



**DIRECTOR
OF PUBLIC
PROSECUTIONS**
NORTHERN TERRITORY

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

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

2016-2017



DIRECTOR
OF PUBLIC
PROSECUTIONS
NORTHERN TERRITORY



**DIRECTOR OF PUBLIC PROSECUTIONS
NORTHERN TERRITORY**

TWENTY-SEVENTH ANNUAL REPORT

FOR YEAR ENDED 30 JUNE 2017



DIRECTOR
OF PUBLIC
PROSECUTIONS
NORTHERN TERRITORY





30 September 2017

Ms Natasha Fyles MLA
Attorney-General and Minister for Justice
Parliament House
State Square
DARWIN NT 0800

Dear Attorney-General

ANNUAL REPORT 2016-2017

In accordance with the requirements of section 33 of the ***Director of Public Prosecutions Act***, I submit to you the Annual Report on the performance of the Director of Public Prosecutions for the period 1 July 2016 to 30 June 2017.

Yours sincerely

W.J. KARCZEWSKI QC



**DIRECTOR
OF PUBLIC
PROSECUTIONS**
NORTHERN TERRITORY

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OFFICE LOCATIONS

1. NORTHERN REGIONAL OFFICE DARWIN (Head Office)

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DARWIN NT 0801

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

2. SOUTHERN REGIONAL OFFICE ALICE SPRINGS

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

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

3. KATHERINE OFFICE

Level 1, Ground Floor (Rear)
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KATHERINE NT 0850
PO Box 1295
KATHERINE NT 0851

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MISSION STATEMENT

MISSION

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

VISION

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

GOALS

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

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



Mission Statement in Kriole

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

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

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

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

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

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

- Ola weka onli gada woriyabat faindimbat raitwan wed bla wot bin hepin - nomo laigim yu o heitim yu o yu femli o enibodi.
Jei gan toktok la enibodi bla yu bijnij, onli la jeya weka wen jei 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
OF PUBLIC
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NORTHERN TERRITORY

DIRECTOR'S OVERVIEW

In February 1998, the then Director of Public Prosecutions, Rex Wild QC, and the then Commissioner of Police entered into a Memorandum of Understanding (MoU) in Respect of Summary Prosecutions. The terms of the MoU appear in the 1997-1997 Annual Report.¹ The MoU is reproduced at Appendix A to this Report for ease of reference.

Circumstances have changed very considerably since 1998, so much so that the MoU is now totally out of date and is no longer used as point of reference for any purpose.

In the 2011-2012 Annual Report the outgoing Director, Richard Coates, discussed at some length the unsuccessful attempts which had been made to update the MoU and called upon the Commissioner of Police to sign up to a new Service Level Agreement (SLA).² Mr Coates observed that *"unless the current arrangements are documented there will be ongoing uncertainty as to who is responsible for what in summary prosecutions. This is not fair on the hard working summary prosecutors both police and civilian who are working at the coal face."*

In the 2012-2013 Annual Report, after noting my predecessor's lament, I noted that I did not pursue the finalisation of the SLA because of strong indications given to me by police senior management and by the Chief Executive of the Department of the Attorney-General and Justice that what was being proposed was a new system whereby police prosecutors would be replaced by civilian prosecutors.³

The anticipated proposal manifested itself in July 2013, with a direction being given to me by the then Attorney-General, the Hon John Elferink, to civilianise the Police Prosecutions Unit in Darwin (the CoPPs Project). I reported on the CoPPs Project in the 2013-2014 Annual Report⁴ and in the 2014-2015 Annual Report.⁵ The CoPPs Project was finalised in December 2013.

The CoPPs Project was restricted to the civilianisation of Police Prosecutions in Darwin. It did not affect operation in Alice Springs and Katherine, they being the other two centres

¹ At pages 77-82

² At pages 11-12

³ At page 11

⁴ At pages 9-10, 33-34

⁵ At pages 35-36

where civilian summary prosecutors are based.⁶ In each of these locations, the hybrid arrangement identified in the MoU continues to exist. However, as mentioned at the outset, the MoU is so far out of date that it has ceased to be of relevance. Discussions between this Office and senior police management with a view to finalising the SLA are continuing slowly. Invariably, the sticking point in any discussions, perhaps not surprisingly, is the issue of who will fund what.

One of the consequences of these protracted negotiations is that the *hard-working (civilian summary) prosecutors who are working at the coal face* have been deprived of the administrative support to which they are entitled.

As a consequence, the focus of my attention in the reporting year was to alleviate the plight of summary prosecutors in Alice Springs and Katherine. I approached this task regardless of who was actually responsible for funding it.

Up until June 2017, summary prosecutors in Alice Springs and Katherine had no administrative assistance in respect of file preparation and maintenance. So, for example, it fell upon the individual prosecutor to photocopy the police file given to him or her and to serve the file on the defence by way of prosecution disclosure. The practical aspects associated with the obligation associated with continuing disclosure also fell upon the prosecutor. In addition, because the files belonged to the police and because the summary prosecutors were, in the first instance, accountable to police in respect of the work performed by them, no separate records were kept by this Office, with the result that the Office had no visibility of the actual workload of the prosecutors. Also, because summary prosecutors were not using the DPP case management system (CaseNet), they did not have access to an electronic court diary which would enable them to plan their future court appearances. In Alice Springs, problems arose because of the way in which work was being allocated to summary prosecutors by the Officer in Charge of Police prosecutions.

In May 2015, the Office deployed to all three offices the IJIS/CaseNet integrated system, which allows for the automated transfer of data from IJIS to CaseNet. To enable this to occur, it is necessary for the DPP registry staff to create a file on the matter. The file creation occurs in CaseNet, as does the allocation to a prosecutor. This information is updated in the electronic diary. The data recorded includes details such as charges, court venue, court time and court dates. These functions are undertaken by DPP registry staff in all three Office locations for both Crown and Summary Prosecutions.

From October 2016, DPP Professional Assistants in the Alice Springs office commenced providing the civilian summary prosecutors with administrative support. In addition to maintaining CaseNet as outlined above, the administrative support includes the preparation of briefs, updating of the electronic diaries, and liaising with the OIC police on individual matters.

In order to streamline the workflow, the Office has realigned the business practice of the Alice Springs office by converting an existing AO3 position to undertake dedicated registry functions.

⁶ There are four civilian summary prosecutors in Alice Springs and one civilian summary prosecutor in Katherine.

In Alice Springs the role of allocating files to summary prosecutors was taken over by the Senior Crown Prosecutor. This will ensure that summary prosecutors are allocated hearing files according to their relative skills and experience and the complexity involved.

In Alice Springs, summary prosecutors did not have the benefit of assistance from the Witness Assistance Service (WAS) when conducting hearings in both Alice Springs and on bush circuits. The services of WAS were restricted to servicing the needs of victims and witnesses in the Supreme Court. During the reporting year, I issued an instruction that WAS services were to be extended to summary prosecutions in Alice Springs and on bush circuits.

On 1 June 2017, the DPP began providing administrative assistance to the civilian summary prosecutor in the DPP Katherine office. The administrative assistance provided does not extend to the preparation of briefs. That responsibility remains with police.

Another major achievement during the reporting year was the amalgamation of the Summary Prosecutions registry and the Crown Prosecutions registry in Darwin. The amalgamation of these registries provides efficiencies in work processes and timeliness in recording and updating the CaseNet system, providing prosecutors with a one-stop shop and the practice managers with centralised file location, along with seamless monitoring and tracking of files within the system and timely updating of court diaries.

I take this opportunity to express my gratitude and thanks to all my staff who work tirelessly to discharge their respective functions and to meet their obligations. It is through their dedication and goodwill that the Office is able to provide to the community the professional service that it does.

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

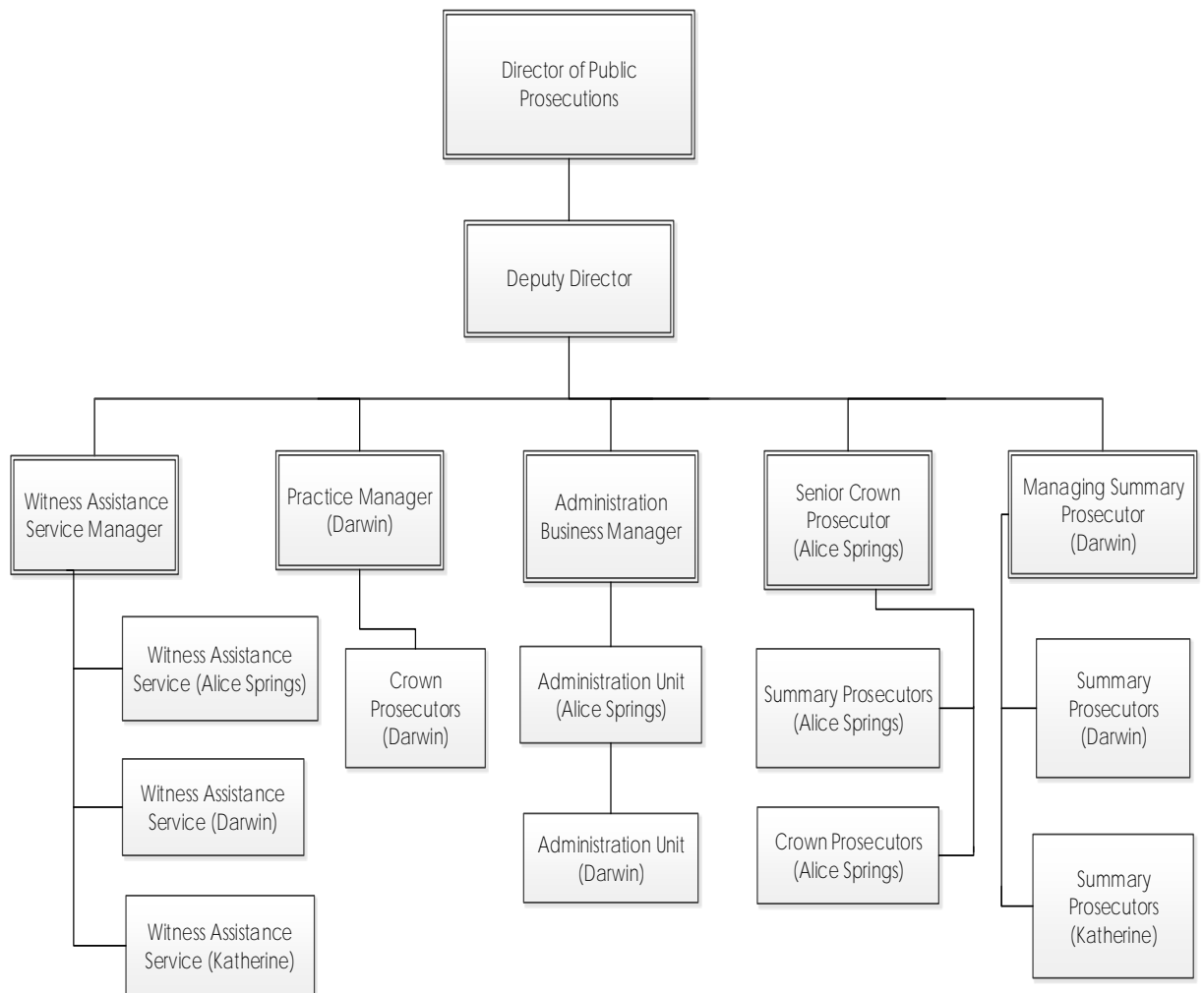
No directions were issued by the Attorney-General to me during the reporting year under either section 26 or 28.



**DIRECTOR
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NORTHERN TERRITORY



DPP ORGANISATION CHART





DIRECTOR
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FUNCTIONS OF THE DIRECTOR OF PUBLIC PROSECUTIONS

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

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

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

General Powers

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



HUMAN RESOURCE MANAGEMENT AND DEVELOPMENT

As at 30 June 2017 the total number of Full Time Equivalent (FTE) staff was 87. The following table provides a breakdown between legal staff, Witness Assistance Service staff (WAS) and corporate support staff.

Position Level	Total FTE	Female	Male
Director	1		1
Legal Staff			
EO4C	1		1
EO2C	1		1
EO1C	3		3
SP2	5	3	2
SP1	7	4	3
P3	9	7	2
P2	17	11	6
Graduate	1		1
Total Legal Staff	45	25	20
Witness Assistance Service (WAS)			
SAO2	1		1
P3	1	1	
P2	1	1	
AO6	1	1	
AO5	7	6	1
AO3	2	1	1
Total WAS Staff	13	10	3
Administrative Staff			
SAO1	1	1	
AO7	1	1	
AO6	2	1	1
AO5	4	4	
AO4	9	8	1
AO3	12	10	2
Total Administrative Staff	29	25	4
TOTAL FTE*	87	60	27
*Total number of FTE includes: 1x Part time employee 3x Casual employees and 4.5x Temporary positions to focus on special prosecutions A total number of 11 FTE identified as coming from Aboriginal group.			

Training

The DPP continued to deliver on its commitment to provide a comprehensive professional development program to all staff. During the year, staff participated and attended a number of training programs and conferences.

Professional development was delivered through a variety of methods, including employees performing higher duties, on-the-job training, presentations delivered by internal experts and mentoring. All professional development sessions were video linked in real time to the Alice Springs office. Internal legal training sessions are recognised by the Northern Territory Law Society as continuing professional development activities for the purposes of the Legal Profession Regulations.

In addition, the DPP covered costs associated with renewal of practising certificates for all its prosecutors.

Direct expenditure on external training for 2016-17 was \$92,000. This is in addition to in-house and on-the-job training which is not costed.

The following table summarises the key training and development initiatives delivered in 2016-17 and the number of staff who participated.

2016-17 Courses/Conferences	Staff Attended
4WD Training	3
AACP Conference 2016	5
Accounts Payable	1
Advanced Microsoft Word 2010	2
AGD Leadership Workshop	4
AGD Mentoring Program	5
AIS Communicating across Languages	8
Basic Writing course	12
Certificate IV in Legal Services	1
CLANT 2017	19
CPD - Aboriginal Witnesses	20
CPD - Advocacy Workshop 2016	9
CPD - Capacity to Instruct	1
CPD - Child Witnesses	18
CPD - Common Purpose	14
CPD - Costs in the local court	17
CPD - Cross Examination on Documents	1
CPD - Dealing with the Bench	11
CPD - Defensive Conduct	1
CPD - Duplicitous	25

CPD - Evidence Illuminated	6
CPD - HRG Prep Workshop	11
CPD - Identification Evidence	22
CPD - Interacting with Self-Rep defendants	31
CPD - Junior Lawyers Unfavourable Evidence	17
CPD - Mandatory Sentencing Regime	15
CPD - New Drug Driving, Drager	23
CPD - Particulars	17
CPD - Plea Negotiations & Statement of Facts	19
CPD - Practice Management	14
CPD - Pre Advocacy, Understanding Evidence in Chief	6
CPD - Prepare and run Voir-Dires	13
CPD - Process and Procedures towards the Supreme Court	9
CPD - Proofing witnesses	31
CPD - Submission on Sentence	1
CPD - Submissions and Sentencing	1
CPD - Summary in-house workshop and team building	14
CPD - Tendency and coincidence	24
CPD - Understanding evidence in Chief	4
CPD - Youth Justice	12
CPD - Youth Offenders	1
CPD- Amendments to Misuse of Drugs Act	17
Cross Cultural Training	15
Disability Confidence Training	2
Domestic Violence Workshop	14
DPP Biannual Conference	40
DPP Executive 2017	2
Emotional Resilience Workshop	5
Emotionally Intelligent Communicator	2
Excel Introductory	1
Excel Intermediate	1
Fire Warden Training	6
First Aid Course and Renewal	3
First Line Manager Program	3
Indigenous Family Violence Policing Conference	1
In-house WAS Workshop	10
International Criminal Law 2016 Conference	1
Legal Eagle Conference	1
LexisNexis	4
Machinery of Government (MOG) Program	1
Mentoring Training Program	1
Merit Selection	1

Microsoft Office Beginners	2
NTPS Aboriginal and Torres Strait Islander Employee Forum	2
Opening Legal Year (OLY)	11
Performance Management	1
Safe from the Start	1
SARC - Open Day	2
Supreme Court Open Day	5
Trauma Counselling	1
Trauma Toolbox	1
Women Leaders in the Public Sector	1
ZOLO Project Information Session	14

Membership and working groups

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

- AGD Audit & Risk Committee
- AGD Executive Leadership Group
- AGD Emergency Management Committee
- AGD Indigenous Reference Group
- AGD IJIS Business Advisory Group
- Crimes Victim Advisory Committee
- Criminal Court Users Forum
- Criminal Lawyers Association NT
- Domestic Violence Local Reference Group, Alice Springs
- Workplace Gender Equality
- ODPP National Executives Meeting
- Work, Health Safety Committee

Development of summary prosecutors

The Judges of the Local Court hold an annual conference. In 2016-17, the conference was held on 22 and 23 August 2016. During this period, the Local Court sat for a limited period each morning. The lower workload allowed for the DPP Summary Prosecutions to facilitate a two-day workshop, with presentations delivered by senior Crown prosecutors and members of the NT Police Force. The workshop was held in Darwin. Topics presented included practice management skills, tendency and coincidence evidence, serious harm, unfavourable witnesses and a discussion on communicating across languages led by the Aboriginal Interpreting Service.

Throughout the 2016-2017 financial year the DPP offered in-house Continuing Professional Development (CPD) opportunities for junior lawyers. CPD presentations were scheduled to occur every fortnight. The junior lawyers CPD presentations were facilitated by senior Crown prosecutors and senior staff from the DPP. Topics discussed

include discussing recent case law and developments on matters of sentencing, evidence, practice and procedure

Development of Witness Assistance Service (WAS)

WAS held its annual staff workshop on 25 and 26 August 2016 in Darwin. WAS officers from Darwin, Katherine and Alice Springs attended sessions on understanding Domestic Violence and what avenues are available to support victims, working with Aboriginal interpreters and working with Auslan interpreters to enable better support to witnesses and victims required to give evidence. Other sessions included understanding child development and the impact of trauma and working with local Court prosecutors. The annual workshop was designed to allow WAS officers to discuss their different experiences working in remote areas and how to recognise and deal with vicarious trauma.

Presentation and training programs provided by the DPP

During the reporting period the DPP provided a number of presentations and training programs to the following organisations and groups:

- GDLP Law Students
- NT Police with presentations and activities focusing on:
 - Legal challenges and evidentiary issues the DPP foreshadows with the use of Body-Worn Video Statements in court
 - Participation in Moot Court training at the Police College
 - Role of the DPP and Criminal Justice System to the Police College
 - Command Training on file preparation
 - Command Training on Mental Health in the Local Court;
 - Training at the Police Investigators course regarding file preparation and admissibility
 - Specialist training to Strike Force Trident
 - Training to general duties patrol groups and police recruitment courses
 - Training of Aboriginal Community Police officers
 - Giving evidence for investigators
 - Witness Assistance Training to new recruits; and
 - Witness Assistance Services participation at NT Police Safety Expos held in Darwin and Alice Springs.
- Corrections probation and parole officers with training focusing on:
 - Role of the DPP
 - Court Proceedings
 - Evidence; and
 - Sentence and dealing with breaches of sentencing orders.
- Witness Assistant Services delivered presentations or participated in the following:

- Law Week activities held at the Katherine Court House
- Annual open day at the Sexual Assault Referral Centre (SARC)
- Presentation to the Ngukurr Safe House
- Presentation to the Katherine Women's Crisis Centre; and
- Participation in the Darwin Supreme Court open day.

INTERSTATE CONFERENCES

National Executives Meeting

The National Executives Meeting was held in Tasmania on 30 March 2017. This meeting is held annually and is attended by managers from Public Prosecution offices across Australia and New Zealand.

The aim of the meeting is to keep abreast of national issues, initiatives and service trends. It is a forum to discuss models of service delivery, practice expertise and discuss issues of national relevance. The agenda items included Early Resolution – Strategies and Results, Case Management Guidelines, Operational Reviews, Impact of Reform and Victim and Witness Initiatives.

The DPP NT provided a presentation on the recent review conducted by KMPG (a note of which appears on page 25 of this report), case management guidelines, diversity programs, mobile devices including eBrief portal and information management. The conference was extremely well attended and highly successful.

Association of Crown Prosecutors Conference (ACCP)

In July 2016 five Crown prosecutors from the Darwin and Alice Springs offices attended the Annual Conference of the Australian Association of Crown Prosecutors, jointly hosted by the Australian Capital Territory Director of Public Prosecutions and the Director of Military Prosecutions. The conference, which is hosted by a different jurisdiction each year, focuses on challenges encountered by Crown prosecutors who regularly appear in jury trials and in appeals from jury trials. This year's conference program included topics on persuasive jury advocacy, the evolution of the acceptance of unsworn evidence of child witnesses, and a most informative visit to the new state-of-the-art Australian Federal Police forensic facility.

Work Experience

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

As our work is often of a sensitive and confronting nature, care is taken in the selection of cases to which the students are exposed. Students are given the opportunity to shadow a prosecutor during the week and attend court with the prosecutor. The student can ask

questions about the prosecution process generally and observe basic office and practice skills.

The Darwin office of the DPP provided work experience to three high school students, one from Kormilda College and two from Darwin High School. One student from St Phillips College was provided with work experience in Alice Springs. The Alice Springs office also provided unpaid work experience to two law students studying at the University of South Australia.

Corporate citizenship

The DPP actively supports the Charles Darwin University (CDU) Law Faculty by providing annual sponsorship to the CDU School of Law Practical Advocacy prize. The prize is awarded annually. The recipient of the 2016-17 DPP prize for Practical Advocacy for Outstanding Academic Achievement was awarded to Ms Samantha Hicks. Ms Hicks is from South Australia. She provided the Office with the following note:

"I completed my Law Degree at Charles Darwin University in 2016. My studies were external as I am based in Adelaide, and I studied as a mature-age student (I am now 34). Law, Justice and the State, the course for which I was awarded the prize for Outstanding Academic Achievement, was one of my final subjects. It was an eye-opening and enjoyable topic, providing practical context and insight into the rule of law, natural law, and social justice. My law degree has provided me with professional opportunities and developed skills that I am able to use in my day-to-day work life. I am grateful to have had the opportunity to study, and also for the support of the legal community in the NT, and the DPP which make recognition of such achievements possible."

Solomon Islands – Northern Territory Twinning Program

Following the success of the 2016 placement of two Solomon Island prosecutors with the DPP Darwin office,⁷ the Office was once again asked and agreed to host two Solomon Island prosecutors as part of a professional skills development program.

As in the previous reporting year, four Solomon Islands lawyers participated in the development program. The program, funded by the Australian Government, placed two of the Solomon Islands lawyers with the DPP, one with the NT Legal Aid Commission and one with Northern Australian Aboriginal Justice Agency (NAAJA).

The two prosecutors who participated in the placement were Mrs Sirepu Ramosaea and Ms Margaret Suifa'asia.

A program was devised which would expose the prosecutors to all facets of DPP operations.

During their first week, the Solomon Islands prosecutors were introduced to the DPP Case Management System (CaseNet) and the DPP Portal. They had a tour of the watchhouse at the Darwin Police Station and met with the Officer-in-Charge of the Judicial

⁷ A note of the 2016 placement appears on page 24 of the 2015-2016 Annual Report

Operations Section and the Youth Diversion Unit and gained an understanding of the processes and procedures relating to arrest and charge laying. The Witness Assistance Service Manager gave a presentation on the role of WAS officers. Over the following weeks, the Solomon Islands Prosecutors shadowed DPP prosecutors at the Darwin Local Court, Children's Court, Supreme Court and Court of Appeal to observe first-hand how Northern Territory courts operate.

The second week of the program focused on proceedings in the Local Court. The highlight of the week was a trip to Katherine to observe proceedings in a more remote location. While in Katherine they observed a number of contested hearings and met with the Katherine-based DPP prosecutor. They also attended a presentation by police in the Police Prosecutions Unit regarding the operation of the hybrid prosecution unit model that operates in Katherine.⁸ They also received a briefing from the Traffic Operations Unit of Katherine Police and viewed a demonstration of a number of technical devices including breath testing equipment, body-worn cameras and speed detection devices. They also attended Catholic Care, a not-for-profit service provider which provides alcohol and other counselling services to persons with matters before the Court.

During their third, fourth and fifth weeks, the Solomon Islands Prosecutors were given an introduction to Crown prosecutions and proceedings in the Supreme Court. In the Supreme Court they observed plea proceedings, a trial, a special hearing,⁹ an appeal from the Local Court to the Supreme Court and argument in the Court of Criminal Appeal. They were also given a presentation on prosecuting sexual offences and viewed the vulnerable witness facilities in the Darwin Supreme Court.

Health and wellbeing

The Office continues to be focused on providing initiatives that improve the health and wellbeing of our staff. Health and wellbeing programs directed through the Department of the Attorney General and Justice include:

- Employee Assistance Program
- Influenza vaccinations; and
- Yoga in the workplace.¹⁰

INFORMATION TECHNOLOGY

In April 2016 the Office commenced a review to improve its current IT business processes.

The CEO AGD approved 12 months funding to engage the services of a Subject Matter Expert (SME) to assist the DPP in mapping the workflows and defining business requirements. The SME will commence in the 2017-2018 financial year.

⁸ The prosecution unit in Katherine consists of police prosecutors who attend to bail and arrest matters and one summary prosecutor who conducts the hearings.

⁹ Under Part IIA of the *Criminal Code*

¹⁰ The approval for a four week trial program was given by the CEO AGD on 2 June 2017. The pilot program which was initiated by the DPP is available to all employees of the AGD. The program, which consists of one 45 minute session every week, is to commence on 29 August 2017.

Further enhancements to the CaseNet system were undertaken in 2016-2017 with the development and implementation of an appeals module. However as appeal results are not transferred from IJIS to CaseNet as part of the automated CaseNet system, the outcome of appeals must be manually entered into CaseNet by administrative staff.

KPMG Independent review.

In November 2015, the CEO, AGD approved funding to undertake an independent review of the resources, systems and processes of the DPP and identify any opportunities for change or improvement. The tender was awarded at the end of April 2016.

KPMG engaged with staff to discuss:

- Duties performed, including systems and processes used
- Views on the current effectiveness and efficiency of DPP's service delivery
- Challenges experienced and the root cause of those challenges; and
- Suggestions for improvement in the way the DPP operates.

The stakeholder engagement activities involved a mixture of one-on-one consultations and facilitated focus groups with representatives of Summary Prosecutions, Crown Prosecutions, Witness Assistance Services and Administrative Support. This included face-to-face consultation with staff in the Alice Springs office.

The final report was delivered to the DPP on 7 November 2016 and distributed to staff on 14 November 2016.

In consultation with staff, an implementation plan on the recommendations outlined in the review was developed. Staff nomination were called for the development of two internal committees: an organisational communication committee and an organisational structure committee. Both committees have held initial meetings with final recommendations yet to be submitted.

Amalgamation of Darwin registries

In December 2013 the police prosecutions section in Darwin was civilianised. Police prosecutors were replaced with legally qualified civilian prosecutors employed by the DPP. The change necessitated the development of a registry unit to enable the summary prosecutions unit to create, update and track matters in the Local Court

In 2014, the existing CaseNet system used by the DPP for Crown prosecutions was deployed in summary prosecutions to record and track files. CaseNet was further developed to enable data entered into IJIS by police and courts to be integrated with the CaseNet system.

CaseNet is now fully integrated with the IJIS system. Data from IJIS which includes outcomes of cases is transferred into CaseNet twice daily.

The previous structure of having two separate registries, one for Crown prosecutions and one for summary prosecutions, was identified as being inefficient and an area which could be improved. Correspondence was being double-handled, there were delays with receipting of mail, delays in the allocation of new matters, and both registries operated with two different court diaries. Backfilling of temporary positions within both registries also proved challenging.

The former structure did not allow staff to multi-skill, and lacked the framework to provide the Office with succession management and opportunities for professional development.

In December 2016 the DPP amalgamated both the Crown and summary registries. The combined registry provides the Office with a structured information management unit, and efficiencies in work processes and staff development.

The new structure allows for multi-skilling, succession planning and professional development, builds team relationships and promotes an environment of knowledge sharing.

Provision of administrative support to summary prosecutors in Alice Springs and Katherine.

In May 2015 the DPP deployed to its three offices the interfaced IJIS/CaseNet system which allows for the automated transfer of data from IJIS to CaseNet.¹¹

One of the benefits of this transition is that summary prosecutors have been provided with a uniform work / information platform which they can access irrespective of the location of their place of work.

A further benefit is that the Office can now record workloads in the two locations which have not been civilianised.

Summary prosecutions in Alice Springs and Katherine comprise both uniformed police officers and civilian lawyers. These offices have not been civilianised. Police are responsible for all bail and arrest matters and direction hearings. Civilian lawyers employed by DPP conduct summary hearings.

From October 2016, DPP Professional Assistants in the Alice Springs office commenced providing the civilian summary prosecutors with administrative support. The administrative support includes the creation of hearing files in CaseNet, preparation of briefs, updating of the electronic diaries and liaising with the OIC police on individual matters.

On 1 June 2017, the DPP commenced providing administrative assistance to the civilian summary prosecutor in the DPP Katherine office. The administrative assistance provided does not extend to the preparation of briefs. That responsibility remains with police.

¹¹ Data transferred from IJIS to CaseNet includes the names of defendants, charges, the name of the Officer in Charge of the case, the names of the victims and witnesses and the court results for every appearance.

The existing police administrative responsibilities and delegations in respect of the civilian summary prosecutors in both the Alice Springs and Katherine offices remain.

Katherine Office Accommodation.

The Katherine office was established in 2007-2008 as part of the NT Government's *Closing the Gap* initiative. Since 2009-2010, the office has been located on the ground floor of the Randazzo Building in Katherine Terrace.¹² That accommodation, which may have been suitable in 2007-2008, is no longer fit for purpose.

Katherine is no longer the sleepy hollow it once used to be. The workload has increased such that, since 2010, a second Local Court judge from Darwin attends Katherine one week in every month to deal with Crown matters (that is, matters which are destined to be dealt with by the Supreme Court in Darwin). These sittings are in addition to the regular sittings of the resident Local Court judge who sits full time to hear and determine cases in the Local Court. As a result, a Crown prosecutor from Darwin attends Katherine to prosecute the Crown matters. The office space is inadequate to accommodate counsel, witnesses and office staff.

The majority of the DPP clients are Aboriginal whose attendance at the Office is required for numerous reasons. They must first find the office, which is tucked away at the end of a corridor. Once they get there, the layout of the office is such that it offers little by way of privacy. The walk from the office to the courthouse, which is some distance, presents numerous obstacles, all of which carry the potential to diminish the capacity of the witness/victim to give honest and reliable evidence, or to give evidence at all. I made mention of this issue in my overview to the 2015-2016 Annual Report. The Territory Coroner made mention of this issue in his findings in the *Inquest into the deaths of Wendy Murphy and Natalie McCormack*.¹³ Being able to get witnesses to court, and then being able to keep them there in a relatively safe environment until they can give their evidence, can only improve the overall quality of justice.

The ideal location for the Office would be in the Katherine Government Centre (KGC), which is situated next to the courthouse. Given that a prosecutor's principal place of work is the courthouse, and given the number of visits a prosecutor needs to make to the courthouse on a daily basis, often with bulky or numerous files and often at short notice, it makes sense that the prosecutor's office is close to the work place. It would also make it easier for witnesses who would simply need to attend the courthouse in order to meet with the prosecutor or the Witness Assistance Service, rather than wandering the streets of Katherine looking for the Randazzo Building.

The business needs of the DPP and police prosecutions in Katherine and the inadequacies of the present accommodation have been known since at least 2009-2010 when an offer of suitable accommodation in the KGC did not eventuate. In 2016, the Office was again advised that accommodation within the KGC would become available.

¹² Prior to 2009-2010 the Office was located on the first floor of the Saddlery Building in Katherine Terrace.

¹³ [2016] NTLC 024

Once again the proposed office space met the business needs of the DPP and police prosecutions. The offer to relocate the Office was stalled by the departing agencies' budget and on 6 October 2016 I was advised that "the project had been shelved".

It is disappointing that, at a time when there is so much discussion and concern regarding the plight of victims and improving the lot of the most disadvantaged members of our society when they interact with the criminal justice system, so little regard is had for those whose primary function it is to drive the system.



OUTPUT PERFORMANCE MEASURES

Key Deliverables	Target	Current Year		Previous Years Actuals		
	2017-18 Budget	2016-17 Budget	2016-17 Actual	2015-16	2014-15	2013-14
New matters ¹	9,400	9,400	9,214	9,418	8,551	8,180
Finalisations:						
- Supreme Court pleas	450	450	426	483	436	275
- Supreme Court trials	60	60	69	55	57	43
- Supreme Court withdrawn	40	40	45	41	36	25
- Not committed to Supreme Court	N/A	N/A	N/A	N/A	1	N/A
- Local Court hearings/pleas ^{1,2}	7,000	7,000	6,483	6,805	6,450	4,372
- Local Court withdrawn ²	800	800	814	463	728	504
- Appeals at all levels	60	60	63	84	62	56
Findings of guilt (including guilty pleas):						
- in Supreme Court	94%	94%	96%	93%	93%	94%
- in Local Court ²	97%	97%	97%	97%	97%	95%
Convictions after trial or hearing	97%	97%	97%	97%	97%	95%
Filing of indictments within 28 days of committal ⁴	N/A	N/A	N/A	45%	55%	71%
Supreme Court matters withdrawn less than 28 days before a trial was to commence ⁴	N/A	N/A	N/A	26%	50%	53%
Witness Assistance Service clients ³	1,730	1,730	1,934	1,923	1,717	1,643

¹ Decrease in the number of new matters and the number of Local Court hearings/pleas and Supreme Court pleas are consistent with the Court data.

² Previously referred to as the Court of Summary Jurisdiction.

³ Increase in the number of Witness Assistance Service (WAS) clients was due to an additional 0.50 position provided to WAS for 12 months.

⁴ These KPIs are no longer reported.



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PROFESSIONAL ACTIVITIES

General Workload

Workload Overview	2016-17	2015-16	2014-15
Matters completed in the Local Court (Criminal Division) and the Youth Justice Court			
Guilty (including guilty pleas)	5,941	6,805	6,450
Committed	327	475	700
Not Guilty/Not Committed	284	144	157
Withdrawn	556	463	728
Total	7,108	7,887	8,035
Matters completed in the Supreme Court			
Pleas	351	483	436
Trial guilty	29	28	24
Trial not guilty	17	20	31
Trial Mistrial	4	7	2
Ex Officio indictment	10	18	25
Nolle Prosequi	26	24	23
Section 297A certificates (no true bill)	0	19	12
Total	437	599	553

Appeals

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

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

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

A summary of decisions of the Court of Criminal Appeal, Court of Appeal and Full Court for the reporting year can be found on the DPP website under the tab Legal Resources / Case Studies.

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

NB: *The figures in brackets in each of the tables below are for the period 1 July 2015 to 30 June 2016.*

TABLE A

**Outcome of defence applications for leave to appeal from
the Supreme Court to the Court of Criminal Appeal
determined by a single judge *on the papers*
2016-2017**

	Sentence	Conviction
Granted	6 (4)	2* (4)
Refused	3** (5)	1 (1)
Discontinued	1 (2)	0 (1)
Total	10 (11)	3 (6)

* One applicant granted leave to appeal against conviction discontinued his appeal prior to hearing.

** Two applicants refused leave to appeal against sentence applied to have their applications reheard and determined by the Court of Criminal Appeal constituted by three judges. One application was determined following oral argument. As that application was argued as if it were an appeal, the result has been included in Table B as a defence appeal against sentence dismissed. The other unsuccessful applicant discontinued the application before the rehearing of the application for leave to appeal.

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

TABLE B

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

2016-2017

	Conviction	Sentence	Other
Allowed	2 (1)	2 (4)	0 (0)
Dismissed	0 (0)	4* (5)	1 (0)
Discontinued	0 (1)	0 (0)	0 (0)
Total	2 (2)	6 (9)	1 (0)

- * Included in this figure was one re-hearing of an application by the Court of Criminal Appeal constituted by three judges where the application for leave to appeal against severity of sentence was refused by a single judge. The application was determined following oral argument. As the application was argued as if it was an appeal, the result has been included in Table B. Although leave to appeal was granted, the appeal was dismissed.

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

2016-2017

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

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

2016-2017

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

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

TABLE C

**Outcome of defence appeals from the Local Court to the Supreme Court at Darwin
2016-2017**

	Conviction		Sentence		Other	
Allowed	1	(3)	4	(7)	0	(0)
Dismissed	4	(4)	6	(13)	0	(2)
Discontinued	1	(1)	10	(7)	0	(0)
Total	6	(8)	20	(27)	0	(2)

**Outcome of prosecution appeals from the Local Court to the Supreme Court at Darwin
2016-2017**

	Dismissal of Charge		Against Inadequacy of Sentence		Other	
Allowed	1	(1)	1	(1)	0	(0)
Dismissed	0	(4)	0	(0)	0	(0)
Discontinued	0	(1)	0	(0)	0	(0)
Total	1	(6)	1	(0)	0	(0)

**Outcome of defence appeals from the Local Court to the Supreme Court at Alice Springs
2016-2017**

	Conviction		Sentence		Other	
Allowed	0	(0)	11	(9)	0	(0)
Dismissed	2	(1)	5	(2)	0	(0)
Discontinued	0	(2)	2	(5)	0	(1)
Total	2	(3)	18	(16)	0	(1)

**Outcome of prosecution appeals from the Local Court to the Supreme Court at Alice
Springs
2016-2017**

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

High Court

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

Prior v Mole

6 December 2016, 8 March 2017
Kiefel, Bell, Gageler, Nettle & Gordon JJ
[2017] HCA 10; 343 ALR 1; 91 ALJR 441

The High Court, by majority, dismissed an appeal from a decision of the Court of Appeal of the Supreme Court of the Northern Territory. The High Court held that the apprehension of the appellant, Mr Prior, pursuant to s128(1) of the *Police Administration Act* (NT) (the PAA), was not unlawful, because it was open for a court to find that the apprehending officer had reasonable grounds to believe Mr Prior was likely to commit an offence.

Section 128(1) of the PAA, relevantly, allows a member of the Police Force of the Northern Territory to apprehend without warrant a person who the member has reasonable grounds for believing is intoxicated, is in a public place, and that, because of the person's intoxication, the person may intimidate, alarm or cause substantial annoyance to others, or is likely to commit an offence. Before his apprehension, Mr Prior was drinking liquor with two other men on a footpath in front of a set of shops, including two shops selling liquor. He was intoxicated. When a police car, driven by Constables Fuss and Blansjaar, drove by he made an offensive gesture and shouted abuse. The officers parked the car in front of the men and asked Mr Prior to speak to them. Mr Prior was belligerent and aggressive. Mr Prior was apprehended by Constable Blansjaar pursuant to s128(1) of the PAA as Constable Blansjaar believed that, because of Mr Prior's intoxication, he might intimidate, alarm or cause substantial annoyance to people, and that it was likely he would commit the offence of drinking in a regulated place contrary to s101U of the *Liquor Act* (NT) (the Liquor Act offence).

After being taken into custody, Mr Prior engaged in conduct which led to him being charged with assaulting a police officer in the execution of duty and public indecency. He was convicted of those offences upon a hearing in the Court of Summary Jurisdiction. That Court found Mr Prior had been lawfully apprehended pursuant to s128(1) of the PAA. On appeal to the Supreme Court, Southwood J was satisfied beyond reasonable doubt that there were reasonable grounds for Constable Blansjaar's belief that, because of his intoxication, Mr Prior was likely to commit the Liquor Act offence. Mr Prior's convictions were, however, set aside by Southwood J,¹⁴ and subsequently restored by the Court of Appeal, on grounds not subject of appeal to the High Court.¹⁵ The Court of Appeal upheld Southwood J's conclusion that Constable Blansjaar had reasonable grounds for believing that it was likely Mr Prior would commit the Liquor Act offence.

By grant of special leave,¹⁶ Mr Prior appealed to the High Court, arguing that the Court of Appeal erred in holding that Constable Blansjaar was entitled to rely on his policing experience in deciding that he had reasonable grounds for believing that Mr Prior would commit the Liquor Act offence. The High Court held, by majority, that the lack of precise

¹⁴ *Prior v Mole* [2015] NTSC 65

¹⁵ *Mole v Prior* [2016] NTCA 2

¹⁶ Special leave to appeal was granted on 1 September 2016 on the papers

particularisation of Constable Blansjaar's experience did not deprive the Court of Appeal of its capacity to assess the reasonableness of his belief. It was fair for the Court of Appeal to infer that Constable Blansjaar's belief about how Mr Prior was likely to behave was informed, at least in part, by Constable Blansjaar's experience in dealing with other intoxicated people, and it was open to hold that, based on Constable Blansjaar's experience, it was reasonable for him to believe that Mr Prior was likely to continue drinking liquor in a regulated place. The High Court also rejected a separate argument that the apprehension of Mr Prior exceeded the limits of the s128(1) power.

Fraud Prosecutions

The Office received continued funding for 4.5 full-time employees to prosecute fraud and corruption-related matters this year. The funding was first provided from April 2015 to support the prosecution of frauds committed against the Pensioner and Carer Concession Scheme (PCCS).

Prosecutions were completed against two persons for frauds against the PCCS this year. Carmel Tuohy was charged with and pleaded guilty to defrauding the PCCS of \$64,600. She was sentenced to a period of imprisonment of five months which was wholly suspended.¹⁷ Vanessa Barrett was charged with and pleaded guilty to defrauding the scheme of \$110,400 when she was manager of the Flight Centre, Palmerston office. Barrett was sentenced to 15 months imprisonment which was wholly suspended.¹⁸ The Fraud Unit continues to work closely with police on investigations being conducted about other possible frauds committed against the PCCS.

In addition, the Fraud Unit has prosecuted a number of other individuals for frauds committed in the jurisdiction. Jackson Anni, who stood as a candidate for the seat of Nhulunbuy at the 2016 Northern Territory election, was charged and pleaded guilty to stealing \$16,000 from several Aboriginal persons through the manipulation of their bank accounts. Anni was sentenced to imprisonment for 18 months with a non-parole period of 12 months. He unsuccessfully appealed the severity of the sentence.¹⁹

Former chief of staff to the Honourable Bess Price MLA, Paul Mossman, was convicted at trial of two counts of receiving secret commissions. He was sentenced to 12 months imprisonment which was wholly suspended. The Crown appealed the sentence that was imposed on the basis it was manifestly inadequate. The Court of Appeal dismissed that appeal.²⁰

Other notable prosecutions conducted by the Fraud Unit include:

- Gail Barry was prosecuted for fraud committed against her employer totalling \$189,800. Barry pleaded guilty to the offending on the second day of the trial and

¹⁷ Case no 21637879 – Darwin Local Court 13 October 2016

¹⁸ Case no 21717064 – Darwin Local Court 24 July 2016

¹⁹ Case nos LCA 23, 24 & 25 of 2017. The appeal was heard by the Supreme Court on 7 July 2017 and the decision delivered on 14 July 2017

²⁰ The appeal was heard on 29 May 2017 and the decision delivered on 24 July 2017. *The Queen v Mossman* [2017] NTCCA 6

was sentenced to four years and nine months imprisonment suspended after serving one year and nine months.²¹

- Naomi and Ricky Finn pleaded guilty to defrauding the South Darwin Rugby Club of \$200,200. Both were sentenced to imprisonment for three years.²²
- Paul Mead pleaded guilty to defrauding his employer, Domino's Pizza, of \$166,000. He was sentenced to imprisonment for three years.²³
- Adam Abraham pleaded guilty to using false documents and forgery charges relating to the creation of false identities. He was sentenced to eight months imprisonment.²⁴
- Margaret Egan pleaded guilty to obtaining a benefit by deception of \$20,000 from the estate of her deceased neighbour. She was sentenced to three months imprisonment which was wholly suspended.²⁵
- Agnes Donnelly, Kitty Simmons and Denicia Luther pleaded guilty to defrauding the Lajamanu Art Centre of \$90,300. They are yet to be sentenced. A fourth accused is pleading not guilty and will be prosecuted in the Supreme Court at some time in the next year.

Prosecutions are ongoing in relation to several other allegations of fraud. They include:

- Chris Deutrom, former manager of Elders Real Estate Darwin City, is charged with stealing \$237,000 from his employer. The matter has been listed for a three week trial commencing 16 April 2018.
- George Manolas is charged with stealing approximately \$750,000 from a company of which he was a Director, which traded as Bar Zushi Casuarina. A three week trial is listed to commence on 23 October 2017.
- Suzanne Meyering is charged with stealing \$84,000 from her employer. No trial date has been fixed as yet.
- John Zvimba, employed in the public service at Royal Darwin Hospital, is charged with two others of having defrauded the government of approximately \$148,000. The matter has not as yet been committed for trial.

Police have recently established a task force to investigate allegations of fraud committed against the Indigenous Employment Program administered by the Department of

²¹ Case no SCC 21538926 – Darwin Supreme Court 9 June 2017

²² Case nos SCC 21559205 & 21559214 – Darwin Supreme Court 17 February 2017

²³ Case no SCC 21711014 – Darwin Supreme Court 24 March 2017

²⁴ Case no 21648420 – Darwin Local Court 6 February 2017

²⁵ Case no 21630707 – Darwin Local Court 18 November 2016

Infrastructure, Planning and Logistics. The Fraud Unit has commenced providing ongoing advice to that task force and it is expected that significant resources will need to be committed in the near to medium future for that investigation and any prosecutions that flow from it.

Royal Commission into the Protection and Detention of Children in the Northern Territory (the Royal Commission)

During the reporting period, the workings of the Office were affected by those of the Royal Commission.

Two middle-ranking Crown prosecutors²⁶ were temporarily transferred to the Solicitor for the Northern Territory to work with the Royal Commission legal team. The transfers were intended to be for a short period, however, the duration of the transfers, effective from January 2017, were extended into the 2017-2018 reporting year due to the Royal Commission's reporting date being extended. Both prosecutors had not returned to the Office by 30 June 2017.

The Royal Commission served the Office with six Notices to Produce. The Notices required production of case files²⁷ in respect of 28 individuals. The Office was able to produce case files / documents in respect of 25 individuals.²⁸ Once the files had been located²⁹, all documentation needed to be vetted for content by a senior Crown prosecutor, and any material over which legal professional privilege (LPP) was claimed, had to be removed. The documentation to be produced (including the material over which LPP was claimed) had to be scanned and uploaded into a dedicated database. Material over which LPP was claimed then had to be redacted. All audio-visual recordings such as police interviews with defendants, all CCTV recordings and all photographs on the files, were also required to be copied and uploaded.

The production process was extremely time consuming and made all the more difficult and stressful for staff because the time frames for compliance specified in the Notices were very short. As a result, the Notices had to be given priority once they were served.

²⁶ One SP1 and one P3

²⁷ The Notices defined the term 'case file' to mean any file maintained by the Director of Public Prosecutions Northern Territory on which documents relating to the abovementioned people at paragraph 1(a)-(c) are kept, including documents relating to Court proceedings where the person was an accused person or a victim including witness statements, prosecution summaries, charge-sheets, case notes, victim impact statements, victim reports, transcripts of proceedings, pre-sentence reports (under section 69 of the *Youth Justice Act* (NT)), reports as to the mental condition of a youth (under s 67 of the *Youth Justice Act* (NT)), or a written judgment.

The Notices defined the term "document" to include any book, register or other record of information, however compiled, recorded or stored, including:

- (a) anything on which there is writing; and
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; and
- (d) a map, plan, drawing or photograph.

²⁸ The Office held no records in respect of three individuals

²⁹ Many of the files had to be retrieved from archives and / or from the Alice Springs office or Alice Springs archives

Eight staff were involved in responding to the Notices at various times.³⁰

In summary, the Office produced to the Royal Commission from the case files a total of 38,298 pages, 383 recordings³¹ and 393 photographs. An additional 1310 pages was produced to the Royal Commission by way of policies, procedures, manuals, training and education material.

In May 2017, a summary prosecutor gave evidence to the Royal Commission. The evidence related to challenges faced by the DPP in relation to the police charging process, police over-charging and recommendations for more efficient practices such as electronic briefs.

In addition, the Office referred to the Royal Commission for its consideration one matter which had originally been referred to it by the NT Police for an opinion and in respect of which no charges were laid.

All the additional work was undertaken within existing resources and budget. The time frames set by the Royal Commission were met. My special thanks go to all the staff who undertook this work in addition to their normal workload.

³⁰ Four prosecutors, two professional assistants and two Registry staff

³¹ CCTV and AV recordings



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SUMMARY PROSECUTIONS

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

Summary Prosecutions sections exist in three geographical locations:

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

Each section is staffed by civilian lawyers employed by the DPP.

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

Historically, prior to December 2013, throughout the Northern Territory, Police prosecutors appeared in all bail and arrest matters in the Local Court³² and in the Youth Justice Court. Police prosecutors appeared in a majority of plea matters as well as contest mentions in both courts. This practice now pertains only in Alice Springs, Katherine and other bush Court locations where Police continue to run bail and arrest matters. DPP civilian prosecutors in these locations only conduct contested hearings and complicated or sensitive pleas.

Summary Prosecutions Darwin (SPD)

Since December 2013, SPD has been entirely civilianised and operates as a division within the DPP. It has complete prosecutorial responsibility for all charges laid by members of the Police within the SPD geographical area. For all matters in Darwin, civilian Summary Prosecutors, all of whom are qualified lawyers, appear at all stages from first mention to finalisation. This includes mentions, bail applications, directions hearings, pleas and hearings.

SPD staff also appear on the first mention of matters which are ultimately destined for the Supreme Court prior to those matters being referred to the Crown Prosecutions Division

³² Previously called the Court of Summary Jurisdiction

of this office. The SPD has 17 civilian lawyers, seven administrative positions and a travel clerk.

A number of significant events have directly affected the operations of SPD and have increased the workload during the reporting period including:

- Responding to the Royal Commission into the Protection and Detention of Children in the Northern Territory (the Royal Commission)
- The continuing need for SPD to staff a separate Youth Justice Court in a geographical location separate to that of the Local Court.
- As mentioned in last year's Annual Report, the establishment by the Local Court of a specialist Mental Health Diversion List continues to be a drain on SPD resources.

Each of the above issues is discussed below.

The effect of the Royal Commission on SPD resources is discussed on page 38-39 of the Annual Report.

As noted in last year's Annual Report, the establishment of a specialist separate Youth Justice Court facility, coupled with the increase in complexity of youth offending, has increased that Court's demands on the prosecution. This has continued to be an issue for SPD during the current reporting period.

In order to address the higher work demands, SPD has two dedicated Youth Justice Court prosecutors and a senior prosecutor who supervises and mentors the Youth Justice Court prosecutors. The requirement to staff a full-time specialist court that is separate to the Local Court has increased demand on human resources. Whereas previously, to service the demands of the various Courts situated in the one location SPD was able to switch additional prosecutors between the Courts at short notice, this is now logistically impossible because the Local Court and the Youth Justice Court (the latter sitting almost full time) sit in two separate locations. Further, as reported in last year's Annual Report, the Youth Justice Court is now sitting more days a week (4-4½ days). This has effectively meant that three prosecutors have now been reallocated to the Youth Justice Court and are no longer available to assist in the mainstream prosecution of matters in the Local Court.

The establishment of a specialist Mental Health list has had similar effects on SPD resources. This list requires significant preparation and consideration by a senior prosecutor in relation to each matter. The Mental Health list also requires a separate prosecutor to appear in the Local Court each Tuesday and Thursday. This has effectively meant that the prosecutor who appears in this list is unavailable to assist in other matters such as the bail and arrest court and the hearing courts, resulting in a further stretching of SPD resources.

SPD prosecutors travel large distances by road and aircraft across the Top End of the Northern Territory to service numerous bush courts that sit in remote locations:

- Alyangula – three days each month
- Borroloola – three days every two months
- Daly River – one day every two months
- Galiwinku – one day every four months
- Gapuwiyak – one day every three months
- Jabiru – one day every two months
- Maningrida – two to three days each month
- Nhulunbuy – three days each month
- Numbulwar – one day every three months
- Oenpelli – two days each month
- Pirlangimpi – one day every three months
- Ramingining – one day every two months
- Wadeye (Port Keats) – two to three days each month
- Wurrumiyanga (Nguiu) – two days each month

Throughout the reporting period, the SPD Managing Prosecutor met with JOS³³ members regularly to discuss issues affecting both police and SPD and continued with the collaborative 'Failed Prosecution Review', during which unsuccessful prosecutions are discussed and assessed with a view to identifying systemic or procedural deficiencies affecting the conduct of matters.

In early 2017, the SPD Managing Prosecutor and the OIC Strike Force Trident³⁴ began regular meetings in relation to youth offenders and the prosecution of youth matters in general. The aim of these meetings is to identify significant issues relating to the prosecution of young offenders and the administration of these matters as they progress through the criminal justice system.

The day-to-day management of prosecutors in SPD rests with the Managing Prosecutor, who in turn reports to the Deputy Director. There are two supervising prosecutors within the division.

The Deputy Director meets regularly with the Managing Prosecutor SPD, the Officers in Charge of the Police Prosecutions Units in Alice Springs³⁵ and Katherine³⁶ and with representatives from JOS.

The Managing Prosecutor SPD also attends the Director's weekly Executive Committee meeting and Practice Managers' meeting.

Summary Prosecutions Katherine (SPK)

For the majority of the reporting period, SPK continued to be staffed by one civilian Summary Prosecutor who is co-located with the Katherine Police Prosecutions Unit. The SPK prosecutor conducts all contested criminal hearings including contested Youth

³³ The Judicial Operations Section of the NT Police Force

³⁴ Strike Force Trident is responsible for the investigation of youth crimes and property offences in Darwin

³⁵ By way of video link

³⁶ By way of telephone conference

Justice Court matters before the resident Local Court judge. Given the prosecutor's unique placement within Katherine Prosecutions, the prosecutor works closely with, and receives significant support from, Police prosecutors within the unit.

As stated in the Overview, in May 2015 the DPP deployed to all its three offices the interfaced IJIS/CaseNet system which allows for the automated transfer of data from IJIS to CaseNet. A benefit of this change is that the Office can now record and report, with relative ease, the workloads in Katherine and in the circuit court locations.

The civilian summary prosecutor appears in the Local Court in both Katherine and the surrounding remote bush courts at the following communities:

- Barunga – one day every two months
- Kalkaringi – one day every two months
- Lajamanu – one day every two months
- Ngukurr – one-two days every two months
- Timber Creek – one day every four months
- Yarralin – one day every two months

In last year's Annual Report I reported that Police funded only one civilian prosecutor to conduct all contested hearings in the Katherine region. This continues to be problematic.

Given the significant workload of the sole prosecutor employed in Katherine, discussions were held between the DPP and police during the reporting period with regard to securing funding for a second prosecutor position for Katherine. Due to budgetary constraints, this issue was unable to be unresolved. However, in order to alleviate the workload of the single prosecutor in Katherine, consideration was given to reallocating some or all of the circuit work to Darwin. Should that happen, it will inevitably place further demands on the limited resources of SPD.

Summary Prosecutions Alice Springs (SPAS)

Summary Prosecutions Alice Springs (SPAS) is staffed by four civilian prosecutors who in the past have had minimal administrative support. The SPAS prosecutors appear in the Local Court in Alice Springs on a daily basis and the following communities in contested hearing matters:

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

As of 30 June 2017, three of the four SPAS Prosecutors were relatively newly admitted legal practitioners with limited experience in the criminal law. This is symptomatic of the ongoing difficulties faced by the Office in attracting and retaining experienced staff. Additionally, the heavy workload and often intense pressures that go hand-in-hand with summary prosecutions increases the potential for staff 'burnout'.

In order to improve managerial and administrative support for summary prosecutors, facilitate mentoring and provide clearer pathways for career advancement, a number of structural changes were implemented in the Alice Springs office during the second half of the reporting period. Chief amongst those are that the Senior Crown Prosecutor in Alice Springs now has direct responsibility for the management and supervision of summary prosecutors. There is a 'one office' approach whereby Crown and summary prosecutors are considered to be part of the same team, ideally with the same levels of administrative support. Summary prosecutors also have ready access to Crown Prosecutors for advice and guidance on a day-to-day basis, and weekly workshops are conducted to discuss topical issues in the conduct of criminal prosecutions.

Unlike Darwin, SPAS is not fully 'civilianised' due to the ongoing responsibility of the Northern Territory Police, via the Officer in Charge of Police Prosecutions South, for the carriage of preliminary and non-hearing matters in the Local and Youth Justice Court. However, whereas in the past summary prosecutors have been briefed with hearing files by the Officer in Charge of Police Prosecutions South, that role has also been taken over by the Senior Crown Prosecutor. Amongst other things, this will ensure that summary prosecutors are allocated hearing files according to their relative skills and experience and the complexity involved.

Efforts have also been made to ensure that summary prosecutors are aided by members of WAS when conducting hearings in Alice Springs and on bush circuits.

It is anticipated that these and other measures will provide better support and assistance to our hard-working summary prosecutors, thereby improving their level of job satisfaction and career development, and ultimately better serving the community of the Northern Territory in this very demanding role.



**DIRECTOR
OF PUBLIC
PROSECUTIONS**
NORTHERN TERRITORY



WITNESS ASSISTANCE SERVICE

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

WAS provides victims and witnesses with:

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

WAS has ongoing funding for the employment of 8.5 WAS Officers. During the reporting year, additional funding continued to increase the part-time position in Darwin to full-time, ensuring that the provision of support to victims and witnesses in Darwin and in the remote courts serviced by the Darwin office was maintained at the same level as the previous reporting year. This funding is due to cease on 31 December 2017.³⁷

The nine Witness Assistance Officers are located as follows:

- Darwin – five WAS Officers who service the Northern Region and East Arnhem Land;
- Katherine – one WAS Officer who services the Katherine region; and
- Alice Springs – three WAS Officers who service the Alice Springs and Barkley regions.

Three WAS positions that became vacant during the reporting period were recruited under the special measures provisions, increasing the number of WAS employee identified as Aboriginal from two to four.

WAS delivered presentations to a range of government and non-government organisations in the 2015-16 financial year to promote the DVD 'Telling Your Story'. The focus in the 2016-17 reporting year was to provide information sessions to NT Police to

³⁷ The funding is tied to the funding for fraud prosecutions

encourage early referrals to WAS and to inform victims of their right to complete a Victim Impact Statement. The sessions have enhanced relationships between WAS Officers and NT Police members in the provision of support to victims and witnesses.

Additionally, WAS participated in Safety Expos and other community events to provide information to members of the public on WAS support for victims and witnesses. These community events provided opportunities for exposure to other services and groups of people that may not be aware of WAS.

Presentations and community events attended included:

- Four presentations to the NT Police, new recruit and investigators courses
- Stalls set up at two NT Police Crime Prevention and Safety Expos in Darwin and Alice Springs
- Stall set up at the Sexual Assault Referral Centre open day in Alice Springs
- Stall set up at the Katherine Court open day as part of National Law week
- Stall set up at the annual Darwin Supreme Court open day
- One presentation to the Ngukurr Safe House, Katherine region; and
- One presentation to the Katherine Women's Crisis Centre.

WAS held its annual staff workshop on 25 and 26 August 2016 in Darwin. WAS Officers from Darwin, Katherine and Alice Springs attended. Matters discussed included understanding Domestic Violence and what avenues are available to support victims, working with Aboriginal and Auslan interpreters, understanding child development and the impact of trauma and working with Local Court prosecutors. The annual workshop also allows WAS Officers to discuss their different experiences working in remote areas and how to recognise and deal with vicarious trauma.

A review of the form of the Victim Impact Statement (VIS) and the accompanying information brochure, undertaken in the previous reporting year, resulted in the introduction of a new VIS in early 2017. The accompanying information brochure is being updated and will be introduced later in 2017.

During the reporting year, 1934 new clients (victims and witnesses) were referred to WAS and Officers assisted in the preparation of 250 Victim Impact Statements across the Territory.

Section 84(1) of the *Youth Justice Act* provides that where an offender has been found guilty of an offence, the Youth Justice Court may adjourn proceedings and order the youth to participate in a pre-sentencing conference. Section 84(2) provides that the pre-sentencing conference may be with any of the victims of the offence the youth is charged with, community representatives, members of the youth's family or any other persons as the court considers appropriate.

Whilst s84 has been part of the *Youth Justice Act* since its commencement in 2006, it was not widely used until January 2017, at which time funding was made available to Jesuit Social Services (JSS) to facilitate pre-sentencing conferences. During the reporting year WAS received a total of 27 requests from JSS and the Community Justice Centre (CJC) to contact victims to ascertain their willingness to participate in pre-sentence

conferencing.³⁸ Twelve of those referrals included a request for a WAS Officer to attend the conference. WAS Officers attended these conferences to either support the victims who attended the conference or to be an advocate for two victims who elected not to attend the conference. Nine of those attendances were in Darwin and three were in Katherine. The conferences were held at locations other than court houses and sometimes occurred outside normal business hours or extended beyond normal business hours.

By way of comparison, in the 2015-2016 reporting year WAS received only one such request.

The primary role of WAS is to provide support to victims and witnesses generally throughout the court process. While WAS is concerned that victims and witnesses receive support during the pre-sentencing conference process, it is of the view that it is not the appropriate body to be involved in the pre-sentencing conference process, particularly where the victim chooses not to participate. It is not a function of WAS Officers to act as advocates for victims at any time, yet this is what is sometimes required of them when they attend pre-sentencing conferences.

Further, the additional responsibilities imposed on WAS Officers by the conferencing procedure adversely impact on current resources and detract from the primary role of WAS. The resources of WAS must be prioritised towards those cases where history shows that victims and witnesses may be further traumatised because of their involvement with the criminal justice system. The court calendar is full of cases involving sexual offences against children and adults, and cases involving serious offences against the person. WAS must give priority to such cases and the very limited resources of WAS are already stretched to the limit to meet this demand.

For these reasons, the role of victim support in the pre-sentencing conferencing process would be better provided by an independent specialist victim support unit, as is the case in some other jurisdictions.

³⁸ The involvement of WAS in the pre-sentencing conference process comes about as a result of Practice Direction No2 of 2016 issued by the Chief Judge of the Local Court on 11 April 2016." A copy of the Practice Direction appears at Appendix B".



**DIRECTOR
OF PUBLIC
PROSECUTIONS**
NORTHERN TERRITORY



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.

PRACTICE DIRECTION No 2 of 2016

REFERRALS FOR PRE-SENTENCE CONFERENCES

Section 84 *Youth Justice Act*

The following Practice Direction is issued pursuant to section 201A of the *Justices Act* read with section 53 of the *Youth Justices Act* and will apply from the date of issue.

BACKGROUND

Section 84 provides for the Court to order a youth to participate in a pre-sentence conference, but there is no mechanism provided for referral to an agency to conduct a pre-sentence conference or report back to the Court following a conference.

The Act supports both the restorative justice practice of victim offender/conferencing and of family group conferencing in order to engage the youth, his or her family and relevant agencies in developing strategies and plans to promote rehabilitation.

This Practice Direction provides procedures for referral of a youth for a pre-sentence conference either by way of a victim/offender conference or a family group conference.

Court Referral Process

Where the Court has found a youth guilty of an offence, either on the application of the youth or on the Court's initiative, the proceedings may be adjourned and the youth ordered to participate in either a victim offender conference or a family group conference.

- 1.1 Where the referral is for a family group conference the court will state in the referral the persons who are required to attend the conference. Generally those participants may be the youth and his or her responsible adult(s), a police officer as nominated by the

Commissioner of Police and an officer of Community Corrections where a pre-sentence report or supervision assessment has also been ordered. Where appropriate in relation to the youth's needs, an officer from the Department of Education should also attend so as to address educational needs and develop an appropriate plan. Where the family is, or is proposed to be supported by a non-government agency an officer of that agency should also attend.

- 1.2 In the case of a victim/offender conference the participants are to be the victim and a support person if requested, the youth and his or her responsible adult. Any other proposed participants should be nominated to the Court at the time that the referral is requested.
- 1.3 The referral should then be made and proceedings adjourned for a period of up to six weeks and listed for sentencing on the adjourned date.
- 1.4 The referral, together with the agreed facts, names of participants and contact details, criminal history and any tendered documents shall be forwarded to the nominated convenor of the conference.

Referrals to the Community Justice Centre

- 2.1 The Community Justice Centre has agreed to accept referrals for pre-sentence conferences and the Director of the Community Justice Centre appointed as convenor for that purpose. Upon receipt of a referral the Director is to allocate it to a mediator accredited under the National Mediation Accreditation System to convene the conference.
- 2.2 The Director of the Community Justice Centre may invite suitable participants to support the pre-sentence conference and its potential outcomes for the youth and victims involved.

- 2.3 The Court may also from time to time appoint an alternative convenor for a pre-sentence conference if satisfied that the convenor has the proper experience and expertise to conduct a pre-sentence conference.
- 2.4 Victims nominated by the Court to attend the pre-sentence conference, will initially be contacted by the Department of Public Prosecutions (DPP) to determine their willingness to participate, and to address any individual needs and concerns they may have.
- 2.5 Once the DPP has provided the list of victims who agree to participate, the convenor will contact and assess the victims and all other parties nominated by the Court, to determine their suitability to take part in the pre-sentence conference.
- 2.6 Where victims or other persons nominated by the Court do not attend the pre-sentence conference, the Report should include an explanation.

Pre-Sentence Conference Reports

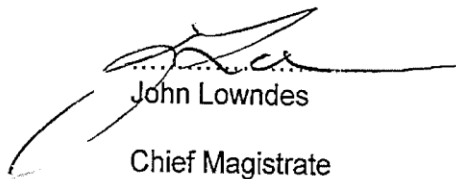
- 3.1 The Convenor must explain to the participants at the conference that he or she is required to report to the Court as to the outcome of the conference. The convenor must also explain that the recommendations from the conference are not binding on the Court in any way and that the Court retains a sentencing discretion under the Youth Justice Act.
- 3.2 The report from the convenor shall include a summary of the conference, including the details of any apology given or other relevant factors as the Convenor considers relevant. The conference report shall also include any outcomes that were agreed between the participants that may be appropriate to be undertaken by the youth to demonstrate that:

(a) the youth accepts responsibility for the behaviour;

(b) the youth has taken steps to make amends with the victims of the offence;

(c) the youth will be assisted to be re-integrated into the community;

3.3 The report should be provided to the sentencing court at least 2 days prior to the adjourned date referred to above.



John Lowndes
Chief Magistrate

11 April 2016