover. The Alice Springs Office now has a separate waiting area for witnesses and victims. New furniture and toys were purchased to make the area more appropriate for anxious clients and clients with children. In July WAS held a morning tea to celebrate the new WAS area.

Education was provided about the service to many government and non government service providers including the Court Indigenous Liaison Officer, SARC, NPY, Community Corrections and the Women's Shelter in Tennant Creek. Staff were invited to attend networking meetings in which information about the service was given.

An announcement was made that Alice Springs would receive a new full time position. The new officer will assist with the aim to have a WAS officer available to attend bush courts in the region, which has in the past been difficult to cover. This year WAS attended some bush courts that had not been visited by WAS previously.

## **KATHERINE**

On 21 April 2008 the Katherine Witness Assistance Service (KWAS) was officially opened with two staff, a co-ordinator and part-time administrative support.

After a year KWAS increased the level of service in the Katherine region and gave victims, witnesses and their families, many of whom are Aboriginal, the necessary support. WAS presence in Katherine provided more support to Aboriginal victims, witnesses and their families in remote areas.

The goal was to establish a Witness Assistance Service in Katherine that will provide support to victims, witnesses and their families within the region.

We have achieved that goal, and provide core services to victims, witness and their families within the Katherine region.

The Katherine Witness Assistance Service is well established, fully operational and a real presence in the Katherine region.



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## **ABORIGINAL SUPPORT**

The Aboriginal Support Co-ordinator celebrated 10 years in this position in 2009. A variety of WAS staff issues came up including bereavement leave and long service leave for WAS staff in the first and third quarter which meant that the other WAS staff were asked to assist. This led to WAS relying on other agencies from time to time.

The Aboriginal Support Co-ordinator continues to serve on the Indigenous Reference Group (IRG). In recent times IRG looked at the whole of Department of Justice Indigenous Employment and Career Development Strategy (IECDS). IRG will be looking at increasing its membership. Representation from Indigenous staff throughout the different areas of the Department of Justice is sought.

The Aboriginal Support Co-ordinator has been asked to serve on the Internal Reference Group. She will be involved in making decisions about best practices by staff of the Department of Justice when they travel to remote Indigenous communities. Mr David Dalrymple will also be a representative from the ODPP.

### **Indigenous Staff**

Nigel Browne	Crown Prosecutor
Colleen Burns	Aboriginal Support Co-ordinator
Michael Devery	WAS Co-ordinator, Katherine
Ronda Ross	WAS Officer, Alice Springs
Jack A'Hang	Indigenous Liaison Officer, Alice Springs
Joh-Ann Coates	Indigenous Law Cadet

### **Networking**

The Aboriginal Support Co-ordinator continues to network with various government and non government agencies. The bulk of this contact has been with the Aboriginal Interpreter Service who provide us with interpreters throughout the court process. The Aboriginal Support Co-ordinator has also given presentations.

## **Community Courts**

There has been an increase in Community Courts set down at Bush Court circuits.

## **Bush Courts**

All WAS staff have attended various Bush Courts as well as filling in the other regions when required. The Aboriginal Support Co-ordinator and the WAS Co-ordinator were invited to a Darwin Summary Prosecutions staff meeting to discuss best practices between WAS and Summary Prosecutions. This meeting led to an increase in referrals from Summary Prosecutions to WAS not only for urban cases but also for Top End Bush Courts referrals.

Overall another good year for WAS.