



**DIRECTOR OF PUBLIC
PROSECUTIONS**

**NORTHERN TERRITORY
OF
AUSTRALIA**

A N N U A L

R E P O R T

2000-2001



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

ELEVENTH ANNUAL REPORT

FOR YEAR ENDED 30 JUNE 2001



**Director of Public Prosecutions
Northern Territory**

Rex Wild QC

28 September 2001

The Hon Peter Toyne MLA
Attorney-General
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Dear Attorney-General

ANNUAL REPORT 2000-01

In accordance with the requirements of section 33 of the *Director of Public Prosecutions Act* and section 28 of the *Public Sector Employment and Management Act*, I have pleasure in submitting to you the Annual Report on the performance of the Office of the Director of Public Prosecutions for the period 1 July 2000 to 30 June 2001.

The Report includes the various statements of guidelines issued and published pursuant to section 25 of the *Director of Public Prosecutions Act*. The statement of these guidelines provides Crown prosecutors and others engaged in law enforcement with clear guidelines for the making of various decisions which arise in respect of prosecutions. They are intended also to inform the public generally of the considerations upon which those decisions are made.

This is the eleventh Annual Report of the Office since its establishment in January 1991 and the sixth since my appointment in February 1996. It is hoped that the information contained within the Report in respect of the Office will advance public knowledge of its operations and its role in the criminal justice system.

Yours sincerely

REX WILD



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OFFICE LOCATIONS

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

Level 2

Tourism House

43 Mitchell Street

DARWIN NT 0800

GPO Box 3321

DARWIN NT 0801

Telephone: (08) 8999 7315

Fax: (08) 8999 7544

2. **NORTHERN REGIONAL OFFICE DARWIN**

Level 1

Tourism House

43 Mitchell Street

DARWIN NT 0800

GPO Box 3321

DARWIN NT 0801

Telephone: (08) 8999 7533

Fax: (08) 8999 7821

Free Call: 1800 659 449

3. **SOUTHERN REGIONAL OFFICE ALICE SPRINGS**

1st Floor

Centrepont Building

Cnr Hartley St & Gregory Tce

ALICE SPRINGS NT 0870

PO Box 2185

ALICE SPRINGS NT 0871

Telephone: (08) 8951 5800

Fax: (08) 8951 5812



MISSION STATEMENT

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

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



MISSION STATEMENT (IN KRIOL)

Wed bla DPPmob

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 alumbat yu.
- Det DPP-mob wandim stap gudwan binji seimwei la yu en la det sambodi weya olabat rekin imin duwim det nogudwan ting.
Jei wandi album yu gidim det samwan hu bin duwim det samting rong en faindat la kot raitwei bla banijim bla wot imin du.
- Olabat DPP-mob wandi meigim bla yu en en det sambodi en ola widnijmob go la kot gudwei, nomo hambag en nomo bla meigim yu fil sheim. DPP-mob duwim dijkain wek bla album eberibodi la Northern Territory jidan seifwan en gudbinjigeja.

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



DIRECTOR'S OVERVIEW

Last year, for the first time, the Annual Report commenced with a short listing of performance highlights. This was in keeping with advice received, on the format of the report, from the Public Sector Accounting Group's Annual Report Awards and Performance Reporting. I came to the task this year without being able to identify any such individual highlights. Last year I was able to point to the Equity Award received for our Aboriginal Employment and Career Development Strategy, the contributions made by the Office to Law Week, the introduction of the Aboriginal Interpreter Service and the effectiveness of the Victim Support Unit. This past year it has rather been the work of the whole Office, in all its components, under very difficult conditions which has impressed me most. Each member of the team is entitled to be justly satisfied with the contribution that he or she has made to the execution of the Office of the Director of Public Prosecutions (ODPP) *Mission*. I set it out below (it also appears in Kriol in this Annual Report):

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.*

The Office has suffered from what is now clearly seen as a continuing shortage in professional and administrative staff in all areas of operation. The responsibility taken for summary prosecutions, pursuant to the *Memorandum of Understanding* (MOU) made between me and the Commissioner of Police in February 1998, has been an onerous one; the impact of mandatory sentencing has continued to be immense and the demands on the Victim Support Unit have increased exponentially. Attempts by the ODPP to expand into the bush courts, both in provision of prosecuting and victim support services, has been done without any increase in staff. It has created additional work for all members of staff. Professional staff have worked in an uncomplaining way well beyond the call of duty. It is usual, and quite frankly necessary, to have people working on weekends and public holidays in order to keep pace with court commitments and the necessity to provide reports and written advice.

For too long, the Office has absorbed additional demands made upon its staff without proper increase in staff and resources. It will no longer be able to do so. The pressures on all staff will inevitably lead to a reduction in efficiency and the effectiveness of the prosecuting service.

The back-up administrative staff has proved insufficient. Bandaiding such problems has meant that we have not been able to offer anything but part-time, casual or temporary appointments. Not surprisingly, some good staff has not stayed and it is difficult to attract the best applicants. The existing staff, of course, meet very high standards.

Summary Prosecutions Units in both Darwin and Alice Springs have managed without any administrative support for the court prosecutors during the whole of the time that I have been responsible for their operations and, I understand, well before that. Summary prosecutors do all their own photocopying, telephoning for witnesses and preparation for hearings (in short, all the duties that a professional assistant should provide). I have been repeatedly advised by the relevant police officers with whom I deal that there are just no funds available for this administrative support.

Budget submissions have been made for additional administrative staff within the ODPP at what, in retrospect, seems to be very modest levels. However, government has been unable to provide funds for one additional AO3 officer on a permanent basis in the last two years.

Law and order continues to be a widely canvassed public issue. A well-funded and resourced prosecuting service is not, however, seen as part and parcel of that issue. No regard has been had to the necessity to have a properly funded and operating prosecution service, for example, in conjunction with the NTSafe Program.

When, for the tenth year in a row, the ODPP had to seek a Treasurer's allowance to meet its budget, the Treasurer advised the Chief Minister and Attorney-General as follows:

While I have approved a Treasurer's Advance ... for the estimated shortfall this financial year, a long-term solution appears necessary. As such, a full review of the functions and responsibilities of the Office of the Director of Public Prosecutions should be undertaken.

As a result, and with a great deal of encouragement by the ODPP, a review is now to be conducted by the Strategic Audit Services (SAS) of the Chief Minister's Department. The terms of reference have been settled as follows:

Specific Objectives

1. *Review the functions and business processes of the Office, establish if they are consistent with the directions and policy decisions made by government and determine if they are being effectively achieved.*
2. *Assess if business processes are being effectively carried out.*
3. *Compare functions and workloads with equivalent agencies interstate.*
4. *Review changes in the Office's environment that are impacting on workloads including:*

- *the current impact of the MOU on the workloads and future directions of the Office following the transfer of responsibility from police for all summary prosecutions;*
 - *the impact of increased victim participation in, and expectations of, the criminal justice system.*
5. *Recommend ways to improve efficiency and effectiveness.*
 6. *Recommend an appropriate resource allocation.*

It is expected that that review will be completed by October 2001 and will be the basis of further budget submissions to Cabinet which will have the effect, it is hoped, of rationalising the resources of the ODPP and enabling it to carry out its functions and duties without the financial pressures which have attended them for most of its recent years of operation.

The Crown prosecuting service, by which expression I mean to include the Office of the Director of Public Prosecutions and the Summary Prosecution Units in both Darwin and Alice Springs, have had to shoulder much of the responsibility for the changes in the criminal justice system which have occurred in recent years. That responsibility includes ensuring that the system functions as a whole, notwithstanding increased workloads of individual prosecutors and administrative staff which continue to emanate from mandatory sentencing and *hidden* factors such as the increase in the number of magistrates available to hear cases in the Courts of Summary Jurisdiction and the appointment of a full-time magistrate in Katherine.

I adopt, with respect, what my colleague the Director of Public Prosecutions for Victoria said in his 1999-2000 Annual Report:

*Courts often speak of the **unlimited resources of the Crown**. This is no longer true, and if the (criminal) system works at all today, it is because of the commitment, goodwill and unpaid overtime of the ODPP solicitors and barristers involved.*

In the Territory situation, I would add the administrative staff, the police personnel and the summary prosecutors involved in the work of the summary prosecutions units.

The ODPP celebrated its tenth anniversary of operation in January 2001. This makes it even more appropriate that the review contemplated by the Treasurer, agreed to by the Attorney-General and welcomed by me, should now take place.

Mandatory sentencing

Mandatory sentencing commenced under the ***Sentencing Act***, in its initial guise, in March 1997. Its impact on the work of the prosecuting service continues. Each refinement of the legislation itself leads to further challenges to that legislation and arguments about its applicability in particular circumstances.

Thus, mandatory sentencing has continued to provide a major focus for the professional work of the ODPP during the year. The defence lawyers, rather than exploring the intricacies of the legislation in court challenges, concentrate on the exercise of prosecutorial discretion in the institution of proceedings. Submissions have been made that because of the perceived inflexibility of mandatory sentencing, in

appropriate circumstances, the prosecution of offenders should not proceed. The submissions focus on the *public interest* leg of the guidelines for prosecutors.

There is a threshold difficulty in such propositions. It assumes that it is not in the public interest to prosecute an offender for what is suggested to be a comparatively minor first offence (or second or third offence for that matter), and in respect of which he will get an unduly harsh penalty, when Parliament has enacted legislation precisely to the contrary intent.

There have been some cases where a prosecution has been withdrawn on my instructions but in most of those some diminution of mental responsibility was involved.

Nevertheless, the submissions have continued and, of necessity, have involved a significant amount of time to give each of them proper and full consideration. In addition, although there have been fewer challenges to the nature and operation of the legislation, additional court and preparation time has been taken in relation to these cases.

Challenges for the future

I repeated these in last year's Annual Report as follows:

- to participate in a criminal justice system which better serves the community in ensuring that cases are brought speedily and completed effectively with a minimum of disruption to the lives of victims, witnesses, jury members and defendants
- to continue to provide an appropriately professional team of prosecutors to service the needs of the Office
- to maintain good personal and working relationships with courts, police officers, defence lawyers and other stakeholders in the criminal justice system to ensure that the system itself has the best opportunity to operate successfully and to the mutual advantage of all the participants.

To these must now be added, as a matter of administration of the Office, the need to rationalise its budgetary and resource provision. It is hoped thereby that the professional leadership of the Office will be able to concentrate on issues more directly relevant to the prosecutorial function and that the administrative functions can be delegated, within the Office, to a senior professional officer. During recent years, the time of the Director and Deputy Director has been very much involved in these matters to the detriment of their involvement in matters of legal professional practice. The Business Manager has performed valiantly in the face of increasing administrative demands and changes to the accounting system and general administration of the public service in the Northern Territory.

Strategic plan and performance measures

The *Working for Outcomes* project has required a re-structuring of the *Corporate Plan* and *Performance Management* of the ODPP. In the year completed, a review was undertaken by SAS of the performance management system. The thrust of the recommendations of that review has been accepted and is incorporated in the separate

section dealing with *Strategic Plan and Performance Management*. I was grateful for the assistance received from David Rolfe of SAS in this connection.

I said last year that *the success of the Office is something that can only really be judged by others*. That remains true in reference both to the objectives which had been set in the *Corporate Plan* and to the extent to which it adheres to and meets its own *Mission Statement*. Consistent with the *Mission Statement*, the essential outcomes are:

- an effective criminal prosecution service
- victims and witnesses are satisfied with the support provided.

I believe that the Office has achieved those outcomes.

Acknowledgements

It follows naturally that the support provided by my staff this year has been enormous. The pressure of work for all members has been extreme but invariably they have accepted the additional duties and responsibility and got on with the job. Deputy Director Jack Karczewski has been a rock at all times. His own involvement in court work has been sacrificed to some extent as he has shouldered more and more of the administrative load. Dr Nanette Rogers has grown in the job in Alice Springs. Michael Carey has been appointed General Counsel to replace Jenny Blokland who resigned at the beginning of the year. He has fitted well into that position and is providing good, professional leadership. I remain very proud of the work of the Victim Support Unit which, under co-ordinator Nannette Hunter, continues to provide effective and sensitive service to victims and witnesses. Lilia Garard, the Business Manager, continues to carry out a very difficult job with extraordinary panache and dedication. I again recognise the efforts of Senior Sergeants Peter Thomas and Richard Bryson (Darwin) and Craig Ryan and Rob Burgoyne (Alice Springs) who have provided first-class support to the Office of the Director of Public Prosecutions during the year. I again thank Joan Macpherson, my Executive Assistant, for her wonderful contribution throughout the year. Joan is, as the saying goes, *the right person in the right place*. Quite frankly, she would be impossible to replace.

My initial five-year appointment as Director terminated on 31 January 2001. It was extended for a further period of five years. I look forward to the years ahead and to the continuing success of the Office. Pursuant to the ***Director of Public Prosecutions Act***, there is provision for the Attorney-General to provide directions to the Director of Public Prosecutions as to the general policy to be followed in the performance of a function of the Director. Any such direction shall be in writing and shall be included in the Annual Report. I formally note that no direction has been issued by the Attorney-General during the year under review (and, in fact, in any previous year to my knowledge). I formally also note that the Attorney-General has not sought to interfere in the carriage of the Director's functions. As a result, I have been able to enjoy appropriate independence in exercising the powers conferred by the ***Director of Public Prosecutions Act***.

REX WILD QC
Director of Public Prosecutions

28 September 2001



FUNCTIONS OF THE DIRECTOR OF PUBLIC PROSECUTIONS

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

- (a) the preparation and conduct of all prosecutions in indictable offences
- (b) the preparation and conduct of committal proceedings
- (c) to bring and conduct proceedings for summary offences
- (d) the assumption where desirable of control of summary prosecutions
- (e) to institute and conduct prosecutions not on indictment for indictable offences including the summary trial of indictable offences
- (f) the power to institute and conduct or take over any appeal relating to a prosecution or to conduct a reference under s.414 of the *Criminal Code*
- (g) the right to appeal against sentences imposed at all levels of the court hierarchy
- (h) the power to grant immunity from prosecution
- (i) the power to secure extradition to the Northern Territory of appropriate persons
- (j) the power to participate in proceedings under the *Coroner's Act* and with the concurrence of the Coroner, to assist the Coroner if the Director considers such participation or assistance is relevant to the performance of some other function of the Director and is justified by the circumstances of the case
- (k) to secure recovery of penalties or to enforce forfeiture
- (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.



STRATEGIC PLAN AND PERFORMANCE

In the year under review an examination was undertaken of the ODPP's *Performance Management System*. This was conducted by David Rolfe of Strategic and Audit Services of the Department of the Chief Minister. The thrust of the recommendations of that review has been accepted. The strategic plan and performance measures which follows flows from the recommendations. The measures which have been selected are regarded as appropriate and attainable. Statistics have not previously been collected and collated on the basis of these measures. As a result, it is not possible to establish whether the measures are realistic, nor if they have been attained this year.

The exception is that, consistent with previous results, the Office is able to claim that it has met the performance measures of 75% fixed in relation to *Convictions after committal*. The following table demonstrates results which represent this category (namely, cases in the Supreme Court).

1996-97	1997-98	1998-99	1999-00	2000-01
78	80	81	78	80

The various measures must be seen in the light of the *Mission Statement* and the desired outcomes and the necessary outputs. Those which have been tentatively set for the ODPP appear below.

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.*

(a) The community

Desired outcomes

- An effective criminal prosecution service.
- Victims and witnesses are satisfied with the support provided.

Prosecution service – required outputs

- To reduce the delays in the time taken between the committal hearing and the trial.
- Identify and respond to changing Territory needs in the criminal justice area by co-operating and liaising with other agencies to ensure those criminal law processes are effective.
- Contribute to improvements in the criminal justice system.

Performance measures

- Number of new prosecution files.
- Establishing a case to answer before the court: **This should be achieved in not less than 95% of matters.**
- Conviction after committal: **This should be achieved in not less than 75% of matters.**
- Conviction after trial or hearing: **A conviction should follow in not less than 50% of matters.**
- Timeliness: **Disclosure not later than fourteen days before committal.**

Victim Support Unit - required outputs

- Maintain close working relationships with referral systems and appropriate agencies and be involved in relevant committees.
- Increase presence of prosecutor and victim support in courts, particularly in remote localities.
- Ensure appropriate service provision is available to all clients by providing services such as interpreters, closed circuit TV.
- Improve the provision of facilities to ensure victims and witnesses are provided with a safe environment.
- Promote the service of the agency by incorporating brochures in relevant government publications.
- Provide publications and pamphlets at appropriate locations.

Performance measures

- Number of clients.
- Clients' awareness of VSU: **Should be linked with number of prosecutions so that not less than 90% of victims are aware of service.**
- Client satisfaction with service: **Measured by survey. Aim should be to achieve general satisfaction in not less than 75% of matters.**
- Provision of victim impact statements to court: **Aim to provide in not less than 80% of matters.**

(b) People and learning

Desired outcome

- Professionally competent and motivated staff.

Required outputs

- Professional staff to participate in Continuing Legal Education program.
- Administrative staff to participate in monthly meeting and opportunities for ongoing development, for example job rotation, individual development plan.
- Provide opportunities for staff to represent the Director at seminars and conferences.
- Provide opportunities for staff to meet with Director on a formal basis annually to discuss personal and career development.
- Provide opportunities for staff to meet with Director informally on short notice on a needs basis.

Performance measures

- Staff Satisfaction Survey (establish baseline in 2001 and determine % increase for subsequent years).

(c) Business process innovation**Desired outcome**

- Systems and processes that facilitate the delivery of core business.

Required output

- Upgrade of internal file tracking/recording system.

Performance measures

- Down time stays at minimal level.
- System provides on request accurate reports regarding:
 - prosecutor activities
 - hearing results
 - victims and
 - other statistics required by government.

(d) Financial**Desired outcome**

- Responsible/transparent management of government monies within budget.

Required outputs

- Monitor and explore opportunities for additional funding.
- Review arrangements that are in place with airlines and accommodation houses to ensure the agency is receiving the most effective rates.

- Encourage Crown prosecutors to be discerning in their requirements for case preparation.

Performance measures

- Deliver services at less than corporate rates.
- Accurate monthly financial reporting.



ORGANISATION CHART

AS AT 30 JUNE 2001

DIRECTOR
Rex Wild QC

**CROWN PROSECUTOR
IN CHARGE (SOUTH)**
Nanette Rogers

DEPUTY DIRECTOR
Jack Karczewski

EXECUTIVE ASSISTANT TO THE DIRECTOR
Joan Macpherson

GENERAL COUNSEL
Michael Carey

SENIOR RESEARCH SOLICITOR
Shane McGrath

BUSINESS MANAGER
Lilia Garard

CROWN PROSECUTORS
Northern Office

John Adams (Senior Crown Prosecutor)
Alexis Fraser (Senior Crown Prosecutor)
Ron Noble (Senior Crown Prosecutor)
Peter Tiffin (Senior Crown Prosecutor)
Therese Austin
Glen Dooley
Josephine Down
Anthony Elliott
Janelle Martin
Shahleena Musk
Ian Rowbottam
Jan Whitbread (on extended leave)

Southern Office
Georgia McMaster
Chris Roberts

SUMMARY PROSECUTORS
Grant Hayward
Tiarni McNamee
Amanda Story

ARTICLED CLERKS
Nigel Browne (Darwin)
Melvin Loh (Alice Springs & Darwin)

ABORIGINAL LAW CADET
Annette Wilson

VICTIM SUPPORT UNIT
Nannette Hunter (VSU Co-ordinator)
Colleen Burns (Aboriginal Support Co-ordinator)
Carolyn Woodman (VSU Co-ordinator – South)
Christine Garland (VSU Assistant)
Merle Thomas (VSU Assistant – South)

LEGAL ASSISTANT
(Vacant)

PROFESSIONAL ASSISTANTS
Northern Office
Leanne Bosman (acting)
Josephine Gillespie (acting)
Sue Golik (acting)
Cecily Hagan (on extended leave)
Elvena White (on extended leave)
Kerrie Wilson
Karen Zerafa

Southern Region
Fern Davenport (part-time) (on extended leave)
Donna Russell
Gail Scobie (acting part-time)
Tracey Wise

ABORIGINAL LIAISON OFFICER
(Vacant)

ADMINISTRATION OFFICERS
Jacqui Fisher (acting)
Allan Page (South)
Heather Parker (on extended leave)

LIBRARY TECHNICIAN
Coleen Harris (part-time)

REGISTRY CLERK
Coralie Crookes

**ASSISTANT REGISTRY
CLERK/ROUNDS CLERK**
Steve Carter (acting)

RECEPTIONIST
Margaret Ray (acting)

OIC SUMMARY PROSECUTIONS DARWIN
Senior Sergeants Peter Thomas and Richard Bryson

OIC SUMMARY PROSECUTIONS ALICE SPRINGS
Senior Sergeant Rob Burgoyne



PROFESSIONAL STAFF

The most significant change in the membership of the staff was the resignation of Jenny Blokland as General Counsel. She left the Office in December 2000 to commence a career at the Northern Territory Bar. Her contribution as General Counsel had been outstanding and the Office was sad to lose her. Her friendly and effective approach to her work will be missed.

The vacancy created by Jenny's departure has been filled by Michael Carey, one of the existing senior Crown prosecutors. He has already shown good leadership and a sound mix of commonsense and legal knowledge in his approach to the position.

The membership of the staff has otherwise remained relatively stable during the year. Articled clerks Josephine Down (Darwin) and Lisa Ewenson (Alice Springs) duly completed their articles and were admitted to practise. Lisa found employment in North Queensland. Jo Down was appointed as a (junior) Crown prosecutor in Darwin, on a short-term contract, and continued with us until the end of the year under report. She has made an excellent beginning to her career as a legal practitioner.

During the first part of the year we continued to sponsor Nigel Browne as a law student at Northern Territory University (NTU) until the completion of his law degree at the end of 2000. He then continued with the Office as the articled clerk in Darwin. Melvin Loh, a Darwin resident but graduate of the University of New England, joined our Alice Springs Office in January 2001 and was then transferred to Darwin in June. Both articled clerks are profiled later in this section.

In January 2001, applications were called for from NTU for the Aboriginal and Torres Strait Islander Cadetship with the ODPP. The successful applicant was Annette Wilson, a second-year student studying law at NTU, and she has already commenced her cadetship.

The professional staff was again to some extent depleted during the year. Jan Whitbread was on maternity leave from November. Sickness and long service leave also accounted for absence of staff from time to time. This obviously has an effect on workloads within the Office. The effect of staff leave on a smallish office is particularly significant. As I noted last year, it will continue to have an impact in coming years. Accumulated long service leave owed to staff members amounts to nearly five years, with normal recreation leave somewhat similar.

Thanks are again extended to all former staff members who have left during the year for the contribution to the Office throughout their employment. Profiles of the new professional staff appear below.

Glen Dooley

Crown Prosecutor

Glen Dooley graduated from Monash University, Victoria, in 1985 with a degree in law and jurisprudence. In mid-1986 he completed his articles with Alex Lewenberg and then spent the next few years with Melbourne firms Alex Lewenberg & Associates and Herbert Geer & Rundle. In mid-1989 he joined the Central Australian Aboriginal Legal Aid Service. During the nineties he gained experience with each of the significant Aboriginal legal aid services. In January 2001 Glen joined the Darwin office of the ODPP. He brings to the ODPP nearly 15 years of experience in practice in the criminal law, most of it in the Territory.

Anthony Elliott

Crown Prosecutor

Anthony Elliott joined the Office on 24 March 2001 after ten years as a Crown prosecutor with the Offices of Crown Solicitor and the Director of Public Prosecutions in Western Australia. Anthony graduated from the University of Western Australia in 1987 receiving degrees in jurisprudence and law. Whilst studying he worked as a para-legal before completing his articles and restricted practice year with a private firm in Perth.

Nigel Browne

Articled Clerk (Darwin)

Nigel Browne was born and educated in Darwin attending local primary, secondary, and tertiary institutions. He received the award for highest achieving indigenous student from Casuarina Senior College upon completing year 12. Nigel continued on to graduate with a Bachelor of Laws from the Northern Territory University in May 2001. During his first year of university Nigel won the inaugural Aboriginal and Torres Strait Islander Cadetship with the ODPP. The cadetship provided Nigel with access to legal resources, professional support and financial security throughout his degree. During semester breaks Nigel worked in the office gaining invaluable practical experience. Nigel's family are long time Darwin residents, with his father's family descending from the Larrakia and Woolner peoples. His mother's family originated from the Dutch province of Dutch New Guinea (now known as Irian Jaya). Nigel expects to be admitted to practise in early 2002.

Melvin Loh

Articled Clerk (Alice Springs and Darwin)

Melvin Loh grew up and went to school in Darwin, attending Sanderson High School 1991-93 and Casuarina Senior College 1994-95. He attended university down south, in the colder climes of the University of New England, Armidale, NSW, undertaking a combined Arts/Law degree during 1996-2000, and was able to gain much invaluable life experience from this extended period of living and studying away from home. He formally graduated from this degree, with Honours in Law, in April 2001. Upon being accepted as articled clerk, Melvin was initially a member of the Alice Springs Office from the end of January 2001 until his transfer to the Darwin Office in mid-June.



CORPORATE SERVICES

Introduction

The objectives of corporate services are to assist in the achievement of the ODPP's strategic directions, achieve excellence and equity in the management of human and financial resources and to ensure that an appropriate, efficient and effective support service is provided to the Director, Crown Prosecutors, Victim Support Unit and clients.

Human Resource Services

As required by sections 18 and 28 of the *Public Sector Employment and Management Act*, the following information is provided in relation to Human Resource Services.

Section 18(2)(b)

In accordance with the service level agreement between the ODPP and the Department of Corporate Information Services (DCIS). DCIS has provided human resource advice and support services to staff. Advice and support services were provided in the areas of recruitment, job evaluation, workers' compensation and occupational health and safety.

In addition to mandatory policies, the ODPP has developed, updated or amended various procedures and policies including an induction booklet, professional assistants' manual and a uniform policy.

Employment Instruction No. 1 - Advertising Selection and Appointment

Advertising is in accordance with Office of the Commissioner for Public Employment requirements undertaken by DCIS. Selection and appointment of employees is in accordance with the ODPP's *Equal Employment Opportunity Management Plan* where appointment is based on equity and merit.

Employment Instruction No. 2 - Probation

The ODPP has developed a probation policy and process. The policy has been effective as the probationary reports have been completed within the set timeframes and guidelines adhered to.

Employment Instruction No. 6 - Inability to Discharge Duties

Consistent with the *Public Service Employment and Management Act*, the ODPP has developed a policy addressing issues and procedures that must be followed. No action was required or undertaken in 2000-01 regarding this instruction.

Employment Instruction No. 7 - Discipline

The ODPP has in place a discipline policy and procedure. No action was required or undertaken in 2000-01 regarding this instruction.

Employment Instruction No. 8 - Review of Grievances

The ODPP has developed a review of grievances procedure. Although the agency has not had to use this procedure, it is believed that it will be effective as any grievance will be dealt with immediately.

Employment Instruction No. 10 – Employees' Records

In accordance with the ODPP service level agreement, employees' records are maintained complying with DCIS requirements.

Employment Instruction No. 11 - Equal Opportunity Management Plan

The ODPP has devised and implemented equal opportunity management plan.

1. Number of identified Aboriginal and/or Torres Strait Islanders employed as at 30 June 2001 are:

Male:	2 full time
Female:	4 full time
	1 vacation employment

2. Strategies have been implemented to raise the level of cross cultural awareness.

It is compulsory that all employees attend cross-cultural awareness training. Reference to cross cultural awareness training has been included in the induction booklet for new employees.

3. Costs for cross cultural awareness training in recent years have been:

1997-98	\$3,500.00	21 employees
1998-99	\$1,400.00	6 employees
1999-00	\$500.00	2 employees
2000-01	\$5,656.00	8 employees

Each employee of the ODPP has, over their period of employment, attended a cross cultural awareness training program.

Since 1997 the ODPP has implemented an *Aboriginal Employment and Career Development Strategy*. Its effectiveness is demonstrated by the fact that 13% of employees are of indigenous heritage. This strategy has recently been reviewed and updated.

In addition, since 1997 the ODPP has offered an Aboriginal cadetship for a student undertaking a law degree at the Northern Territory University. Nigel Browne was the first recipient (1997-2000). He is now undertaking his articles of clerkship. Ms Annette Wilson is the current recipient of the cadetship.

Employment Instruction No. 12 - Occupational Health and Safety Programs

In accordance with the service level agreement, the ODPP has adopted the DCIS policy on occupational health and safety.

Employment Instruction No. 13 - Code of Conduct

Every employee within the ODPP has received a copy of the *Code of Conduct*. Copies are provided to new employees as part of the recruitment and induction process.

Employment Instruction No. 14 - Part-time Employment

The procedures set out are in accordance with the *Public Sector Employment and Management Act*. As at 30 June 2001, 5% of staff were part-time employees.

Section 28(2)(g) Management Training and Staff Development Programs

Direct expenditure on training and study assistance during 2000-01 was \$43,000.00. This represents 3.6% of the corporate budget. Training opportunities were made available to all staff.

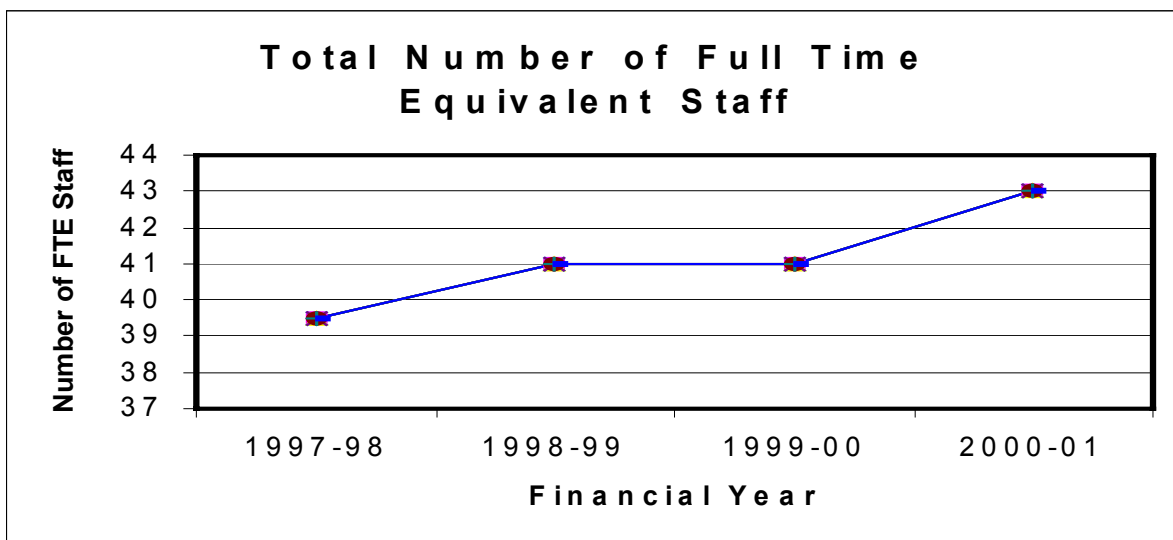
Section 18(2)(c) - Reporting, Discipline, Summary Dismissal and Inability to Discharge Duties

No action was required or undertaken in 2000-01.

Staffing Profile

As required under s.28(c) of the *Public Sector Employment and Management Act*, a comparison of the agency's staffing profile between 30 June 1998 and 30 June 2001 is as follows:

	Actual Staff 30 June 98	Actual Staff 30 June 99	Actual Staff 30 June 00	Actual Staff 30 Jun 01
Director	1	1	1	1
Executive Contract Officer 2	1	1	1	1
Executive Contract Officer 1	6	7	6	6
Professional 4	4	4	3	5
Professional 3	3	3	4	3
Professional 2	3	5	5	4
Professional 1	1	1	1	2
Administrative 6				1
Administrative 5	1	1	1	
Administrative 4	5	5	6	6
Administrative 3	9.5*	10*	10*	11*
Administrative 2	1	1	1	1
Administrative 1	1			
Articled Clerk	3	2	2	2
Total	39.5	41	41	43
	38 full-time *3 part-time	40 full-time *2 part-time	40 full-time *2 part-time	42 full-time *2 part-time

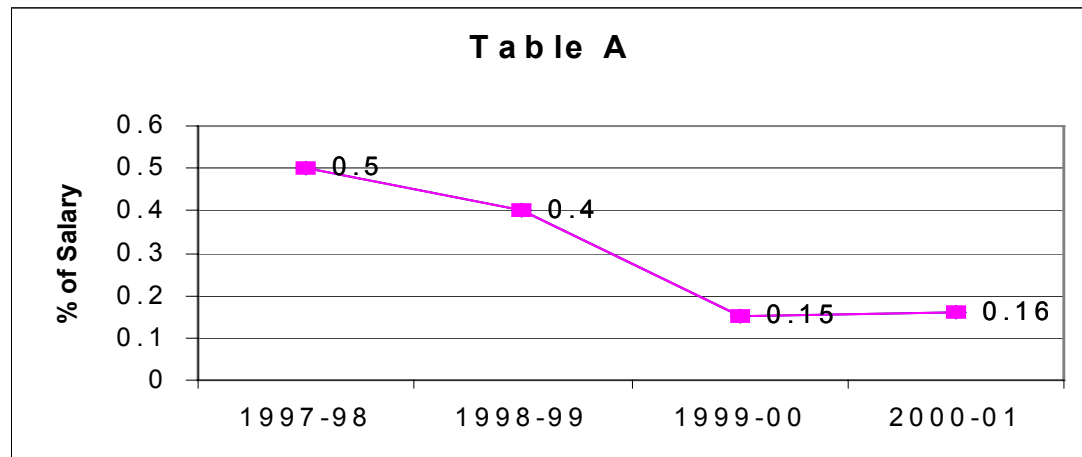


Occupational Health and Safety

Under the service level agreement DCIS manages occupational health and safety and workers' compensation functions.

Performance

Table A shows the costs of compensation injuries as a percentage of gross salary.



Sponsorship of law prizes

In conjunction with the NTU Law School prizes are awarded annually in recognition of the best students in *Advocacy* and *Criminology*. The ODPP continues to support young Territorians undertaking law degrees.

Aboriginal cadetship

In 1997 the Office awarded an Aboriginal cadetship to Nigel Browne, a law student at NTU. The Office continued to sponsor Nigel until he completed his studies in December 2000 and commenced articles of clerkship in February 2001.

Articled clerks

The Office is committed to offering law graduates one year articles of clerkship (preference being given firstly to graduates of NTU and, secondly, to residents of the Territory). Articles were offered to Nigel Browne (former Aboriginal law cadet) and Melvin Loh.

Vocational employment of law students

This is provided from time to time.

Placement of work experience students

The ODPP has continued to provide Territory students with work experience. Students gain an insight into the workings of the Office by assisting Crown prosecutors and attending court proceedings. The Office encourages placement of students and recognises the need to give young Territorians the opportunity to work within an office environment and obtain an understanding of the criminal justice system.



FINANCIAL ACCOUNTABILITY

Pursuant to Section 10 of the *Financial Management Act 1995*



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CERTIFICATION OF FINANCIAL STATEMENTS

The accompanying financial statements for the year ended 30 June 2001 are consistent with this Office's accounts and records. Account processing and records management have been maintained and supplied by the Department of Corporate Information Services. The records are presented in the format required under Part 2 Section 5 of the Treasurer's Directions. At the date of signing, we are not aware of any circumstances which would render the particulars included in the financial statements misleading or inaccurate.

REX WILD
Director

LILIA GARARD
Business Manager

28 September 2001

**NOTES TO AND FORMING PART OF THE FINANCIAL
STATEMENTS FOR THE YEAR ENDED 30 JUNE 2001**

1. Basis of accounting

The 2000-2001 financial statements and accounts included in this section have been prepared in accordance with Part 2, Section 5 and Appendices A to K of the Treasurer's Directions. They are included in the Annual Report in accordance with s.12 of the *Financial Management Act*.

The agency financial records are kept on a cash basis. No accrual accounting entries are processed to the ledgers of this agency.

2. Accounting for assets and liabilities

The agency's assets are recorded in an asset register. Assets are registered at cost, depreciation is not charged.

3. Contingent liabilities

In accordance with Treasurer's Directions Part 2, Section 4 as at the 30 June 2001 the agency had no contingent liability.

4. Investment in corporations, trusts or joint ventures

As at 30 June 2001 the agency had no investments in corporations, trusts or joint ventures.

5. Accountable Officers' Trust Account

The Accountable Officers' Trust Account is established in accordance with s.7 of the *Financial Management Act*.

6. Accounting and property manual

The Accounting and Property Manual of the Office has been established in accordance with s.7 of the *Financial Management Act*.

EXPENDITURE BY ACTIVITY
FOR YEAR ENDED 30 JUNE 2001

Activity/Program	Final Allocation	Actual Expenditure
	\$000	\$000
Director of Public Prosecutions	4722	4710
Corporate services	1210	1132
Legal services	3512	3578
Total expenditure	4722	4710

EXPENDITURE BY STANDARD CLASSIFICATION

FOR YEAR ENDED 30 JUNE 2001

Category of Cost/Standard Classification	Final Allocation	Actual Expenditure
	\$000	\$000
Personnel costs	3229	3215
Salaries		2536
Payroll tax		195
Fringe benefits tax		60
Superannuation		140
Higher duties allowance		25
Leave loading		25
Northern Territory allowance		8
Other allowances		18
Other benefits paid by employer		122
Overtime		7
Penalty payments		0
Perishable freight allowance		0
Recreation leave fares		16
Salary advances		0
Salary clearing account		0
Termination payments		59
Workers compensation		4
Operational expenditure	0	34
NT Government repairs and maintenance program		0
Repairs and maintenance for recoverable works		0
Property maintenance		0
General property management		0
Power		34
Water and sewerage		0
Other operational expenditure	1483	1449
Advertising		0
Agent service arrangements		0
Clothing		0
Communications		122
Consultants' fees		0
Consumables/general expenses		20
Document production		18
Entertainment/hospitality		4
Food		0

Freight		11
Furniture and fittings		9
Information technology services		75
Insurance premiums		10
Legal expenses		823
Library services		86
Marketing and promotion		0
Medical supplies		0
Membership and subscriptions		21
Motor vehicle expenses		117
Office requisitions and stationery		27
Official duty fares		7
Other plant and equipment		30
Recruitment expenses		21
Regulatory and advisory board expenses		0
Relocation expenses		3
Training and study expenses		43
Travelling allowance		2
Bank charges		0
Intrasector Payments		0
Payments to the Northern Territory Government		0
Consolidated Revenue Account On-Costs		0
Capital expenditure	10	11
Land acquisitions		0
Land and building acquisitions		0
Construction (works in progress)		0
Purchase of capital assets		11
Grants	0	0
Current grants		0
Capital grants		0
Community/Government service obligations		0
<hr/>		
Total Expenditure	4722	4710
<hr/>		

RECEIPTS BY ACCOUNT
FOR YEAR ENDED 30 JUNE 2001

Consolidated revenue account	Estimated receipts	Actual receipts
	\$000	\$000
Nil	0	0
Total consolidated revenue account	0	0

Operating account	Estimated receipts	Actual receipts
	\$000	\$000
Commonwealth grants	0	0
Charges for goods and services	0	0
Miscellaneous revenue	0	12
Sale of assets	0	0
Intrasector receipts	0	0
GST control	0	-12
Total operating account	0	0
Transfers from Consolidated Revenue Account	4754	4754
Total receipts to Agency Operating Account	4754	4754

**ACCOUNTABLE OFFICERS' TRUST ACCOUNT WITH THE
NORTHERN TERRITORY GOVERNMENT ACCOUNT
FOR YEAR ENDED 30 JUNE 2001**

Description of account

The Accountable Officers' Trust Account is established under s.7 of the *Financial Management Act* for each accountable officer to maintain miscellaneous trust monies for a maximum of six years.

	Balance 1-7-2000	Receipts	Expenditure	Balance 30-6-2001
	\$000			\$000
Office of the Director of Public Prosecutions	NIL	NIL	NIL	NIL

**WRITE OFFS, POSTPONEMENTS AND WAIVERS
FOR YEAR ENDED 30 JUNE 2001**

Category	\$000
Write offs, postponements and waivers under the Act	
Amounts written off or waived by delegated officers	
Irrecoverable money written off	NIL
Losses or deficiencies of money written off	NIL
Value of public property written off	24
Waiver of right to receive or recover money	NIL
Amounts written off, postponed or waived by the Treasurer	
Irrecoverable money written off	NIL
Losses or deficiencies of money written off	NIL
Value of public property written off	NIL
Postponement of money owing	NIL
Waiver of right to receive or to recover money	NIL
Write offs, postponements and waivers authorised under other legislation	
Amounts written off or waived by delegated officers	
Losses or deficiencies of money written off	NIL
Total	24

Note:

This amount reflects the purchase price of the assets and not their written-down value at the time of their disposal. These assets were written off under Section 35(1) of the *Financial Management Act* being property which was lost, deficient, condemned, unserviceable, abandoned or obsolete due to acceptable cases (such as fair wear and tear; reasonable obsolescence within predetermined tolerance).

DEBTORS

AS AT 30 JUNE 2001

Activity/Program	External			Intrasector			Total	Total
	Charges	Others	Total	Charges	Other	CSO		
Director of Public Prosecutions	\$000 0	\$000 5	\$000 5	\$000 0	\$000 23	\$000 0	\$000 23	\$000 28
Total Less: Provision for doubtful debts	0	5	5	0	23	0	23	28
Net Debtors	0	5	5	0	23	0	23	28
Classified as: Current Non-current	0	5	5	0	23	0	23	28
Net Debtors	0	5	5	0	23	0	23	28

CREDITORS

AS AT 30 JUNE 2001

	External			Intrasector			
Activity/Program	Creditors	Accruals	Total	Creditors	Accruals	Total	Total
	\$000	\$000	\$000	\$000	\$000	\$000	\$000
Public Prosecutions	15076	97196	112272	901	22224	23125	135397
Total	15076	97196	112272	901	22224	23125	135397
Classified as: Current Non-current	15076	97196	112272 0	901	022224	23125 0	135397 0
Total	15076	97196	112272	901	22224	23125	135397

EMPLOYEE ENTITLEMENTS OUTSTANDING

AS AT 30 JUNE 2001

Entitlement	\$000
Current	
Recreation leave	402
Recreation leave fares	16
Leave loading	32
Long service leave	294
Non-current	
Long service leave	160
Total	904

Methodology

1. Recreation leave

The value of recreation leave entitlements is calculated by PIPS based on employees' actual salaries and entitlements at 30 June 2001.

2. Recreation leave fares

Recreation leave fares entitlements are calculated on 2000-01 actuals.

3. Leave loading

The value of leave loading entitlements is calculated by PIPS based on employees' actual salaries and entitlements at 30 June 2001.

4. Long service leave

Long service leave entitlement is calculated in accordance with Australian Accounting Standard AAS30. The calculation takes into account the probability of employees reaching ten years of service, the future increases in salary costs and discount rates to achieve the net present value of the future liability.

LEASE LIABILITIES

AS AT 30 JUNE 2001

Lease commitments/ Liability	Information Technology		Furniture & Fittings	Other Plant & Equipment	Total
	Hardware	Software			
	\$000	\$000	\$000	\$000	\$000
Not later than one year	0			6	6
Later than one year but not later than two years	0			5	5
Later than two years but not later than five years	0			3	3
Later than five years	0			0	0
Minimum lease payments	0			14	14
Less future financing charges	0			4	4
Total	0			10	10
Classified as:					
Current	0			4	4
Non-current	0			6	6
Total	0			10	10



FINANCIAL MANAGEMENT ACT STATEMENT



Office of the Director of Public Prosecutions

Rex Wild QC
Director

43 Mitchell St
Darwin NT 0800
Telephone (08) 8999 7315
Facsimile (08) 8999 7544
GPO Box 3321
Darwin NT 0801
Australia

28 September 2001

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

Dear Attorney-General

Pursuant to section 28 of the *Public Sector Employment and Management Act* and section 12 of the *Financial Management Act*, I now state in respect of the Office of the Director of Public Prosecutions that to the best of my knowledge and belief:

- (a) proper records of all transactions affecting the Office are kept and that employees under my control observe the provisions of the *Financial Management Act*, the Financial Management Regulations and Treasurer's Directions. Proper records of transactions undertaken by the Department of Corporate and Information Services (DCIS) are kept on behalf of the Office
- (b) procedures within the Office afford proper internal control and a current description of such procedures is recorded in the Accounting and Property Manual which has been prepared in accordance with the requirements of the *Financial Management Act*
- (c) no indication of fraud, malpractice, major breach of legislation or delegation, major error in or omission from the accounts and records exists
- (d) in accordance with the requirements of section 15 of the *Financial Management Act*, the internal audit capacity available to the agency is adequate and the results of internal audits have been reported to me
- (e) the financial statements included in the Annual Report have been prepared from proper accounts and records and are in accordance with Part 2 Section 5 of the Treasurer's Directions, where appropriate. All financial statements prepared by DCIS on behalf of the Office were prepared from proper accounts and records and

- (f) all employment instructions issued by the Commissioner for Public Employment have been satisfied.

Yours sincerely

REX WILD
Accountable Officer



THE ROLE OF THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

Introduction

This is the eleventh Annual Report since the inception of the Office of the Director of Public Prosecutions. The Office was created by the *Director of Public Prosecutions Act*. It commenced operations on 21 January 1991. The principal functions of the Director are to institute, prepare and conduct criminal cases on behalf of the Crown before the Supreme Courts and the Courts of Summary Jurisdiction of the Northern Territory and the High Court of Australia. Those functions extend to all ancillary appellate work and cover the prosecution of all defended indictable matters before the Courts of Summary Jurisdiction and such other defended summary matters as are deemed appropriate. The Office has taken over most of the functions of the Attorney-General in relation to the prosecution of offences.

The prosecutor

The duties and responsibilities of the Crown prosecutor have been described in the following terms:

... the prosecutor is at all times a minister of justice, though seldom so described. It is not the duty of prosecuting counsel to secure a conviction, nor should any prosecutor ever feel pride or satisfaction in the mere fact of success. Still less should he boast of the percentage of convictions secured over a period. The duty of the prosecutor, as I see it, is to present to the tribunal a precisely formulated case for the Crown against the accused, and to call evidence in support of it. If a defence is raised incompatible with his case he will cross-examine, dispassionately and with perfect fairness, the evidence so called, and then address the tribunal in reply, if he has the right, to suggest that his case is proved. It is not rebuff to his prestige if he fails to convince the tribunal of the prisoner's guilt. His attitude should be so objective that he is, so far as is humanly possible, indifferent to the result. ... It may be argued that it is for the tribunal alone, whether magistrate or jury, to decide guilt or innocence.¹

¹ In a speech, by Christmas Humphreys, Senior Prosecuting Counsel at the Old Bailey, at the Inns of Court in 1955: [1955] CLR 739,740-41.

As long ago as 1865, the concept of the prosecutor as a *minister of justice* was declared. In a case where an appeal court found it necessary to criticise the actions of the prosecutor at trial, Crompton J pointed out that counsel for the prosecution should remember that they are:

*... to regard themselves as ministers of justice, and not to struggle for a conviction ... This is not the occasion to describe all of the various duties and responsibilities of this paragon of virtue who acts as a minister of justice when presenting the Crown case.*²

Role of the Office

The purpose of establishing the Office of the Director of Public Prosecutions (hereinafter referred to as the Office) was to ensure professionalism and independence in the institution, preparation and conduct of criminal prosecutions in the Northern Territory. The creation of a Director of Public Prosecutions system in 1991 was a revolution in the administration of criminal justice in the Northern Territory. The day to day control of criminal prosecutions has passed from the hands of the Attorney-General to the Director of Public Prosecutions and hence from the political to the professional arena. There is now a Director of Public Prosecutions for each State and Territory and for the Commonwealth. It is clear therefore that the institution of this statutory position has found favour with governments of all political persuasions.

Crime has increasingly become the focus of media and public attention. Politicians, victims' organisations, civil liberties and police lobby groups are all extremely vocal in commenting on the day to day operation of the criminal justice system. Hitherto, Attorneys-General have had the sole burden of making ultimate prosecutorial decisions. They have had the responsibility for determining whether to prosecute or discontinue a prosecution, whether to institute an appeal against the leniency of a sentence, whether to accept a plea to lesser or fewer charges, or whether to grant immunities from prosecution. Prosecutorial decisions made by politicians both here and abroad can become subject to distortion or misconstruction if they are drawn into the ambit of party political debate. Such debate may be misconceived or allegations of bias totally groundless. Nevertheless, in either situation public confidence in the administration of the criminal law is eroded. Decisions on whether or not to prosecute politicians, police officers, senior public servants and other prominent public figures can cause particular difficulty. Not surprisingly, the public often finds it difficult to understand or accept that in his or her prosecutorial role, the Attorney-General acts completely independently from government. Hence, the appointment of an independent law officer can be seen not only to be desirable but also as a substantial safeguard of the rights of every citizen.

Independence

The Director of Public Prosecutions, as created by the Northern Territory legislation, has complete independence in decision-making. This independence has been attained by appointing the Director upon the terms and conditions of office accorded to a Supreme Court judge and by the appointment of the Director until the age of 65 years

² *R v Ruddick* (1865) 176 ER 662 @ 663.

or for a fixed term. In the latter case, the appointee is eligible for reappointment. In addition, the Office has had substantial administrative independence.

Accountability

This independence does not mean, as it should not, independence of the control of Parliament. The Director is accountable to Parliament through the Attorney-General. Except as provided in the Act there is general freedom for the Director to act independently of any direction from the Attorney-General. There are provisions which require consultation with the Attorney-General and the Attorney-General may, after consultation, issue directions as to a general policy to be followed in the performance of a function of the Director. There is a requirement that any such direction shall be in writing and shall be included in the Annual Report of the Director to Parliament. In order to maintain consistency between the Attorney-General and the Director, the Director shall not, without the consent of the Attorney-General, perform a function inconsistently with the action of the Attorney-General in relation to a function which is vested in both of them. If, in such a case, the action of the Attorney-General precluded the Director from taking any action he would otherwise have taken, the Director is obliged to refer to that occurrence in the Annual Report to Parliament.

The independent functioning of this Office is a matter of great priority. The Director believes it has not been affected or brought into question in any way during the current year.

Since the establishment of the Office, there has been no single instance where the Attorney-General of the day has exercised his authority in any matter in which there is a concurrent jurisdiction. The convention has already developed of allowing the Office to function as a separate decision-making authority. In consequence the prosecution service in the Territory has been completely independent both in practice and in theory.

In the result, the Director is able to report to Parliament that there is in existence an independent prosecution service which forms an integral part of the criminal justice system in the Northern Territory. That independence is a substantial safeguard against corruption and interference in the criminal justice system.

Professionalism

Professionalism in the Office has been achieved by staffing the Office with lawyers experienced in the criminal law whose duties involve appearing in court and the preparation and conduct of cases encompassing the full criminal calendar. To ensure that professionalism is maintained the Director has encouraged participation in and attendance at appropriate conferences and meetings. Some of those are detailed elsewhere in this Report.

The Director has endeavoured to set high and demanding standards and leadership for those engaged in the prosecution service so as to ensure above all a continued public and professional confidence in the administration of criminal justice within the Northern Territory.

Objectives

On assuming office, the first Director of Public Prosecutions set a number of objectives for this Office. These were said to be designed to assist in the improvement of the quality of life in the Northern Territory community by providing an independent criminal prosecution service which operates:

- (i) *without fear or favour*
- (ii) *in a manner which is both fair and sensitive to public interest*
- (iii) *effectively and*
- (iv) *efficiently.*

These objectives now have been re-written as part of the *Mission Statement*.

Guidelines

Included with this Report are a number of separate guidelines. They deal with separate issues. They are included in this Report pursuant to section 25 of the ***Director of Public Prosecutions Act***. They are intended to be followed in the performance of the Director's functions.

Issues as to whether a prosecution should proceed, a plea offer be accepted, an appeal be instituted, or an indemnity be granted arise daily for resolution by a Director of Public Prosecutions. All the Directors in Australia met on a number of occasions in the early nineties in an endeavour to reach agreement upon a common set of criteria to be used in determining the vital question as to whether or not a prosecution should proceed. As a result of those meetings, agreement was reached in formulating universal guidelines capable of consistent application throughout Australia. That agreement, to which the first Director was a party, is reflected in the guideline *The criteria governing the decision to prosecute*. All guidelines are constantly kept under revision and they will be amended or changed from time to time as the circumstances require. Where agreement is reached between the States and the Commonwealth upon common guidelines for other purposes those agreements will also be reflected in new guidelines.

These guidelines are intended to provide Crown prosecutors and others engaged in law enforcement with clear directions for the making of various decisions which arise in respect of prosecutions. They ensure a better co-ordination and more consistent approach to the prosecution of serious offences throughout the Northern Territory. They were designed, however, so as not to preclude the degree of flexibility necessary to enable prosecutors to cope with variations between individual cases.

They also set standards against which the performance of prosecutors and the operations of the Office may be measured. Additionally, they are designed so as to create a public awareness and understanding of the policies, procedures and decision-making criteria adopted by the Office. As such, it is hoped that they contribute significantly to community confidence in the administration of criminal justice.

The public is entitled to expect justice and good levels of service and has to be reassured that only those who need to enter the system should do so; that the guilty are convicted and that the innocent are acquitted. It is the constant aim to gain the

wholehearted support of the public. The Office endeavours to set new standards to ensure that members of the public, whether they be witnesses, victims, jurors or defendants, all be treated fairly and courteously. We need to be, and be seen to be, efficient, courteous and just. The Director ensures that more than lip service is given to these objectives.

The guidelines and policies set out in this Report contain the principles and criteria by which it is determined whether or not someone should be prosecuted. In every case referred to this Office, the evidence is first reviewed. There must be admissible, substantial and reliable evidence, that a criminal offence has been committed by an identifiable person, and that there is a reasonable prospect of that person's conviction. Secondly, if satisfied that the evidence provides a reasonable prospect of conviction, it must be considered whether the public interest requires a prosecution.

During recent years, the Directors of Public Prosecutions have at the regular meetings often discussed the vexed question of prosecutorial *disclosure*. After much discussion, common general guidelines were arrived at and these were issued to prosecutors pursuant to s.25 of the Act early in the current reporting year. Some slight modification of the *universal* guidelines has been made to account for local Northern Territory conditions. These guidelines appear later in the Report.

The draft policy and procedures for witnesses, interpreters and translators was issued last year but has already been revised. It appears later in the Report.

In order that the reader may gain an appreciation of the role of this Office in a typical case, included in the Report is a section which charts in skeletal fashion the normal progress of a matter from the date a defendant is charged until the date of final disposition by the court.

Publication of reasons

Where the Director decides to exercise the power conferred by the Act to decline to proceed further with a prosecution reasons may be given to any enquirer with a legitimate interest in the matter. For example, the person said to be the victim of the alleged offence or those responsible for the investigation will normally be informed. It is acknowledged that the media have a legitimate interest in the administration of justice and where a person has been publicly committed for trial there usually will be no objection to the reasons for any decision not to proceed with such a trial being made public. Those reasons will be stated in general terms.

However, reasons will not be given where to do so might give rise to further harm or serious embarrassment to a victim, a witness or to the accused, or where such a step might significantly prejudice the administration of justice. Similarly, even where reasons are given it may be necessary to limit the amount of detail disclosed. Under no circumstances will the Director engage in public debate concerning the reasons.

Reasons will not normally be given for a decision to discontinue proceedings before there has been any public hearing. To do so would involve publishing allegations against members of the community in circumstances where there is insufficient evidence to substantiate them or, for some other reason, a prosecution would not be justified. This policy should not be regarded as an inflexible rule. It may be appropriate to provide reasons in some circumstances even when there has been no

public hearing. Where, for example, the arrest and charge has attracted significant public interest it may be necessary to consider providing at least some explanation for the decision to terminate the prosecution.



PROFESSIONAL ACTIVITIES

There were a number of important events, conferences and activities during the year which are dealt with separately.

Criminal Lawyers' Association of the Northern Territory (CLANT)

The eighth biennial conference of the Association was held at the Bali Hyatt Hotel in Sanur, Bali, in the last week of June 2001. It was a great success.

The conference was attended by 117 delegates, including 40 from the Northern Territory. The delegates were accompanied by 32 family members and friends, of whom 21 were children.

The keynote speakers were Justice Mark Weinberg of the Federal Court of Australia and Chief Justice John Doyle of the Supreme Court of South Australia. Delegates were welcomed by the President of CLANT, Darwin barrister John Lawrence, and the conference was formally opened *in absentia* by the Northern Territory Attorney-General, the Hon Denis Burke, whose opening remarks were read on the Attorney's behalf by the Northern Territory Solicitor-General, Tom Pauling QC.

In addition to these formalities, there were 18 papers presented at the conference on a wide variety of topics associated with the criminal justice system. There were two open forum sessions.

The conference also included the now-traditional rehearsed play reading of a significant criminal trial, on this occasion of the trials following the incident at the Eureka Stockade in 1854.

The theme of the conference was *The Criminal Justice System: Serving the Community, or Giving it a Serve*.

Northern Territory delegates included Justices Angel, Mildren, Riley and Bailey of the NT Supreme Court, Magistrate Anthony Gillies, the Territory Solicitor-General (Tom Pauling QC), the Director of the NT Legal Aid Commission (Richard Coates), the Territory's Director of Public Prosecutions (Rex Wild QC) and representatives (using the term loosely) of the NT Attorney-General's Department. In addition there were delegates from the public and police prosecutions offices, the private profession, Aboriginal legal aid offices in Alice Springs and a significant contingent from the Northern Australian Aboriginal Legal Aid Service in Darwin. The Territory representatives also include the Hon Austin Asche QC AO, a former Territory Chief Justice and former Territory Administrator, who has attended every CLANT conference since 1989. Former Supreme Court judge, John Nader QC, also attended.

This is an important conference for any serious practitioner in the field of criminal law in the Territory. Since the first CLANT conference in 1987, the conferences have always focused on matters and issues relevant to the Northern Territory. In addition, the biennial CLANT conference is now generally regarded by Australian criminal law practitioners as the leading criminal law conference in Australasia. It is significant that the number of delegates continues to increase at each conference.

The conference was co-sponsored by the Criminal Law Section of the Law Institute of Victoria (as was the previous conference in 1999) and not surprisingly there were more than 20 delegates from that State. All mainland States were represented at the conference.

Thus, the conference provided an opportunity for substantial interaction and exchange of views between the various facets of the Northern Territory profession (bench, magistracy, police, prosecution and defence, all well represented) and also with colleagues from interstate.

The ODPP was represented by the Director, Deputy Director Jack Karczewski, Peter Tiffin, Glen Dooley, Grant Hayward and Senior Sergeant Peter Thomas. In conjunction with Richard Coates, the Director of the Legal Aid Commission, the Director presented a paper on mandatory life imprisonment for murder.

During the conference the following resolution was moved:

This conference resolves to request the Northern Territory Government to review its position in respect of mandatory life imprisonment for the offence of murder so that it is relatively consistent with the law in the rest of Australia.

The conference papers contain an excellent treatment of varied current topics of importance to the Australian and Territory criminal justice systems.

Library committee

The most significant development of the year was the complete overhaul of our internal annotated Acts and other research documents. This was done at considerable expense to the Office. The documents were formerly on Microsoft Word. However, as the database got bigger it was unable to cope with the amount of data on the system. The system was in danger of collapsing and becoming inoperative. There have been a few initial teething problems relating to printing and some text not being visible.

Dialog produced a user manual and has provided training for all those available to take advantage of it.

The following are now available online to prosecutors via our Lotus Notes database: Annotated ***Criminal Code NT, Evidence Act, Police Administration Act, Misuse of Drugs Act, Sentencing Act***. Also available are ***Cases and Articles***, which is a synopsis of the cases and articles distributed to prosecutors and of major Northern Territory cases. This availability is almost entirely as a result of the work of Shane McGrath as Senior Research Solicitor (with appropriate administrative assistance). It gives the professional staff an excellent set of research tools which have already proved invaluable.

The library committee commenced a review of the Office's requirements for medical texts. This review has yet to be completed.

The library committee has revamped the Butterworths online services. In addition, ***Carter's Annotated Criminal Code (Qld)*** is now available online, as is the annotated Western Australian Criminal Code.

It is hoped, in the year 2001-02, that the librarian's position will revert from DCIS to ODPP. Coleen Harris, a wonderful find as librarian, will then be employed full time under the supervision of the Senior Research Solicitor. She will have responsibility for library matters, compilation of statistical data for the Victim Support Unit and some research tasks.

The Office is grateful to Alexis Fraser for chairing the Library Sub-Committee and for her contribution in that role.

Legislative review

Members of the staff of the Office are in an ideal position to observe the operation of the criminal justice system and the relevant legislation. From time to time anomalies in the law become apparent, whereupon the necessary advice is given to the Attorney-General. This has occurred on a number of occasions during the year under review. The court often raises matters of concern about legislation and such concerns are, as a matter of practice, referred to the Attorney-General for his consideration and such action as he thinks fit. The Office is also represented on various committees looking at matters touching law reform and contributing to the development of new policy initiatives. Some of these activities and possible deficiencies in the law which have been identified are listed later in the Report in a separate section under this heading.

Continuing legal education

Last year's Report contained a significant discussion of the activities under this heading. It is the policy of the Office to maintain the provision of proper continuing legal education (CLE) to all staff and for this purpose a biennial conference is held. The conference was last held in March 2000 so this was the *off-year*. Workload pressures under which all professional staff found themselves operating meant it was difficult to provide a full CLE program during 2000-01.

This year there was a visual presentation on the Projection Plus System by one of its Directors, Mr Peter Jessep. The system is designed to show diagrammatically individual presentations on a whiteboard connected to a computer. The whiteboard, known as a *Smartboard*, facilitates the sharing of information by allowing the presenter to control various software applications from the board. The operator can import files, pictures, clipart, organisational charts and then annotate them with different colours. This was amply illustrated when Mr Jessep re-created an accident scene and moved vehicles and characters about depending on where the various witnesses put people at the scene of the accident. In a court situation this would allow both the jury and judge to gain an appreciation of what had occurred.

In November 2000 Amanda Everett from Butterworths Perth Office gave a visual presentation to the prosecutors on the use of Butterworths online. The presentation involved giving an overview of the system. It showed the participants how to use the *Focus Search* templates, how to navigate around the system, how to browse as an alternative to searching for information. It also involved the use of the *Table of Contents* and the *Indexes* as a method of searching for information.

In June 2001 Therese Austin presented a paper on the exceptions to the mandatory sentencing provisions of the ***Sentencing Act***. She looked at the position where the offender was lawfully in the premises or at the place at the time of the offence. Therese examined the *exceptional circumstances* provisions in s.78A(6C) of the Act. She examined in some detail how the law looked at the trivial provisions of the Act, including the different approaches taken by the court. Therese then looked at how the law considered whether the offender had made reasonable efforts to make full restitution.

Most professional staff participated in one or more external CLE programs during the year. Eight members (including some VSU staff) attended a presentation by a visiting United States expert in child psychiatry, Dr Anne Graffam-Walker, which was organised by the National Association for the Prevention of Child Abuse and Neglect.

Jack Karczewski attended a seminar on *Technology for Justice* and various prosecutors attended programs on advocacy presented by the Northern Territory Law Society.

Seven members of staff, in accordance with the compulsory policy of the ODPP, attended cross cultural awareness workshops.

Therese Austin and Ian Rowbottam attended a very interesting two-week advocacy course and workshop at the Australian National University at Canberra which compared Australian and USA court procedures and techniques. The course was conducted between 21 May and 3 June 2001 by Hugh Selby and Graeme Blank from the Australian National University and was entitled ***Comparative Australian and American Trial Practice***. The first week concentrated on basic Australian trial advocacy. The second week of the course was presented by two visiting American trial advocates and lecturers and dealt with basic American trial practice and procedure. The course culminated in two mock trials presided over by Justice Hampel from the Australian Institute of Advocacy, the first conducted as an Australian trial and the second as an American trial. Members of the legal profession constituted the audience and law students the jury. The jury's deliberations were videotaped and broadcast live. The audience completed a survey indicating their preferences for the two different styles presented. The results of that survey are not yet to hand but should stimulate further debate.

Michael Carey attended the annual meeting of the newly formed Australian Association of Prosecutors which was held in Victoria.

Other important conferences or meetings attended by the Director and/or other members of staff are separately identified.

Workload

It is noted that the number of matters concluded in the Supreme Court in Darwin was less than the previous year. There were a similar number of trials and justices' appeals but pleas were less than in previous years. Nevertheless, the number of appearances in the Supreme Court by prosecutors was close to double. This appears to be a reflection of the new criminal practice rules which provide for regular monitoring of cases in the Supreme Court with mentions of matters before the criminal registrar and the trial judge.

Overall there was also an increase in matters at the summary level and again greater use of Crown prosecutors at Top End bush courts. In this regard, Katherine was a particular focus of attention. As a result of the presence of a resident magistrate in Katherine, the caseload there has increased markedly.

BREAKDOWN OF PROSECUTION CASES

For the period 1 July 2000 to 30 June 2001

Number of Matters dealt with by:	DARWIN		ALICE SPRINGS	
Trial	16	(16)	7	(7)
Re-trial	3	(1)	-	(-)
Plea	90	(120)	25	(20)
Justice Appeal	52	(57)	37	(42)
Case Stated	-	(-)	-	(-)
Voir Dire	3	(8)	4	(5)
297A	5	(3)	-	(-)
Nolle Prosequi	7	(26)	3	(4)
Committal	146	(136)	30	(31)
Court of Criminal Appeal	8	(14)	-	(1)
Court of Criminal Appeal (Mentions)	24	(25)	2	(4)
Court of Appeal	6	(4)	-	(-)
Court of Appeal (Mentions)	9	(-)	-	(-)
High Court	1	(1)	-	(-)
Summary Court Mentions*	753	(532)	969	(794)
Supreme Court Mentions**	713	(352)	67	(102)
Summary Prosecutions	208	(252)	153	(115)
Breach Supreme Court Bond	11	(8)	7	(8)
Supreme Court Warrants	21	(7)	5	(5)
Summary Court Warrants	51	(45)	77	(85)
Totals	2127	(1608)	1386	(1233)

NB: The figures in brackets are for the period 1 July 1999 to 30 June 2000

* Crown prosecutors in the Alice Springs Office appear at all preliminary mentions of hearings at committals. In the Darwin Office these mentions are primarily dealt with by the bail and arrest sergeant and are not included here.

** Figures do not include arraignments.

Of those tried by jury in the Supreme Court last year 30% (compared with 26% in the previous year) were convicted and 48% (57%) acquitted. The other 22% (17%) was represented by cases in which the jury were unable to agree or the trial was otherwise aborted. Overall, when pleas of guilty and nolle prosequis are included, the conviction rate was 80% (78%) of all matters disposed of in the Supreme Court. This is an acceptable outcome, consistent with previous years.

Expedition

In earlier Reports attention has been drawn to the fact that there is a clearly established need for all persons charged with an offence in the Northern Territory to have a trial within a reasonable time. To that end, the Office operated an internal guideline that unless there are exceptional circumstances all indictments should be settled within one month of the date of committal. This has been overtaken in recent years by a Supreme Court instruction that indictments be handed up at the first arraignment date after committal. In most cases this instruction is complied with, although it does lead, in some cases, to indictments being provided at a time when the final decision as to the proper form of it has not been made. New Criminal Practice Rules of the Supreme Court were introduced as from May 2000. Their impact has yet to be fully felt but there is already a great increase in the number of appearances required by prosecutors before cases are finally resolved.

Last year there was again noted a considerable back-log in cases awaiting trial. The time from committal to trial was, at best, eight months and, in some cases, much in excess of that. No single reason provides the answer for this state of affairs but the shortage of available court time has been one of them, despite the lesser numbers of cases actually going to a full trial.

Conference of Australian Directors

For a number of years, Australian heads of prosecuting agencies have met informally to discuss matters of mutual interest. Due to the increase of crime which traverses State and Territory borders and the increased introduction of uniform legislation among the States and Territories of the Commonwealth, the various Directors in Australia have formed an association which meets regularly to discuss matters of mutual concern. This association meets on a more formal basis than in the past and is known as the Conference of Australian Directors. By this means the Directors are forcefully promoting consistency of the administration of criminal law in the several jurisdictions and, additionally, exchanging very useful information.

There have been two meetings of the Directors in 2000-01. The Directors have all maintained contact by mail and telephone on issues of common interest. The contacts and the information exchanged between Directors has proved to be invaluable and continues to assist us greatly in carrying out our respective functions and ensuring valuable and essential co-operation.

Heads of Prosecuting Agencies Conference (Commonwealth)

The first meeting of this group (HOPAC) took place in Sydney in 1991. Attendance at this original conference was by invitation which stated:

The aim of the conference is to give heads of prosecution agencies an opportunity to meet and to discuss matters of contemporary significance, general principle and issues of practical importance.

The conference was therefore designed to bring together heads of prosecuting agencies of Commonwealth jurisdictions for the purpose of meeting and exchanging different points of view. It was the answer to specific operational needs.

Subsequently meetings have taken place in Ottawa (1993), London (1995), Wellington (1997), Sigatoka (1999) and Edinburgh (2001). The Office was represented by the previous Director at the first three such conferences. Most other Australian jurisdictions attended. The current Director attended the NZ, Fiji and Scotland conferences.

These conferences have proved invaluable in providing a forum for:

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

International Association of Prosecutors

The International Association of Prosecutors (IAP) was created in June 1995 in the offices of the United Nations in Vienna and was formally inaugurated in September 1996 in Budapest.

The IAP is the only world association of prosecutors and its membership includes individuals, prosecution services and associations of prosecuting counsel.

As a world organisation, the IAP membership is not confined to one legal system. It encompasses as many legal systems as are represented by its members. It is an alliance of both individual and corporate members who already have standing and credibility in their respective jurisdictions. It is the coming together of reputable persons to learn from and to share with one another in all areas concerned with the business of prosecution.

The role of the IAP on the international scene is an extremely broad one.

All Offices of Directors of Public Prosecutions in Australia have joined as corporate members of the organisation.

The location of the conference for the year 2000 was Cape Town. The major theme was **Human Rights**. The conference was addressed by the former President of South Africa, Nelson Mandela. The Director was invited to chair a workshop at the conference which he duly attended.

The former president of the IAP, the Director of Public Prosecutions of Ireland, Eamonn Barnes, in May 2000 circulated a letter in which he articulated his view of the role of the prosecutor as an upholder and defender of human rights and went on to say:

It is a function which often appears to be the monopoly of defence counsel or of the many excellent organisations formed for the

promotion of human rights or civil liberties. The reality is that prosecutors, by their dedication in daily practice to individual rights, whether they relate to the victims of crime, to persons suspected or accused of crime or to the community generally, are in many jurisdictions the principal defenders of those rights.

If there were to be a single hope and ideal on which I could choose to vacate my high office as your President, it would be the aspiration that at our conferences and meetings our role as defenders of human rights and civil liberties everywhere would be a theme which would underlie and inform all our deliberations and decisions. Unless we constantly rededicate ourselves to that role, our daily work and functions will become hollow in relation to our constitutional objectives and in particular in relation to the establishment and promotion everywhere of the highest standards of criminal justice. Very few jurisdictions, if any, can afford to feel complacent or superior regarding the full achievement within their own criminal justice systems of a sufficient commitment to human rights. Our solemn duty as members of the Association is to seek always to enhance those rights around the world.

Eamonn has been succeeded as president, by Nicholas Cowdrey QC, the NSW Director of Public Prosecutions. This ensures and maintains a strong recognition of Australia, its States and Territories, within the organisation. The next conference, to be held in September 2001, will be in Sydney.



SUMMARY PROSECUTIONS

Background

Summary Prosecutions in Darwin and Alice Springs consists of legal practitioners employed by the Office, members of the Northern Territory Police attached to the Office and employees under the ***Public Sector Employment & Management Act***. This arrangement is pursuant to a *Memorandum of Understanding* between the Director and the Commissioner of Police executed on 11 February 1998 (see pg 71).

DARWIN

Functions

Summary Prosecutions carries out the following functions in the Court of Summary Jurisdiction and Juvenile Court sitting at Darwin, Daly River, Port Keats, Garden Point, Alyangula (Groote Eylandt) and Maningrida:

- receiving, recording and checking initial apprehension files from NT police
- laying charges, issuing summonses for service by police
- resisting bail applications before magistrates
- attending to all preliminary mentions of files in court
- prosecuting pleas of guilty
- prosecuting summary trials of regulatory offences, simple offences and/or minor indictable offences
- making submissions on sentence
- prosecuting breaches of community-based sentencing orders, whether consequent to further offences or otherwise
- prosecuting applications for extradition to places outside the Northern Territory under the Commonwealth ***Service and Execution of Process Act***.

Also, summary prosecutors from Darwin attend circuits at Oenpelli, Jabiru and Nhulunbuy as required.

Complex and/or sensitive cases are referred to the Director for allocation to a Crown prosecutor.

Summary Prosecutions carries out other functions:

- providing advice and recommendations to the Director on appeal cases
- providing visiting lecturers to the Police, Fire and Emergency Services College at Peter McAulay Centre, for both recruit and in-service training of police

- providing advice to operational police on matters of substantive law, evidence and procedure
- assisting the Police Domestic Violence Unit with advice and prosecutorial support
- providing training on evidentiary requirements and preparation of court documents to other government agencies using the Courts of Summary Jurisdiction (eg Correctional Services)
- appearing before the Firearms Appeal Tribunal on behalf of the Commissioner of Police in appeals under the *Firearms Act*.

Location

Summary Prosecutions occupies approximately 50% of the second floor, Tourism House, Mitchell Street, Darwin - adjacent to the Director's Chambers.

Staffing

The pre-*Memorandum* staffing (less reallocated functions) was preserved. Police Prosecutions had a total staff establishment of 15. The actual situation was that two extra staff were on long term attachment to prosecutions to cover casual vacancies, etc.

	Establishment	Actual
Senior Sergeant	1	1
Sergeants	4	3
Constables	2	5
Police Auxiliaries	2	2
AO2	3	3
Legal Practitioners	3	3
Total	15	17

There has been some turnover in the staff by reason of promotion, although most incumbent staff have attained at least three years' service within Summary Prosecutions.

Training

Summary Prosecutions staff are invited to all ODPP in-service training and have a high rate of participation. Additionally all police prosecutors external to Darwin are provided with opportunities to attend Darwin for in service training and benefit regularly from having a prosecutor from Summary Prosecutions attend on circuit and providing one on one tuition.

Management

The officers-in-charge of Summary Prosecutions (Darwin and Alice Springs) both participate in the Executive Committee which meets weekly.

Integration

The integration of the former Police Prosecutions Unit into ODPP continues. Summary Prosecutions receives significant support from the VSU, the Senior Research Solicitor and the Chambers' Prosecutor.

The workload of the Top End circuits is shared between Summary Prosecutions and the Crown prosecutors, so as to maximise the efficient use of resources.

Caseload

The caseload of Summary Prosecutions has increased markedly during the year. Focus throughout the year again has been on improving the standard of files, reviewing contested files earlier and improving the standard of presentation and submissions in order to achieve appropriate outcomes whilst minimising public expense. However, the number of contested hearings continues to increase exponentially as does the complexity of the legal issues which regularly arise in the Courts of Summary Jurisdiction. This combination of factors ensures that on an almost daily basis Summary Prosecutions is unable to meet all of its requirements internally within present staffing levels, resulting in regular *briefing out* to external counsel to assist with the workload. The cost of this has proved prohibitive.

Liaison with the Northern Territory Police

In order to enhance the skills of the remaining police prosecutors (that is, those based outside Darwin and Alice Springs), the informal *Prosecutors' Development Program* has continued. Police prosecutors have attended a hands-on, in-service program in Darwin, focussing on file management and court presentation.

Networking with other Government Agencies

Both the officer-in-charge and supervisory sergeants in Darwin attend various other government agencies and committees to represent the office and ensure current service delivery in the jurisdiction is that of *best practice*. This includes forums such as the *Criminal Court Users Group* and the *Domestic Violence Prosecution and Legal Reference Group*. Additionally, the officer-in-charge holds a position on the multi-agency Northern Territory Police *PROMIS/IJIS Interface Project Steering Committee* which will ensure our future IT requirements are conducive to operational requirements.

ALICE SPRINGS

Summary Prosecutions in Alice Springs is immediately responsible to the Crown Prosecutor-in-Charge, ODPP Alice Springs.

Summary Prosecutions Alice Springs carries out the following functions:

- receiving initial apprehension files, both arrest and summons
- checking and determining the appropriate charges
- laying charges in the appropriate court (Summary Jurisdiction or Juvenile Court)

- making applications to breach sentencing orders or good behaviour bonds in appropriate cases
- receiving all prosecutions from Department of Correctional Services commenced by them for
 - breach of home detention
 - breach of community service orders
 - breach of sentencing orders
 - breach of punitive sentencing orders
- issuing summonses for service by police
- prosecuting applications for extradition to places outside the Northern Territory under the *Commonwealth Service and Execution Act*
- all preliminary mentions of files in court
- opposing bail application in appropriate cases
- prosecuting guilty pleas
- prosecuting all matters in the Juvenile Court and Courts of Summary Jurisdiction 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 senior counsel.

Circuit courts

Courts are held at Hermannsburg, Papunya, Mutitjulu (Yulara), Tennant Creek and Yuendumu bi-monthly. A prosecutor attends as required.

Training and advice

Training during the year was given to the NT Fire Service regarding court etiquette and what to expect as a witness.

Summary Prosecutions also provides training to members at Alice Springs Station. A prosecutor attends and gives lectures as required.

Advice is given to police members carrying out prosecution duties at Hermannsburg, Papunya, Mutitjulu (Yulara), Tennant Creek and Yuendumu.

Advice is also given to Alice Springs and bush station members located at Harts Range, Kulgera and Ti Tree on all aspects of law, evidence and procedure.

Location

Summary Prosecutions is located on the top floor in the Centrepont Building on the corner of Gregory Terrace and Hartley Street. The area is adjacent to the ODPP.

Staffing

	Establishment	Actual
Senior Sergeant	1	1
Sergeant	2	2
Senior Constable	1	1
Auxiliary	1	1
AO2	1	1

On 14 February 2001 Senior Sergeant Rob Burgoyne took over as the officer-in-charge. He is responsible for managing the section, answers correspondence and acts as a hearing prosecutor at bush courts and both bail and arrest and hearing prosecutor in Alice Springs as required.

Sergeant Kevin Winzar remains as the only permanent hearing prosecutor.

Sergeant Don Eaton, bail and arrest prosecutor, commenced on 29 May 2001 with Sergeant Craig Ryan returning to General Duties to further his career in the NT Police.

Senior Constable Hosking remains as the Prosecutions Constable and is responsible for the initial preparation of files including computer entry as required, swearing warrants on oath, filing adjourned matters and general liaison with the police station and court regarding files. During staff shortages he can take up the position of bail and arrest prosecutor.

Senior Constable Allan Duncan, the Southern Region Coroner's Constable, has his office in the Summary Prosecutions area. The Coroner's Constable provides administrative assistance to Summary Prosecutions during staff shortages. The Prosecutions Constable and Coroner's Constable are cross-trained and each is able to undertake the duties of the other (minus prosecution duties), expanding the flexibility of both positions. The Coroner's Constable's vehicle is the only vehicle available for the day to day running of Summary Prosecutions. A separate vehicle has been sought for the coming financial year.

Senior Police Auxiliary Pat Arnell performs the duties of liaison between police and prosecutors, both Summary Prosecutions and ODPP. Caroline Pidgeon gives valuable administrative assistance and types complaints, informations, summonses, deals with correspondence and locates, maintains and tracks files as required.

The ODPP Victim Support Unit continues to assist with an increased number of requests for crime victims' assistance compensation information and Victim Impact Statements for the Court of Summary Jurisdiction.

General Comment

The Alice Springs ODPP gives significant support to Summary Prosecutions through advice and shared facilities.

Summary Prosecutions continues to strive to maintain a close working relationship with both the ODPP and police. At times this is difficult due to the different and sometimes competing demands of these two masters.

Due to mandatory sentencing and an increase in reported domestic assaults, the workload has remained high. A previous submission to the NT Police for an additional sergeant to assist with contested hearings has been disregarded.

The need for an extra prosecutor was further highlighted during the year by the:

- continued high number of contested hearings
- use of an extra magistrate from time to time by the Alice Springs Court of Summary Jurisdiction because of their increased workload
- requirement to provide a prosecutor more often for increased contested hearings at bush courts and Tennant Creek
- continued high number of Domestic Violence Orders and thereby contested applications
- increase in the number of prosecutorial errors being made by Summary Prosecutions due to lack of preparation time available.



MEMORANDUM OF UNDERSTANDING IN RESPECT OF SUMMARY PROSECUTIONS

MEMORANDUM OF UNDERSTANDING BETWEEN THE COMMISSIONER OF THE NORTHERN TERRITORY POLICE AND THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

WHEREAS:

The Northern Territory Police Force and the Office of the Director of Public Prosecutions are both concerned with the conduct and prosecution of all offences and have, to a certain degree, a complimentary role within the criminal justice system. It is acknowledged, however, that within the current context of accountability and best practice that a coordination of resources between the parties will best serve the efficient and effective prosecution of all offences.

NOW THIS MEMORANDUM WITNESSES the following understanding and arrangements:

1. Purpose

- 1.1 The purpose of this Memorandum of Understanding (MOU) is to formally acknowledge that the responsibility for the care and conduct of the prosecution of all offences rests with the Office of the Director of Public Prosecutions (ODPP).
- 1.2 The MOU will also define the respective roles of the ODPP and the Northern Territory Police Force within the ODPP.
- 1.3 The parties agree that upon signing the MOU the Darwin and Alice Springs Police Prosecutions Sections are to be renamed *The Office of the Director of Public Prosecutions - Summary Prosecutions*.
- 1.4 It is the intention of the signatories that employees of the ODPP and members of the Northern Territory Police Force will apply this MOU in a co-operative spirit and will maintain a close working relationship in order to ensure the effective performance of the duties of each of the parties towards the proper conduct of all prosecutions.

- 1.5 It is recognised that the Northern Territory Police Force has a key role to play in the care and conduct of the prosecution of summary offences. The ODPP, however, will maintain overall responsibility of all prosecution matters in addition to the functions outlined in Part III of the *Director of Public Prosecutions Act*.
- 1.6 While this MOU has been developed for use in Darwin and Alice Springs, it is intended that all police prosecutors throughout the Northern Territory will have equal access to advice from the ODPP and that they will perform their duties in accordance with the guidelines of the ODPP.

2. Interpretation

- 2.1 In this MOU, unless the contrary intention appears:
- (a) *Commissioner* means the Commissioner of Police appointed under section 7 of the *Police Administration Act*.
 - (b) *Director* means the Director of Public Prosecutions appointed under section 4 of the *Director of Public Prosecutions Act*.
 - (c) *ODPP* means The Office of the Director of Public Prosecutions.

3. Functions of the Northern Territory Police Force

- 3.1 Police members will continue to be responsible for the following functions:
- (a) office management
 - (b) general administrative duties
 - (c) bail and arrest and associated court attendance
 - (d) juvenile prosecutions
 - (e) Crown Law liaison
- 3.2 It is agreed that for the time being the establishment of police staff will be maintained at the current level but subject to review. A possible option may include replacement, where appropriate, with qualified lawyers. Such an option is to be considered on a case by case basis. Members in the following police positions will be attached to the ODPP - Summary Prosecutions on a long-term basis:

Darwin Police Prosecutions:

- (a) Officer-in-Charge, Senior Sergeant
- (b) Administration Sergeant
- (c) Two Bail and Arrest Sergeants
- (d) Juvenile Prosecutor, Sergeant
- (e) Bail and Arrest Constable
- (f) Summons Constable
- (g) Crown Law Liaison Officer, Police Auxiliary
- (h) Administration Support, Police Auxiliary

Alice Springs Police Prosecutions:

- (a) Officer-in-Charge, Senior Sergeant
- (b) Two Sergeants
- (c) Bail and Arrest/Summons Constable
- (d) Crown Law Liaison Officer, Police Auxiliary.

- 3.3 It is agreed that the establishment of civilian staff will be maintained at no less than the current level. The current level is:

Darwin Police Prosecutions:

- (a) three AO2s

Alice Springs Police Prosecutions:

- (b) one AO2.

- 3.4 As far as it is possible, the Officer-in-Charge of ODPP - Summary Prosecutions is to be a police officer with legal qualifications, or extensive prosecutorial experience, and proven office management skills.
- 3.5 The Officers in Charge will be responsible to the Director and responsible for the day to day supervision of ODPP - Summary Prosecutions.
- 3.6 The previous practice of attaching a TINES Officer to the Police Prosecutions Section, Darwin, will no longer apply and that position will be relocated and continue to be the responsibility of the Northern Territory Police Force.
- 3.7 The previous practice of attaching Coroner's Constables to the Police Prosecutions Sections will no longer apply and those positions will continue to be the responsibility of the Northern Territory Police Force.
- 3.8 In addition to the police officer identified as the Officer-in-Charge, the Commissioner shall nominate a Commissioned Officer to act as his direct liaison officer with the Director and the ODPP.

4. Functions of the Office of the Director of Public Prosecutions

- 4.1 The functions of the ODPP will include the assumption of ultimate responsibility for summary prosecutions and the management of the police and civilian staff employed in ODPP - Summary Prosecutions.
- 4.2 Subject to sub-clauses 3.2 and 3.3, staff levels will be determined by the Director consistent with the guidelines provided by the NT Government.

5. Staff entitlements and selection criteria

- 5.1 Staff entitlements for police, civilian and ODPP employees will be in accordance with their respective conditions of service provisions under the *Police Administration Act* and the *Public Sector Employment and Management Act*.
- 5.2 In consultation with the Northern Territory Police Force, the ODPP may determine the selection criteria for the positions filled by the Northern Territory Police Force members. The selection criteria will be made available to all potential applicants when these positions become vacant from time to time.
- 5.3 Currently there are three qualified lawyers employed at the P2 level within ODPP - Summary Prosecutions. They will continue to be contracted by the Director and their salaries and entitlements will continue to be paid by the Northern Territory Police Force.

6. Selection of staff

- 6.1 While the responsibility for the final selection of Northern Territory Police Force staff to be attached to the ODPP - Summary Prosecutions rests with the Commissioner, it is acknowledged that the Director will have input in this process. To this end, the Director or his nominee will be consulted prior to any transfer of police to the ODPP - Summary Prosecutions.
- 6.2 It is agreed that members attached to the ODPP - Summary Prosecutions will generally be for a minimum period of two years and that there be a period of overlap between incoming and outgoing members. This provision, however, will not limit the Commissioner's power to transfer a member on compassionate grounds or a member who has been promoted.

7. Training of staff

- 7.1 It is agreed that the Northern Territory Police Force, with the assistance of ODPP staff, will continue to provide training for police prosecutors and police members stationed in remote areas. This training should also be available to new lawyers appointed to the ODPP.

8. Budgetary and administration issues

- 8.1 Budgetary and administration issues will remain unchanged in the short term. Future changes will be as agreed between the Director and the Commissioner.

9. Access to information

- 9.1 The Director and the Commissioner maintain a continued right of access to information held by the Northern Territory Police Force and the ODPP, where appropriate, for the performance of their respective functions and duties.

10. Disputes

- 10.1 Where there is a disagreement between the ODPP and the Northern Territory Police Force over any matter related to issues covered by the MOU, both parties will seek to resolve the matter through negotiation.
- 10.2 It is not the intention of this MOU to have all matters negotiated at the highest level and any dispute is to be considered on its merits. An appropriate person will, in each case, be identified to negotiate the issue in dispute.
- 10.3 Should negotiations identified in sub-clause 10.2 fail, the matter is to be referred without undue delay to the Director and the Commissioner.

11. Meetings

- 11.1 Meetings between senior staff of the Northern Territory Police Force and the ODPP will be conducted on a regular basis to discuss strategic planning issues and other matters of importance to both parties.

12. Amendments

- 12.1 Amendments to this MOU may be made at any time by mutual written agreement of both parties.

13. Date of effect

- 13.1 This MOU is effective immediately.

(Signed) **RW**
Rex Wild QC
Director of Public Prosecutions

 BCB
Brian C Bates
Commissioner of Police

Dated the 11th day of February 1998.



VICTIM SUPPORT

Support to victims of crime, witnesses and their families has been provided within the Office of the Director of Public Prosecutions since 1995. The Victim Support Unit (VSU) was established in April 1997.

The VSU consists of five staff. In Darwin they are Nannette Hunter, VSU Co-ordinator, Colleens Burns, Aboriginal Support Co-ordinator and Christine Garland. In Alice Springs they are Carolyn Woodman, Co-ordinator (South) and Merle Thomas.

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

Support

This involves court preparation and can include court tours, demonstration of vulnerable witness facilities and observations of court sittings. Support regularly involves accompanying witnesses to court and can include being with a witness either in the closed circuit television room or behind a screen.

Information

The VSU notifies victims of crime about the service and invites them to make contact. Victims are provided with several publications at the appropriate times. These include the *Northern Territory Charter for Victims of Crime*, the VSU pamphlet and the victim impact statement booklet which includes a pro-forma for victims who choose to prepare a victim impact statement independently.

The VSU also gives information about the date, time and place of court appearances, the stage that the matter is up to and whether attendance by the witness is required.

Referral

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

Explanation

The explanation of legal processes, language, behaviour 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

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

Victim Impact Statements

The VSU assists victims of crime to prepare victim impact statements. Victims of crime have the right to present to the court a statement detailing the effect a crime has had on their lives. Victim impact statements were introduced in the Northern Territory in March 1997. Since then many people have decided to participate in the criminal justice system by exercising that right. The VSU assisted 304 people with victim impact statements this year. Since the beginning of the scheme the VSU has assisted more than 1,000 people to prepare a victim impact statement.

Members of the VSU participate in many committees and activities on behalf of the Office to represent the Office and to network with as many agencies as possible.

Crime Victims Advisory Committee

The VSU Co-ordinator and Aboriginal Support Co-ordinator attend the Crimes Victims Advisory Committee (CVAC) meetings. This year CVAC considered the issue of restitution and presented a paper on the topic to the Attorney-General.

The Attorney-General referred the issue of the operation of the victim impact statement scheme to CVAC. As a result of the reference a review of the use of victim impact statements within the criminal justice system has been undertaken. CVAC used interviews and questionnaires. Members of the VSU were involved in the development of the questionnaire and its distribution as well as in various other areas of the review. CVAC expects to present the report to the Attorney-General later in the year.

Victims of Crime Assistance League

The VSU Co-ordinator attends meetings of the Victims of Crime Assistance League (VOCAL). The VSU participated in the VOCAL training course for volunteers this year. The VSU and VOCAL work closely together to provide a variety of complementary services to victims of crime.

Domestic Violence Prosecution and Legal Reference Group

The Prosecution and Legal Reference Group (PLRG) was formed to replace the Domestic Violence Prosecutions Sub-Committee. PLRG is a sub-committee of NTSafe. PLRG's task is to monitor and consider legal issues in the implementation of the Domestic Violence Strategy. The VSU co-ordinator is a member of the PLRG. The Director is represented by the Deputy Director on PLRG. Summary Prosecutions is also represented by a police prosecutor.

Training

Members of the VSU regularly participate in training groups of people who come into contact with victims of crime in their workplace. This year these included several squads of police recruits and VOCAL volunteers.

The VSU also participates in training to develop skills. This year all members of the VSU attended a Victim Offender Conference Training Workshop to ensure that the VSU would be able to inform victims of what they would be involved in should they chose to participate in a Victim Offender Conference as a diversionary scheme for juvenile offenders. The VSU also participated in a Domestic Violence Training Workshop and in a Working with Interpreters Workshop.

National Conference

The VSU Co-ordinator attended the 4th National ODPP network meeting of Witness and Victim Support Workers in ODPP Offices. This was an excellent opportunity to network with peers interstate, to share information and to compare and contrast the different ways that the services operate throughout Australia. Major issues raised included VIS legislation, use of vulnerable witness provisions and the delivery of services to regional, rural and remote areas. All of these issues were very topical for the Northern Territory VSU.

NTSafe Expo

The VSU participated in the inaugural NTSafe Expo in the grounds of the Peter McAulay Centre. The theme was *Promoting Crime Prevention and Community Safety*. An eye catching display was prepared, presented and staffed with assistance from other people from the Office. The response from the general public to our display was very positive.

Publications

The VSU is responsible for two publications, a booklet *Victim Impact Statements* and a pamphlet *Support for Victims of Crime*.

Interpreters

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

ALICE SPRINGS

The VSU in Alice Springs is into its fifth year of operation.

As in previous years, the VSU continues to work primarily with victims of crime. Family members and other witnesses, however, comprise approximately 20% of the work.

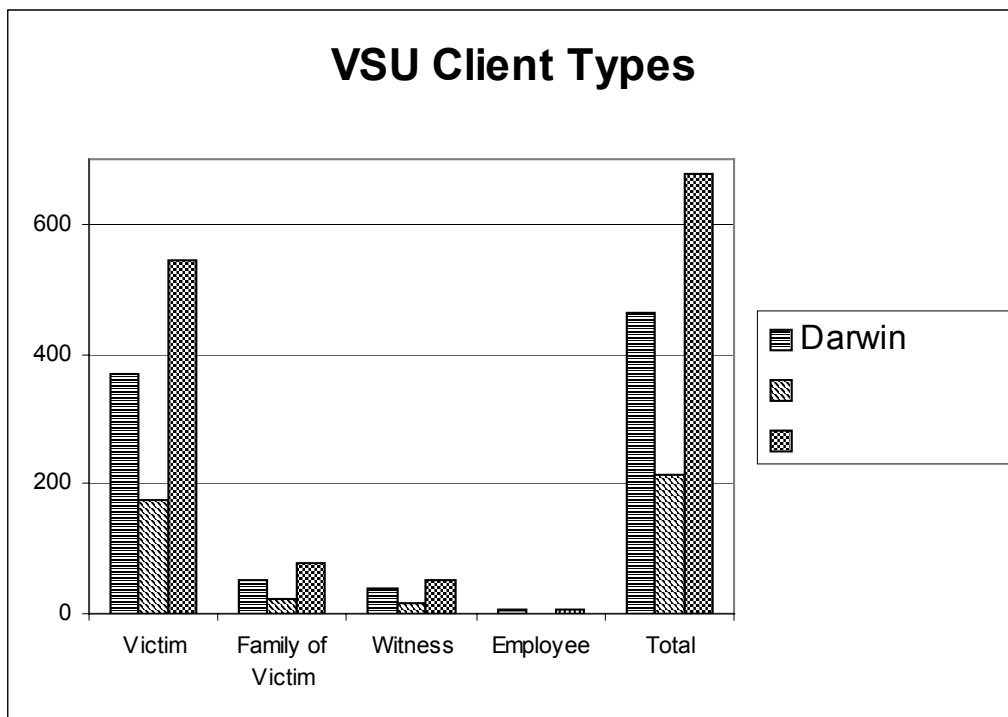
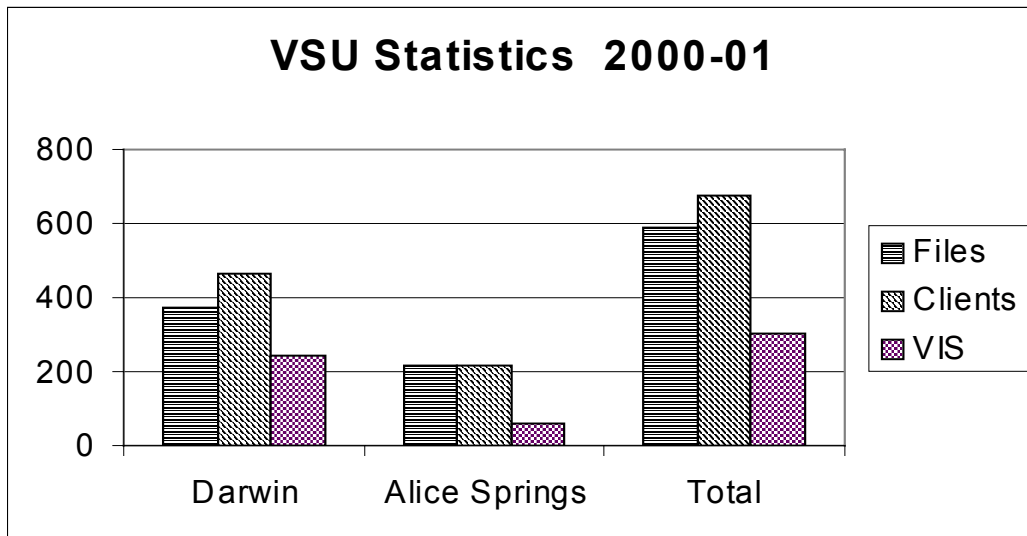
This year has seen an increase of approximately 25% in the numbers of victims of crime assisted by the VSU. Work associated with providing information for Crimes Victims Assistance matters has increased by 30%.

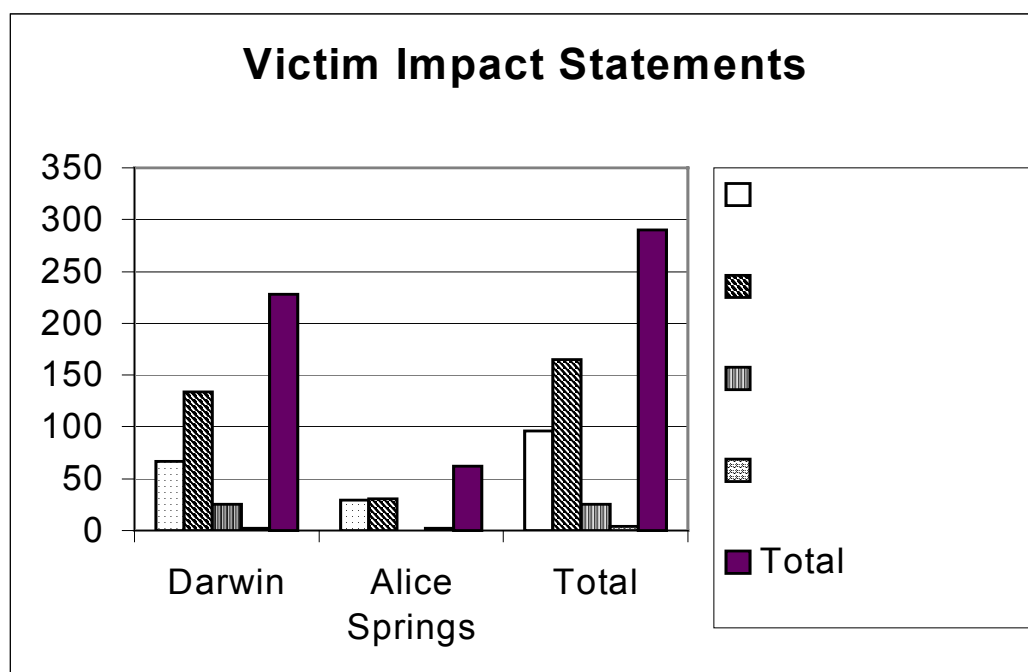
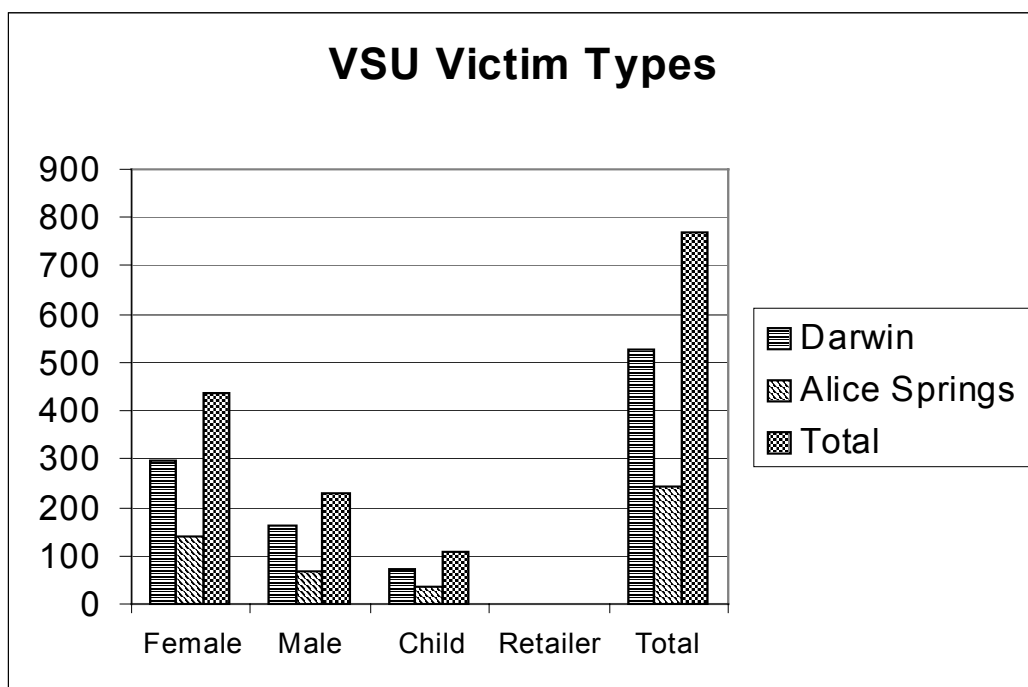
These increases appear to be largely a function of the VSU becoming better known and the willingness of police, solicitors and others to refer victims to it.

The Aboriginal Interpreter Service is being utilised fully by the ODPP to enable witnesses to give their evidence. It has been particularly useful to have interpreters available at court. This has resulted in a more consistent service.

NTSafe

The ODPP is not represented on the *NTSafe* Committee. Its role in the program is not regarded as significant. Its VSU provides support to victims of crime, witnesses and their families throughout the criminal justice system. This includes assistance with preparation of victim impact statements and giving information about court processes and the like. The aim is to provide increased satisfaction for victims, as far as this is possible, with their experience of the criminal justice system. The service provided is essentially re-active.







ABORIGINAL SUPPORT

The Office deals with a large number of Aboriginal victims and witnesses. This is ongoing and continues to be a challenge. The VSU has been more proactive to ensure that more victims of crime access the service. The increased networking with police and Summary Prosecutions has been particularly pleasing. The VSU now has access to IJIS the computer system that is linked to the Office of Courts Administration, Correctional Services and Police. This allows the VSU to pick up victims who have previously been difficult to contact.

Bush Circuit

This year has seen an increase in bush court trips. This has been an initiative of the Aboriginal Support Co-ordinator to ensure that victims in remote communities have more access to support. There has been an increase in VIS prepared as a result of these trips. The Aboriginal Support Co-ordinator made 16 trips covering five communities over 31 days.

Aboriginal Interpreter Service

The Aboriginal Support Co-ordinator has maintained a good working relationship with the AIS and has assisted with registering new interpreters when visiting communities. She has also given presentations to interpreters-in-training about the role of the VSU.

Indigenous Family Violence Reference Group

The Northern Territory Government approved a five year extension to the Domestic Violence Strategy from 2001-05. under the structure of *NTSafe*. The Domestic Violence Working Group appointed by the Chief Minister is supported by four Reference Groups. These Reference Groups provide expert advice on issues such as domestic violence, sexual assault, indigenous family violence and prosecutions and legal issues. The Aboriginal Support Co-ordinator represents the Office on the Indigenous Family Violence Reference Group.

Cross Cultural Awareness Courses

The Office continues to ensure that all professional and administrative staff participate in a cross cultural awareness course.

Aboriginal Staff

There are currently five Aboriginal staff employed within the Office. They are Colleen Burns, Aboriginal Support Co-ordinator, Shahleena Musk, Crown prosecutor, Merle Thomas, VSU assistant, Nigel Browne, articulated clerk and Arthur A'Hang, Aboriginal liaison officer. Over the past twelve months we have lost three Aboriginal employees due to new employment and/or family commitments.

The recipient of the ODPP Aboriginal and Torres Strait Islander Law Student Cadetship is Annette Wilson, a second year law student at NTU. Nigel Browne who is now an articulated clerk was the first recipient of this cadetship.

Participation in other committees, meetings and forums

The Aboriginal Support Co-ordinator has participated in various committees, meetings and forums in relation to victim support work. These have included:

- Top End Women's Legal Service – Aboriginal and Torres Strait Islander Subcommittee
- Aboriginal Interagency Meeting
- Karu Aboriginal and Islander Child Care Agency
- Monitoring Committee for Indigenous Family Violence Offender Program
- Senate Hearing – Stolen Generation
- Katherine Aboriginal Families Support Unit
- NAPCAN – *Dangerous Assumptions in Questioning Children*
- Indigenous Workforce Issues Working Party
- Indigenous Women's Legal Service – Nungalinga College
- Darwin and Rural Area Domestic Violence Network
- ATSIC – Aboriginal Family Violence Workshop
- Aboriginal Justice Advisory Committee
- Danila Dilba Medical Service – Emotional and Social Wellbeing Service
- Correctional Services – *An Holistic Approach to the Prevention of Sexual Abuse* Workshop
- Diwurruwurru-Jaru Aboriginal Corporation – Katherine Language Centre

Training

The Aboriginal Support Co-ordinator participated in training specifically in relation to Aboriginal issues. These included:

- Police Recruits
- Aboriginal Community Police Officers and
- NTU students.

Presentations were made at:

- Indigenous Women's Health Expo
- Northern Territory Women Lawyers' Association

The Aboriginal Support Co-ordinator was instrumental in initiating the development of an orientation manual for the VSU. The manual is in draft form and will be a valuable resource in the future.



LEGISLATIVE REVIEWS

During the year, the Office was asked to comment on a number of papers, commentaries, drafts and the like on various proposed legislation. In some cases that legislation was Commonwealth in origin. The Senior Research Solicitor, Shane McGrath, has in most cases provided draft comments for the Director. In other cases, prosecutors with some intimate knowledge of the particular legislative needs, perhaps arising from problems experienced during court proceedings or pointed out from the bench, provide the necessary submissions. In areas where victims or witnesses or indigenous interests are involved, submissions are provided by the professional members of the VSU.

Submissions were sought on a large variety of matters which, although not strictly speaking necessarily involving legislation, excited parliamentary interest. The Attorney-General's Department had initiated an outside review of the *Justices Act* and its operation. The Office contributed to this review. The contribution made by the Office in respect of legislative reviews generally, led by Jack Karczewski (Deputy Director), Michael Carey (General Counsel) and Shane McGrath (Senior Research Solicitor) is very significant. It is time-consuming but, nevertheless, important work.

In a number of cases the Attorney-General has been advised of difficulties involved in the application and interpretation of various legislation. Some of them have been brought to notice by judges or magistrates dealing with cases. Others have been the result of prosecutors' own research.

A number of specific proposals or references which have been made to the Attorney-General, and which have been accepted, are as follows:

- **Justices Amendment 2001**
Provides for a right of appeal by the prosecution against the dismissal of a case by a magistrate.
- **Evidence Amendment 2001**
Amends the provisions relating to the giving of evidence by vulnerable witnesses.
- **Sexual Offences (Evidence and Procedure) Amendment 2001**
*Extends the definition of a vulnerable witness to include sexual offences under the **Criminal Law Consolidation Act**.*

- **Traffic Amendment Bill**

Proposed amendments to ss.27 and 28 of the Act to allow certificates relating to blood alcohol levels to be used as evidence in any proceedings in a court was to have been introduced in the August 2001 sittings.

The ODPP has also provided extensive input into proposals for new legislation dealing with offences relating to unborn children and their mothers. There are difficult concepts to be considered in any amendment to the existing law, which has been found somewhat inflexible. Alexis Fraser, Senior Crown Prosecutor, has contributed to the submissions in this area.

Unfitness to Plead

Section 357 of the ***Criminal Code*** is the provision in the Northern Territory which governs the procedure to be followed where an accused person is unfit to plead. The section only applies to matters laid by way of information and capable of being dealt with by the Supreme Court only. There are only three dispositions available to the court - bail, custody and discharge. Custody has been interpreted by the courts to have a very specific meaning - only for such time as it takes for the accused to become fit to plead otherwise a person must be discharged.

Fitness to plead has emerged over the last two years in Alice Springs as a major issue. I dealt with it in some detail in last year's Report.

Other Australian jurisdictions have a far more comprehensive legislative scheme than the Northern Territory. The present legislative scheme under s.357 is unacceptable. Changes must be made which give both the Court of Summary Jurisdiction and the Supreme Court wider powers and a greater range of dispositions. Attention should also be directed by the legislation to the supervision of an accused person by appropriate authorities to ensure adequate treatment, protection of the community and so on.

Policy personnel in Attorney General's have been extremely receptive to the ODPP's comments and recommendations in this difficult area. Such inter-agency co-operation is very much appreciated; it fosters a very practical relationship between prosecutors and policy advisers to government. Unfortunately, to date no resolution has been achieved and the ODPP continues to await the introduction of a new legislative regime.



GUIDELINES

*Pursuant to section 25 of the **Director of Public Prosecutions Act** the following statement of guidelines to be followed in the performance of the Director's functions have been issued.*

The criteria governing the decision to prosecute

1. Sir Hartley Shawcross QC, then Attorney-General, stated to the House of Commons on 29 January 1951:

*It has never been the rule in this country - I hope it never will be - that suspected criminal offences must automatically be the subject of prosecution. Indeed the very first Regulations under which the Director of Public Prosecutions worked provided that he should ... prosecute **whenever it appears that the offence or the circumstances of its commission is or are of such a nature that a prosecution in respect thereof is required in the public interest.** That is still the dominant consideration.*
(HC Debates, Vol.483, col.681, 29 January 1951).

This statement is equally applicable to the position in Australia and the Northern Territory. The resources available for prosecution action are finite and should not be wasted pursuing inappropriate cases, a corollary of which is that the available resources are employed to pursue with some vigour those cases worthy of prosecution.

2. The decision whether or not to prosecute is the most important step in the prosecution process. In every case great care must be taken in the interests of the victim, the suspected offender and the community at large to ensure that the right decision is made. A wrong decision to prosecute or, conversely, a wrong decision not to prosecute, both tend to undermine the confidence of the community in the criminal justice system.
3. The initial consideration in the exercise of this discretion is whether the evidence is sufficient to justify the institution or continuation of a prosecution. A prosecution should not be instituted or continued unless there is admissible, substantial and reliable evidence that a criminal offence known to the law has been committed by the alleged offender. (The term *alleged offender* includes a defendant or an accused person).

4. When deciding whether the evidence is sufficient to justify the institution or continuation of a prosecution the existence of a bare prima facie case is not enough. Once it is established that there is a prima facie case it is then necessary to give consideration to the prospects of conviction. ***A prosecution should not proceed if there is no reasonable prospect of a conviction being secured.*** In indictable matters this test presupposes that the jury will act in an impartial manner in accordance with its instructions.
5. The decision whether there is a reasonable prospect of conviction requires an evaluation of how strong the case is likely to be when presented in court. It must take into account such matters as the availability, competence and credibility of witnesses and their likely impression on the arbiter of fact, and the admissibility of any alleged confession or other evidence. The prosecutor should also have regard to any lines of defence which are plainly open to, or have been indicated by, the alleged offender and any other factors which in the view of the prosecutor could affect the likelihood or otherwise of a conviction. This assessment may be a difficult one to make, and of course there can never be an assurance that a prosecution will succeed. Indeed, it is inevitable that some will fail. However, application of this test dispassionately, after due deliberation by a person experienced in weighing the available evidence, is the best way of seeking to avoid the risk of prosecuting an innocent person and the useless expenditure of public funds.
6. When evaluating the evidence regard should be had to the following matters:
 - (a) are there grounds for believing the evidence may be excluded bearing in mind the principles of admissibility at common law and under statute? For example, prosecutors will wish to satisfy themselves that confessional evidence has been properly obtained. The possibility that any evidence might be excluded should be taken into account and, if it is crucial to the case, may substantially affect the decision whether or not to institute or proceed with a prosecution
 - (b) if the case depends in part on admissions by the alleged offender, are there any grounds for believing that they are of doubtful reliability having regard to the age, intelligence and apparent understanding of the alleged offender?
 - (c) does it appear that a witness is exaggerating, or that his or her memory is faulty, or that the witness is either hostile or friendly to the alleged offender, or may be otherwise unreliable?
 - (d) has a witness a motive for telling less than the whole truth?
 - (e) are there matters which might properly be put to a witness by the defence to attack his or her credibility?
 - (f) what sort of impression is the witness likely to make? How is the witness likely to stand up to cross-examination? Does the witness suffer from any physical or mental disability which is likely to affect his or her credibility?

- (g) if there is conflict between eye-witnesses, does it go beyond what one would expect and hence materially weaken the case?
- (h) if there is lack of conflict between eye witnesses, is there anything which causes suspicion that a false story may have been concocted?
- (i) are all the necessary witnesses available and competent to give evidence, including any who may be abroad? Is any witness likely to obtain an exemption from giving evidence pursuant to the *Justices Act* or other provisions?
- (j) where child witnesses are involved, are they likely to be able to give sworn evidence or, if not, is there corroboration in some material particular by some other evidence implicating the alleged offender?
- (k) if identity is likely to be an issue, how cogent and reliable is the evidence of those who purport to identify the alleged offender?
- (l) where two or more alleged offenders are charged together, is there a realistic prospect of the proceedings being severed? If so, is the admissible evidence sufficient to prove the case against each alleged offender should separate trials be ordered?

This list is not exhaustive, and of course the matters to be considered will depend upon the circumstances of each individual case, but it is introduced to indicate that, particularly in borderline cases, the prosecutor must be prepared to look beneath the surface of the statements.

7. Having satisfied himself or herself that the evidence is sufficient to justify the institution or continuation of a prosecution, the prosecutor must then consider whether, in the light of the provable facts and the whole of the surrounding circumstances, the public interest requires a prosecution to be pursued. It is not the rule that all offences brought to the attention of the authorities must be prosecuted.
8. The factors which can properly be taken into account in deciding whether the public interest requires a prosecution will vary from case to case. While many public interest factors militate against a decision to proceed with a prosecution, there are public interest factors which operate in favour of proceeding with a prosecution (for example, the seriousness of the offence, the need for deterrence). In this regard, generally speaking the more serious the offence the less likely it will be that the public interest will not require that a prosecution be pursued.
9. Factors which may arise for consideration either alone or in combination in determining whether the public interest requires a prosecution include:
 - (a) the seriousness or, conversely, the triviality of the alleged offence or that it is of a *technical* nature only
 - (b) any mitigating or aggravating circumstances

- (c) the youth, age, intelligence, physical health, mental health or special infirmity of the alleged offender
- (d) the alleged offender's antecedents and background
- (e) the staleness of the alleged offence
- (f) the degree of culpability of the alleged offender in connection with the offence
- (g) the obsolescence or obscurity of the law
- (h) whether the prosecution would be perceived as counter-productive, for example, by bringing the law into disrepute
- (i) the availability and efficacy of any alternatives to prosecution
- (j) the prevalence of the alleged offence and the need for deterrence, both personal and general
- (k) whether the consequences of any resulting conviction would be unduly harsh and oppressive
- (l) whether the alleged offence is of considerable public concern
- (m) any entitlement of the State or Territory, the victim or other person or body to criminal compensation, reparation or forfeiture if prosecution action is taken
- (n) the attitude of the victim of the alleged offence to a prosecution
- (o) the likely length and expense of a trial
- (p) whether the alleged offender is willing to co-operate in the investigation or prosecution of others, or the extent to which the alleged offender has done so
- (q) the likely outcome in the event of a finding of guilt having regard to the sentencing options available to the court
- (r) whether the alleged offence is triable only on indictment and
- (s) the necessity to maintain public confidence in such basic institutions as the Parliament and the courts.

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

10. A decision whether or not to prosecute must clearly not be influenced by:
 - (a) the race, religion, sex, national origin or political associations, activities or beliefs of the alleged offender or any other person involved
 - (b) personal feelings concerning the offender or the victim
 - (c) possible political advantage or disadvantage to the government or any political group or party or
 - (d) the possible effect of the decision on the personal or professional circumstances of those responsible for the prosecution decision.
11. As a matter of practical reality the proper decision in many cases will be to proceed with a prosecution if there is sufficient evidence available to justify a prosecution. Although there may be mitigating factors present in a particular case, often the proper decision will be to proceed with a prosecution and for those factors to be put to the court at sentence in mitigation. Nevertheless, where the offence is not so serious as plainly to require prosecution the prosecutor should also apply his or her mind to whether the public interest requires a prosecution to be pursued.

Domestic violence cases

12. The following separate guidelines result from a consideration and application of the government's policy on domestic violence. That policy involves the implementation of a domestic violence strategy. One of the objectives of that strategy is to ensure the Territory has a criminal justice driven prosecution that does not rely on the victim giving evidence. What is referred to as the *no drop* policy is intended to ensure that charges may be laid and cases proceed to hearing despite the victim not wishing to co-operate further and/or give evidence at a hearing.
 13. In specific cases there may be a conflict between the principles expounded in the guidelines, which deal with the general criminal prosecution, and those to be applied in domestic violence cases.
 14. Since February 1998, the responsibility for prosecution of all summary offences has been transferred to the Office. It is therefore appropriate that distinct guidelines relating to domestic violence cases be applied by those appearing to prosecute summary offences who, from February 1998 at least, have been prosecuting on behalf of the Office.
 15. The specific guidelines to be applied in domestic violence cases are as follows:
 - (a) Special care must be taken in deciding whether to prosecute cases arising out of domestic or family circumstances. Although the attitude of the victim of the alleged offence to a prosecution (see para 9(n) above) remains an important factor, it is not to be regarded as decisive.
 - (b) If in such cases, there is available (irrespective of the wishes or presence of the victim) evidence which provides a reasonable prospect
-

of a conviction being secured, then the matter should be prosecuted to hearing unless there are exceptional circumstances.

- (c) What might be exceptional circumstances cannot be established in advance. However, the fact that a victim simply does not wish to proceed should not be so regarded.
- (d) If in the opinion of the prosecutor holding the brief in the Court of Summary Jurisdiction, exceptional circumstances exist why charges should be withdrawn, he or she nevertheless is not to withdraw the charges except with the authority of the officer-in-charge of Summary Prosecutions or of the Chambers' Prosecutor (in either case to be confirmed in writing within 48 hours of the withdrawal).
- (e) Subsequent to any withdrawal pursuant to para (d), the relevant prosecutor must record in writing on the file the grounds upon which such decision was made and submit a written report within 7 days of the withdrawal endorsed by the relevant authorising officer, to the Deputy Director of the Office of the Director of Public Prosecutions (in the Darwin Office) Darwin or the Crown Prosecutor-in-Charge (in Alice Springs) as appropriate.
- (f) Where the exceptional circumstances arise in part because of the reluctance of a victim to proceed with the matter, the prosecutor should arrange for a statement to be taken from the victim outlining those circumstances. If necessary or desirable, the victim should be called to give evidence in court detailing the wishes to withdraw.

Prosecution of juveniles

- 16. Special considerations apply to the prosecution of juveniles. Prosecution of a juvenile should always be regarded as a severe step, and generally speaking a much stronger case can be made for methods of disposal which fall short of prosecution unless the seriousness of the offence or the circumstances of the juvenile concerned dictate otherwise. In this regard, ordinarily the public interest will not require the prosecution of a juvenile who is a first offender in circumstances where the offence is not serious.
- 17. In deciding whether or not the public interest warrants the prosecution of a juvenile regard should be had to such of the factors set out in paragraph 9 as appear to be relevant, but particularly to:
 - (a) the seriousness of the offence
 - (b) the age and apparent maturity and mental capacity of the juvenile
 - (c) the available alternatives to prosecution, such as a caution, and their efficacy
 - (d) the sentencing options available to the relevant children's court if the matter were to be prosecuted

- (e) the juvenile's family circumstances, particularly whether the parents of the juvenile appear able and prepared to exercise effective discipline and control over the juvenile
- (f) the juvenile's antecedents, including the circumstances of any previous caution the juvenile may have been given, and whether they are such as to indicate that a less formal disposal of the present matter would be inappropriate
- (g) whether a prosecution would be likely to be harmful to the juvenile or be inappropriate, having regard to such matters as the personality of the juvenile and his or her family circumstances.



EXERCISE OF GENERAL PROSECUTORIAL DISCRETION

1. It is a fundamental obligation on those who prosecute for the Crown to assist in facilitating the speedy administration of justice insofar as that is possible. To that end cases should be prepared for trial quickly and an indictment settled at the earliest practicable opportunity. Once prepared the details of the indictment should be communicated to the accused or the accused's legal representatives. Similarly any amendment to the indictment should be communicated to the defence at the earliest opportunity.
2. No ex-officio indictment should be found without the specific approval of the Director in respect of any offence which is substantially different in nature from the offence or offences committed for trial or in respect of any offence where there has been no committal for trial.
3. When the charge against a defendant has been dismissed by a magistrate and consideration is being given to proceeding on that charge by way of ex-officio indictment the defendant so discharged should be notified. In reaching a decision whether or not to proceed in this way particular significance will be given to any relevant delay and a decision should be made within three months of the case being referred for consideration.
4. A number of decisions have highlighted the need for restraint in laying conspiracy charges. Whenever possible substantive charges should be laid. However, there are occasions when a conspiracy charge is the only one which is adequate and appropriate on the available evidence. Where it is proposed to lay or proceed with conspiracy charges against a number of accused jointly, Crown prosecutors must guard against the risk of the joint trial being unduly complex or lengthy, or otherwise causing unfairness to accused.
5. The Crown has a responsibility to ensure trials proceed and once a case has been listed for trial it is generally speaking not appropriate for the Crown to force an adjournment by refusing to present an indictment to the court. Where such action is taken a report should be made to the Director explaining the reasons for so doing.

The Crown should also assist the efficient organisation of the business of the courts by opposing unnecessary applications for adjournments of trials on the day of trial and, in particular, where such applications are for the purpose of seeking to review judgments of the trial judge as to preliminary matters such as staying the indictment.

6. In exercising the right of challenge of the Crown no attempt should be made to select a jury which is not representative as to age, sex, or ethnic origin.
7. When advised by defence counsel before a trial that there is a particular reason certain evidence should not be referred to in the Crown's opening and the relevant evidence will be challenged, care should be taken to ensure nothing is said in the opening which may lead to the subsequent discharge of the jury. Where appropriate a preliminary ruling should be sought before opening.
8. Where Crown witnesses are known to prosecuting counsel to have prior convictions and/or are indemnified in respect of the matter before the court and that fact could be of any material significance in the trial, it is appropriate to reveal the conviction or the indemnity to the defence.
9. Attention should be given to the decision of the High Court in *The Queen v Apostilides* and, in particular, the statement that a decision whether or not to call a relevant witness from whom the defence wish to lead evidence must be made with due sensitivity to the dictates of fairness to an accused. It was said by the court that a refusal to call the witness would be justified only by reference to the overriding interests of justice and such an occasion would be rare. The unreliability of the evidence is only sufficient where there are identifiable circumstances which clearly establish it. If a decision is made not to call the witness the defence should be notified in due time.

It is recognised that there is a general duty upon the Crown to disclose the case-in-chief for the prosecution to counsel for the accused.

The purpose of disclosure by the Crown is threefold:

- (a) to ensure that the defence is aware of the case-in-chief for the prosecution and all other evidence relevant to the guilt or innocence of the accused
- (b) to resolve non-contentious and time-consuming issues in advance of the preliminary hearing or trial in an effort to ensure more efficient use of court time
- (c) to encourage the resolution of cases including where appropriate the entering of guilty pleas at a date early in the proceedings.

The guiding principle is always full disclosure of the case-in-chief for the prosecution and all other evidence relevant to the guilt or innocence of the accused. Such full disclosure may only be limited where there is a real need to protect the integrity of the administration of justice, including the need to prevent the endangerment of the life or safety of witnesses or interference with the administration of justice.

10. Where it is desired to cross-examine an accused as to credit or motive, it is the responsibility of Crown prosecutors to be fair. In particular, when putting material based on information made available to the Crown, care should be taken to ensure the material is accurate and use of it is justified in the circumstances of the particular trial.

11. In prosecuting charges of personal assault including charges of sexual assault, particular attention should be paid to the situation of the victim who may have suffered emotional and physical distress as a result of the offence. This concern should manifest itself by explaining to victims their role in the prosecution process and providing reasons to victims for decisions made in relation to proceedings that directly affect them such as not proceeding with a prosecution or decisions to proceed on a lesser charge. Similarly, appropriate consideration should be given to the wishes of a victim who does not wish to proceed with a prosecution for reasons of health, humiliation or trauma.
12. It is not the practice of the Crown to address on the quantum of sentence in the normal case and clearly there are limits on the matters that can properly be raised by the Director on sentence. It is not the role of the prosecutor to press for the highest possible penalty or to seek to sway the court by passion or rhetoric, ie to engage in forensic urging on the question of sentence before the sentencing judge. The role of the prosecutor is to ensure that all relevant material is before the court and where appropriate to ensure that the significance of any part of the material is drawn to the court's attention.

It is the function of the Crown prosecutor to seek to prevent the court falling into appellable error. Where assistance is sought by the court, the Crown should be in a position to provide the court with any relevant decisions relating to principles of sentence and should always be prepared to assist with respect to technicalities of sentencing. Depending upon the circumstances of the case, the prosecutor may draw the court's attention to any aggravating circumstances or the absence of extenuating circumstances; he or she may canvass the various sentencing options available and may, in an appropriate case, suggest a particular option to the court; he or she may refer to the mischief which the legislation addresses, and any legislative history which may assist the court; and he or she may inform the court of the range of penalties imposed by other courts in similar matters.

A prosecutor should not urge the imposition of a particular sentence on the court and should ensure that matters beneficial to the defendant are also drawn to the court's attention. The overwhelming obligation of the prosecutor is one of fairness.

In the case of an unrepresented defendant, special care must be taken to ensure that all relevant matters are before the court including those beneficial to the defendant.

Special care should be taken when the court seeks the Crown prosecutor's consent to a particular sentencing option. An agreement that a non-custodial sentence is appropriate may have the effect of frustrating the power of the Director to proceed with an appeal against the inadequacy of sentence.

13. Where a lawyer is appearing on behalf of the Director in the Court of Summary Jurisdiction in either committal proceedings or defended hearings the same professional standards referred to in guideline 1 apply as where counsel appears for the Crown in a jury trial. Legal representatives of the Director appear to represent the interests of the State or Territory and the primary duty is to assist the court to arrive at the truth. Before prosecution all cases should be assessed as to whether a prosecution is appropriate at all or whether a prosecution is appropriate on the charge laid. In presenting the case it is not the duty of the prosecutor to secure a conviction or committal for trial by all means but rather to ensure the court is apprised of all relevant facts and the relevant law.



GUIDELINES FOR APPEALS AGAINST INADEQUACY OF SENTENCE

1. The Director is empowered to appeal against the inadequacy of sentences which have been imposed. There are no time limits on an appeal against the inadequacy of a sentence by the Director but, in practice, the Director commences appeals expeditiously and 28 days is regarded as a guide to the commencement of appeals. On a number of occasions representations have been received outside that time of 28 days. It follows that persons (be they police, politicians or members of the general public) who seek to bring particular cases to the notice of the Director should do so expeditiously. Apart from the abovementioned time constraint other factors must be considered. All of the relevant material must be obtained and analysed and in the cases of appeals to the Supreme Court and the Court of Criminal Appeal the views of a Crown prosecutor obtained. In any event, as a matter of fairness, those persons at risk of an appeal by the Director ought to be notified of their fate as swiftly as possible. Whether particular sentences are adequate or whether they should be the subject of an appeal is a topic which frequently attracts public interest. It is appropriate therefore that I enunciate the legal factors which govern the appellate process.
2. The sentencing function of the court involves elements of retribution, deterrence (special and general) and rehabilitation and is extremely complex. In sentencing for any offence, a trial judge or magistrate will be faced with a wide spectrum of sentencing options ranging from a bond or community service to imprisonment.
3. The sentence for a specific offence will vary according to its nature, the circumstances of its commission, the antecedents of the prisoner and indeed the viewpoint of the particular judge or magistrate who must deal with the accused. Consequently, for any given offence there exists a range of legitimate penalty options. An appellate court will not interfere with the exercise of a judge's or magistrate's sentencing discretion unless an error in the exercise of that discretion can be demonstrated. In practical terms the court must be satisfied that the sentence imposed falls clearly outside the appropriate penalty range and may consequently be characterised as manifestly inadequate. Mere disagreement with the sentence passed is insufficient.
4. Furthermore, appellate courts have long maintained that Crown appeals should be a rarity instituted for the purposes of enabling the courts to maintain adequate standards of punishment, to correct idiosyncratic views of individual judges as to particular crimes or classes of crime and to remedy those

sentences which are so disproportionate to the seriousness of the offence as to shock the public conscience.

5. It should be understood that any decision by the Director to appeal against the sentence imposed by a court can only be made within the context of these legal principles.
6. In addition, I would make the following general comments. It appears that there is a current community view that offences which involve a disregard of the value of human life, the invasion of the physical integrity of individuals and the infliction of high levels of fear and violence upon them, warrant condign penalties. There is also a concern which should not be cursorily dismissed that this viewpoint is not being sufficiently embraced by the courts. Experience does indicate that the sentencing range for particular offences does alter over time to reflect community concern at their prevalence or seriousness. It is neither appropriate nor possible for a Director of Public Prosecutions to seek unilaterally by a succession of appeals to alter the range or tariff for a specific offence. Nevertheless, I will continue to institute appeals in appropriate cases where the penalty imposed appears to be manifestly inadequate. Ultimately, any change in sentencing levels must be achieved either by legislative intervention or must be judicially initiated.



GUIDELINES FOR PROSECUTION DISCLOSURE

General

These guidelines for prosecution disclosure in the Northern Territory recognise that:

1. there must be a full and frank delivery or exchange by the investigator to the prosecutor
2. not all material in the hands of the prosecutor will appear immediately relevant because there is no obligation in this country for the defence to make pre-trial disclosure either of issues or general defence information
3. there is a continuing obligation to disclose
4. there may be good and sustainable public interest reasons in declining to disclose material which is either sensitive, privileged or of a type the disclosure of which may undermine the administration of justice or endanger the life or safety of any person.

Generally speaking, however, the defence is entitled to receive pre-trial particulars of the charge or charges and the Crown case-in-chief. Whilst there is no common law duty imposed upon the prosecution to make full disclosure pre-trial it is inconsistent with a person's right to a fair trial for the prosecution to withhold from or fail to disclose to the defence material in its possession which is relevant and admissible.

Specific matters of which there should be disclosure

1. Particulars of the accused's prior convictions
2. copies of all written statements, and an opportunity to examine electronically recorded interviews, of all witnesses to be called together with a copy of any prior inconsistent statement of those witnesses
3. copy of any written or electronically recorded statement obtained from the accused by a person in authority
4. copies of any photographs, plans, documents or other representations which will be tendered by the prosecution at trial

5. an opportunity to examine exhibits which will be tendered
6. copies of proofs of statements of any expert witnesses to be called and, by appointment through the prosecution, an opportunity for a defence expert from the same or similar discipline to speak with that expert pre-trial.
7. copy of any warrant or details of any other statutory authority used in the gathering of evidence to be adduced at trial
8. an opportunity to inspect bank records, books of account or other records or documents relevant to the prosecution case-in-chief which may not be introduced into evidence but relied upon
9. the prosecutor is not obliged to call a witness whom he or she does not regard as credible. In the case of any material or statement which is or may be exculpatory, on the prosecution case-in-chief, and which the prosecutor declines to adduce or call, the defence should receive details of the evidence and the whereabouts of the witness or witnesses. If requested by the defence the prosecution should subpoena the witness.

Discretion to withhold or delay disclosure on public interest grounds

If a prosecutor is of the opinion that specific material or evidence should not be disclosed, or its disclosure delayed in the public interest, that material should, subject to review by the Director and, where necessary the court, be immune from disclosure. Some, but not all, of the factors which should be taken into account in determining this public interest issue are:

- (a) the material is relevant
- (b) withholding is necessary to preserve the identity of an informer
- (c) withholding is necessary to protect the safety or security, including protection from harassment, of persons who have supplied information to the police or persons close to them
- (d) the material is protected by legal professional privilege
- (e) the material, if it became known, might facilitate the commission of other offences or alert a person to police investigations
- (f) the material discloses some unusual form of surveillance or method of detecting crime
- (g) the material is supplied to the police only on condition that the contents will not be disclosed
- (h) the material contains details of private delicacy to the maker
- (i) the material relates to the internal workings of the police force
- (j) the material relates to national or state security.

If after consultation with the Director a *public interest* claim is maintained in support of immunity against disclosure the prosecutor must advise the defence that material, without specification, has been withheld on a claim of immunity. If the defence is not satisfied with that claim or any consideration of its submissions by the Director the matter should be submitted to the court for resolution prior to trial.

If the prosecutor considers, after consultation with the Director, that the non-disclosure of the material could prejudice the defence at trial the Director must

consider whether the charge or charges to which the material is relevant should be withdrawn and whether the accused should be charged with an alternative or lesser offence the prosecution of which will not necessitate the production of the withheld material.

Continuing obligation to disclose

The prosecutor's duty of disclosure is a continuing obligation but the extent of that obligation should be seen as also imposing upon the defence an obligation to give timely notice of any defence or issue, not immediately apparent on the prosecution case, which may make otherwise irrelevant material relevant. For example:

- (a) the prosecution should not be required to provide details of prior convictions or records of police disciplinary proceedings against a Crown witness until the defence has indicated that the credibility of that witness is to be attacked and the prior convictions, etc are relevant
- (b) the validity of a warrant or other authority should, unless an indication of challenge is given, be proved in a formal way. Any evidence establishing the correctness of the process, etc should only be provided if an indication of challenge is given.

There will be many instances where the prosecution should be entitled to rely upon the *presumption of regularity* unless a contrary indication is given. Until that indication is given the issue of irregularity should be treated as irrelevant and one upon which supporting evidence and material is not required.

The defence of insanity, once raised, and other defences or challenges requiring expert evidence, will not only broaden the field of relevant information in the hands of the prosecution but also require an understanding between prosecution and defence to enable frank pre-trial exchanges of information and access to witnesses.

Disclosure of material additional to the Crown case

These guidelines deal with disclosure of material not directly relevant to the Crown case.

Duties of police

Because of the dependence of prosecutors upon investigating officers or agencies for the gathering of documentation and evidentiary material in all matters in which either a prosecution is commenced in the summary jurisdiction or following committal for trial on indictment, police, if requested, must disclose to the Director, as soon as possible after the commencement of proceedings or the committal, all other documentation, material and any other information held by any police officer concerning the investigation. This includes information held concerning any proposed prosecution witness, which the prosecution considers might be of assistance or interest to either the prosecution or the defence.

The police officer-in-charge of the investigation shall, if required by the Director, certify, on delivery of that information, that to the best of that officer's knowledge,

information or belief all such documentation, material or information has been disclosed to the Director.

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

Obligations of the prosecution concerning material additional to the Crown case

The prosecution, upon request by the defence, shall, upon sufficient reason being given and subject to any claim for immunity on the grounds of public interest (appearing earlier in these guidelines) allow inspection of all such documentation, material or information.

Defence disclosure

The prosecution should, wherever it is consistent with the court's practice, encourage defence counsel to make an opening address to the jury following the Crown opening which is not argumentative but merely opens the defence case and identifies or discloses the issues in the trial thereby defining the issues so that questions of relevance and issues of disclosure are clearly identified at the commencement of the trial process.

Disclosure of previous convictions of witnesses

It has already been noted that the prosecutor's duty of disclosure is a continuing one. It has been suggested that the prosecution should not be required to provide details of prior convictions or records of police disciplinary proceedings against a Crown witness until the defence has indicated that the credibility of that witness is to be attacked and the prior convictions, etc are relevant.

However, in considering the extent to which disclosure should be made in such cases consideration should also be given to:

- (i) the position adopted by the Commonwealth Director of Public Prosecutions in its *statement on prosecution disclosure* (which is set out as an annexure to these guidelines as issued to prosecutors but which is not included with the Annual Report)
- (ii) the decision of the Supreme Court of Victoria Court of Appeal in the matter of ***R v Garofalo*** (BC9807143, No 87 of 1998, delivered 18 December 1998) where Ormiston JA said at para 70:

Consequently, at least for present purposes, the rule (that pursuant to which the prosecution should disclose to the defence witnesses' convictions) may be stated that, at the least, in trials on presentment or indictment, the prosecution should inform the defence of any convictions of every proposed witness whose credibility may be in issue, if proof of any such conviction may reasonably be seen as capable of affecting the witness's credibility. It is irrelevant that counsel or instructing solicitor or any other person directly engaged in the prosecution of the particular

charge is unaware of any relevant conviction, for it is for the prosecution to make the necessary enquiries on computer or otherwise, although it could not be suggested that their obligations go further. Again for present purposes that level of enquiry must be seen as having been necessary, so that, without examining that issue further, the ignorance of both counsel and instructing solicitor was irrelevant in the present case.



EXTRADITION

DIRECTOR OF PUBLIC PROSECUTIONS ACT 1990

STATEMENT OF EXTRADITION GUIDELINES

*These Guidelines are to be read in conjunction with the Statement of Prosecution Guidelines issued pursuant to section 25 of the **Director of Public Prosecutions Act**.*

1. The extradition of persons required to answer any charge of an offence or to serve a sentence imposed in the Northern Territory will always involve additional expense to the Territory.
2. However, that expense will generally be appropriate where there are reasonable prospects of conviction, in order to maintain confidence in the administration of the law and to prevent offenders fleeing from justice.
3. When application is made to take steps to secure extradition, in addition to the assessment of the prosecution case in accordance with these guidelines, the following factors will be relevant:
 - (a) any delay after discovery of the suspected offender
 - (b) any compensation or restitution which might be ordered following conviction
 - (c) the likely disposition following conviction; where the person to be extradited is already serving a sentence in another jurisdiction this factor will have greater weight
 - (d) the likely cost to the Territory.
4. Approval for extradition may be sought by police or other relevant government agency.
5. Before determining a request for extradition, the Director may consult with and require information from a relevant agency.

6. Applications for approvals for extradition should be in writing, presenting reasons for the extradition of a particular fugitive offender.
7. In urgent cases, approval may be sought and given orally. An oral approval must be followed by a report of the circumstances from the requesting agency as soon as possible.
8. The following factors, if applicable, will be taken into consideration in deciding whether approval is given:
 - (a) the country or state from which the fugitive is to be extradited
 - (b) the nationality of the fugitive
 - (c) whether the fugitive is to be charged with an offence or, having been charged, has absconded
 - (d) the nature and gravity of the offence or offences alleged against the fugitive
 - (e) the existence of reasonable prospects of conviction
 - (f) any delay after discovery of the fugitive's whereabouts
 - (g) the likely disposition following conviction
 - (h) where a person is in custody, whether the provisions of the ***Prisoners (Interstate Transfer) Act*** should be utilised
 - (i) the likely cost of extradition
 - (j) the existence of assets held by the fugitive which could satisfy an order in relation to breach of bail or a confiscation order and where such assets are to be found.
9. In seeking approval for extradition, or in providing information, the Director should be advised if and to what extent the fugitive might reasonably constitute a risk to the public, either at large or for the purposes of transportation to the Northern Territory. Advice to the Director should include recommendations as to whether the fugitive should be extradited on bail or in custody. If in custody, advice should include information on the number of officers required to effect extradition and the cost of economy airfare for the fugitive and officer(s).
10. Approval for extradition may be given by the Director or the Deputy Director.



PLEA NEGOTIATIONS

A priority of this Office is to always endeavour to ascertain at the earliest possible point in the criminal process whether a plea of guilty is likely to be entered in respect of any charge brought. There are clearly dangers in endeavouring to set any exhaustive criteria as to whether a plea should or should not be accepted, having regard to the vast variety of circumstances giving rise to the exercise of the prosecutorial discretion. However, it is helpful to identify some of the major factors which may cause the Director to accept an accused's offer of a plea. The Crown possesses a discretion to accept pleas of guilty to lesser or fewer offences than those with which an accused person has originally been charged.

No such plea will be accepted by the Crown unless it reasonably reflects the nature of the criminal conduct of the accused and provides an adequate basis upon which the court can impose an appropriate sentence. In exercising this discretion it has to be borne in mind that in a particular case the public interest may be better served by the certainty of a conviction secured by the acceptance of a plea than by the unpredictability inherent in a contested trial.

The major factors which may cause the Director to accept an accused's offer of plea may be briefly listed.

The evidence available to support the Crown case on the principal charges may be lacking in some particular. The Crown case may be fraught with forensic difficulty. Such problems may relate to the admissibility of evidence or to the credibility or availability of witnesses or indeed to the reluctance of some major witnesses (particularly victims) to give evidence.

The acceptance of a plea may save witnesses, especially elderly people and young children, from the trauma of court appearance. Where an indictment contains a number of counts and the imposition of concurrent sentences will effectively result in the same total penalty, a plea to a lesser number of charges may be warranted. This consideration may also arise where an accused person is already serving a substantial term of imprisonment.

Where the community is faced with a long and expensive trial on minor matters with a negligible penalty as a likely result, the foreshortening of procedures may be seen as desirable in the public interest.

Occasions sometimes arise where an accused person will offer to plead guilty to a specific count on an indictment and thereafter give evidence on behalf of the Crown. The acceptability of such a course will depend upon the importance of such evidence

to the Crown case and the level of culpability of the accused compared with those of whom it is sought to convict by the use of this evidence.

While the circumstances involved in this decision-making process are infinitely variable, no plea will be accepted unless, after analysis of all the facts, it is concluded that it is in the public interest to do so.

It is essential to the just operation of the criminal justice system that multiple or inappropriate charges are not laid with the object of strengthening the plea bargaining position of the Crown.

The principles expressed above have been already expressed in similar or identical form in other parts of the Commonwealth and have wide acceptance in other jurisdictions. I see no cause to depart from those accepted principles and practices and they will generally be adhered to. I have instituted in this Office the operation of a system of checking and accountability designed to ensure that concluded plea negotiations accommodate the interests of the Crown, the defence, the community and the victim.

Internal office procedures in relation to plea negotiations have been formulated in revised directions to Crown prosecutors from 1 June 1994. These are designed to ensure that acceptance of plea occurs only after the material has been subjected to scrutiny by, and consultation between, at least two qualified and experienced practitioners, thus providing protection against capricious or other ill-considered judgments. It also provides an additional safeguard of accountability by requiring documentation of the acceptance decision. This affords a protection to the prosecutor and the police alike.

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



INDEMNITY FROM PROSECUTION

The Director is empowered by s.21 of the *Director of Public Prosecutions Act* to grant an indemnity from prosecution, whether on indictment or otherwise, and to give an undertaking to a person that an answer given or a statement or disclosure made by the person will not be used in evidence against the person. These powers are an inherent part of the prosecutorial function.

1. This section is concerned with the broad considerations involved in deciding whether to give an accomplice an indemnity or undertaking in order to secure that person's testimony for the prosecution.
2. A decision whether to call an accomplice to give evidence for the prosecution frequently presents conflicting considerations calling for the exercise of careful judgment in the light of all the available evidence. Inevitably, however, there will be instances where there is a weakness in the prosecution evidence that makes it desirable, or even imperative, to call an accomplice for the prosecution if that accomplice appears to be the only available source of the evidence needed to strengthen the weakness.
3. In conjunction with the question whether to call an accomplice the question may arise whether that accomplice should also be prosecuted. In this regard, unless the accomplice has been dealt with in respect of his or her own participation in the criminal activity the subject of the charge against the defendant, he or she will be in a position to claim the privilege against self-incrimination in respect of the very matter the prosecution wishes to adduce into evidence. Where, however, an accomplice has been given an indemnity or undertaking that indemnity or undertaking will override what would otherwise be an allowable claim of privilege.
4. In principle it is desirable that the criminal justice system should operate without the need to grant any concessions to persons who participated in alleged offences in order to secure their evidence in the prosecution of others. However, it has long been recognised that in some cases this course may be necessary in the interests of justice.

Nevertheless, an indemnity or undertaking will only be given as a last resort. In this regard, as a general rule an accomplice should be prosecuted irrespective of whether he or she is to be called as a witness, subject of course to the usual evidentiary and public interest considerations being satisfied. Upon pleading guilty the accomplice who is prepared to co-operate in the prosecution of another can expect to receive a substantial reduction in the sentence that would otherwise have been appropriate. However, this course

may not be practicable in some cases; for example, time may not permit charges against the accomplice to proceed to conviction before the trial of the principal offender, or there may be insufficient admissible evidence to support charges against the accomplice.

5. Apart from being a course of last resort, an indemnity or undertaking will only be given provided the following conditions are met:
 - (a) the evidence that the accomplice can give is considered necessary to secure the conviction of the defendant and that evidence is not available from other sources, and
 - (b) the accomplice can reasonably be regarded as significantly less culpable than the defendant.
6. The central issue in deciding whether to give an accomplice an indemnity or undertaking is *whether it is in the overall interests of justice* that the opportunity to prosecute the accomplice in respect of his or her own involvement in the crime in question should be foregone in order to secure that person's testimony in the prosecution of another. In determining where the balance lies, the following factors will be taken into account:
 - (a) the significance to a successful prosecution of the evidence which it is hoped to obtain as a result of the indemnity or undertaking having particular regard to:
 - (i) the strength of the prosecution evidence against the defendant without the evidence it is expected the accomplice can give and, if some charge or charges could be established against the defendant without the accomplice's evidence, the extent to which those charges would reflect the defendant's criminality
 - (ii) the extent to which the prosecution's evidence is likely to be strengthened if the accomplice testifies, apart from taking into account such matters as the availability of corroborative evidence, and the weight that the arbiter of fact is likely to give to the accomplice's testimony, it will also be necessary to consider the likely effect on the prosecution case if the accomplice does not come up to proof
 - (iii) the likelihood of the weakness in the prosecution case being strengthened other than by relying on the evidence the accomplice can give (for example, the likelihood of further investigations disclosing sufficient independent evidence to remedy the weakness)
 - (iv) whether there is or is likely to be sufficient admissible evidence to substantiate charges against the accomplice and whether it would be in the public interest that the accomplice be prosecuted but for his or her preparedness to testify for the prosecution if given an indemnity or undertaking, and

- (v) whether, if the accomplice were to be prosecuted and then testify, there is a real basis for believing that his or her personal safety would be at risk while serving any term of imprisonment
 - (b) the degree of involvement of the accomplice in the criminal activity in question compared with that of the defendant
 - (c) has any inducement been offered to the person concerned?
 - (d) what is the character, credit and previous criminal record of the person concerned?
 - (e) has the person concerned made or is the person prepared to make full disclosure of all facts and matters within his or her knowledge?
7. Where an accomplice receives any concession from the prosecution in order to secure his or her evidence, whether as to choice of charge, the grant of immunity from prosecution or by means of an indemnity or undertaking, the terms of the agreement or understanding between the prosecution and the accomplice should be disclosed to the court.
8. In the course of an investigation the police may identify a participant in the criminal activity under investigation as a person who is likely to be of more value as a prosecution witness than a defendant. Thereafter the investigation may be directed at constructing a case against the remaining participants based on the evidence it is expected this person will give. Unless for some reason it is not practicable to do so, the police should always seek advice from the Director as to the appropriateness of such a course. This will minimise the potential for an otherwise meritorious prosecution being abandoned as a consequence of the Director deciding that it would not be in the interests of justice to grant the accomplice an undertaking under the Act in order to secure his or her testimony.



INFORMERS

The use of informers as prosecution witnesses is always a matter which calls for the making of careful and well balanced judgments. On the one hand there is always a tendency to distrust an informer, particularly if that informer has gained or has anything to gain from giving evidence. A circumstance which creates particular difficulty is where that informer is a prisoner in gaol where it must be recognised that small favours could induce a false testimony from people who have less to lose than the ordinary witness.

On the other hand, the evidence of informers is evidence capable of evaluation by a jury and realistically there are many instances where the evidence of an informer will be absolutely true. Moreover, there are some areas of law enforcement where a prosecution will only ever be possible as a result of evidence from informers. That is often true in respect of corruption by public officials where evidence from an informer is often the catalyst to commence an investigation.

It is not infrequent for informers to be available to be used as witnesses. What must be done is to ensure as far as is possible that the tribunal of fact is aware of all of the matters which would affect the proper evaluation of the evidence of an informer.

The prosecuting authority has a special responsibility to ensure the processes of justice do not miscarry where an informer is used. In some cases that will involve assessing whether the evidence of the informer is so tainted that it should not be used at all.

In all cases, where it is proposed to use an informer as a witness, care will be taken to ascertain whether the informer has been promised any reward for giving evidence or hopes to gain any benefit from testifying. Any criminal record the informer has and any motive for lying will be carefully scrutinised.

In the ordinary course of events the prosecutor will look for significant corroborative evidence to support the evidence of an informer. That will be particularly so where the informer is serving a sentence in a gaol. It will be even more so where a prison informer gives evidence of an oral confession made by another prisoner in gaol. In this latter event there must be a strong presumption that the evidence will not be called unless either the alleged confession itself is strongly corroborated or there is substantial independent evidence of the guilt of the accused. In any event it will be necessary for the prosecution to make a careful and objective assessment of the informer and the evidence to be given.



MEDIA GUIDELINES

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

1. Before trial or plea

- (a) Where an inquiry concerns a pending trial or pleas, information may be given as to trial date, likely length and venue. Unless the accused has already appeared and the indictment has been read in court, details as to the actual charges *cannot* be given. No comment should be made about a matter being *no billed* or discontinued or an ex-officio indictment being filed.
- (b) Details of names and address of witnesses *cannot* be given.
- (c) Details of prior convictions *cannot* be given.

2. Plea of guilty

Following a plea of guilty the following details may be given:

- (a) the form of indictment
- (b) the plea
- (c) the court, judge and counsel names
- (d) the sentence or other order
- (e) the address of the accused
- (f) a copy of the Crown outline of facts as given in court
- (g) any other information already disclosed in open court.

3. Trials

In the event of a trial, all of the details referred to above in respect of pleas of guilty may be given.

4. General

Counsel may use their discretion as to information supplied but the following factors are relevant:

- (a) it is in the Crown's interest that matters in court be reported. If justice has any deterrent effect then the community must know about the matters before courts
- (b) reports should be accurate. Therefore, if a reporter who has attended court seeks clarification or assistance, reasonable efforts to help should be made
- (c) there is a real risk of miscarriage in the report of a case by a journalist who has not personally attended at all and after a trial or plea requests information. In these circumstances the request should generally be refused
- (d) witnesses' addresses should never be disclosed. If the media wish to contact a witness, advise the witness of the inquiry. Special care should be taken to ensure that informers and others who are giving evidence at some personal risk are kept confidential
- (e) before any information is released concerning the impact of the crime on the victim prosecuting counsel should ensure that it is acceptable to the victim and the Victim Support Unit that such information be released
- (f) in the event of any doubt about the applicability of the guidelines or whether it is appropriate to give information, *say nothing*
- (g) no information should be given, of course, in cases where there has been a direction by the court not to give information or where there is a statutory prohibition against supplying information as, for example, in ss.6 and 7 of the *Sexual Offences (Evidence and Procedure) Act* and s.24 of the *Misuse of Drugs Act*
- (h) it is incumbent upon the prosecuting counsel, prior to the release of any information, to ensure no statutory or other prohibition exists in relation to the information supplied.

5. **Comments on specific cases or sentences**

No comment is ever to be made out of court to the media concerning a verdict or sentence or the fact that the case might or will be the subject of appeal. In the case of Crown appeals the practice is not to release details to the media until the appeal has been filed and then served on the respondent.

6. **Comments on policy**

These should be referred to the Director or, in his absence, the Deputy Director.

7. **Comments on investigations or operational matters**

The media should be advised that the Office does not make comments about investigations or operational matters and if appropriate the request should be referred to the Director or, in his absence, the Deputy Director.

8. **Comments on decisions to terminate prosecutions**

These should be referred to the Director or, in his absence, the Deputy Director.

9. **Request to film Crown prosecutors**

Television stations have a legitimate interest in obtaining film of prosecutors for use in reports of cases. It is a matter for individuals as to how they will respond. However, there is no objection to prosecutors posing for cameras in the office or elsewhere to provide television stations with file footage. Moreover, especially in long cases, it should be possible to agree to be filmed entering or leaving court once on condition that thereafter you are not confronted each time you step outside. On the other hand, if the media continue to chase the prosecutor there is little point in becoming upset at the interest. Certainly no sign of annoyance should be displayed.

10. **Local rules**

Prosecuting counsel shall at all times comply with any relevant rules of professional conduct applicable to them by reason of their admission to practice in the Northern Territory and, in this context, which relate to contact with the media. All prosecutors shall ensure that he or she has at all times an up-to-date copy of such rules.

11. **Legislative requirements**

All members of staff shall have regard to the ***Public Sector Employment and Management Act***, its By-laws and Regulations, in relation to any comments to the media and to any directions, determinations or guidelines issued by the Commissioner for Public Employment or any other authorised officer pursuant to the Act. In the event of any apparent conflict with these guidelines, the members of staff should refer the conflict to the Director for his advice and determination.



(DRAFT*)

AMENDED GUIDELINES FOR PROVISION OF DOCUMENTATION IN RELATION TO CRIMES (VICTIMS ASSISTANCE) ACT APPLICATIONS

From time to time, but on a regular basis, enquiries and requests are made to the Office of the Director of Public Prosecutions (ODPP) for information and access to documents relating to claims pursuant to the *Crimes (Victims Assistance) Act* and other civil claims said to arise from criminal wrong-doing. There is often some misunderstanding as to the information which should be properly made available in those circumstances.

To ensure a consistent response to requests for information and to minimise confusion with practitioners as to what material the ODPP can provide, the following guidelines shall now apply:

1. All requests are to be in writing and, when made on behalf of applicants for compensation or potential plaintiffs, accompanied with an authority to release information from such persons (in these guidelines termed *the applicant*, which expression will include his or her legal representative).
2. Prior to completion of the prosecution (including any appeal period) the ODPP will provide the following material to the applicant:
 - (a) applicant's statement(s) to police
 - (b) details of charges or counts on the indictment
 - (c) the next date listed for a court hearing
3. After completion, the ODPP will assist by providing the following to the applicant:
 - (a) applicant's statement(s) to police
 - (b) copy of SAIK (Sexual Assault Information Kit) if available
 - (c) copy of any non-contentious statement where an authority to release is provided by the maker of the statement (to be obtained, where appropriate, by the applicant's legal representative)
 - (d) photographs (where available) showing injury to the applicant
 - (e) after a plea of guilty, a copy of the precis or Crown facts
 - (f) details of the final result

4. (i) Further after completion, the ODPP will allow inspection of the prosecutions file (less *privileged* material) by:
- (a) the applicant
 - (b) the Solicitor for the Northern Territory (or its representative), and
 - (c) any defendant, or his or her legal representative, to proceedings arising from the alleged criminal wrong-doing.

(which three categories will be collectively termed *interested parties*).

- (ii) A member of the staff of the ODPP will supervise such inspection. No photocopies of material will be provided or allowed during such inspection. Any dispute as to the release of material will be referred to and decided by General Counsel to the ODPP or, in cases arising out of prosecutions which have been the responsibility of the Alice Springs ODPP, by the Prosecutor-in-Charge, Alice Springs.
 - (iii) A defendant, if acting on his or her own behalf, shall not be entitled to inspection unless he or she satisfies the ODPP that he or she has not previously had access to the relevant documents.
5. The ODPP response to requests will contain:

- (a) advice that transcript should be sought from Court Reporting Services (NT) Pty Ltd and
- (b) information about medical practitioners, other professional consultants and expert witnesses who have provided reports in evidence. To obtain copies of these, authorisation must be provided by the author. In such cases, interested parties may find it useful, and more expeditious, to apply direct to such persons for copies of the relevant material.

6. Upon request by an interested party, as far as possible, *general and short reasons* for any decision not to proceed with a prosecution will be provided. As a matter of policy, no reasons will be given which reflect on the credibility of the applicant, this ultimately being a matter for a fact-finding tribunal. If it appears, for example, that a matter did not proceed because an applicant failed to appear at court, then this information will be provided. Correspondence in response to such a request will be supervised by General Counsel.

7. Ultimately, unresolved disputes about the inspection and production of documents may be resolved in the courts, pursuant to the relevant court's process for discovery.

*** Note that the form of amended guidelines had not been finally determined as at 30 June 2001. Enquiry should be made to General Counsel to the ODPP if any clarification is needed pending such finality.**



POLICY AND PROCEDURES FOR WITNESSES, INTERPRETERS AND TRANSLATORS

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.*

Witnesses, interpreters and translators have a right to be treated courteously and to be provided with the necessary information and assistance as required. It is the responsibility of the Office, in conjunction with the police, to ensure that their rights are respected.

Witnesses, interpreters and translators may have special needs that should be given special consideration; for example, the aged, those with communication difficulties or cultural differences and those with disabilities.

For advice and assistance in relation to these needs contact should be made with the Victim Support Unit.

1. WITNESSES

The police Officer-in-charge of a case (the OIC) is responsible for seeing that the witnesses get to and from court in conjunction with the Prosecutions Liaison Officer (see Police General Orders P3.7). They are also responsible for the supervision of the conduct of witnesses at court.

The Prosecutions Liaison Officer is responsible for organising transport and accommodation where needed.

Witnesses are entitled to a copy of their statement.

At court witnesses should be sought out and kept apprised before and during proceedings. Explanation of the layout of the court complex and its amenities, eg telephones, toilets and refreshments can help those unfamiliar with the court environment. The responsibility for this should be accepted by the OIC.

Prosecutors must ensure that witnesses are informed in a detailed timely manner about their attendance at court.

When, in the opinion of the Crown prosecutor, a witness is no longer required, they should be informed immediately. Witnesses are informed that they are excused and should be given a witness claim form for expenses. This should be paid without delay. Processing of witness fee payments will be five working days. The prosecutors' working knowledge of witness expenses procedures and entitlements will help answer important questions often asked by witnesses and police.

Pro-active, thoughtful, communicative strategies over and above legislative and procedural requirements will ensure that the Office does provide a quality service to its witnesses.

2. WITNESSES' ENTITLEMENTS

(a) Generally

Witness Allowance

Witnesses' expense allowances are approved by the Director of Public Prosecutions.

A witness may be entitled to:

- (i) accommodation allowance
- (ii) meal allowance
- (iii) travelling allowance; and
- (iv) an allowance for loss of earnings in accordance with the policy.

The net amount for *Loss of Income, Salary or Wages* is to be reimbursed on production of a letter from their employer or a certified accountant, stating the **net** amount of income.

(b) **Travelling Allowance**

- (i) The amount of the travelling allowance that is to be paid to a witness (other than public service officers):
 - (a) the amount paid for fares in travelling to and from court using the most economical form of public transport; or
 - (b) if public transport is not available and a witness travels to and from court in a private vehicle, then the witness may be paid an allowance as determined by the ***Public Sector Employment and Management Act***.
- (ii) A witness is not entitled to the payment of a travelling allowance if no expenses are incurred by the witness in travelling to and from court.
- (iii) If a witness travels to and from the court in a private vehicle with another witness only one payment is to be made for that vehicle.
- (iv) If approval is given for the witness to travel to and from court by air, then such travel will be by economy class (or its equivalent) and will be arranged by the Office or the Prosecutions Liaison Officer.

(c) **Accommodation and Meal Allowances (Interstate and Intrastate Witnesses)**

- (i) Accommodation will be booked and paid for by the Office for witnesses who are required to stay overnight for the purpose of attending court.
- (ii) Where accommodation is not obtained at a hotel, motel or other establishment of the kind included in the definition of hotel in the ***Hotel-Keepers Act***, the witness will, on production of receipt, be paid a daily meal allowance in accordance with section 2(c)(iii) of this Policy.
- (iii) Meal allowance will be paid as determined by the ***Public Sector Employment and Management Act*** (for breakfast, lunch and dinner) and are provided for at the place of accommodation. Where a witness is only entitled to one or two of these meals a maximum allowance per meal is provided for as follows:
- (iv) In circumstances where the witness does not eat at the place of accommodation, receipts must be produced in order for reimbursement to be claimed. Upon production of receipts, reimbursement not exceeding the prescribed maximum amount per meal provided for in section 2(c)(iii) will be provided.
- (v) Reimbursement will only be paid at the conclusion of the matter and payment will be by way of cheque.
- (vi) At no time will cash be paid to witnesses or interpreters from the Office.

- (vii) Meal allowance will only be payable to witnesses who are necessarily absent overnight or for more than 12 hours from that person's place of abode.
- (viii) If the person is a witness who is under the age of 12 years, the amount of the meal allowance is to be halved.

(d) **Police Officers**

- (i) Witness expenses by way of loss of earnings will not be paid to any police officers (intrastate, interstate or overseas). This also applies to police officers who were *off-duty* when they witnessed an offence and who subsequently give evidence for the prosecution. The appropriate police departments are expected to remain responsible for payment of wages.
- (ii) Accommodation for Northern Territory police officers will generally be provided in Visiting Officers' Quarters. When not available, appropriate hotel accommodation will be provided by the police. Meal and travel allowances will remain the responsibility of the NT Police. The Office will be responsible, however, for such entitlements in respect of interstate or international police officers.

(e) **Public Servants - State and Commonwealth**

In accordance with By-Law 21 of the *Public Sector Employment and Management Act* no witness fee payments are to be made to a witness who is a public service officer:

- (i) within the meaning of the *Public Sector Employment and Management Act*; or
- (ii) within the meaning of the *Commonwealth Employment Service Act*, or
- (iii) a police officer within the meaning of the *Police Administration Act*, or
- (iv) a prisoner of the Crown.

(f) **People Accompanying Witnesses and Babysitters**

From time to time it is necessary for another person to accompany a witness.

This generally applies to adults accompanying child witnesses, persons accompanying disabled witnesses and interstate prison officers accompanying interstate prisoners.

These requests are to be treated as a *one off*. Such requests are to be made in advance and are to be approved by either the Director or his delegate.

(g) **Expert Witnesses**

An expert witness is a person who the prosecution has defined as being called to give evidence that involves his/her particular specialisation in private enterprise and may claim up to the maximum of \$610.20 per day. This rate is set out in the Rules of the High Court and is amended from time to time. The

prosecutor will advise those persons who qualify for this fee. If the amount claimed by the expert exceeds the scheduled fee, approval from the Director or his delegate must be sought.

3. INTERPRETERS AND TRANSLATORS

Interpreters and translators are requested through the Victim Support Unit (VSU).

The VSU will make an initial booking through either the NT Interpreter and Translating Services (NTITS) or the Aboriginal Interpreter Service (AIS).

Aboriginal interpreter bookings are made through the AIS. Fees, accommodation, transport and any other costs relating to the provision of this service are arranged by AIS and debited to the Office. Bookings are subject to confirmation by the VSU.

Interpreters that are not booked through either AIS or NTITS are paid in accordance with rates as set by the Office of Ethnic Affairs – updated rates can be obtained by contacting the Business Manager:

Interpreter – public servant

Where the interpreter is a government employee and the employee is provided *leave with pay* (as opposed to *recreation leave*) no interpreter fees are payable.

Where the interpreter is a government employee and the employee is required to take leave without pay or recreation leave, interpreter fees pursuant to the current rates as set out by the Office of Ethnic Affairs will apply.

Cases cancelled – interpreter no longer required

Where the interpreter is notified prior to commencing travel, no interpreter fees are payable.

Where the interpreter is only notified upon arrival in Darwin (or Alice Springs, or as appropriate) a fee is payable.

(a) Transport

Transport to be provided to and from court. This should include:

- return airfares or bus fares (where necessary)
- return taxi pick up from airport to hotel (where necessary)
- return taxi pick up from hotel to court and to hotel after assignment (where necessary).

Taxi fares within the Darwin or Alice Springs city centre areas are only provided to attend court in exceptional circumstances where the witness can

prove hardship which may include adverse weather conditions or inability to walk to court due to a disability.

Where an interpreter's own vehicle has to be used a kilometre allowance may be payable at the current rate as set out in the ***Public Sector Employment and Management Act*** in circumstances where no scheduled passenger service (air, train, bus) is reasonably available to meet the specific needs of the situation. If a scheduled service is available, the amount payable to the interpreter is the equivalent bus fare within the NT or airfare for interstate interpreters.

(b) Accommodation and meals

To be provided in accordance with section 2(c) of this policy.

(c) General

- (i) The Office accepts responsibility on behalf of the Crown for the provision of an interpreter to be available in court in order that the defendant may understand the nature of the proceedings.
- (ii) Defence is responsible for payment of interpreter fees, other than when the interpreter is required in court; for example, where the defence require an interpreter for conferences.

4. OVERSEAS WITNESSES

The prosecutor who has carriage of the matter should make a request in writing and forward it for the Director's approval.

The request should annex a copy of the facts and the charges, refer to the importance of the witness's evidence and whether it is feasible and desirable to seek to adduce that evidence in another way.

The estimated costs should be included in the request. The aim, of course, is to ensure cost effectiveness.

5. VARIATION

- (i) Any variation, in a particular case, to the foregoing allowances and fees will not be accepted by the Office unless agreed to in writing before the relevant expense has been incurred. In addition to the Deputy Director, who holds general delegations, the Assistant Director (Alice Springs) and General Counsel are hereby designated as officers who may authorise such variations.
- (ii) Notwithstanding anything that appears elsewhere in this statement of policy and procedures, it is recognised that from time to time emergencies may arise where witnesses are genuinely in straitened circumstances and need a small amount of cash for essential food items. In the event that a relevant member of staff of the Office (whether a prosecutor, member of the VSU or of the administrative staff) gratuitously advances the cost of such food to a witness (by directly

purchasing it rather than handing over cash), then on application reimbursement will almost invariably be approved (receipts for government accounting purposes will be requested).

REX WILD QC
Director of Public Prosecutions

March 2001



PROVISION OF INTERPRETERS

The following guidelines (by way of instructions for prosecutors and the Victim Support Unit) shall be adopted when dealing with Aboriginal witnesses in the court system:

1. Prior to hearing, witnesses should be assessed, in conjunction with the Victim Support Unit, as to whether they require the assistance of an interpreter. It is to be noted that although most Aboriginal witnesses speak some English, they may not be competent in court.
2. When engaging an interpreter, the interpreter must be informed of the following:
 - name of the witness(es) to be assisted
 - name of defendant
 - type of crime.

This information will enable the interpreter to advise of any possible cultural conflicts that could arise. Where there is a conflict, another interpreter should be used.

3. Where possible, the witnesses should be advised prior to the hearing of the name of the interpreter to be used.

If there is an indication of conflict another interpreter should be used.

4. Upon engagement of an interpreter their services must be used, unless there is a justifiable reason for not doing so.



ABORIGINAL EMPLOYMENT AND CAREER DEVELOPMENT STRATEGY 2000-2003

Introduction

The Office of the Director of Public Prosecutions (the ODPP) first implemented an Aboriginal Employment and Career Development Strategy (the strategy) in July 1997.

The strategy is an integral component of the ODPP Equal Employment Opportunity Management Plan and forms part of the Human Resource Policy.

The goals of the strategy are essentially two fold. Firstly, to increase employment opportunities as well as supporting effective training and development for Aboriginal and Torres Strait Islanders so that they can reach their full career potential within the ODPP. Secondly, to increase the focus on the different cultures of both Aboriginal and non-Aboriginal people thus enabling the ODPP to better understand and address client needs.

The effectiveness of the strategy to date is demonstrated by the fact that 13% of employees are of indigenous heritage – an increase of 8%.

It is estimated that approximately 90% of criminal cases listed for hearing in Alice Springs and 70% in Darwin, concern crimes allegedly committed by Aboriginal persons. Most of these crimes are committed against other Aboriginal persons, thus giving rise to a significant number of Aboriginal witnesses.

The ODPP has established a Victim Support Unit (VSU) which provides support to victims of crime, witnesses and their families throughout the criminal justice process. This establishment of the VSU was, in part, a response to the identified needs and issues that affect Aboriginal victims and witnesses. Positions within the VSU have been identified for the employment of Aboriginal and Torres Strait Islanders.

The ODPP is committed to the continuing development and improvement of the strategy.

REX WILD QC
Director

September 2000

Legislative requirements

The *Public Sector Employment and Management Act* 1993 (the Act) requires Agencies to develop and implement equal opportunity programs.

Employment Instruction Number 11 issued by the Commissioner for Public Employment provides:

All agencies should implement an Aboriginal Employment and Career Development program. The program should be developed within the framework of the Act and the Northern Territory Public Sector Aboriginal Employment Career Development Strategy.

Section 28(2)(f) of the Act requires Chief Executive Officers to report annually on equal opportunity management programs and other initiatives designed to ensure that employees in Northern Territory Government Agencies have in place equal employment opportunities.

The goals of the strategy are to:

1. Develop and maintain an employment policy that will actively encourage Aboriginal and Torres Strait Islander people to apply for employment within the Office.
2. Increase the number of Aboriginal and Torres Strait Islander people employed by the Office.
3. Provide Aboriginal and Torres Strait Islander people with an opportunity to develop to their full potential.
4. Enhance career management by recognition of specific needs and by making available customised learning through individual career development programs.
5. Promote, utilise and retain the Aboriginal knowledge within the Office.
6. Maintain relevant, current and continuous learning opportunities for Aboriginal and Torres Strait Islander people within the Office.
7. Retention of an Aboriginal Support Co-ordinator within the Office.
8. Promote a better understanding of the indigenous culture by ensuring that all staff are trained in cross-cultural awareness.

Goal 1

Develop and maintain an employment policy that will actively encourage Aboriginal and Torres Strait Islander people to apply for employment within the Office.

Task

- Recognise relevant Aboriginal and Torres Strait Islander culture, skills and education for inclusion in job descriptions.
- Where appropriate include cultural skills and prior knowledge in job vacancies, workplace goals, objectives and JES documentation.
- Identify positions where future programs and aims will require employment of Aboriginal and Torres Strait Islander staff.
- Expand opportunities for Aboriginal and Torres Strait Islander people to participate in part-time, casual and vocational employment.
- Include an Aboriginal or Torres Strait Islander on selection panels when interviewing Aboriginals or Torres Strait Islanders for positions within the Office.
- Maintain flexible work practices to accommodate short term leave to meet family demands or community commitments. This can be made available either through paid recreation leave or leave without pay.

Goal 2

Increase the number of Aboriginal and Torres Strait Islander people employed by the Office

Task

- Identify vacancies that should be allocated for the employment of Aboriginal and Torres Strait Islander people.
- When such a position has been identified have the following included in job descriptions:

Persons of Aboriginal and Torres Strait Islander descent are encouraged to apply

- Where appropriate the selection criteria should specify that the applicant have the following attribute:

Demonstrated experience in communicating effectively and sensitively with Aboriginal and Torres Strait Islander people and have an understanding of traditional and contemporary Aboriginal and Torres Strait Islander culture, society and issues.

- Actively encourage more Aboriginal and Torres Strait Islander graduates to apply for positions within the Office through advertising in the media.
- Provide support in career advice and advancement.
- Design jobs ensuring cultural appropriateness.

- Retention of indigenous employees by providing a career structure.

Goal 3

Provide Aboriginal and Torres Strait Islander people with an opportunity to develop to their full potential.

Task

- Create *stepping stones*, that is, positions which give Aboriginal and Torres Strait Islander people the opportunity to develop to their full potential.
- Identify vacancies for which cultural skills and education of Aboriginal and Torres Strait Islander people would be beneficial to the Office.
- Completion of relevant job training for Aboriginal and Torres Strait Islander people.
- Provide opportunities for secondment to other Agencies for a period of time to undertake a particular job or project.
- If required or requested, to arrange the provision of mentor support.
- Ensure that Aboriginal and Torres Strait Islander staff have access to relevant training programs at a level which benefits the role they are expected to play within the organisation.
- Promotion of the continued respect of Aboriginal and Torres Strait Islander cultural differences.

Goal 4

Enhance career management by recognition of specific needs and by making available customised learning through individual career development programs.

Task

- Provide a broad range of training opportunities that will enhance the service provided to our indigenous clients.
- Utilise in-house cultural knowledge of indigenous employees by making available the opportunity to provide input into the Office policies and strategies.
- Recognise the unique skills which will enable the Office to provide a more efficient client service.
- Extend the representation of Aboriginal and Torres Strait Islander staff to all levels within the Office.

Goal 5

Promote, utilise and retain Aboriginal and Torres Strait Islander knowledge within the Office.

Task

- Provide Aboriginal and Torres Strait Islander staff with opportunities for promotion and career advancement through the introduction of training and development programs which combine formal and on the job training.
- Ensure that Aboriginal and Torres Strait Islander staff have access to existing mainstream training opportunities.
- Promotion of the continued respect of Aboriginal and Torres Strait Islander cultural differences.
- Provide cadetships targeting Aboriginal and Torres Strait Islander people.
- Encourage law graduates of Aboriginal and Torres Strait Islander descent to apply for *articles of clerkship* with the Office.
- Retention of indigenous employees by providing a career structure.
- Provide a support system to assist indigenous employees in performing their duties.

Goal 6

Maintain relevant, current and continuous learning opportunities for Aboriginal and Torres Strait Islander people within the Office.

Task

- Ensure an appropriate induction package is made available to new staff.
- Provide Aboriginal and Torres Strait Islander staff with on the job training.
- Ensure that Aboriginal and Torres Strait Islander staff have access to existing mainstream training opportunities.
- Ensure that Aboriginal and Torres Strait Islander staff have access to relevant training programs.
- Identify a range of development options such as rotations and secondment to match the skills of individual Aboriginal and Torres Strait Islander staff.
- Develop personal development plans and provide career counselling.
- Encourage participation in the personal development plans. If required or requested, outline training needs such as assertiveness, management issues, presentation skills and career development courses.

Goal 7

Retention of an Aboriginal Support Co-ordinator within the Office.

Task

- Provide policy advice to the Director and other government and non-government agencies on issues affecting victims of crime and other witnesses, including Aboriginal and Torres Strait Islander victims of crime and other witnesses.
- Formulate recommendations for the Office and government regarding amendments to legislation, government policy and practice as it particularly affects Aboriginal victims of crime and other witnesses.
- Liaise with Aboriginal groups and organisations on issues relating to Aboriginal victims of crime in the criminal justice system.
- Represent the Office on relevant committees in relation to Aboriginal victims of crime, including facilitating networking with relevant agencies.
- Conduct education for the public and to Crown and Summary Prosecutors regarding issues affecting Aboriginal and Torres Strait Islander victims of crime.
- Provide victim and witness support to Aboriginal and Torres Strait Islander people.

Goal 8

Promote a better understanding of indigenous culture by ensuring that all staff are trained in cross-cultural awareness.

Task

- Increase cross-cultural awareness by ensuring that all staff have undertaken cross-cultural training.
- Encourage staff to further their cross-cultural awareness.
- Address negative attitudes of staff. Racist behaviour and attitudes are not acceptable or tolerated.
- Increase staff awareness of the broad and diverse range of Aboriginal and Torres Strait Islander cultures and issues.
- Promote an environment which accepts cultural and social differences.



EQUAL EMPLOYMENT OPPORTUNITY MANAGEMENT PLAN

The Office of the Director of Public Prosecutions (ODPP) has developed an equal employment opportunity management plan to ensure the promotion and enhancement of equal opportunity within the ODPP.

The underlying principle on which the program is based is merit. This principle requires that the policies and practices relating to recruitment, employment, career development and advancement, promotion and retirement be based solely on merit, without regard to race, gender, impairment, marital status, religious/political beliefs or other non-merit related considerations.

The overall objective of the plan is the creation and maintenance of a fair and equal workplace in which individuals have the opportunity to genuinely and effectively compete for employment and training opportunities, free from any real or perceived discriminatory practices.

The overall goal of the ODPP's *Equal Opportunity Management Plan* is to promote equality of opportunity for all employees in line with government policy and the requirements of Northern Territory legislation by:

- raising commitment and awareness of the *Equal Employment Opportunity Management Plan* throughout the ODPP
- developing best practice policies, procedures and guidelines
- recognising that cultural diversity is an asset
- providing flexible work arrangements that recognise people with special needs.

Raising commitment and awareness of the *Equal Employment Opportunity Management Plan* throughout the ODPP

- Distribute a copy of the policy statement to all employees in the Darwin and Alice Springs Offices
- inform managers of equal employment opportunity requirements under the *Public Sector Employment and Management Act*

- commence investigation of equal opportunity complaints within 7 days
- review this plan every year to ensure compliance with contemporary equal employment opportunity issues and requirements
- include equal employment opportunity statements such as *knowledge and understanding of equal employment opportunity principles* in position descriptions and selection criteria of all managers
- organise equal employment opportunity awareness training for employees directly involved in management, recruitment, selection, promotion, career development and cessation of employment as required
- appoint an Equal Employment Opportunity Co-ordinator.

Develop best practice policies, procedures and guidelines

- As vacancies arise, review advertisements, position descriptions and selection criteria to ensure compliance with equal employment opportunity principles. Position descriptions should reflect the genuine requirements of the job, including formal qualifications
- train or refresh intending interviewers prior to convening each interview panel
- offer post interview counselling to all applicants
- review and monitor policies, procedures and guidelines for recruitment and selection to encourage adherence to equal employment opportunity principles and practices
- aim to inform employees on new policies, processes and procedures, such as those relating to discipline, grievances, probation and harassment
- prepare grievance settling procedures and inform employees on appeal and grievance processes as required
- encourage employees to become familiar with legislation such as the *Anti-Discrimination Act* and the *Code of Conduct* contained in the *Public Sector Employment and Management Act*
- offer employees fair and consistent access to policies, procedures, information and conditions of service
- review current policies and procedures to identify and eliminate any direct or indirect discrimination.

Recognising that cultural diversity is an asset

- Encourage people from different backgrounds to apply for positions within the ODPP

- provide and make compulsory attendance at cross cultural awareness training for all employees in Darwin and Alice Springs Offices
- endeavour to identify positions suitable to people from culturally differing backgrounds and language groups
- project positive images of the ODPP as an equal opportunity employer in position advertisements - for example, by inserting *The ODPP is an equal opportunity employer*
- review position descriptions in areas where there is an apparent imbalance of classes of employees with a view to attracting, if possible, under-represented groups.

Provide flexible work arrangements that recognise people with special needs

- Identify employees with a physical or intellectual disability and encourage employees from groups who are disadvantaged or have a special need to apply for positions, attend training courses, seminars and conferences
- advocate work-based child care needs and availability
- support flexibility of working hours to accommodate work and family responsibilities
- support updating of skills of employees returning from parental leave
- wherever possible, offer exit interviews or questionnaires to departing employees to identify relevant workplace problems
- endeavour to provide reasonable physical access or other requirements for employees/clients with a disability
- ensure that the ODPP's *Aboriginal Employment and Career Development Strategy* is maintained and operative.



PROGRESS OF A TYPICAL MATTER FROM CHARGE TO TRIAL

To assist readers gain an appreciation of the role of the Office, an outline of the progress of a typical defended matter appears below:

1. police charge defendant with indictable offence(s)
2. police refer the matter to the Office and provide a brief, including charge sheets and statements of the witnesses
3. the matter is allocated to a Crown prosecutor to prosecute at the Magistrates Court committal hearing
4. the Crown prosecutor reviews the charges to ascertain if it is more appropriate for the prosecution to proceed to finality before the Magistrates Court
5. the Magistrates Court committal hearing is held: defendant committed for trial to the Supreme Court if *sufficient evidence* to justify trial (defendant is from now on known as the accused)
6. the Crown prosecutor prepares an indictment, case summary and list of witnesses for trial
7. a pre-trial conference is held shortly before arraignment day before the Registrar at which the issues between the Crown and the defence are canvassed
8. there is an arraignment before a judge to ascertain whether a plea of guilty is to be entered into by the accused or if the matter is to proceed to trial
9. the trial date is set at a callover; depending on the availability of judges, the date fixed may be some months away
10. a Crown prosecutor is allocated the brief
11. the witnesses are subpoenaed
12. the Crown prosecutor appears at the trial, assisted by an instructing officer

13. in the event of a conviction, a Crown prosecutor will appear at the subsequent sentencing of the accused if this does not occur immediately upon the conviction
14. if an appeal is lodged against the conviction and/or sentence, General Counsel will brief the Director or other senior appropriate prosecutor before the Court of Criminal Appeal
15. some matters may be taken to the High Court.

Of course, not all matters proceed all the way to trial:

- the defendant may be discharged in the Magistrates Court
- the defendant may, depending on the seriousness of the charge(s), be dealt with summarily in the Magistrates Court
- the defendant may plead guilty in the Magistrates Court to the indictable charge(s) and, again depending on their seriousness, be committed for sentence to the Supreme Court
- after committal for trial the accused may enter a plea of guilty (at arraignment or at any time up to and including the trial)
- the Director can, at any stage, discontinue proceedings, for example, for want of sufficient evidence or in response to the wishes of the victim.



**DECISIONS OF THE COURT OF CRIMINAL
APPEAL AND THE COURT OF APPEAL
DELIVERED BETWEEN
1 JULY 2000 AND 30 JUNE 2001**

Eupene v Hales

3 March, 26 May and 4 September 2000 - Martin CJ,
Angel and Thomas JJ - 10 NTLR 16

The appellant pleaded guilty in the Court of Summary Jurisdiction to one count of having possession of property, namely, seven pearls which were reasonably suspected of having been stolen or otherwise unlawfully obtained, contrary to s.61 of the *Summary Offences Act*.

The appellant was arrested when he visited premises where police happened to be conducting a search in relation to a drug related matter. A search of the appellant's bag revealed seven pearls in a tobacco tin. The pearls were wrapped in tissue paper inside the tin. The appellant told police he had found the pearls while he was walking along Vestey's beach.

The submissions on sentence focused on whether the appellant could avail himself of the *exceptional circumstances* provision contained in s.78A(6C) of the *Sentencing Act*. That provision permits a court to refrain from imposing a minimum mandatory sentence if, inter alia, the offence was *trivial* in nature. The Court of Summary Jurisdiction found that the offence was not trivial in nature and sentenced the appellant to the mandatory minimum 14 days imprisonment.

The appellant appealed to the Supreme Court. However, because of the existence of two apparently conflicting decisions of the Supreme Court as to the meaning of *trivial* in the context of the section, the Supreme Court referred the proceedings to the Full Court for determination.

In the Full Court the respondent's submissions highlighted the apparent different approaches taken by the Supreme Court in the decisions of *Curnow v Pryce* (1999) NTSC 116, 29 October 1999 and *R v Torres* (SCC 9728321), 19 August 1999. In *Curnow v Pryce* the court applied a test which effectively meant that an offence would not be regarded *trivial* if the objective circumstances probably warranted a sentence of imprisonment (actual or suspended). That decision emphasised the remedial nature of s.78A(6C) of the *Sentencing Act*. In *R v Torres* the court emphasised the objective circumstance of each particular case without regard to what the result should be.

Argument before the Full Court considered approaches taken in other jurisdictions when the term *trivial* is used in legislation. The Full Court also sought argument from the parties on whether the elements of the unlawful possession charge had been made out in the Court of Summary Jurisdiction proceedings.

The Full Court heard argument on 3 March and 26 May 2000. The court reserved its decision.

Prior to the Full Court delivering its decision, the court sought further submissions from the parties on the question of whether the offence which the appellant pleaded guilty to had been made out, notwithstanding the plea of guilty.

Both the appellant and the respondent argued that the charge had been proven by way of the prosecution facts, the plea of guilty and submissions of counsel.

On 4 September 2000 the court, by majority (Angel and Thomas JJ) allowed the appeal, set aside the sentence and conviction and remitted the matter back to the Court of Summary Jurisdiction for re-hearing.

The majority held that the offence of being in possession of goods reasonably suspected of being stolen or unlawfully obtained required proof of the appellant's guilty state of mind at the time he came into possession of the goods, rather than subsequently. The majority held that the agreed facts did not contain unequivocal proof of the offence charged and that the plea of guilty did not amount to an unequivocal admission of guilt and for these reasons the plea of guilty should have been rejected by the magistrate.

Although the magistrate accepted the appellant's explanation as to how he found the pearls, namely, that it was after the pearls came into his possession that he decided to keep them, the majority of the Full Court was of the view that the magistrate had failed to address the critical question, that is, the state of the appellant's mind at the time he first obtained the pearls.

Martin CJ dissented on this point, taking the view that the Full Court did not have jurisdiction to reject the plea.

On the question of triviality, Angel J disagreed with the conclusion of Mildren J in *Curnow v Pryce* (1999) 131 NTR 1, holding that courts daily make non-custodial orders with respect to offences which are far from trivial. Angel J equated trivial with petty examples of a crime.

Similarly, Thomas J held that the proper test of triviality is to look at the objective circumstances of the offence without regard to the result.

The conviction was quashed and remitted to the Court of Summary Jurisdiction for re-hearing.

The applicant pleaded guilty in the Supreme Court at Alice Springs to two indictments.

The first indictment contained one count of aggravated robbery.

The second indictment contained five counts, namely:

1. Aggravated unlawful entry (intent to steal; occurrence at night time).
2. Stealing (a hammer valued at \$22.85).
3. Attempted aggravated unlawful entry (intent to steal; building a dwelling house; occurrence at night time; applicant armed with an offensive weapon, namely the stolen hammer).
4. Aggravated unlawful entry (intent to have sexual intercourse without consent, ie to commit the offence of rape; building a dwelling house; occurrence at night time armed with offensive weapons, namely the stolen hammer and a knife).
5. Unlawful sexual intercourse (rape).

All offences occurred on the night of 4 December 1998.

Facts - Indictment 1

On 25 October 1998 at 3.30 am the accused and two co-offenders saw the victim hop into a vehicle. The accused and co-offenders then approached the victim. One punched him in the face and knocked him unconscious. The victim was pushed further into the vehicle and the accused got into the passenger's seat. One of the co-offenders drove the vehicle to a location on Smith Street. There they took the unconscious victim from the vehicle. The accused dragged the victim along the ground and dumped him into the bushes. Fifty dollars was taken from the victim's wallet. The accused took some coins from the victim's vehicle. The accused and co-offenders drove off. The victim woke up and flagged down a police vehicle.

The accused was arrested and on 5 December 1998 he took part in a formal record of interview making partial admissions to the offence.

Facts - Indictment 2

At 5.00 am on 4 December 1998 the accused went to the front door of a residence and rang the doorbell. After getting no response from the occupant, he smashed the door chime and removed a flyscreen from a window endeavouring to gain entry without success. He then went to a shed at the rear of the premises, removed a hammer from the shed and smashed a rear window of the house.

The occupant yelled out to the accused that she had rung the police. On hearing this the accused left the yard with the hammer.

The accused then walked towards another house. He was carrying a knife and a hammer. He entered the victim's house and went to her room. She was asleep. He covered his face with a white plastic bag and carried the knife. He then held the blunt edge of the knife to the throat of the victim for a short time. He pinned her to the bed and removed her underpants and his own pants. The victim struggled and screamed.

The accused then hit the victim to the left side of her head with the hammer he had previously obtained. The victim lost consciousness. When she came to she found herself on the floor with her face covered and the accused was on top of her. He threatened to sodomise her with the hammer. He raped her. The accused threatened to come back and do it again. After some time, he left the premises.

The victim rang the police. During the assault the victim suffered bruises, grazes and lacerations. She was taken to hospital and received two stitches to the head.

The accused was located by police later on the same day and arrested. He participated in a record of interview the following morning and made admissions.

The applicant was 19 years old at the time of the offences and had a substantial record of offences of dishonesty, property offences and assault committed both as a juvenile (commencing at the age of 13 years) and as an adult. He had previously been imprisoned in New South Wales for three months for four counts of assault and in May 1998 had been placed on a three year bond in that State for an offence of break, enter and steal.

The sentencing judge heard evidence from a psychiatrist and concluded that:

- on the balance of probabilities she was not able to find that the applicant suffered from paranoid schizophrenia
- although rehabilitation must be a factor in sentencing the applicant in view of his age, rehabilitation did not play such a significant part in view of the very serious nature of these offences
- deterrence and retribution were factors which played a role in offences of the present seriousness.

In arriving at the sentence imposed, the sentencing judge firstly fixed notional sentences totalling 18 years and seven months imprisonment. This was achieved by ordering all of the sentences on the second indictment be cumulative on the sentence imposed on the first indictment and by a mixture of orders that the sentences in the second indictment be served concurrently and cumulatively. Having regard to the *principle of totality* the sentences were reduced to a total of 14 years and six months imprisonment. A non-parole period of eight years and six months was fixed.

The applicant applied for leave to appeal against sentence on the grounds that:

1. the effective sentence of 14 years and six months and the non-parole period of eight years and six months were manifestly excessive, taken as a whole in all the circumstances of the case and of the applicant

2. in imposing the effective head sentence and non-parole period, the learned sentencing judge erred in failing to have regard to the totality of the overall sentence in the light of the mitigating factors
3. the learned sentencing judge erred in that she did not give any or sufficient weight to the psychiatric evidence called on behalf of the applicant.

The court unanimously granted leave to appeal and allowed the appeal on ground 2. The court held that the only real issue disclosed concerned the application of the totality principle. The court held that even though none of the individual sentences were manifestly excessive, the sentencing judge's approach in a simple arithmetical accumulation of the various sentences may have led to an adoption of a starting point which was too high for the totality of the applicant's criminality.

In re-sentencing the applicant the court emphasised that *an early plea of guilty in a case such as the present involving an offence of unlawful sexual intercourse has particular significance as a mitigating factor where a complainant is relieved of the distressing and distasteful experience of giving evidence and being cross examined about highly personal matters.*

The court re-sentenced the applicant to a total effective sentence of 11 years and six months imprisonment. None of the individual sentences were disturbed. The new sentence was arrived at by ordering more concurrency of sentences on the sentences in the second indictment. A non-parole period of seven years was fixed.

Kalmar v R

20 September 2000 - Angel ACJ, Bailey and Riley JJ

The applicant pleaded guilty to 18 counts of aggravated unlawful entry of a building, 18 counts of stealing, seven counts of aggravated criminal damage and two counts of aggravated unlawful use of a motor vehicle. The value of the property stolen or damaged was in excess of \$120,000.00.

Very little of the property stolen was recovered. Little explanation was offered for the commission of the offences. The offences of unlawful entry were characterised by the destruction of personal possessions of the victims within the residences.

The applicant who was aged 18 years at the time of the commission of the offences had an extensive prior criminal history for similar offences. A co-offender involved in several of the offences was dealt with in the Court of Summary Jurisdiction. The co-offender had no prior criminal history.

The applicant was sentenced to five years and eight months imprisonment. A non-parole period of two years and ten months was fixed.

The applicant applied for leave to appeal on the grounds that:

1. the sentencing judge gave undue weight to the applicant's substantial prior record of offending
2. the sentencing judge attached undue weight to the applicant's age of 18 years as compared to the co-offender's age of 17½ years

3. the court attached insufficient weight to the principles of parity
4. the court attached insufficient weight to the applicant's prospects of rehabilitation
5. the court failed to have regard to the principle of totality.

The court unanimously refused leave to appeal. The respondent was not called upon to make oral submissions.

Clancy v Gokel

20 September 2000 - Angel ACT, Bailey and Riley JJ

The appellant, a juvenile, pleaded guilty in the Juvenile Court to two counts of unlawful use of a motor vehicle, five counts of stealing, three counts of aggravated unlawful entry of a dwelling house, one count of attempted unlawful entry, one count of aggravated unlawful damage and two counts of unlawful damage. The offences were committed during six different episodes of offending over a period of two months.

The circumstances were fairly typical of their kind, entry into houses and stealing cash, jewellery, alcohol and other goods. On one occasion the appellant stole a keycard from her aunt and withdrew \$290.00 in six different transactions from her aunt's account. This money was spent on alcohol, cannabis, clothing and jewellery. The motor vehicles were taken for joy riding and none of them were damaged. On most, if not all occasions, the appellant was accompanied by another or others. The value of the property stolen was \$4,400.00 and the value of the property damaged was \$3,540.00.

The appellant was 14 years old when the offending took place. The offences were committed while the appellant was four months into an 18-month good behaviour bond for offences of dishonesty. The appellant's prior history included a previous breach of a community service order.

The appellant was sentenced to a total of 12 months detention which was wholly suspended upon the appellant entering into a bond to be of good behaviour for two years. Conditions were attached to the bond. Although the maximum penalties for the offences ranged between two years and twenty years, 12 months is the maximum period for which an order for detention of a juvenile may be made.

The appellant appealed to the Supreme Court on the ground that the sentence was manifestly excessive. On 2 September 1999 the court dismissed the appeal.

The unsuccessful appellant then appealed to the Court of Appeal where it was argued that the Supreme Court was in error in dismissing the appeal. The appellant complained of the length of the fully suspended term of 12 months and also the length of the two-year bond.

The court unanimously dismissed the appeal holding that the sentencing magistrate might well, given the appellant's prior history of broken bonds, have ordered the appellant to actually serve a period of detention. The respondent was not called upon to make oral submissions.

On 1 September 1998 the appellant was found guilty in the Court of Summary Jurisdiction of having trespassed unlawfully on enclosed premises, namely a large storage container owned by Energy Resources of Australia, contrary to s.5 of the *Trespass Act*. The trespass took place on a container situated on the Jabiluka Mineral Lease on 19 May 1999. The magistrate found that the storage container was *land*. The appellant was convicted and ordered to pay a \$500.00 fine and \$20.00 victim levy. The appellant was a traditional Aboriginal owner of the relevant land for the purposes of the *Aboriginal Land Rights (Northern Territory) Act*.

She appealed her conviction to the Supreme Court on the following grounds:

1. the court erred in finding that at the time of the alleged offence the appellant was not acting in accordance with her entitlements under s.71(1) of the *Aboriginal Land Rights (Northern Territory) Act*
2. the court erred in having regard to the painting of a slogan on the container in determining whether the appellant's actions had interfered with ERA's enjoyment of its estate or interest in the land
3. the court erred in finding that the appellant's actions interfered with ERA's enjoyment of its estate or interest in the land
4. the court erred in finding that the appellant's actions were unlawful despite her belief as to her right to be on the land
5. the court erred in regarding as an aggravating factor, that the appellant's intention in entering the land was to ventilate her claim of entitlement or her beliefs.

On 12 March 1999 the Supreme Court dismissed the appeal.

The unsuccessful appellant appealed to the Court of Appeal. The respondent filed a notice of contention challenging the magistrate's finding that the container was *land*. The grounds raised three issues:

1. whether the rights conferred on the appellant by s.71 of the *Aboriginal Land Rights (Northern Territory) Act* authorised her to be on the land subject to the Jabiluka Mineral Lease such that the appellant could not trespass on it for the purposes of s.5 of the *Trespass Act*; and
2. even if the appellant was a trespasser, whether the learned magistrate could be satisfied beyond reasonable doubt that she had no honest belief that she was entitled to take the action taken by her
3. if the container was a chattel, the prosecution had failed to prove beyond reasonable doubt that under the terms of the agreement and the lease, ERA was entitled to place the container where it had.

The court unanimously dismissed the appeal holding that the magistrate was in error

in characterising the container as *land* for the purposes of s.71 of the ***Aboriginal Land Rights (Northern Territory) Act***. The court found that the container remained a chattel from first to last and because the lawfulness (or otherwise) of ERA placing the container within the boundaries of its (valid) mineral lease was never a matter in dispute before the magistrate it was not an issue that could be raised before the Court of Appeal. This finding effectively disposed of grounds 1 and 3 given that s.71 of the ***Aboriginal Land Rights (Northern Territory) Act*** is limited to rights concerning the entry, occupation and use of *land*.

In relation to ground 2, the court was satisfied (assuming that s.30(2) of the ***Criminal Code*** did apply to an offence against s.5 of the ***Trespass Act***) that no defence of *honest claim of right* was available to the appellant on the evidence. The court endorsed the findings of the magistrate and the judge below that on the evidence given by the appellant before the magistrate she did not have the relevant genuine belief.

Nelson v R

27 November 2000 - Riley J

The applicant pleaded guilty on an ex officio indictment to one count of unlawfully causing grievous harm and one count of assault with circumstances of aggravation. The victim in each count was different. The assaults were committed a month apart.

On the evening of 30 November 1999 the applicant came home to his wife of 13 years after a day of drinking and an argument began about the applicant's drinking habits. The applicant became increasingly angry, pushed his wife over, dragged her from the lounge room to the kitchen and poured a half-full kettle of recently boiled water over the victim. He then stabbed her three times with a steak knife. The burns were particularly serious and the victim was still receiving regular medical attention at the time of sentence.

On the evening of 31 December 1999 the applicant was drinking in the grounds of Alice Springs High School with a small group of people including his mother. The applicant requested that his mother give him money for alcohol and she refused. He then ripped a branch off a nearby tree about one metre long and one and a 25 centimetres thick and hit his mother over the head, twice to her face, once to her mouth and once to her left eye. He then punched her in the eye. His mother gave him money to stop hurting her. The victim suffered bruising and lacerations to the eye and mouth.

The applicant was sentenced to three years and six months imprisonment on the charge of causing grievous harm and to 20 months imprisonment on the charge of assault. The sentencing judge stated that although the two sentences should be served cumulatively because they were quite separate offences on different dates involving different victims, the sentences would be made concurrent as to eight months to take account of the *totality principle*.

The total effective head sentence imposed was four years and six months.

Section 53(1) of the ***Sentencing Act*** requires a court sentencing an offender for 12 months or longer (provided the sentence is not suspended in whole or in part), to fix a period during which the offender is not eligible to be released on parole *unless it considers that the nature of the offence, the past history of the offender or the circumstances of the particular case make the fixing of such a period inappropriate*.

The sentencing judge declined to fix a non parole period because the applicant had an extensive history of offending, the attacks were cowardly and serious attacks upon Aboriginal women, the applicant appeared to have little or no prospect of rehabilitation and the applicant had previously breached a suspended sentence imposed for aggravated assault.

The applicant applied for leave to appeal on the grounds that:

1. the sentence is manifestly excessive taken as a whole in all the circumstances and of the applicant
2. the learned sentencing judge erred in failing to set a non-parole period
3. the learned sentencing judge erred in failing to give due weight to the totality principle by not making the sentence for assault wholly or substantially concurrent with the sentence for causing grievous harm.

The application for leave to appeal was considered by a single judge exercising the powers of the Court of Criminal Appeal pursuant to rule 86.14 of the Supreme Court Rules. The application was determined on written arguments in the absence of the parties. On 27 November 2000 Riley J refused the applicant leave to appeal.

Jackson v Hales

13 November and 1 December 2000 - Martin CJ,
Thomas and Riley JJ

After a hearing following a plea of not guilty the appellant was found guilty by the Court of Summary Jurisdiction of possessing a trailer reasonably suspected of having been stolen or otherwise unlawfully obtained contrary to s.61 of the **Summary Offences Act**. It is a defence to such a charge if the defendant gives to the court a satisfactory account as to how the defendant obtained the property referred to in the charge. The trailer was worth about \$2,000.00. The finding of guilt attracted a mandatory minimum sentence of 14 days imprisonment unless the appellant proved, on the balance of probabilities, that he had *co-operated with law enforcement agencies in the investigation of the offence* as provided for by s.78A(6C)(d) of the **Sentencing Act**.

The appellant gave to the investigating officer an explanation of how he obtained the trailer. He gave evidence to similar effect when the matter came before the Court of Summary Jurisdiction.

The court found that although the appellant co-operated with the police in that he kept his appointments with police during the investigation, was polite, courteous and answered questions for as long as questions were asked, co-operation for the purpose of s.78A(6C)(d) of the **Sentencing Act** also entailed a substantial degree of truth in what was said on those occasions. As the court had disbelieved the account given by the appellant to the police during the investigation, the court found that the appellant had not *co-operated with law enforcement agencies*.

The appellant was sentenced to 14 days imprisonment.

The appellant appealed to the Supreme Court on the ground that the magistrate erred in his interpretation of s.78A(6C)(d) of the **Sentencing Act** in terms of co-operation with law enforcement agencies. On 8 March 2000 the Supreme Court dismissed the appeal.

The unsuccessful appellant appealed to the Court of Appeal on a number of grounds centred upon the meaning of the requirement in s.78A(6C)(d) that the court be satisfied that the offender co-operated with law enforcement agencies in the investigation of the offence.

The court unanimously dismissed the appeal holding that what amounts to co-operation will be a matter of fact and degree in each case. The expression *co-operate* in the context under consideration required an element of assistance to the enforcement agencies or a working together with them towards a common end. For there to be co-operation there must be either assistance to the agencies or, at least, a willingness to assist. In some cases a simple act such as attending for interview by police may suffice. In other a greater degree of co-operation may be necessary. An offender may co-operate with authorities even if that co-operation does not produce a tangible result. It is the fact of co-operation that is relevant not the product of that co-operation.

The court held that in the circumstances of this matter the appellant cannot be said to have co-operated with law enforcement agencies in the investigation of the offence where the explanation that he volunteered to those agencies as to the circumstances surrounding the obtaining of possession of the trailer, the centrepiece of the enquiry, were rejected. An offender does not co-operate with authorities by providing a false account of events in circumstances which do not suggest an innocent explanation for so doing.

Willoughby v Trenerry 21 March 2001 — Angel, Thomas and Bailey JJ

The appellant pleaded guilty in the Court of Summary Jurisdiction to one count of stealing. Stealing is a property offence which attracts the mandatory minimum sentencing regime provided for in the **Sentencing Act** except where *the offence occurred at premises, or a place, where goods are sold and the offender was lawfully in the premises or at the place at the time of the offence.*

The appellant, having been evicted from the Victoria Hotel because he was intoxicated, re-entered the hotel through a staff entrance at the rear which was not open for use of the public. He then entered a non-operating coldroom which was being used as a storeroom and took and drank a bottle of alcohol. On again being discovered he was evicted for the second time, staff at the time being unaware that he had drunk the alcohol. He was later apprehended by police.

The court found that the appellant was a trespasser on the basis that having been evicted, his implied licence as an invitee to enter the hotel had been withdrawn. The court found that, as the appellant was a trespasser, he was not lawfully on the premises. Accordingly he did not fall within the exception to the imposition of mandatory sentencing set out in Schedule 1 of the **Sentencing Act**. The court sentenced the appellant to the mandatory minimum 14 days imprisonment.

The appellant then appealed to the Supreme Court. That appeal was dismissed. The

Supreme Court decided that the implied licence to enter premises such as the Victoria Hotel is limited to the public areas of the premises, and that the coldroom was not a place open to members of the public pursuant to an implied right to enter the hotel. The appellant was therefore a trespasser and not lawfully on the premises.

The appellant then appealed to the Court of Appeal.

The Court of Appeal unanimously dismissed the appeal. The court held that a person was a trespasser if, on entering premises in accordance with an implied licence, he acted in a way that was alien to the invitation. The appellant's theft of the alcohol was alien to the invitation. The court went on to say that in any event, having been evicted from the premises that night, the appellant entered as a trespasser when he returned to the premises.

The respondent was not called upon to make oral submissions.

Wayne v R

2 April 2001 - Angel J

On 6 December 2000 the applicant pleaded guilty in the Supreme Court at Alice Springs to the following charges:

1. aggravated unlawful entry (intent to steal; building a dwelling house; building occupied at time; occurrence at night time, armed with an offensive weapon)
2. aggravated unlawful use of a motor vehicle (vehicle having a value greater than \$20,000.00)
3. stealing
4. aggravated assault (victim suffered bodily harm; victim threatened with offensive weapons, namely, iron bar and axe).

The applicant requested the sentencing judge to take into account when passing sentence on him one further offence of unlawfully using a motor vehicle.

At about 9.30 pm on 26 April 2000 the applicant and a co-offender entered a dwelling house at Alice Springs. Both had been drinking alcohol. They had with them an iron bar and an axe. They started to push an unlocked vehicle out of the yard. The sole occupant of the house, a 58-year-old man, heard the noise and went outside to investigate. He saw the applicant pushing the vehicle onto the road and shouted out to him. The applicant and the co-offender ran away. The victim retrieved his vehicle and went into the house to telephone the police.

The applicant returned to the house with the iron bar, smashed his way through some glass paneling and entered the kitchen of the house. The victim became involved in a fight with the applicant. The co-offender entered the premises and swung an axe through the door towards the victim who ducked and rolled away.

The victim was struck a number of hard blows on his back and on the back of his head. He asked his attackers to stop. One of the co-offenders picked up a carving knife and threatened to cut his throat. The co-offenders demanded his car, some money and beer. He told them that the keys were in the ignition, gave them money out of his wallet and told them that there was beer in the fridge. The co-offenders then left taking the car. The victim summonsed help and was hospitalised until 5 May with a fractured skull, fractured ribs and lots of bruising and cuts. When apprehended by the police the co-offenders declined to answer any questions. The sentencing judge found that the victim had suffered serious physical and substantial psychological and emotional problems which were continuing at the time of sentence.

The applicant was 19 years at the time of the offence and had seven previous convictions for stealing, four for criminal damage, two for unlawful entry, one for assault, six for unlawful use of a motor vehicle, one for resisting police, seven traffic matters and three breaches of bond.

On counts 1, 2 and 3 the applicant was sentenced to an aggregate sentence of four years imprisonment. He was sentenced to two years imprisonment on count 4. It was ordered that the sentences be served cumulatively. The total effective sentence therefore was six years imprisonment. A non-parole period of three years was fixed to commence after the applicant had served a mandatory sentence of 14 days applicable to the property offences comprising counts 1, 2 and 3.

The applicant subsequently applied to the Court of Criminal Appeal for leave to appeal against severity of sentence on the grounds that the learned sentencing judge erred:

1. in imposing a sentence which was manifestly excessive in all the circumstances of the case and of the applicant
2. in not giving sufficient weight to the applicant's age, past disadvantage and plea of guilty
3. in ordering that count 4 be served cumulatively on counts 1, 2 and 3
4. in discounting the applicant's prospects of rehabilitation.

The application for leave to appeal was considered by a single judge exercising the powers of the Court of Criminal Appeal pursuant to rule 86.14 of the Supreme Court Rules. The application was determined on written arguments in the absence of the parties. On 2 April 2001 Angel J refused the applicant leave to appeal.

Walker v R

10 May 2001 — Mildren ACJ, Bailey and Riley JJ

On 13 November 2000 the applicant was convicted of further breaches of a suspended sentence originally imposed on 16 July 1997 by Angel J. The outstanding sentence of 16 months was fully restored by the court, the applicant having already served four months.

On 30 November 2000 the applicant applied to re-open proceedings pursuant to s.112 of the **Sentencing Act**, seeking an order that a non-parole period pursuant to s.53(1)(b) of the **Sentencing Act** be set. The court declined to set a non-parole period and referred the question of whether he could set a non-parole period in the circumstances to the Full Court of the Supreme Court pursuant to s.21 of the **Supreme Court Act**.

The Full Court considered whether, under s.43(5)(c) or (d) of the **Sentencing Act**, when a court restores a sentence, or part of a sentence, which is for a period of 12 months or longer, and orders the offender to serve it, the court has power to fix a non-parole period pursuant to s.53(1) of the **Sentencing Act**. The Crown supported the applicant's submissions.

The Full Court made the unanimous finding that the court does have such a power.

The court ordered that the matter be remitted to Angel J for further consideration, as to whether or not the court should fix a non-parole period in the circumstances.

McKay v R 11 May, 14 and 20 June 2001 - Mildren ACJ, Bailey and Riley JJ

The appellant was found guilty by a jury after a trial before Martin CJ of two counts of having sexual intercourse without consent, contrary to s.192(3) of the **Criminal Code**. He was unrepresented at trial. He was given an aggregate term of 14 years imprisonment with a non-parole period of ten years. He was acquitted on a further charge of disabling with intent to commit a crime, contrary to s.175 of the **Criminal Code**.

The appellant appealed against the sentence on the grounds that:

1. the sentencing judge erred in law by imposing an aggregate sentence
2. the sentencing judge erred in imposing a sentence that was manifestly excessive in the circumstances of the offences and the applicant
3. the sentencing judge erred in the application of the principles of general deterrence to the sentences imposed upon the applicant
4. the sentencing judge erred in law by taking into account in sentencing an offence of which the applicant was not charged and a further offence of which the applicant was acquitted at trial
5. the sentencing judge erred in imposing a sentence that infringed the totality principle of sentencing.

The Crown contested all grounds of the appeal.

The appeal was heard on 11 May 2001. On 14 June 2001 the court advised that the appeal would be allowed on ground 1 and received further submissions on sentence.

On 20 June 2001 the court unanimously granted leave to appeal on ground 1 and allowed the appeal on this ground. Leave to appeal on the remaining grounds was refused.

The court re-sentenced the appellant to eight years imprisonment on count 1 and ten years imprisonment on count 2. It was further ordered that six years of the sentence on count 2 be served cumulatively on the sentence imposed on count 1. The total effective sentence imposed therefore was a term of 14 years imprisonment. A non-parole period of ten years was fixed. In the end the sentence and non-parole imposed on appeal was the same as that imposed by the sentencing judge; the only difference being that the Court of Criminal Appeal imposed individual sentences for each offence in lieu of the original aggregate sentence.



OUTSTANDING APPEALS IN THE COURT OF CRIMINAL APPEAL AND COURT OF APPEAL AS AT 30 JUNE 2001

Knight v R

9 October 2000 - Angel ACJ

7 June 2001 - Angel, Mildren and Thomas JJ

The applicant pleaded guilty in the Supreme Court to one count of cultivating cannabis with the circumstance of aggravation that the number of plants was a commercial quantity, namely, 1556 plants.

In about September 1997 the applicant entered into an agreement with one EB and others to cultivate a cannabis crop at a very remote and largely inaccessible location. The applicant used a helicopter from his business and employed his piloting skills in getting men and materials to the crop site and provided supplies during the growing process. The applicant was involved in ensuring that another person GB returned to the Northern Territory from Queensland to take part in the operation. He did that in a manner which GB found threatening. He paid for GB's airline ticket to return to Darwin and paid for GB's outstanding rent in Queensland. He delivered a sawn off shotgun to another co-offender PC and required that GB leave all of his personal papers with him. The sentencing judge found that whilst the applicant may not have been the ultimate organiser, he was an integral part of organising the enterprise.

The crop had a potential value of a little over \$500,000.00 and could have been as high as \$1,100,000.00.

Although the applicant entered a last minute plea of guilty on the morning of the trial his sentence was reduced by almost 15% on that account. He did not co-operate with the authorities. The applicant had no relevant prior convictions. He exhibited no remorse.

The co-offenders were sentenced to the following terms:

PC two years six months imprisonment. Non-parole period 20 months. GB six months imprisonment. EB ten months imprisonment.

GB and EB had co-operated with the authorities. They pleaded guilty at an early stage and gave evidence against the applicant at the committal proceedings and were prepared to give evidence against him at trial.

The sentencing judge found that the applicant was involved to a greater degree than GB and PC. The applicant was sentenced to imprisonment for three years. A non-parole period of 18 months was fixed.

The applicant applied for leave to appeal against severity of sentence on the grounds that the sentencing judge erred:

1. in imposing a sentence without properly considering the principle of parity in regard to the co-offenders
2. in imposing a sentence which was manifestly excessive in all the circumstances.

The application for leave to appeal was initially considered by a single judge exercising the powers of the Court of Criminal Appeal pursuant to rule 86.14 of the Supreme Court Rules. The application was determined on written arguments in the absence of the parties. On 9 October 2000 Angel ACJ refused the applicant leave to appeal.

The applicant subsequently sought leave to appeal from the Court of Criminal Appeal constituted by three judges. That application was heard on 7 June 2001. The court reserved its decision. No decision had been delivered as at 30 June 2000.

Fittock v R

12 and 13 June 2001 - Angel, Mildren and Riley JJ

On 11 November 1999 the applicant was found guilty by a jury of one count of murder and one count of attempted murder. This followed a trial in Alice Springs.

The applicant had been in a relationship with the deceased for a number of months during the early part of 1998. In about May 1998 the deceased ended the relationship and commenced another relationship with one J, the victim of the attempted murder. The applicant had difficulty coping with the termination of his relationship with the deceased. The applicant made many attempts to reconcile his relationship with her to no avail.

On Friday night 6 November 1998 the applicant went to the Borroloola Inn where between 6.00 p.m. and midnight he consumed approximately 12 mid-strength beers. He then drove to his home where he consumed rum.

The applicant then fully loaded a semi-automatic rifle with 21 rounds, took a bottle of rum and walked to the perimeter fence of the hotel where the deceased was working

After the deceased finished work at about 2.00 am on Saturday 7 November 1998 she went to a room in a demountable building situated not far from where the applicant was sitting. J was waiting for the deceased inside the room.

The deceased left the demountable at about 4.00 am. As she shut the door of the demountable she was confronted by the applicant who shot her once in the chest at point blank range killing her almost immediately. Another shot may have been fired.

Upon hearing the shot J got up and went towards the door. As he did so, the applicant entered the demountable saying *Where's this cunt, I got some for him and I still got some for me*. The barrel of the gun was then pointed at J. Before the applicant could pull the trigger J grabbed the barrel of the rifle and pushed it up into the air. As he did so the applicant discharged the rifle. A struggle then ensued with the applicant and J grappling for the firearm. During this time the rifle was discharged by the applicant on at least two occasions.

J was able to wrestle the firearm away from the applicant. Nearby hotel guests and staff then attended and assisted in restraining the defendant until police arrived.

At trial the applicant denied that the initial shot or shots fired were intended to, or in fact did, hit the deceased. It was not his intention to kill her or J but merely to *talk* to them. The killing was accidental.

The applicant was sentenced to mandatory life imprisonment for murder and to eight years imprisonment for attempted murder. It was ordered that both sentences be served concurrently. A non-parole period of four years was fixed in respect of the sentence of eight years for attempted murder. The court is precluded from fixing a non-parole period in respect of the sentence of life imprisonment for murder.

The jury originally comprised 14 members including two reserve jurors. One of these was discharged at an early stage of proceedings. The other was discharged in the normal way at the conclusion of the summing up. During the summing up the trial judge reminded the jury that their verdict *should be unanimous*. Immediately prior to the jury returning its verdict on each count they were asked whether they were unanimously agreed to which the foreman replied that they were. After each guilty verdict the foreman was asked *is that the verdict of you all?* to which he replied *yes, it is*.

The applicant applied for leave to appeal against both convictions on nine grounds. Grounds 1 to 4 concerned constitutional issues which the Court of Criminal Appeal had no jurisdiction to entertain. The applicant applied to the High Court of Australia to remove these grounds from the Court of Criminal Appeal into the High Court. That application was heard by the High Court on 24 November 2000 and was dismissed. A report of those proceedings appears at page 171 of this report.

Grounds 5 to 9 allege that the verdict is unsafe and unsatisfactory because:

5. the Crown prosecutor sought to put the Crown case on an alternative basis for the first time in his final address
6. the trial judge erred in law by failing to direct the jury on the issue of provocation
7. the trial judge erred in law by directing the jury that their verdict should be unanimous
8. the trial judge erred in law by inadequately instructing the jury on how they should assess the evidence of a witness who had admitted telling a lie under oath

9. that the trial judge erred in law by failing to make a formal order directing, pursuant to s.37A(1) of the *Juries Act* that there be additional jurors chosen and returned as reserve jurors in respect of the trial.

The court heard the application on 12 and 13 June 2001. The court reserved its decision. No decision had been delivered as at 30 June 2001.

Miles v R

10 October and 4 December 2000 - Angel J

In October 1998 the appellant was convicted by a jury of one count of supplying heroin and one count of possessing heroin. The appellant was not legally represented and appeared for himself.

The appellant was sentenced to a total period of imprisonment of eight years with a non-parole period of six years.

The appellant subsequently sought leave to appeal against conviction and sentence. Leave to appeal against conviction was refused by the Court of Criminal Appeal on 8 October 1999 and special leave to appeal was refused by the High Court of Australia on 24 March 2000.

On 23 June 2000 the Court of Criminal Appeal granted leave to appeal against sentence, allowed the appeal and remitted the matter back to the original sentencing judge.

A full note of the proceedings referred to above appears in the 1999-2000 Annual Report at pages 159 and 184.

On the remitter the appellant was represented by counsel who made submissions on the appropriate length of sentence. The sentence was reduced and the appellant was re-sentenced to a period of seven years imprisonment with a non-parole period of five years and three months.

The appellant subsequently sought leave to appeal against this sentence on the grounds that it was manifestly excessive. The application for leave to appeal was considered by a single judge exercising the powers of the Court of Criminal Appeal pursuant to rule 86.14 of the Supreme Court Rules. The application was determined on written arguments in the absence of the parties. On 10 October 2000 Angel J granted the applicant leave to appeal.

The appeal has been listed for hearing in August 2001.

On 2 November 2000 the appellant lodged further applications for leave to appeal against conviction and for leave to appeal out of time respectively. These applications were considered by a single judge exercising the powers of the Court of Criminal Appeal pursuant to rule 86.14 of the Supreme Court Rules. The applications were determined on written arguments in the absence of the parties. On 4 December 2000 Angel J refused to grant the applicant an extension of time.

The applicant subsequently sought to obtain leave to appeal from the Court of Criminal Appeal constituted by three judges. The application which was to be heard on 8 June 2001 was abandoned and dismissed on the day of hearing.

Jarc v R

4 April 2001 - Angel J

The applicant, a 20 year old, was found guilty by a jury of murder at Darwin on 21 February 1999 and was sentenced to life imprisonment.

The applicant had been befriended by the deceased and on the date of death had visited the deceased at his unit in Northlakes, a Darwin suburb. The applicant claimed that he struck the deceased to the head with a full wine bottle as a result of an unwanted homosexual advance by the deceased. He stated that the deceased then threatened him with a knife and that the applicant disarmed the deceased and then caused the death of the deceased by striking him to the head with a fire extinguisher a number of times. He claimed that he then stabbed the dead body of the deceased with the knife he had taken from him. He claimed to have acted as a result of provocation and/or in self-defence.

The Crown case against the applicant was a combination of direct and circumstantial evidence. The circumstantial evidence included evidence of the Crown's forensic pathologist, Dr Sinton, who stated that at least one of the stab wounds (and therefore the Crown alleged, by inference, the others) was inflicted prior to the death of the deceased, together with DNA evidence and expert evidence of blood splatter. The combination of that evidence, the Crown alleged, indicated that the deceased was bleeding profusely from the stab wounds when the applicant attacked him with the fire extinguisher and killed him.

The applicant applied for leave to appeal on the grounds that:

1. the Crown prosecutor commented on the failure of the applicant to testify
2. the trial judge erred in failing to direct the jury on the failure of the Crown prosecutor to put the prosecution scenario to forensic pathologist Dr Lee, an expert witness for the defence
3. the Crown prosecutor failed to put the prosecution scenario to Dr Lee
4. the trial judge erred in failing to direct the jury that it must be satisfied beyond reasonable doubt of the opinion of Dr Sinton that the stab wounds were inflicted prior to death.

The application for leave to appeal was considered by a single judge exercising the powers of the Court of Criminal Appeal pursuant to rule 86.14 of the Supreme Court Rules. The application was determined on written arguments in the absence of the parties. On 4 April 2001 Angel J refused the applicant leave to appeal on ground 1 and granted leave to appeal on grounds 2, 3, and 4.

The appeal had not been listed for hearing as at 30 June 2001.

On 6 December 2000, in the Supreme Court at Alice Springs, the respondent pleaded guilty to the manslaughter of his sister.

The facts found by the court were that both the respondent and the deceased had been drinking heavily through the day and night prior to the death. The respondent and the deceased had not been on good terms for some time. Old grievances surfaced. A verbal argument developed between the respondent and the deceased while they were having breakfast the following day. The deceased asked the respondent for beer and money. He told her to go away. The deceased was argumentative with the respondent and used foul language. A scuffle broke out during which they pushed and punched one another. The respondent picked up a walking stick and using both hands began to strike the deceased about the head and legs. The deceased fell to the ground. The stick broke. The respondent then picked up a car starter motor weighing 15 kilograms and with his arms raised above his head threw it at the deceased striking her in the upper back. Relatives in the immediate vicinity called upon the respondent to stop. He replied that he was going to teach her a lesson.

The respondent then obtained a boning knife with a blade measuring 15 centimetres and stabbed the deceased once in the upper right back. The deceased died shortly after. The wound was measured at 15 centimetres in depth and had been driven to the hilt into the deceased's back with moderate to severe force. The knife punctured the right lung and severed the pulmonary artery. The deceased died from loss of blood.

Although the Crown case was that the accused intended to cause the deceased grievous harm (thus having the necessary intent for the offence of murder), the Crown accepted the respondent's plea of guilty to manslaughter on the basis that he was legally provoked by the deceased so as to reduce the crime from murder to manslaughter. The provocation consisted of hurtful words and insults coupled with verbal and physical goading by the deceased of the respondent.

The respondent was 32 years old at the time of sentence and had no relevant prior convictions.

The respondent was sentenced to imprisonment for three years. It was ordered that the sentence be suspended after a period of 11 months. A period of two and a half years was fixed during which the respondent is not to commit another offence punishable by imprisonment. The sentence was backdated to 7 January 2000, that being the day the offence was committed and the respondent taken into custody. The practical effect of the order suspending the sentence is that the respondent was released from custody on the day of sentence, 8 December 2000.

On 15 December 2000 the Director of Public Prosecutions filed a Notice of Appeal in the Court of Criminal Appeal the grounds being, in effect, that the sentencing judge erred in imposing a Manifestly inadequate head sentence of three years and in suspending too great a proportion thereof

The appeal has been listed for hearing in August 2001.

On 12 December 2000 the respondent pleaded not guilty to one count of murder but guilty to manslaughter. The Crown accepted the respondent's plea of guilty to manslaughter in full satisfaction of the murder indictment on the basis of diminished responsibility.

In 1998 the respondent, aged 42 years, was then living in the long grass in the Darwin area with his de facto wife, the deceased. During the evening of 1 July 1998 the respondent and the deceased were drinking wine at an itinerant campsite in the city area. They both became heavily intoxicated. Some time around midnight they walked to the Daly Street Bridge where they had some bedding hidden in the drain underneath. An argument developed. The deceased wanted to return to her brother's camp in a vacant lot in Mitchell Street. The respondent wanted to sleep at the bridge. The respondent became incensed with the deceased arguing with him. The respondent punched the deceased once in the mouth with his fist. The deceased fell down an embankment ending up in a drain, a drop of about three metres. The deceased then walked along the drain. The respondent followed her and continued to administer a beating striking her about the body an unknown number of times.

After the beating the respondent put the deceased in her swag under the bridge and went to sleep next to her. The deceased died probably within half an hour of the beating. The following morning the respondent checked the deceased and found that she was dead. He called an ambulance on 000. The respondent left the area as police arrived. He was located later that day by police in an intoxicated state. He stated that he had punched the deceased once in the face the night before and then woken up to find her missing. He was arrested on a charge of aggravated assault and detained for further questioning. When again questioned by police the following day and confronted with the results of the post-mortem examination, he made partial admissions to punching the deceased, causing her to fall down the embankment and then punching her three or four times to the body because she would not shut up.

The deceased died as a result of internal bleeding from a severely ruptured liver. The deceased also sustained lacerations and abrasions to the head, face, chest, abdomen, back of the trunk, to both arms and legs. She also suffered soft tissue haemorrhage across the back of the trunk, buttocks, right side of the chest and the right breast. There were also fractures of the pelvis, lower spine and back of the rib cage. There was a small amount of bleeding into the left kidney. The pattern of injuries was consistent with several severe blows to the head and repeated blows to the body with a blunt instrument.

The respondent had one prior conviction for manslaughter. In 1993 he was sentenced to eight years imprisonment with a minimum term of three years.

The respondent was sentenced to 12 years imprisonment. A non-parole period of eight years was fixed.

On 13 February 2001 the Director of Public Prosecutions filed a Notice of Appeal in the Court of Criminal Appeal the grounds being, in effect, that the sentencing judge erred in imposing a head sentence and non-parole period which were manifestly inadequate in all the circumstances.

The appeal has been listed for hearing in August 2001.

Lai v R

Application for leave to appeal filed 1 March 2001

On 14 February 2001 the applicant was found guilty by a jury of murdering his wife following an eight-day trial in the Darwin Supreme Court.

The Crown case was based on strong circumstantial evidence. The applicant and the deceased were married in 1981. They ran a small take away food business in Darwin. Approximately a year prior to her death in April 1999 the deceased and the applicant were introduced to an Indonesian businessman (RO) with a view to starting up an import business. Over time a close relationship developed between the deceased and RO. They went away on trips together to Bali and Singapore. In November 1998 the applicant learned that the deceased travelled to Singapore to be with RO. The applicant telephoned RO and threatened to kill them should they come back. The deceased subsequently returned to Darwin and obtained a restraining order against the applicant. Proceedings were commenced in the Family Court which made orders in relation to the custody of children and the division and disposition of assets including the business and two residences. The deceased was to take over the running of the business until it was sold. The applicant was to have custody of the children on the weekend. They were to swap houses. They did so ten days before her death. The deceased changed the locks in her house and gave a key to RO. The applicant did not have a key.

On 24 April 1999 the deceased worked at the business until approximately 9.50 pm and then returned home. It had been arranged that RO would come over that night. When she arrived home the applicant was waiting inside the house for her. He had used a brick to break a large hole in the rear sliding deadlocked door. In doing so he cut his fingers and left bloodstains on the broken glass in the sliding door and on the brick. The applicant used a broom and a dustpan to sweep up the broken glass inside the house. He deposited it outside the broken door. In the process he left bloodstains on two pieces of broken glass, the broom handle and dustpan handle. The applicant used a television video cable to strangle the deceased to death. During the course of the assault the applicant left bloodstains on the deceased's T-shirt. Before leaving he took from the deceased's body a distinctive gold chain she had been seen wearing earlier that evening. The chain broke and the clasp was found by police near the body.

The applicant then returned to his residence and hid the chain under his mattress. He then took both children to McDonald's and on the way told his ten year-old daughter that if anyone asked whether he went out that day she should say he stayed home. The deceased's body was discovered by RO and police notified. Police attended the applicant's residence to check on the welfare of the children. The applicant pretended that he was unaware of his wife's death and repeatedly suggested or asked if something terrible had happened. He later made a written statement to police that he has not seen his wife for nearly two weeks and that he had not been to her residence since he moved out ten days before. Police found the necklace later that same day when they searched the applicant's residence.

Some three weeks after his arrest he was interviewed by members of the Australian Federal Police in relation to an unrelated matter. During that interview he volunteered a new version of events in which he admitted going to the deceased's residence on the night of her death. He claimed that his wife was already dead when he entered the

unlocked front door and that in fear and panic he cut his finger on the broken sliding door. He explained that he took the deceased's necklace as a keepsake.

DNA analysis established that the bloodstains were those of the applicant. At trial the applicant admitted that the bloodstains were his. However it was suggested that the bloodstains had been deposited on the items on some earlier occasion when he was in occupation of the residence. The applicant did not give or call evidence.

At trial, in cross-examination, a police investigator gave evidence that the accused had no prior convictions.

On 16 February 2001, the applicant was sentenced to mandatory life imprisonment.

On 1 March 2001 the applicant applied for leave to appeal against conviction on the grounds that the trial judge:

1. misdirected the jury in how they could use the evidence of the applicant's good character (ie lack of prior convictions)
2. erred in admitting into evidence conversations between the applicant and members of the Northern Territory Police.

The application had not been listed for hearing as at 30 June 2001.

Gokel v Gualandi

Appeal filed 23 March 2001

The respondent pleaded guilty in the Court of Summary Jurisdiction to one count of unlawfully possessing a dangerous drug specified in Schedule 1 to the *Misuse of Drugs Act*, namely, cocaine. The sentencing magistrate found that there were two aggravating circumstances for the purposes of s.37 of the *Misuse of Drugs Act*, namely, that the respondent had a prior conviction for possessing cannabis and that the offence was committed in licensed premises. The maximum penalty for this offence was a fine of \$5,000.00 or imprisonment for two years. Subsections 37(2)(b) and (3) of the *Misuse of Drugs Act* require a court in these circumstances to impose a sentence requiring the person to serve a term of actual imprisonment of not less than 28 days unless, having regard to the particular circumstances of the offence or the offender (including the age of the offender where the offender has not attained the age of 21 years) it is of the opinion that such a penalty should not be imposed.

The respondent gave evidence that he honestly believed the drug to be amphetamine and not cocaine and submitted that he should be sentenced on the basis of his belief rather than on the basis of what the drug actually was. Amphetamine is a dangerous drug specified in Schedule 2 to the *Misuse of Drugs Act* and in the circumstances before the court carried a lesser maximum penalty of a fine of \$2,000.00. Although the sentencing magistrate accepted the respondent's evidence and submission, he nevertheless convicted and sentenced the respondent for possessing the Schedule 1 drug (cocaine) rather than the Schedule 2 drug (amphetamine). The respondent was sentenced to imprisonment for one month.

The respondent then appealed to the Supreme Court against conviction and severity of sentence.

On 1 March 2001 the Supreme Court allowed the appeal on the basis that the identity of the drug was an essential element of the offence charged and that the prosecution had failed to prove that the respondent did not have an honest and reasonable belief as to the identity of the drug possessed. The conviction and sentence was quashed.

The prosecution then appealed to the Court of Appeal on the grounds that the Supreme Court erred in:

1. quashing the conviction imposed by the Court of Summary Jurisdiction
2. not treating the plea of guilty to the offence in the Court of Summary Jurisdiction as sufficient proof of the elements of the relevant charge
3. treating the belief of the respondent as to the actual identity of the dangerous drug as relevant to the question of conviction
4. finding that the sentencing magistrate had positively found that the respondent had an honest and reasonable belief that the substance in his possession was amphetamine.

The appeal has been listed for hearing in August 2001.

Damaso v R

Application filed 15 June 2001

On 23 May 2001 the applicant pleaded guilty to the following charges:

1. possessing cannabis with the circumstance of aggravation that the amount was a commercial quantity, namely, 940.5 grams
2. supplying cannabis to another person.

On 22 December 1999 police executed a search warrant where the applicant was living. In all police found five bags of cannabis, two sets of electronic scales and a quantity of small plastic unused cipseal bags. The applicant was arrested. When questioned by police he admitted that the cannabis, scales and bags were his. He said he was going to use the scales to *weigh some ounces up* and that he was *going to give them to (his) family as presents*. He also admitted that he had smoked cannabis with friends at various times from his supply.

By virtue of subsections 37(6)(b) and (7) of the *Misuse of Drugs Act* which came into operation on 14 December 2000 there was a presumption that the applicant intended to supply the cannabis. The applicant did not attempt to prove the contrary. The applicant submitted that the amendment did not apply to him as the offence of possession (count 1) was committed before the amendment came into operation.

The cannabis had an estimated street value of \$23,500.00. The applicant had two convictions for possessing cannabis.

The sentencing judge held that the amendments to s.37 of the *Misuse of Drugs Act* did apply to the applicant because they did not affect rights or obligations but merely the way in which they were to be contested in court.

The applicant was sentenced to two years imprisonment on count 1 and six months imprisonment on count 2. It was ordered that the sentences be served concurrently. A non-parole period of one year was fixed.

On 15 June 2001, the applicant gave notice of application for leave to appeal against sentence on the grounds that:

1. the sentence was, in all the circumstances of the case and the applicant, manifestly excessive
2. that the learned sentencing judge erred in finding that amendments to s.37 of the *Misuse of Drugs Act* were retrospective and that they applied to the defendant.

The application for leave in the first instance will be determined by a single judge exercising the powers of the Court of Criminal Appeal by way of written submissions pursuant to Part 3 of Order 86 of the Supreme Court Rules.



APPLICATIONS IN THE HIGH COURT

Fittock v R

24 November 2000 - Gummow, Kirby and Hayne JJ

On 11 November 1999 the applicant was found guilty by a jury of one count of murder and one count of attempted murder. This followed a trial in Alice Springs. The facts of the case are set out fully at page 160 of this Report.

On 7 December 1999 the applicant filed in the Court of Criminal Appeal an application for leave to appeal against conviction on grounds other than those set out at page 161.

On 11 August 2000 the applicant filed a Notice of Motion applying to remove five questions to the High Court of Australia. Essentially those questions involved whether or not the system of reserve jurors in the Northern Territory was contrary to the Commonwealth Constitution and whether the mandatory life imprisonment for murder was similarly invalid. The questions sought to be removed were additional to those raised in the application for leave to appeal.

The application was unanimously dismissed. The court was of the opinion that in the setting of the litigation, in particular the pendency of the appeal to the Court of Criminal Appeal on other grounds, the removal application was premature.



OUTSTANDING HIGH COURT APPEAL

DPP Reference No 1

Application filed 20 July 2000

This case was noted in the 1999-00 Annual Report at page 167. Questions of law were referred to the Supreme Court at the request of the Director of Public Prosecutions pursuant to s.162A of the *Justices Act* after the applicant for special leave to appeal (a senior elder of the Gumatj Aboriginal Clan and responsible for enforcing Aboriginal law in land which the Gumatj clan owned) was found not guilty by a magistrate of charges of assault and unlawfully damaging property.

On 12 March 1999 the court determined the questions as follows:

- traditional Aboriginal law cannot found an honest claim of right within the meaning of s.30(2) of the *Criminal Code*
- on the facts in the case is s.26(1)(a) of the *Criminal Code* was not capable of authorising the impugned behaviour of the respondent.

The decision of the Supreme Court is reported in 8 NTLR 148.

The applicant then appealed these determinations to the Court of Appeal on the grounds that they were wrong in law.

On 22 June 2000 the Court of Appeal unanimously dismissed the appeal. The decision of the Court of Appeal is reported in 156 FLR 310.

On 20 July 2000 the applicant applied to the High Court for special leave to appeal against the decision of the Court of Appeal on the grounds, in effect, that the decision of the Court of Appeal was wrong in law.

The application had not been listed for hearing as at 30 June 2001.