



**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

2013-2014



DIRECTOR
OF PUBLIC
PROSECUTIONS
NORTHERN TERRITORY





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TWENTY-FOURTH ANNUAL REPORT

FOR YEAR ENDED 30 JUNE 2014



DIRECTOR
OF PUBLIC
PROSECUTIONS
NORTHERN TERRITORY





DIRECTOR
OF PUBLIC
PROSECUTIONS
NORTHERN TERRITORY

30 September 2014

Mr John Elferink MLA
Attorney-General and Minister for Justice
Parliament House
State Square
DARWIN NT 0800

Dear Attorney-General

ANNUAL REPORT 2013-2014

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 2013 to 30 June 2014.

Yours sincerely

WJ KARCZEWSKI QC



DIRECTOR
OF PUBLIC
PROSECUTIONS
NORTHERN TERRITORY



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DIRECTOR
OF PUBLIC
PROSECUTIONS
NORTHERN TERRITORY



OFFICE LOCATIONS

1. NORTHERN REGIONAL OFFICE DARWIN (Head Office)

Level 5, Old Admiralty Tower
68 The Esplanade
DARWIN NT 0800
GPO Box 3321
DARWIN NT 0801

Telephone: (08) 8935 7500
Fax: (08) 8935 7552
Free Call: 1800 659 449

2. SOUTHERN REGIONAL OFFICE ALICE SPRINGS

1st Floor, Centrepoint Building
Cnr Hartley St & 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)
Randazzo Building
Katherine Terrace
KATHERINE NT 0850
PO Box 1295
KATHERINE NT 0851

Telephone: (08) 8973 8813
Fax: (08) 8973 8866



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 that:

VISION

The vision of the Director of Public Prosecutions is to provide the highest quality of 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 albumbat 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
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DIRECTOR'S OVERVIEW

The most significant project undertaken by the Office in the reporting year was the civilianisation of the Police Prosecutions Unit in the Darwin region ("the CoPPs Project"). The rationale for the CoPPs Project was government's decision to re-align police resources with mainstream police functions. Hitherto, uniformed police prosecutors appeared in the Court of Summary Jurisdiction and Youth Justice Court, all bail and arrest matters and mentions and attended to all administrative duties related to these functions including the laying of charges. Police prosecutors were not legally qualified.

The CoPPs Project commenced in July 2013 and concluded with a formal take-over by this Office of all these functions (except the laying of charges) on 2 December 2013. It resulted in an increase of 19 FTE.¹

In tandem with the civilianisation process, police made various operational changes as to the way they interact with this Office. The most significant of these changes were (i) shifting the responsibility for the laying of charges from the former Police Prosecutions Unit back to the investigating member, (ii) establishing a Judicial Operations Section (JOS) to be the primary liaison unit for the DPP, and (iii) changing the structure of the police brief of evidence provided to this Office so as to reflect proposed amendments to the case management process in the Court of Summary Jurisdiction. A consequence of the civilianisation process has been to give the Office an opportunity to have greater input into all of these matters.

The establishment of JOS is welcomed as it provides a single point of contact for this Office in respect of the myriad of issues which arise on a daily basis in relation to the prosecution process generally and which, in the ordinary course of events, need to be addressed quickly. In turn, it gives the police hierarchy a clearer overview of matters such as the standards of briefs of evidence presented to this Office for prosecution and the ability to identify issues in respect of which remedial action, such as training, is required.

The CoPPs Project presented numerous challenges. It was hard work for all concerned. I would like to extend my thanks to all members of the CoPPs inter-agency committee which met on a weekly basis to identify, organise and implement all the necessary changes. My special thanks go to Edward Cade, the Acting Managing Prosecutor, Summary Prosecutions Darwin, who, in addition to his day-to-day court obligations and management duties, developed the organisational structure, lines of authority and work practices within the new unit and sat on many staff selection panels.

¹ 11 new and three MoU professional positions and four new and one MoU administration positions

Because of the significant changes effected by CoPPs, I did not pursue the SLA (MoU) between the DPP and the Commissioner of Police referred to in the overview in the last two annual reports. A new MoU is in the process of being drafted to reflect the new structure and procedures bought about by CoPPs. The old SLA/MoU continues to apply in Katherine and Alice Springs.

On the professional front, it was a busy year for the Office. In the Court of Criminal Appeal, there was a slight increase in the number of applications for leave to appeal against conviction² and a significant increase in the number of applications for leave to appeal against sentence.³ There was also a significant increase in the number of defence appeals heard by the Court of Criminal Appeal as to conviction⁴ and severity of sentence.⁵

Although the number of Supreme Court trials prosecuted was down slightly from the previous year, this shortfall was more than made up for by a number of trials which were both considerably longer and more complex than the average trial.⁶

During the reporting year, staff were involved in both receiving and delivering training. The highlight of the year was an in-house conference for all prosecutors held on Saturday, 15 March 2014. The theme of the conference was the ***Evidence (National Uniform Legislation) Act 2011*** (NT). The conference was attended by 34 Crown and summary prosecutors from all three offices. Two prosecutors from the Commonwealth DPP attended also. The presentations were of a high standard and were well received.

Prosecutors delivered presentations to NT Police, Australian Federal Police, Community Corrections, to high school students during Law Week,⁷ and to youth as part of the Multicultural Youth NT Program.

The Office provided work experience opportunities to both secondary and tertiary students.

The DPP website was reviewed and updated and a new logo was designed which will assist Territorians to identify the DPP and access the service. The new logo appears on the front page of this report.

Throughout the reporting year, the Office participated as a member of the Integrated Justice Information System (IJIS) Modernisation Program. One of the suggestions advanced by this Office, the electronic Brief of Evidence, was approved and is now being developed. The DPP is required by law to deliver to the Court of Summary Jurisdiction and to each defendant a copy of the Brief of Evidence provided to it by the Police in respect of all matters where a preliminary examination is to be

² Seven in the reporting year, five in the previous year

³ 17 in the reporting year, 10 in the previous year.

⁴ Nine in the reporting year, two in the previous year

⁵ 13 in the reporting year, four in the previous year

⁶ ***R v Cassidy*** - attempting to pervert the course of justice – 12 weeks. ***R v Ashley*** - murder - almost six weeks. ***R v Vanko*** – murder – four weeks. ***R v Murdoch*** - sex offences x 3 against a child under the age of 16 years – almost four weeks

⁷ Presentation at the Supreme Court entitled Cabinet to Court

conducted.⁸ The Brief is photocopied sufficient times so as to provide a copy to each defendant and to the Court. The purpose of the project is to eliminate the paper based Brief of Evidence and to allow for the electronic service and exchange of documents between Police, DPP, Courts and defence counsel. The benefits of the electronic Brief of Evidence will be reduced paper usage within the office and a reduction in the time spent by administrative assistants in photocopying the Brief of Evidence.

In last year's Annual Report, I reported that due to budgetary constraints, I had made no attempt to replace my two most senior lawyers. The positions to which I referred were the Deputy Director (based in Darwin) and the Assistant Director, Alice Springs. Both positions were advertised and have now been filled. Paul Usher, the former Assistant Director, Darwin, was appointed Deputy Director on 10 April 2014. Roger Griffith, a former Principal Crown Prosecutor with the Queensland Director of Public Prosecutions, commenced duties as the Assistant Director, Alice Springs, on 2 October 2013.

In last year's report, I reported two instances in the Supreme Court of failed audio-visual recordings of the evidence of child complainants in proceedings for sexual offences against them. This resulted in additional trauma to the children occasioned by the necessity to give evidence a second time. I am pleased to report that there have been no such failures during the current reporting period.

In last years' report, I made mention of the new regime of mandatory sentencing for violent offences introduced by the **Sentencing Amendment (Mandatory Minimum Sentences) Act 2013** ("the Act") and highlighted an argument that had arisen as to whether the stipulation in the Act that "*the offender has previously been convicted of a violent offence*" permitted the court to take into account a conviction for a violent offence recorded prior to the commencement of the Act on 1 May 2013. I noted that as a consequence of adverse rulings by the courts, the Legislative Assembly passed the **Sentencing Amendment Act 2013** ("the Amending Act") the purpose of which was to make it clear that the phrase "*previously convicted of a violent offence*" meant a previous conviction for a violent offence whenever that offence occurred. The Amending Act did this by adding the words "*whenever committed*". The Amending Act commenced on 12 July 2013.

The provisions of the Amending Act were considered by the Supreme Court in the case of **The Queen v Leo**⁹ where, at first instance, it was held that the Amending Act had retrospective effect and that persons who committed violent offences both before and after the commencement of the Amending Act were liable to have previous violent offences, whenever committed, taken into account for the purpose of the aggravated minimum penalty. This interpretation was overruled by the Court of Criminal Appeal in **Leo v The Queen**¹⁰ where it was held that the inclusion of the words '*whenever committed*' did not retrospectively impose criminal liability or increase the penalty for offences committed prior to the commencement of the Amending Act. The law on this aspect has now been settled.

⁸ See s 105C and 105D **Justices Act**

⁹ [2013] NTSC 70

¹⁰ [2014] NTCCA 8

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.

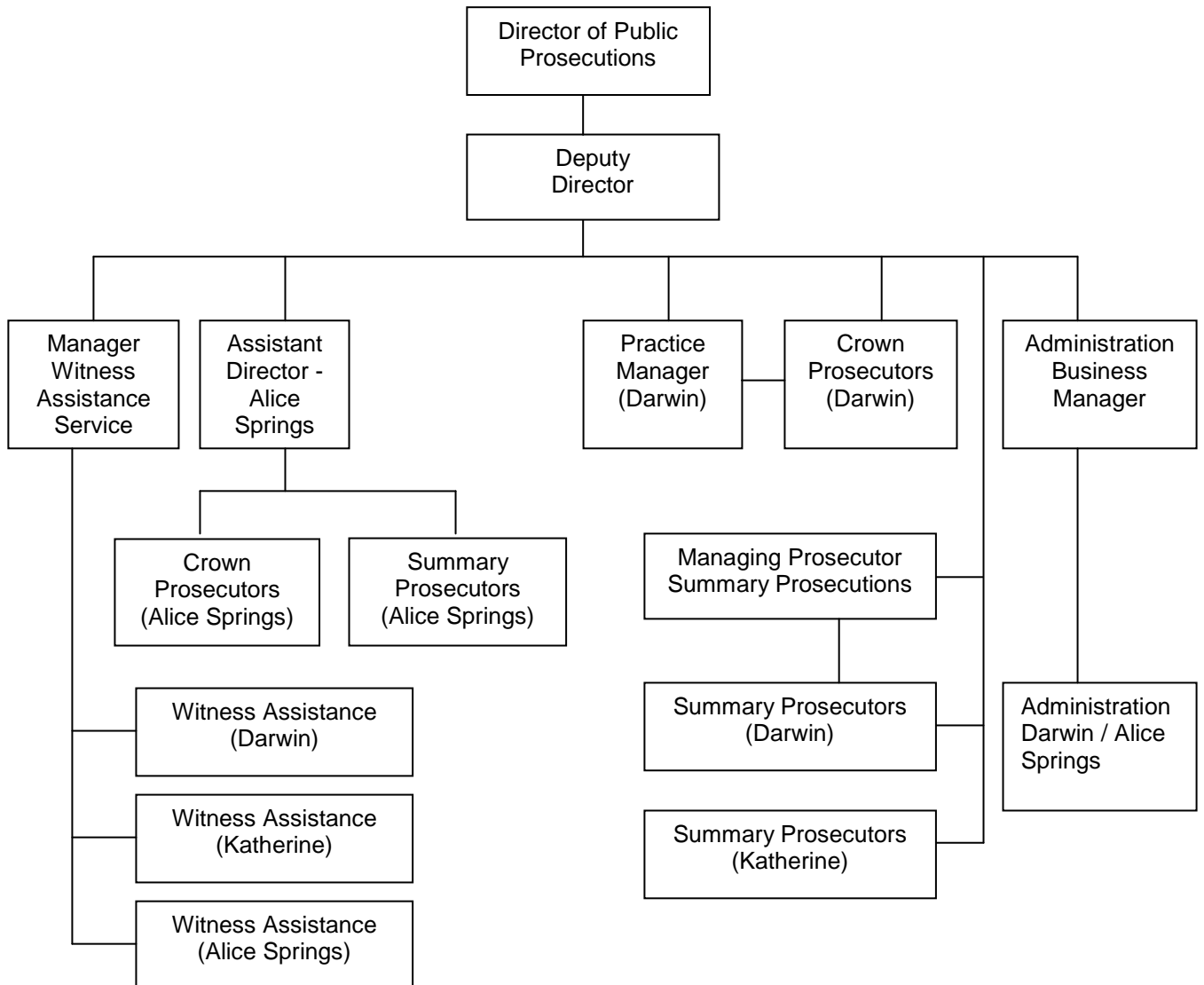
Although no directions were issued by the Attorney-General to me during the year under review under either section 26 or 28, on 11 November 2013 the Attorney-General issued a press release some of which was reproduced in an article on page 3 of the NT News on 12 November 2013.

The article reported the Attorney-General as saying that he was convinced that the sentence of two years imprisonment with a non-parole period of 14 months imposed on Nicholas Cassidy who was found guilty by a Supreme Court jury of the offence of attempting to pervert the course of justice was manifestly inadequate. The article further quoted the Attorney-General as saying that he had asked me to review the sentence and that if he had the power to direct me to appeal against the inadequacy of the sentence, he would do so. The latter sentiment was expressed directly to me by the Attorney-General on 11 November 2013.

After careful consideration of detailed submissions from the senior Crown prosecutor who prosecuted the trial, I decided not to institute an appeal.



DPP ORGANISATION CHART





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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 s414 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 *Coroner's 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 2014, the total number of staff was 78.87. The increase in the number of Full Time Equivalent (FTE) from previous years was a result of the civilianisation of summary prosecutions in Darwin which took effect from 2 December 2013. As at 30 June 2014, there was incomplete recruitment action for three vacancies.

Level	Total	Female	Male
Director	1		1
ECO4	1		1
ECO3	1		1
ECO2	1		1
ECO1	3		3
SP2	5	2	3
*SP1	6	3	3
*P3	6.6	3	3.6
*P2	17	7	10
P1	0	0	0
GRADT	1	1	
Total Legal Staff	42.6	16	26.6
SAO2	1	1	
P3	1	1	
**P2	1	1	
AO5	4.5	3.5	1
AO3	1.5	0.5	1
Total WAS Staff	9	7	2
SAO1	1.27	1	0.27
AO6	1	1	
AO5	4	4	
AO4	6	6	
AO3	15	12.5	2.5
Total Support Staff	27.27	24.5	2.77
GRAND TOTAL	78.87	47.50	31.37

*1 x SP1, 1 x P3 and 1 x P2 vacancies were not filled as at 30 June 2014 and are not counted as FTE

**1 x P2 vacancy was not filled as at 30 June 2014 and is not counted as FTE.

Administration

The Office was successful in implementing initiatives that focused on staff, technology, and work processes. All initiatives were designed to improve productivity and advance the provision of services. Highlights and achievements are outlined below.

Recruitment

The civilianisation of police prosecutions in Darwin created a significant increase in the number of recruitment actions undertaken. An additional fourteen professional positions and five administrative positions were established.

An increase in the Full Time Equivalent (FTE) of 30% in Summary Prosecutions has placed additional strain on the existing support structure within the Office.

Training

During the year, staff participated and attended a number of training programs and conferences.

The DPP also conducts regular in-house legal training which is designed to ensure that prosecutors keep their skills current and that they are able to comply with the Law Society's continuing legal education requirements.

Direct expenditure on external training for 2013-2014 was \$36,581.59. There was also considerable in-house and on-the-job training which is not costed.

The following table provides examples of the range of professional development and training activities supported by the DPP in 2013-2014 and the number of staff who participated.

2013-2014 Courses and Conference attended

COURSE/CONFERENCE	TOTAL STAFF ATTENDANCE
2014 DPP Conference	34
2014 IAP & AACP Joint Conference	5
2014 Practical Advocacy Workshop	6
BOXI HR	2
CPD - Practical Advocacy Skills	1
CPD - Advanced Cross Examination	1
CPD - Disclosure: Just do it	1
CPD - Evidence Rules ok?	4
CPD - Keep Calm and Toughen Up Princess	1
Cross Cultural Training	25
Discovery Women as Leaders Program	1
DPP Executive Meeting	2
e-Recruit Training	2
Forensic Accounting-Expert Reports	1
GL Coding by AGD BPT	2
IPR Information Session	3
IPR Training	1
Low Risk Defensive 4WD Training	1
NT Suicide Prevention Conference	2
Orientation Appropriate Workplace Behaviour	4
Preventing Harassment & Bullying for Managers and Supervisors	1
Recruitment & Selection Training	13
Sexual Assault Conference	1
Train the Trainer	1
Windows 7 - Office 10 Training	3
Work Health Safety Certificate IV	1
CPD Intensive	1

Membership and Working Groups

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

- Criminal Court Users Forum (Court of Summary Jurisdiction);
- Summary Case Management Working Group;
- ODPP National Executives Meeting;
- Mandatory Sentencing Data Capture Committee;
- Crimes Victim Advisory Committee;
- Victim Support and Advocacy Service;
- Sexual Assault Network Darwin;
- Internal Audit Committee;
- Executive Leadership Group;
- Information Management Committee; and
- Work, Health and Safety Committee.

Training to External Agencies

Presentation and programs are provided to a number of different organisations including:

1. Advice and training to police recruits.
 - A prosecutor attends the Police, Fire and Emergency Services (PFES) College and gives lectures as required.
 - Advice is given to police members in the police stations including when prosecutors are on Court circuit.
2. Training to Community Corrections officers as part of their Core Training Framework.

The DPP participates with other government and non-government organisations in making presentation to high school students studying Legal Studies. This year's presentations included:

- Cabinet to Court - A joint program between the NT Legislative Assembly and the Supreme Court aimed at year 10 – year 12 students. It included speakers sharing their experience in four different careers directly involving law and students asking questions.
- Presenting and participating in roles as prosecutors at the Multicultural Youth NT program that aims at educating young people about the legal system and take them through the steps of court procedures.
- The Supreme Court Open Day which was held at the Darwin Supreme Court on 24 August 2013.

Witness Assistance Service (WAS) conducted presentation to groups including:

- NT Police;
 - North Australian Aboriginal Family Violence Legal Service; and
 - Sexual Assault Awareness month – SARC.
3. The DPP National Executives Meeting is comprised of DPP representatives from New Zealand and each of the DPP offices in Australia. The body meets once a year and is hosted on a rotational basis by each State/Territory in Australia. At the meeting, the representatives discuss current issues in practice management such as early plea strategies, the use of technology in court and effective ways to measure prosecutor performance. Staff welfare initiatives and best practice strategies are also discussed. In April 2014, the DPP Practice Manager and Business Manager attended this meeting on behalf of the Office.

Intra/Inter-Agency Co-operation

Department of the Attorney-General and Justice – Legal Policy

During the reporting year the Office responded to 24 requests from the Legal Policy Division of the Department. Given the independence of the DPP, any advice given or comments provided by the Office must be restricted to advice of a technical nature. In the main the advice sought concerned new legislation or amendments to existing legislation.

NT Police

During the reporting year the Office received 89 requests for opinions from police. Of those, 67 opinion files were finalised and 22 remained open as at 30 June 2014.

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 to the working environment of lawyers.

As our work is often of a sensitive and confronting nature, care is taken in the selection of cases that the students are exposed to. 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.

Tertiary Students

Two Charles Darwin University law students and two interstate law students undertook work experience at the DPP. One law graduate was also provided with two weeks work experience.

Secondary Students

The Darwin Office of the DPP provided work experience to four year 10 students from Darwin High School. The Alice Springs Office of the DPP provided work experience to three year 10 students from St Phillips College.

Technology

Website Review

The DPP reviewed and updated the website, which included the development of a new logo that will assist Territorians to identify the DPP and access its service. The new logo appears on the front cover of this Annual Report. The website provides useful and accessible information resources for victims and witnesses in their dealings with the NT Court system.

CaseNet Enhancements

A number of enhancements were developed and implemented in the DPP file management system, CaseNet. They include the interface with IJIS to provide automated information from IJIS onto word templates such as witness lists, subpoenas and victims letters.

The enhanced system will deliver productivity improvements via workflow-based support of key business processes and the automation of key tasks.

Health and well being

To date, the Office's efforts around meeting the health and wellbeing needs of staff have been directed through the Department of the Attorney General and Justice Work Health and Safety Program, Employee Assistance Program and Influenza vaccinations. These programs are essential and provide benefits to employees, however they have been offered independently and do not represent a holistic approach to health and wellbeing issues. DPP have commenced work on a Health and Wellbeing project which is specific to the DPP in addressing issues faced by the staff.



OUTPUT PERFORMANCE MEASURES

Key deliverables	Current Year		Targets	Previous Years	
	2013-14 Estimate	2013-14 Actual	2014-15 Estimate	2012-13 Actual	2011-12 Actual
New matters ¹	6,800	8,180	8,400	1,906	2,021
Finalisations:					
- Supreme Court pleas ²	280	275	300	341	397
- Supreme Court trials	50	43	50	53	49
- Supreme Court withdrawn	50	25	50	45	43
- Not committed to Supreme Court	10	0	10	0	1
- Summary hearings/pleas ¹	3,900	4,372	6,400	972	959
- Summary withdrawn ¹	400	504	480	249	234
- Appeals at all levels	75	56	75	62	68
Witness Assistance Service clients ³	1,450	1,643	1,450	1,822	1,493
Duty prosecutors days ⁴	800	787	650	886	1,097
Findings of guilt (including guilty pleas) in Supreme Court	90%	94%	90%	94%	95%
Findings of guilt (including guilty pleas) in Court of Summary Jurisdiction	90%	94%	90%	89%	91%
Convictions after trial or hearing	90%	95%	90%	90%	91%
Filing of indictments within 28 days of committal	65%	71%	65%	57%	75%
Supreme Court matters withdrawn less than 28 days before a trial was to commence	65%	53%	65%	69%	63%

1. Increases reflect civilianisation of police prosecutions in Darwin effective from 2 December 2013.
2. Increasing number of indictable offences being prosecuted in the Supreme Court.
3. Additional witnesses are being engaged by the Witness Assistance Service to assist through the criminal justice process.
4. Duty prosecutor days have reduced with the civilianisation of police prosecutions in Darwin. Duty prosecutor days are now predominately provided in Alice Springs and Katherine.



PROFESSIONAL ACTIVITIES

General Workload

WORKLOAD OVERVIEW	2013-14	2012-13	2011-12
New Matters ¹	8,180	1,906	2,021
New Phases (Crown only)	2,197	2,121	2,268
Court Appearances (Crown only)	8,673	9,025	9,548
Duty Lawyer days	787	886	1,097
MATTERS COMPLETED IN SUMMARY & YOUTH JURISDICTIONS			
Guilty (including guilty pleas)	4,372	972	959
Committed	389	334	282
Not Guilty/Not Committed	155	87	108
Withdrawn	504	249	234
Total CSJ & Youth Matters ¹	5,420	1,642	1,493
MATTERS COMPLETED IN SUPREME COURT			
S/C Pleas	275	341	401
S/C Trial guilty	20	25	28
S/C Trial not guilty	20	21	16
S/C Trial Mistrial	3	7	5
Nolle Prosequi	19	35	38
S297 (no true bill)	6	11	5
Total S/C (not incl 297A)	337	429	488

1. Increase number of new matters and increase in matters completed in Summary and Youth Jurisdiction is a result of the civilianisation of police prosecutions in Darwin effective from 2 December 2013.

Appeals

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

- (i) institute and conduct, or to 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 at Appendix A.

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.

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 2012 to 30 June 2013.

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* 2013/2014

	Sentence	Conviction
Granted	7 (5)	5 (2)
Refused	10* (4)	1** (3)
Discontinued	1 (1)	1 (0)
Total	18 (10)	7 (5)

* Six applicants applied to have their applications re-heard and determined by the Court of Criminal Appeal constituted by three judges. Only two of those applications were heard and determined following full oral argument before the Court during the reporting year. One application was granted and the appeal allowed. The other application was refused. As the applications were argued as if they were appeals, the results have been included in Table B. The four remaining applications will be heard and determined in the 2014-2015 reporting year.

** One applicant applied to have his application re-heard and determined by the Court of Criminal Appeal constituted by three judges. The application was heard and determined following full oral argument before the Court during the reporting year. The application was refused. As the application was argued as if it was an appeal, the result has been included in Table B.

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

2013/2014

	Conviction	Sentence	Other
Allowed	3 (1)	6 (3)	0 (1)
Dismissed	6 (1)	7 (1)	0 (0)
Discontinued	0 (0)	1 (0)	0 (0)
Total	9 (2)	14 (4)	0 (1)

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

2013/2014

	Sentence	Other
Allowed	2 (3)	0 (0)
Dismissed	3 (2)	0 (0)
Total	5 (5)	0 (0)

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

2013/2014

Decided in favour of prosecution	0 (0)
Decided in favour of defence	1 (0)

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

TABLE C

**Outcome of defence appeals from the Court of Summary Jurisdiction to the Supreme Court at Darwin
2013/2014**

	Conviction		Sentence		Other	
Allowed	4	(5)	12	(14)	0	(0)
Dismissed	2	(8)	7	(10)	0	(0)
Discontinued	1	(2)	10	(2)	0	(0)
Total	7	(15)	29	(26)	0	(0)

**Outcome of prosecution appeals from the Court of Summary Jurisdiction to the Supreme Court at Darwin
2013/2014**

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

TABLE C

**Outcome of defence appeals from the Court of Summary Jurisdiction to the Supreme Court at Alice Springs
2013/2014**

	Conviction		Sentence		Other	
Allowed	1	(1)	6	(7)	0	(0)
Dismissed	3	(1)	0	(6)	0	(1)
Discontinued	1	(1)	1	(1)	0	(0)
Total	5	(3)	7	(14)	0	(1)

**Outcome of prosecution appeals from the Court of Summary Jurisdiction
to the Supreme Court at Alice Springs
2013/2014**

	Dismissal of Charge		Sentence		Other
Allowed	1	(0)	1	(0)	(0)
Dismissed		(0)	2	(0)	(0)
Discontinued	0	(1)	1	(0)	(0)
Total	1	(1)	4	(0)	(0)

HIGH COURT

The Office was directly involved as respondent in two applications for special leave to appeal to the High Court of Australia during the reporting period.

The Office was indirectly involved as respondent in one appeal to the High Court of Australia in the reporting period.

Moseley v DPP

**11 October 2013
French CJ & Crennan J
[2013] HCA Trans 237**

The applicant applied for special leave to appeal to the High Court of Australia from the decision of the Full Court of the Supreme Court which, on 1 March 2013, answered two questions of law referred to it by the Supreme Court to the effect that the Supreme Court has jurisdiction to set aside a judgment of the Court of Criminal Appeal obtained by fraud in the event fraud is established. See *DPP v Moseley* [2013] NTSC 8.

The Crown case was that the applicant, who had been found guilty of aggravated robbery, secured a quashing of that finding of guilt in the Court of Criminal Appeal by means of fraud. The fraud involved having a person by the name Da Silva falsely admit to the police (after trial) that it was he, Da Silva, and not Moseley who was involved in the robbery. The Court of Criminal Appeal quashed the jury's finding of guilt in respect of Moseley and ordered a re-trial. See *Moseley v The Queen* [2012] NTCCA 11.

Before the re-trial took place, Da Silva recanted his admission to having taken part in the robbery and made a further statement to police claiming that his admission was false. He made a statement saying that Moseley had offered him a sum of money to make the false statement and that Moseley had admitted to him (Da Silva) that he (Moseley) had committed the robbery.

The Crown commenced proceedings in the Supreme Court with a view to setting aside the order of the Court of Criminal Appeal claiming that it had been obtained by fraud. The judge hearing the matter referred to the Full Court of the Supreme Court two preliminary questions of law directed to the jurisdiction of the Supreme Court to

hear such an application. The Full Court held that the Supreme Court has jurisdiction to set aside the judgment of the Court of Criminal Appeal in the event fraud is established. The Full Court made no findings as to whether the decision of the Court of Criminal Appeal had in fact been obtained by fraud.

On 26 March 2013, the applicant filed an application for special leave to appeal to the High Court of Australia from the whole of the judgment of the Full Court. The grounds of the application included, inter alia, that the Full Court erred in failing to conclude that a retrial, as ordered by the Court of Criminal Appeal, is an appropriate forum in which to determine the truth of the allegations of fraud made by Da Silva.

On the hearing of the application for special leave, the High Court found it difficult to appreciate why a retrial would not be an appropriate course of action, rather than the matter being the subject of debate about special leave in relation to an interlocutory application. The Crown argued, inter alia, that a retrial would be inappropriate as it would not remove the taint on the judgment of the Court of Criminal Appeal which would remain. The Court granted Moseley special leave to appeal.

Prior to the appeal being listed for hearing in the High Court, the Crown discontinued the original proceedings against Moseley i.e. the proceedings in respect of the retrial ordered by the Court of Criminal Appeal by the filing of a *nolle prosequi*. Moseley then discontinued the High Court appeal. He was then immediately extradited to South Australia to stand trial on a charge of armed robbery.

Lo Castro v The Queen

**2 April 2014
Hayne & Crennan JJ
[2014] HCASL 74**

The applicant was tried in the Darwin Supreme Court and convicted of five counts of unlawful assault and three counts of sexual intercourse without consent in respect of a certain complainant (complainant A). After the return of the verdicts, and during the course of separate proceedings concerning a different complainant (complainant B), the applicant pleaded guilty to a further four counts of unlawful assault and one count of attempting to have sexual intercourse without consent. The applicant was sentenced in respect of all of the offences to a total effective sentence of 13 years' imprisonment with a non-parole period of eight years. In separate proceedings in the High Court, the applicant was refused special leave to appeal against that sentence.¹¹

In the instant case, the applicant sought special leave to appeal from that part of the decision of the Court of Criminal Appeal dismissing his appeal against convictions in respect of complainant B.¹²

At the hearing of the appeal, the Court of Criminal Appeal received evidence directed to the question of whether the applicant's pleas of guilty in the second trial had been properly entered and whether they should be set aside on various grounds, including the ground that they were tainted by the results in the first trial, a new trial having been ordered in respect of that trial.

¹¹ **Lo Castro v The Queen** [2011] HCASL 168

¹² **Lo Castro v The Queen** [2013] NTCCA 15

In refusing the applicant's applications for an extension of time and for leave to appeal in respect of convictions in the second trial involving complainant B, the Court of Criminal Appeal was not satisfied that the applicant's pleas of guilty were attributable to factors other than the voluntary and deliberate choice made by him.

The High Court was not persuaded that the approach taken, and conclusions reached, by the Court of Criminal Appeal involved any failure to apply well-settled principles concerning a change of plea. Further, in reaching its conclusions, the Court of Criminal Appeal noted that in his evidence before that Court, the applicant did not clearly deny that he had committed the offences with which he had been charged in the second trial, and did not clearly assert any defence on the merits. That being so, the High Court was not persuaded that it would be in the interests of justice, either generally, or in this particular case, that there be a grant of special leave to appeal.

The High Court determined the application without listing it for hearing.

The application for special leave to appeal was dismissed.

Attorney-General (NT) v Emmerson 4, 5 February, 10 April 2014
French CJ, Hayne, Crennan, Kiefel, Bell,
Gageler, & Keane JJ
[2014] HCA 13, (2014) 88 ALJR 522,
307 ALR 174

This was an appeal by the Attorney-General against the decision of the Court of Appeal in the matter of *Emmerson v Director of Public Prosecutions (NT)*.¹³ The appeal concerned the validity of certain provisions of the *Criminal Property Forfeiture Act (NT)* ("the CPFA"). The DPP, in whose name the initial proceedings against Emmerson ("the offender") were commenced in the Supreme Court under the CPFA, filed a submitting appearance and played no further part in the High Court proceedings. The matter was argued by the Solicitor-General instructed by the Solicitor for the Northern Territory ("the SFNT"). The SFNT acts for the DPP in all applications made by the DPP under the CPFA. The High Court found that the impugned provisions were valid and reversed the majority decision of the NT Court of Appeal. The net result of the High Court proceedings was to restore the order made by the judge at first instance declaring the offender to be a drug trafficker with the result that all of the offender's property was liable to be forfeited, whether or not it was used in or acquired from the commission of a crime, or was unexplained wealth.¹⁴

¹³ [2013] NTCA 4, 33 NTLR 1

¹⁴ *DPP v Emmerson & Anor* [2012] NTSC 60, 32 NTLR 180



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SUMMARY PROSECUTIONS

The Summary Prosecutions section of the Director of Public Prosecutions is responsible for the conduct of prosecutions and prosecution related activities in the Court of Summary Jurisdiction (“the CSJ”). Summary Prosecutions sections exist in three geographical areas; Summary Prosecutions Alice Springs (SPAS), Summary Prosecutions Katherine (SPK) and Summary Prosecutions Darwin (SPD). Each section is staffed by civilian lawyers employed by the DPP.

In addition to matters referred to them by police, summary prosecutors also appear on instructions from Department of Correctional Services in relation to breaches of suspended sentences, home detention orders and good behaviour bonds.

Until 2 December 2013 all three prosecution sections provided a uniform range of prosecution services on behalf of the NT Police, mainly the prosecution of matters referred by the Officer in Charge of Police Prosecutions including contested hearings and pleas of guilty of a complex or sensitive nature. Police prosecutors appeared in all bail and arrest matters in the Court of Summary Jurisdiction and in the Youth Justice Court and appeared in the majority of plea matters in both courts and on contest mentions.

Summary Prosecutions Darwin (SPD)

On 2 December 2013 SPD was ‘civilianised’ with the result that the model of a shared division of prosecution responsibilities between Police and the DPP changed to one whereby the DPP has complete prosecution responsibility for all charges which are laid by members of the Police within the SPD geographical area.

The ‘Civilianisation’ of Summary Prosecutions Darwin – The CoPPs Project

In July 2013, a direction was issued by the Attorney-General that the DPP should take over from the Police the prosecution function previously performed by the Police Prosecutions Unit in Darwin. The Civilianisation of Police Prosecutions or CoPPs as the project came to be known was managed by an ad hoc inter-agency steering committee¹⁵ the membership of which comprised persons with expertise in finance, HR, ICT and infrastructure. The committee chaired by the DPP met on a weekly basis until December 2013 when the formal transfer of responsibilities occurred. The committee dealt with a plethora of issues including budget transfers from NTPFES to NTDPP, the development of job descriptions (including flexible hours of work), the recruitment of staff, liaison with external stakeholders such as the Court of Summary Jurisdiction, ICT issues such as the extension of CaseNet, the DPP case

¹⁵ Comprising staff from the Department of the Attorney-General and Justice and NT Police

management system, to capture data previously maintained/stored by Police and other infrastructure issues.

SPD now has an establishment of 19 civilian lawyers and six administrative positions.¹⁶ The establishment finally settled upon, after a trial period, appears in the organisational chart/table at Appendix B.

SPD also serves the Court of Summary Jurisdiction in the following remote communities.

Alyangula - three days each month
Borrooloola - three days or more each second month
Daly River - one or more days each month
Galiwinku - one day each third month
Gapuwiyak – when required
Jabiru – one or more days every two months
Maningrida – three days each month
Nhulunbuy – three or more days each month
Numbulwar – one day every two months
Oenpelli - two days every month
Pirlingimpi – one day every four months
Ramingining – one day when required
Wadeye (Port Keats) – two to three days per month
Wurrumiyanga (Nguiu) – two days each month.

The day to day management of prosecutors in SPD rests with the Managing Prosecutor who in turn reports to the Deputy Director. The Deputy Director meets with the Managing Prosecutor SPD, the Officers in Charge of the Police Prosecutions Units in Alice Springs¹⁷ and Katherine¹⁸ and with representatives from JOS on a weekly basis.

The Managing Prosecutor SPD also attends the Director's weekly Executive Committee meeting and the Director's weekly meeting with the Office Business Manager, Assistant Business Manager and the Crown Practice Manager.

Summary Prosecutions – Alice Springs (SPAS)

Summary Prosecutions Alice Springs (SPAS) is staffed by three prosecutors who have no administrative support. The SPAS prosecutors appear in the Court of Summary Jurisdictions in Alice Springs and the following communities:

Ali Curung – one day every two months
Papunya - one day every two months
Tennant Creek – one week twice a month

¹⁶ Prior to CoPPs there were eight civilian prosecutors (three of which were MoU positions) and two administrative staff (one of which was an MoU position).

¹⁷ By way of video link

¹⁸ By way of telephone conference

Ti Tree - one to two days every two months
Yuendumu – two days every two months
Yulara – one day every two months
Kintore – one day every two months
Elliott – one day every three months
Hermannsburg – one day every month

Summary Prosecutions Katherine (SPK)

Summary Prosecutions Katherine (SPK) is staffed by one summary prosecutor located within the Katherine Police Prosecutions Unit, and has no administrative support. The SPK prosecutor supports the resident magistrate in Katherine by prosecuting contested matters before him or her. A second magistrate attends Katherine for one week per month to preside over “DPP matters” [mainly preliminary examinations (committal hearings)] and to pick up any overflow of any summary matters. The committal hearings are prosecuted by a Crown Prosecutor who travels from Darwin for that purpose.

The SPK prosecutor appears in the CSJ Katherine and in the following remote communities:

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



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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 witness with:

- Information
- Support
- Referrals and
- Assistance with Victims Impact Statements.

The WAS unit employs of 8.5 Witness Assistant Officers located in DPP offices as follows:

- Darwin - 4.5 staff who service the Northern Region and East Arnhem Land;
- Katherine - 1 staff who services the Katherine region; and
- Alice Springs - 3 staff who service the Alice Springs and Barkley regions.

During 2013-14 WAS developed two new DVDs titled “Telling Your Story”. One version shows what happens when a matter goes before the Supreme Court and the other version address matters conducted in the Court of Summary Jurisdiction.

The DVD is integral to the provision of support to Indigenous people about to enter the prosecutorial process as well as their families.

The original WAS DVD was created in 2004. The DVD was updated in 2013 to incorporate contemporary remote community story line in a “bush Court” setting and highlights the interpreter services and the provision of Victim Impact Statements.

The updated DVD also reflects current court procedures and processes and was developed with the assistance of Judges, Magistrates, Court staff, police, prosecutor’s and WAS staff.

The DVD is widely used by the WAS staff as promotional/educational tool in providing support to witnesses prior to becoming involved in a court matter.

The DVD specifically targets indigenous witnesses and support services in remote communities throughout the Top End and Centre. The DVD will be distributed to a range of service providers including police, Women’s Shelters, Legal Services, community clinics, youth organisations and other stakeholders towards the end of 2014. The DVD will also be uploaded on the website.

WAS is in the process of developing posters to help promote services within remote community. It is anticipated that the posters identifying key messages will be completed and distributed to remote communities by July 2015.

WAS Performance

During 2013/14 WAS attended to:

- 824 new case referrals. 97 involved children of which 57 were victims in sexual assault and 29 victims in physical assault. Additionally 69 adults were victims of sexual assault.
- 155 victims were deemed as vulnerable witnesses. 56 matters in Alice Springs, 84 matters in Darwin and 15 matters in Katherine.
- 23 new referrals for matters relating to murder or manslaughter where the primary victim was deceased.
- 1,643 individual clients, 239 victims were from remote communities and 8 lived interstate or overseas.

EXPLANATION OF THE APPEAL PROCESS

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

- (i) Institute and conduct, or to 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 section 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.

Some explanation of these functions is required.

As to (i), pursuant to s.414(1)(c) of the **Criminal Code**, the Director may appeal to the Court of Criminal Appeal against any sentence imposed by the Supreme Court following prosecution upon indictment. The Director is not required to obtain the leave of the Court to appeal against sentence. The appeal lies as of right. The Director cannot appeal against a jury verdict of not guilty.

By way of contrast, a person found guilty on indictment in the Supreme Court may appeal to the Court of Criminal Appeal -

- Against the finding of guilt on any ground that involves a question of law alone;
- With the leave of the Court, against the finding of guilt, on any ground that involves a question of fact alone or a question of mixed fact and law; and
- With the leave of the Court against the sentence passed on the finding of guilt.

Although the Court of Criminal Appeal is the Supreme Court constituted by not less than three judges and or an uneven number of judges, the **Criminal Code** provides that certain powers of the Court of Criminal Appeal can be exercised by a single judge. Relevantly, a single judge is permitted to grant leave to appeal and to extend the time in which to give notice of appeal or notice of application for leave to appeal.¹⁹

An appeal against conviction on the ground that the verdict is *unsafe and unsatisfactory* or that the verdict *is unreasonable or cannot be supported having regard to the evidence* involves the Court of Criminal Appeal in deciding a question of fact. Accordingly, leave to appeal is required.

¹⁹ **Criminal Code** s 429(1)

Certain applications to be determined *on the papers*

The procedure governing applications for leave to appeal and applications for an extension of time is contained in the Supreme Court Rules.²⁰ These are the most common applications made to the Court. The Rules were amended in May 2000 and now provide that these applications are to be determined by a single judge upon written submissions filed by the parties and without hearing oral submissions ie, the applications are determined *on the papers*. The Rules provide that a party is not entitled to make oral submissions in relation to these applications although the judge may hear oral submissions if he or she thinks it necessary to do so. This rarely happens. A judge who determines an application *on the papers*, is not required to give reasons for his or her decision.

In the event of a single judge refusing all or part of an application *on the papers*, the unsuccessful applicant is entitled to have the application(s) re-heard and determined by the Court constituted by three judges.²¹ If the unsuccessful applicant does not apply to have the application(s) determined by the Court constituted by three judges, the refusal by the single judge is final.

The purpose of the application for leave to appeal is to weed out the obvious cases where it is plain that the appeal cannot succeed. In order to obtain leave the applicant must show that there is an arguable case that the sentencing discretion reposed on the trial judge has miscarried or that there is a real possibility that the applicant might suffer injustice by the refusal. The argument must be sufficiently strong to call for a response.

If the application for leave to appeal is successful, the appeal is then heard and determined in open court by the Court constituted (normally) by three judges. A rehearing of an unsuccessful application for leave to appeal by the Court of Criminal Appeal constituted by three judges is heard by the Court as if it were an appeal.

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

As to (ii), the Director may, in a case where a person has been acquitted after his trial on indictment in the Supreme Court, refer any point of law that has arisen at the trial to the Court of Criminal Appeal for its consideration and opinion thereon. Although the acquitted person is entitled to make submissions to the Court, the opinion of the Court upon the reference cannot affect the trial in respect of which the reference was made or any acquittal in that trial.

As to (iii), pursuant to s.163(1) of the **Justices Act**, both the Director and the offender may appeal to the Supreme Court against any sentence imposed by the Court of Summary Jurisdiction following conviction for a minor indictable offence. A person found guilty of having committed a minor indictable offence in the Court of

²⁰ RSC Order 86

²¹ **Criminal Code** s.429(2)

Summary Jurisdiction may appeal to the Supreme Court against that finding of guilt. Leave to appeal is not necessary. The appeal lies as of right. In September 2001, s.163(3) of the **Justices Act** was amended to give the prosecution a right of appeal from an order or adjudication of the Court of Summary Jurisdiction dismissing a charge of a minor indictable offence. Leave to appeal is not necessary. The appeal lies as of right.

A judge of the Supreme Court hearing an appeal from the Court of Summary Jurisdiction may refer the whole or part of that proceeding to the Full Court of the Supreme Court for determination.

An unsuccessful appellant to the Supreme Court may appeal the decision of that court to the Court of Appeal. Leave to appeal is not necessary. The appeal lies as of right. The prosecution, as of right, can appeal against an order of the Supreme Court quashing the finding of guilt made by the Court of Summary Jurisdiction and the Court of Appeal is empowered to quash the order of the Supreme Court and reinstate the conviction recorded in the Court of Summary Jurisdiction.

The Court of Criminal Appeal, the Court of Appeal and the Full Court are each constituted by not less than three judges of the Supreme Court.

Tables B in the Report summarises the results of appeals from the Supreme Court to the Court of Criminal Appeal, Court of Appeal and Full Court during the reporting period.

Table C in the Report summarises the results of appeals from the Court of Summary Jurisdiction to the Supreme Court decided during the reporting period.

Prosecution appeals against inadequacy of sentence

The Director's Guidelines which deal with appeals against inadequacy of sentence remind prosecutors that appellate courts have long maintained that prosecution appeals should be a rarity, instituted for the purposes of enabling the courts to maintain adequate standards of punishment, to correct idiosyncratic views of individual judges as to particular crimes or classes of crime and to remedy those sentences which are so disproportionate to the seriousness of the offence as to shock the public conscience.²²

In 2000, the High Court of Australia in ***Dinsdale v The Queen***²³ affirmed the proper role of prosecution appeals against sentence in the following terms:

For reasons of legal history and policy, the position of Crown appeals against sentence has long been regarded, in Australia and elsewhere, as being in a class somewhat different from that of an appeal against sentence by a convicted offender. When first introduced, Crown appeals were considered to

²² Guideline 17.5(1)

²³ 202 CLR 321 at paragraph 62 per Kirby J

cut across "time-honoured concepts" of the administration of criminal justice in common law legal systems. For this reason, it has sometimes been said that, as a "matter of principle", such appeals should be a comparative rarity. The attitude of restraint reflected in such remarks has often been justified on the basis that a Crown appeal against sentence puts the prisoner in jeopardy of punishment for a second time, a feature that is ordinarily missing from an appeal, or application for leave to appeal, brought by those who have been sentenced. The consequence is that where the Crown appeals, it is normally obliged to demonstrate very clearly the error of which it complains. The further consequence is that, where such demonstration succeeds, it is conventional for the appellate court to impose a substituted sentence towards the lower end of the range of available sentences. This convention tends to add an additional restraint upon interference, given the strong resistance that exists against appellate "tinkering" with sentences.

The convention referred to in the underlined passage is commonly referred to as *double jeopardy*. The nature of *double jeopardy* was addressed in the Northern Territory case of *R v Tait*²⁴ where the Court (Brennan, Deane and Gallop JJ) observed:

Although an error affecting the sentence must appear before the appellate court will intervene in an appeal either by the Crown or by a defendant, a Crown appeal raises considerations which are not present in an appeal by a defendant seeking a reduction of his sentence. Crown appeals have been described as cutting across "time-honoured concepts of criminal administration". A Crown appeal puts in jeopardy "the vested interest that a man has to the freedom which is his, subject to the sentence of the primary tribunal". The freedom beyond the sentence imposed is, for the second time, in jeopardy on a Crown appeal against sentence. It was first in jeopardy before the sentencing court. (References omitted)

In 2011, s.414(1)(c) of the **Criminal Code** which gives the Director of Public Prosecutions the right to appeal against any sentence imposed by the Supreme Court following prosecution upon indictment was amended by the **Criminal Law Amendment (Sentencing Appeals) Act 2011**²⁵ by the insertion of s.414(1A) which provides:

(1A) In exercising its discretion on an appeal made under subsection (1)(c) involving a sentence imposed after the commencement of this subsection, the Court must not take into account any element of double jeopardy involving the respondent being sentenced again when deciding whether to do either or both of the following:

- (a) allow the appeal;*
- (b) impose another sentence.*

²⁴ (1979) 46 FLR 386 at 388

²⁵ The Act commenced on 27 April 2011

APPENDIX A

Section 414(1A) was considered by the Court of Criminal Appeal in *R v Wilson*²⁶ where the Court, after opining that the expression "*double jeopardy*" in s.414(1A) of the **Criminal Code** means the element of distress and anxiety to which all respondents to a Crown appeal are presumed to be subject,²⁷ went on to hold that s.414(1A) of the **Criminal Code** has the following effect upon Crown appeals in the Northern Territory:

- (a) The section removes any need for the Court of Criminal Appeal to give consideration to ensuring that Crown appeals are "rare and exceptional". Responsibility in that regard rests with the Director of Public Prosecutions.
- (b) The Court must not take into account any element of double jeopardy involving the respondent being sentenced again when deciding whether or not to allow a Crown appeal.
- (c) The Court must not take into account any element of double jeopardy involving the respondent being sentenced again when deciding whether to impose another sentence.
- (d) The Court must not reduce the sentence which it otherwise believes to be appropriate on the basis of double jeopardy arising from the respondent being sentenced again.
- (e) Apart from double jeopardy considerations, the Court retains a residual discretion to determine that, despite error having been established and being satisfied that a different sentence ought to have been passed, a Crown appeal should be dismissed or a reduced sentence should be imposed.
- (f) Factors that may be relevant to the exercise of the residual discretion to dismiss an appeal, despite inadequacy of sentence, include the presence of unfairness arising from such matters as delay, parity, the totality principle, rehabilitation and fault on the part of the Crown.²⁸

²⁶ [2011] NTCCA 9, 30 NTLR 51

²⁷ At paragraph [26]

²⁸ At paragraph [27]



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Summary Prosecutions Darwin Professional and Administration Structure

