

**DIRECTOR OF PUBLIC PROSECUTIONS
ANNUAL REPORT 1987-88**

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DIRECTOR'S OVERVIEW

This is the fifth Annual Report of the Office of the Director of Public Prosecutions. The first related to only a part year. As would be expected after more than 4 years of existence, the organisation has now settled down and is functioning in an efficient and effective manner. Work done in previous years was consolidated and built upon during 1987-88, and some new challenges arose, most of which were or are in the course of being addressed. This report deals with all such matters.

The functions of the Office were extended during the last year, with a consequential increase in staff. It is worth noting that all staff increases from the outset have been based upon, and justified by, new functions. In the early days staff numbers rose as regional offices were opened. Later the allocation of further resources became necessary due to statutory amendments which extended the DPP's role, and as a result of Government decisions. The most recent initiative in the second category was the *Proceeds of Crime Act 1987* which lead to 20 positions being allocated in 1987-88. The former Civil Remedies branches in each regional office have been reorganized into Criminal Assets branches. We are now nearly fully staffed in this important area.

As at 30 June the Office comprised some 420 people, nearly 40% of whom were lawyers. It continues to be the case that we are a large law office which, although it has specialist functions, is not narrow in its fields of legal interest and involvement.

In the main work area, that of prosecutions, there have been notable successes. Some highlights were:

- the **Saffron** case, which was a major achievement in the revenue fraud area;
- the Sydney appeal which resulted in record sentences being imposed upon a couple named **Curry** who had been convicted of several drug importation offences;
- still in Sydney, the **McLean** and **Cornwell - Bull** matters;
- in Melbourne, the completion of the very protracted committal proceedings against **Vereker** and others;
- the trial arising out of a murder on **Christmas Island**, in which matter both Canberra and Perth Offices made important contributions;

- the prosecutions relative to **Indonesian fishing vessels** in the North West;
- the completion of 'bottom of the harbour' matters in Queensland with the hearing of the **Ahern** appeal, which was dismissed by the High Court just as this report was nearing completion.

These are but some of the thousands of cases conducted Australia wide each year. They range from the relatively routine to some of the most difficult and important prosecutions in the country.

As at the date this overview is written, DPP lawyers have been closely involved with other agencies in the recovery, to the benefit of tax-payers of Australia, of over \$50M from criminals. This largely comprises profits derived from illegal activities, together with some property forfeited as having been used to facilitate the commission of crimes. The report contains details of the results achieved in the year under review, and the amounts in the pipeline as at 30 June 1988. Some of the DPP's best and brightest people work in this area and the work they are doing is highly innovative. It seems clear that this important and rewarding initiative will be a permanent feature of the Australian criminal justice system, at least at the federal level. There is also every reason to hope that the high rate of return to this stage can be continued.

We continue to contribute to reform of the law in areas that are of obvious concern to the Office, at present principally through the Review of Commonwealth Criminal Law under the chairmanship of Sir Harry Gibbs. As would be anticipated, the work done to date by the Review is both scholarly and sensible, and the DPP has high hopes that it will lead to beneficial legislative change.

There will be found in Appendix 1 the guidelines relative to the giving of reasons on request for decisions not to proceed with a trial on indictment, notwithstanding that a magistrate has made a committal order. This is a significant step forward in making the DPP accountable for its decisions. The report also advises of liaison guidelines agreed between the DPP and the Australian Federal Police, and of amendments to the guidelines on jury selection dealing with jury vetting.

We continue to make progress in winding up the prosecution of those alleged to have facilitated the evasion of income taxation by company stripping. These 'bottom of the harbour' cases in Queensland and Western Australia have been effectively completed. However, there is a total of 21 defendants in these cases who have yet to be dealt with in Victoria and New South Wales. In both States, but particularly in New

South Wales, court delays and queues of litigants have been constant problems.

It is also worth noting that the level of investigation and prosecution activity in relation to evasion of sales tax continues to be high. Of more current interest is the fact that a new relationship has developed between the DPP and the Australian Customs Service in relation to frauds involving the evasion of customs duty. There are already some large prosecutions in this area under way and a greater number is under investigation. The DPP is involved in these investigations in a continuing advice role. We are constantly seeking to ensure that law enforcement, particularly in relation to revenue fraud, is as widely spread as possible. Until recently those who evaded customs duty could say with absolute confidence that the worst risk they ran was that of a significant monetary penalty. Some of these people will now go to prison.

It seems likely that the Office will face 2 major challenges shortly, each of considerable difficulty. One is represented by the proposed federal legislation in relation to the companies and securities industry. At present prosecutions in this area are largely conducted by State agencies. If the proposed legislation is enacted there will be a large increase in the workload of the DPP. In that event the difficulties at present being experienced in recruiting and retaining staff of ability and experience are bound to be exacerbated.

Secondly, and more imminently, legislation is at present before the Parliament which, if enacted, will give Australian courts jurisdiction over war crimes and crimes against humanity committed in Europe during World War II. In anticipation of that happening, a small unit within Head Office has been established which has done much valuable work in researching a number of novel issues that are likely to arise in these prosecutions, as well as liaising with the Attorney-General's Department and, in particular, its Special Investigations Unit. The DPP also made a major submission to the Senate Standing Committee on Legal and Constitutional Affairs on the *War Crimes Amendment Bill*. The report of that committee reflected many of the views put to it by the DPP. If the legislation is passed, and if evidence sufficient to justify prosecutions is available, then there will be a huge task in front of us. The prosecutions are likely to be as demanding and sensitive as any the country has seen.

We aim to provide a high quality service to the departments and agencies that refer work to us, and indeed to the people generally. Within a law office the legal work is necessarily done by lawyers, but they could not function without support. In providing their service, they are in turn serviced by all of the other occupational groups - secretaries, clerks,

keyboard operators, drivers, those who make the computers work and tell them how to think, the people who add up the figures, and so I could go on. To all of them great credit is due after what has been a distinctly successful and rewarding year.

I make mention of 3 particular initiatives in the area of administration: accommodation, program budgeting and fines and costs.

As to the first of these, progress in rehousing the Melbourne Office has been disappointingly slow, but we are getting there. Successful extension projects have been carried out in Sydney and Perth, and the refurbishment of Head Office is practically completed. Two small sub-projects remain to be done there. By the end of this calendar year the formerly shabby accommodation will have become stylish.

Program budgeting has undoubted benefits, in requiring managers to concentrate upon objectives, indicators of performance and their objective measurement. I strongly support the fresh perspectives these approaches impel us towards. A lot of work has been done in establishing and measuring performance criteria: some important work still remains to be done. However, a risk which must be guarded against is that program budgeting on a portfolio basis can, in the absence of care, impinge upon agencies which are intended by the Parliament to be independent of the Departments of State which have portfolio responsibilities.

The third matter may appear mundane to some, but is nevertheless quite important. During 1987 it was agreed that we should take over the recovery of fines and costs from the Australian Government Solicitor. The criminal justice system cannot be seen to work properly if those persons solemnly ordered by a court to pay a financial penalty are not in fact made to pay, assuming their continued ability to do so. A great deal of effort has gone into effecting the changeover, the task is practically complete and the monies are starting to flow in a satisfactory manner.

I express the appreciation of the Office to the Attorney-General's Department for its ready willingness to discuss matters of mutual concern, if not always to agree with us, and especially to the Australian Federal Police who manage to get better even while they are getting bigger, which is no mean feat.

My appointment expires on 5 March next, and by the time this report is tabled in the Parliament it will have been announced that I am not to be re-appointed. This is therefore the last Annual Report that I am privileged to deliver. Some concluding observations seem justified. They address the

question: Have we met Parliamentary and public expectations? In what follows the direct quotes are taken from the second reading speech by the then Attorney-General, Senator Gareth Evans, QC - see *Hansard* for 10 November 1983 at 2496.

One clear expectation was and is that the Office should be independent, at least in the sense that the key prosecution decisions should not be taken at the direction of, or in order to please, the Government of the day. The Act makes clear that the Attorney-General, as the first law officer, bears ultimate responsibility for what the Office of DPP does, and how it is done. That is right and proper: in a democracy the elected Minister should have primacy over the appointed official, even granted that the latter is a statutory law officer, with security of tenure who reports to Parliament. However any directions given by the Attorney-General to the Director must be published in the Parliament. Only one has been given in some 4.5 years, and that was done in a non-operational matter, after discussion and with my acquiescence. The expectation that: *'Day to day prosecution decisions will ordinarily be made by the Director or his officials'* has been greatly exceeded in practice. That is what has invariably happened. Such decisions are taken without fear or favour, and entirely outside the party political process. There can be no doubt that the DPP is widely recognised as being an independent although accountable entity.

Another expectation was that the Office would *'revitalise and re-organise Commonwealth prosecution processes.'* It is contended that has been done. Large steps have been taken, as detailed in successive annual reports, to improve morale and performance. Adequate resources have been granted, and they have been utilised so as to enable the Commonwealth to handle successfully prosecutions which rank among the most difficult, document intensive and challenging as have ever been undertaken anywhere. Various guidelines have been issued so as to make clear how the Director and his delegates exercise their important statutory functions. While the Office has not been entirely immune from criticism, and nor should it be, there have been no manifest failings which could lead to a diminution in public confidence in the Office. Thus we have met the expectation that creation of the DPP would *'restore public confidence in Commonwealth criminal law enforcement'*. The contrast between the present position, and that which prevailed 5 years ago, is very stark.

Much has been achieved: but much remains to be done. The momentum must continue, and complacency be resisted. There is always the prospect that the factors which led to the DPP's establishment, and those which have sustained it as an efficient and effective prosecution body, will be forgotten. Any tendency to allow the Office to become administratively dependent upon or integrated with the Attorney-General's Department

must be vigorously resisted. Future appointments to the position of Director ought to be of persons of eminence in the private legal profession, not public servants. At the very least there would be a perception that those who have worked with and under Government over any significant period cannot be relied upon to operate independently of it when the necessity arises.

I consider myself privileged to have served as Director of Public Prosecutions. It has been particularly gratifying to work with the individuals who have over the years made up the Office, practically all of whom have been both gifted and committed to the Office of DPP and the ideals which it represents.

I.D.TEMBY, QC