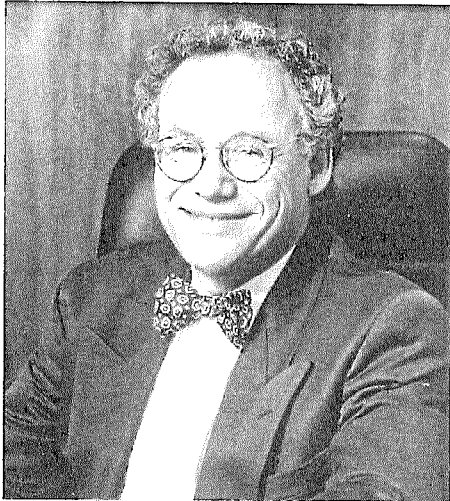


Commonwealth
Director
of Public
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Director's overview



Michael Rozenes QC, Commonwealth Director of Public Prosecutions

In March 1993 the Honourable Michael Duffy retired as Attorney-General. I would like to record the fact that I very much enjoyed working with him and wish him well for the future.

On 27 April 1993 the Honourable Michael Lavarch was appointed Attorney-General after a short period during which the Honourable Duncan Kerr held that position. I am pleased to report that relations with the Attorney-General are most cordial and that I have continued to be able to discharge my functions free from any political interference.

Mr Edwin J. Lorkin was appointed Associate Director commencing 1 July 1992. Since his appointment he has worked tirelessly providing great energy and sound advice to the Office, for which I am most grateful.

During the year I had the opportunity to discuss prosecutorial matters with a variety of national and international lawyers. The Office was visited by the Indonesian Attorney-General, the Fijian Attorney-General, the Fijian DPP and the Procurator-General for the Ukraine. I have had extensive discussions with DPPs and prosecutors from the United Kingdom, Canada, the United States and other comparable jurisdictions. The various DPPs in Australia have formed an association which meets regularly and discusses matters of mutual interest. It is clear from all of this that prosecuting agencies have similar problems worldwide and attempt to cope with them in much the same way as we do. I think however that it can safely be said that this Office is at the very forefront of modern prosecuting agencies.

The tables which appear later in this report indicate that, although there was a slight decrease (.9 per cent) in matters dealt with on indictment, overall there was a significant increase in the number of prosecutions completed during the year. For the most part this was in the summary area where there was an 8.6 per cent increase.

Our corporations work continues to be the most challenging aspect of our practice. These cases are usually complex, difficult to investigate and difficult to prosecute. Substantial resources need to be devoted to them. Major fraud, whether it is directed at the corporate or public sector, is on the increase and must be dealt with by the criminal courts. As one judicial commentator has recently observed:

The indications are that serious fraud is on the increase. We have to be able to deal with it : to deter it, to detect it, and to punish it. Our criminal justice system must play its proper part in this. It must be fair but inevitable. It must be more powerful than the most powerful. It must be effective in convicting the guilty and acquitting both the innocent and those not proved to be guilty. The trials leading to these verdicts must be manageable (for if not manageable, fairness is threatened), and it must not be wasteful either of time or of money. That specification is what we require of the system.¹

In my report last year I expressed the view that the great challenge for the criminal justice system was to ensure that the criminal courts were able to deal with complex fraud trials in a way which afforded justice to both parties and to the community at large. To this extent I was hopeful that an initiative of the Standing Committee of Attorneys-General (SCAG) calling for special legislation to be enacted for the conduct of complex fraud trials would be adopted by the States and Territories. Only Victoria has so far enacted such legislation. It is highly desirable that all other jurisdictions grapple with this issue.

A factor which must not be overlooked in this context is the extent to which the delays suffered in the court system impact upon the trial of complex fraud trials. Of course, delay varies from jurisdiction to jurisdiction, but it can be said that in NSW and to a marginally lesser extent in Victoria the level of delay is simply unacceptable. By way of example, in NSW a complex fraud committal may, after charges are laid, wait up to 18 months for a hearing date and then up to a further 18 months for a trial date: three years wasted waiting for a court. When one adds to this the fact that the offence may not have been discovered for a period of some years and then investigated for another substantial

period, it is no wonder that there is public concern that these cases take far too long to complete.

This brings me to the matter of the law enforcement effort in the area of corporations fraud. During the past year my Office entered into a Memorandum of Understanding with the Australian Securities Commission which, in essence, provided a solid basis for future relations between the two agencies. The Memorandum was the product of extensive discussions with the Chairman and other members of the Commission and has resulted in the production of guidelines which will ensure that there is maximum cooperation between our respective agencies in the investigation and prosecution of corporate crime. In the six months of operations under the guidelines, I am able to report there has been a high level of cohesion in our effort to deal with corporate wrongdoing.

On 13 November 1992 the High Court delivered its judgment in *Dietrich*. The court unanimously reaffirmed that an accused person has a right to a fair trial and in that context held that a trial judge should not, save in exceptional circumstances, proceed with the trial of an indigent accused for a serious criminal offence who through no fault on his or her part is unable to obtain legal representation. The ramifications of this decision for legal aid and the administration of criminal justice are substantial. Cases that had previously proceeded with an unrepresented accused may now not do so. In the very short period since the decision a number of cases have had to be adjourned with the real risk that some defendants may never be brought to trial. SCAG is at present considering a proposed uniform legislative approach to the issues raised by the judgment.

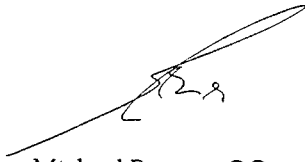
¹ Foreword by the Hon. Mr Justice Henry to Kirk and Woodcock, *Serious Fraud: Investigation and Trial*.

In the end result, the question boils down to one of adequate funding. There is no doubt that people charged with serious criminal offences must be adequately represented if a fair trial is to be guaranteed. I recognise that legal aid resources are finite and are being increasingly put under great pressure. If we are to retain public confidence in the administration of the law then the criminal justice system and, in particular, the legal aid agencies must be adequately funded so as to provide the general community with fair, prompt and equitable access to the criminal courts.

Finally, it is of concern that crimes against the revenue are seen by some as being a less serious form of criminal conduct. I consider that those who systematically defraud the revenue, and through it the whole community, of substantial amounts over extended

periods and who are motivated by profit and greed should be treated no differently than those who steal directly from private citizens. It is invariably the practice of courts throughout Australia to sentence the latter category of persons to serve actual periods of imprisonment and I see no reason in principle why those who steal from the Commonwealth should be treated more leniently.

I take this opportunity to thank all the officers of the DPP for their fine effort in contributing to the success of the Office over the year and in maintaining its high professional standards. Furthermore, I acknowledge the cooperation of the heads of the various investigative agencies with whom I have regular contact and who do so much to promote the Commonwealth's law enforcement policy.



Michael Rozenes QC
Commonwealth Director of Public Prosecutions