Commonwealth Director of Public Prosecutions

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Director's overview

Michael Rozenes QC

At the time of writing this, the ninth annual report, I have been Director for some seven months.

It is appropriate, first of all, that I thank all members of DPP staff for the great level of support shown to me at the commencement of my term of office. To them I am singularly grateful. Secondly, I wish to record my thanks to the senior staff of the Attorney-General's Department for the assistance and cooperation afforded to me upon my appointment.

I also note that a sound and proper working relationship was quickly established between the Attorney-General and myself. I thank the Honorable Michael Duffy for his willing contribution in this regard. This report would be incomplete without particular credit being given to my predecessor, Mark Weinberg QC, who after his three years as Director has left the Office in

excellent shape and also to Paul Coghlan who stayed on as Associate Director until 30 June to ensure a smooth transition. Edwin J. Lorkin, a member of the Victorian Bar, was appointed as the Associate Director on and from 1 July, 1992.

It is perhaps a little early in my term to express concluded views about all aspects of the work undertaken by my Office. What is clear, however, is that there are highly complex forces involved in the discharge of the duty of prosecutor. The decision to prosecute is, in many cases, a delicate balanced one requiring a consideration of manifold competing factors. My experience as a barrister, practising almost exclusively in criminal law, has armed me well for this aspect of the work. On the other hand, I have found administrative matters both fascinating and challenging.

The work undertaken by this Office of the Commonwealth DPP is in some respects unique. Unlike its State counterparts the Office derives some of its most important work from agencies who, in the discharge of their statutory functions, do not see criminal prosecution as their prime objective. Generally speaking, police do see the detection of crime and the successful prosecution of those charged as a fundamental exercise in law enforcement. That is not to say that there is not an important role to be played by the police in the area of crime prevention.

Perhaps it is naive to expect that agencies such as the Australian Taxation Office (ATO), the Australian Securities Commission (ASC) and the Australian Customs Service (ACS) would have a similar commitment to criminal prosecutions as an appropriate and effective law enforcement tool.

The different emphasis of regulatory and revenue agencies were highlighted in the differences of opinion with the ASC which unfortunately became a public issue. The issues were articulated in the Report of the Joint Statutory Committee on Corporations and Securities which was tabled in Parliament on 6 October 1992. I should add that my office and the ASC are operating cooperatively in accordance with the Directions issued by the Attorney-General.

The important point that must be made is that civil action cannot, in cases of fraud or dishonesty, be an adequate and effective deterrent. In my view, in cases involving fraud or dishonesty, there must exist a real deterrent in the form of criminal prosecution with appropriate penalties for those convicted.

Such cases, whether they involve fraud in the company context or fraud against the Commonwealth generally, should be dealt with along broadly similar lines. The prosecution policy of the Commonwealth is directed at making the system fair so that '... it does not display arbitrary and inexplicable differences in the way ... classes of cases are treated locally or nationally'. Whilst there is a place for administrative penalties and alternative responses short of prosecution in minor or routine cases, prosecution should be considered in all the more serious cases.

Prosecution action can of course be extremely frustrating to those unused to the criminal justice system. The time involved to properly investigate and prosecute major corporate fraud in often measured in years. No doubt advances can be made to streamline the investigation and prosecution of these sorts of cases but at the end of the day the offender must have his or her guilt proved to the criminal standard. The frustrations that are felt resulting from such long lead times must not lead to the conclusion that the criminal process is inappropriate.

Those who contravene the law must recognise that ultimately they will be brought to book. It has been said that a regulatory strategy without a credible threat of prosecution is simply no strategy at all. I agree with such sentiments.

I am not to be taken as saying that civil remedies play no part in the proper regulation of those involved in criminal enterprise. On the contrary, civil remedies form an important weapon in the fight against Commonwealth crime. It must however, be understood that the only real and effective deterrent for the criminal is the perceived likelihood of detection followed by the certainty of punishment. To advocate otherwise is to simply encourage corporate wrongdoers to factor into the cost of doing business the cost of having to pay back ill-gotten gains. Such an approach will only ensure that assets are well-hidden and that otherwise the risk is accepted.

Another matter which has occupied a significant amount of time during this reporting period has been the operation and effectiveness of the *Proceeds of Crime Act 1987*.

Most practitioners see the legislation as authorising a draconian interference with personal property before an accused has been convicted. I must confess that in the past I shared the view. However, I now concede that the legislation is a most important law enforcement tool. The extent to which it is effective is directly related to how much of the restrained assets remain intact and available for ultimate forfeiture after conviction. The lack of effective control over the payment of legal fees out of assets restrained under the Act continues to be of great concern.

The Act allows an accused person access to restrained assets in order to meet the cost of legal expenses if there are no assets which are not the subject of a restraining order available to meet those expenses.

There is no doubt that an accused person should be adequately represented rather than face the prospect of conducting a complex criminal trial without representation.

Unfortunately, the experience of my Office has been that some members of the legal profession have, on a number of occasions, acted without the requisite degree of restraint by expending as much of the restrained funds as possible. In one case, over a million dollars was drawn down and spent on committal proceedings which ultimately ended in a plea of guilty once the money was gone.

What must not be lost sight of is that, in addition to the total depredation of the fund, valuable prosecuting resources were lost and the court was occupied to the exclusion of other litigants for nine months. It is vital that mechanisms be devised and implemented to more effectively control the payment of monies from frozen funds for legal representation. It is necessary to guarantee that an accused will be adequately represented while at the same time ensuring that the funds will not be dissipated so as to completely thwart the objects of the legislation.

Finally, I anticipate that the great challenge facing my Office, as it does all other Directors of Public Prosecutions, is to ensure that the criminal courts of this country are able to deal with complex fraud trials in a way which affords justice both to the parties and to the community at large.

To this end the recent initiative of the Standing Committee of Attorneys-General calling for special legislation to be enacted for the conduct of complex fraud trials is to be applauded. If the changes there proposed are adopted, we will have come a substantial step closer to ensuring that complex fraud trials are a manageable exercise.

It will be appreciated that my Office conducts prosecutions in all States and Territories and accordingly those proceedings are governed by the procedural laws and practices applicable in those places. It is accordingly of singular significance to my Office that the reform of the way in which we litigate complex trials is uniformly effected throughout the whole of Australia.

Michael Rozenes QC