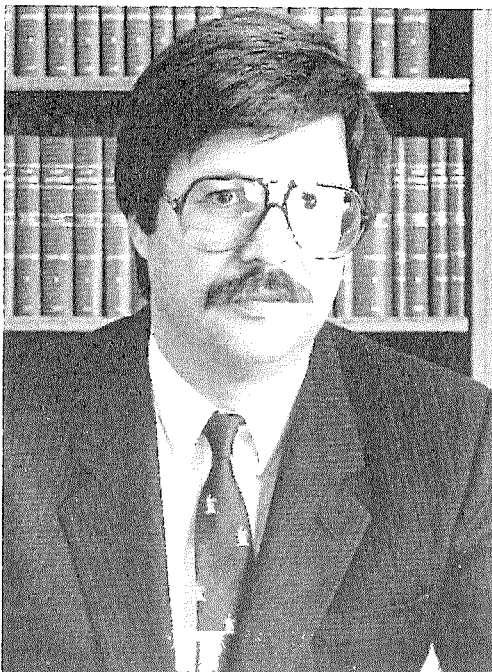

Commonwealth
Director of Public Prosecutions

Annual Report
1988-89

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Director's overview

*Mark Weinberg QC,
Commonwealth Director of Public Prosecutions.*

This is the sixth annual report of the Office of the Director of Public Prosecutions. It is the first such report under my hand. Having been Director for the best part of a year, I have now had the opportunity of learning at first hand something of how this large and complex organisation functions.

I practised for many years at the defence end of the bar table. It follows that my transition to prosecution work might have been somewhat difficult, and perhaps even daunting. What eased my task considerably was the level of cooperation and assistance afforded to me by DPP staff at all levels, and throughout all offices. It would be natural to expect a newcomer, coming to this position with my background, to have been greeted with some suspicion, if not downright hostility. The reverse has been the case. I should publicly record that fact, and my gratitude and appreciation to all my staff for their loyalty and support.

I should also place on record the cooperation of those within the Attorney-General's Department, and their willingness to develop a close and harmonious working relationship between our two offices. I have nothing but praise for the present Attorney-General who, at all times, has recognised the need for me to be able to operate independently in the exercise of my statutory functions. There has never been any attempt to interfere in any way with that independence.

When I assumed the office of Director, I assured my staff that I would not be making any immediate changes of a radical nature so far as the structure and operations of the office were concerned. I needed time to assess matters generally, and I needed to talk to a number of people as part of my own learning process.

It therefore comes as somewhat of a surprise to me, in looking back over my first year in office, to note the number of significant changes which have in fact occurred during that period. I will return to some of these matters. I should, however, first say something about the functions of the Office. These have continued to expand during the past twelve months, and seem likely to expand still further in the future.

The legislation creating the Australian Securities Commission provides for my office to have a major role to play in the area of companies and securities fraud. This will necessarily entail the acquisition of new skills, and will require additional staff to take on what may prove to be some of the most challenging and demanding prosecution work in this country. Preliminary steps have been set in train to prepare for this new function. Another area of additional responsibility is the prospect of tackling war crimes prosecutions under the War Crimes Amendment Act 1988, legislation which was enacted in December 1988 amid controversy and bitter debate. If prosecutions are brought under this legislation, it will only be after the most careful scrutiny of the evidence supporting any such charges. The enormity of the task confronting any such prosecution half a century after the events in question should not be underrated.

The proceeds of crime initiative (discussed in the last annual report) continues to generate a significant volume of work, and has already led to some recovery of assets. Lawyers working in this field, and in the general area of criminal asset recovery, are rapidly developing highly specialised commercial skills which enable these complex cases to be presented in a thoroughly professional manner. We are proceeding to develop a series of guidelines which will eventually be published so that the community can be made aware of how we go about our work in what is a sensitive and vitally important branch of our operations.

In addition to these rather more specialised functions, the Office continues to prosecute large numbers of drug offences under the provisions of the Customs Act and, where appropriate, State drug laws. Some of the cases prosecuted during the last 12 months have involved vast quantities of narcotic drugs, exceeding anything we have previously seen in this country. Drug law is, of course, highly technical, and requires specialised skills on the part of those who prosecute. Our level of success in this area has been very satisfying.

In the area of major fraud, the last of the 'mega' trials involving so-called bottom of the harbour tax schemes are presently grinding their way through the courts. During the past 12 months, we have also initiated prosecutions in respect of a number of significant sales tax and customs duty frauds. We continue to prosecute social security fraud, Medicare fraud, and sundry other frauds upon the Commonwealth. These general prosecutions, together with an occasional hotly-contested extradition, and the odd foray into the Federal Court in Administrative Decisions (Judicial Review) Act 1977 (ADJR Act) proceedings, continue to keep our prosecution lawyers extremely busy.

My predecessor punctuated his overview with a list of some of the notable successes of the Office during the year of his last annual report. I do not propose to follow his example. It should not be assumed that this means that there were no such successes during my first year in my new position. Rather, it seems to me that a Director's overview should address matters of more general application. I leave for later chapters a discussion of some of the important cases which this office has handled during the last 12 months. I hasten to add that not all of them have been 'notable successes'. A prosecution service which has an exceptionally high conviction rate may not be performing its role properly; it is likely to be avoiding prosecuting those hard cases which ought to be brought to trial.

Among the most important changes to the Office during the past year was the welcome addition of an Adelaide DPP Office. This office, which was formally opened by the Attorney-General on 4 July 1989, provides a belated but much needed addition to the DPP armoury in a State which has seen a considerable expansion in revenue fraud in recent years. With the creation of the new Adelaide Office, the total staff of the DPP comprised some 427, nearly 40 per cent of whom were lawyers.

One significant innovation introduced into the practice of the Office was the appointment in Sydney and Melbourne of in-house counsel. Previously, all indictable matters which went to trial were briefed out to the private bar in those cities. Lawyers within the respective regional offices occupied the role of solicitors. It seemed to me to be highly desirable to retain the services of a limited number of experienced members of the practising bar to act as permanent Commonwealth prosecutors, who would be briefed to appear in the higher courts as barristers prosecuting trials and appeals. The appointment of such permanent prosecutors has the additional advantage of providing an in-house source of legal advice to the younger, and less experienced, lawyers within these offices. Although it is too soon to draw firm conclusions regarding this initiative, the signs are that it will prove to be an outstanding success. It is also likely to be highly cost-effective. The appointment of such in-house counsel required delicate negotiations to be undertaken with the New South Wales Bar Association and the Victorian Bar Council, whose Chairmen proved to be most cooperative. Further, as a result of recent discussions with the New South Wales Bar Association it now appears possible for barristers within the Sydney Office to obtain practising certificates.

Another significant event during my first year in office was the Attorney-General's agreement that the Director of Public Prosecutions Act should be amended to grant the Director the power to bring ex-officio indictments (a power hitherto reserved to the Attorney himself) and to grant transactional immunities to prospective witnesses. Previously, the Director could only grant the more limited 'use' immunity. The decision to confer these powers upon the DPP reflects the trust and confidence reposed in my office by the Attorney.

One of my first tasks was to undertake a review of several of the most important guidelines previously developed by my predecessor. These included the general prosecutions policy of the Commonwealth, and the guidelines governing prosecution submissions during the course of sentencing. Those guidelines are in the process of being reviewed and it is hoped that this review will be concluded early in 1990.

It is obvious from these few opening remarks that the past year has been an eventful one for the Office of the DPP. The appointment of a new Director is only one of a number of important changes to have occurred.

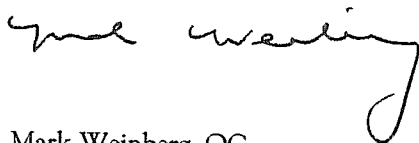


Commonwealth DPP Mark Weinberg QC, with First Deputy Director John Dee (seated).

From a personal point of view, the year has been a highly satisfying one. I have been able to continue to appear on a regular basis in appellate courts, thereby maintaining both my first professional love — advocacy — and perhaps my sanity. I have been invited to address numerous professional bodies and various legal conferences. I have been able to engage in some legal research which will lead to publication in scholarly journals.

The downside has been the enormous amount of travelling required. As the Director of a national organisation with a number of regional offices, it is imperative that I visit each of them from time to time. Commuting interstate on a regular basis, at a time when airline schedules are often disrupted for one reason or another, is scarcely conducive to maintaining low stress levels. It is also highly disruptive to one's own family life. I have no doubt that the position of Director has a rapid 'burn out' factor built into it, and that it may prove to be difficult to persuade anyone to occupy the position for more than a limited number of years.

I should not end this overview without acknowledging one particular source of support which has been an integral part of any success which I may have had in my first year. John Dee, my First Deputy Director, has provided me with his sound counsel and unfailing good humour throughout many bleak times. He, like many of my senior staff, has worked long hours, performing complex tasks for remuneration that can only be described as hopelessly inadequate. If there is a shadow on the horizon threatening the maintenance of high standards in my office, it is the level of remuneration available to attract and retain lawyers of quality. The Government is conscious of the problem, and it is to be hoped that a solution will be found.

A handwritten signature in cursive script, appearing to read 'Mark Weinberg', with a long, sweeping underline that extends to the right.

Mark Weinberg, QC