AN INSIDER’S VIEW OF THE DPP

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First Australasian Women Police Conference

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Introduction

Members of the AFP and some State police officers sooner or later have to deal with the Commonwealth Director of Public Prosecutions Office. This paper gives an insider's view of the Commonwealth DPP based on my experiences over some 10 years with the DPP. The paper gives information about how women have fared in the DPP. It is also designed to give police officers greater insight into the workings of the DPP and what makes DPP prosecutors tick. In preparing this paper I am indebted to the DPP’s Pam Ford, Joanne Pentony, Leonie Ingram, Stela Walker, John Thornton and Geoff Gray.

DPP staffing

The DPP was set up by the Director of Public Prosecutions Act 1983 although the office actually commenced operating in early 1984. The office is headed by a statutory office holder who is appointed for up to seven years. Its first Director was Ian Temby QC from 1983 to 1988 followed by Mark Weinberg QC from 1988 to 1991. The current Director is Michael Rozenes QC.

Mr Weinberg and Mr Rozenes come from the Melbourne Bar and Mr Temby from the Perth Bar. The DPP also has an Associate Director who so far has been a barrister often appointed for three years. There has not been a female Director or Associate Director.

Apart from these statutory office holders the DPP is staffed by some 427 full-time public servants who are permanent or temporary. Of the public servants 186 are lawyers.

There are regional offices in Sydney, Melbourne, Brisbane, Townsville, Adelaide and Perth and a Head Office in Canberra. Lawyers in the Head Office also conduct prosecutions in the ACT and the surrounding areas of NSW. Prosecutions in Tasmania and the Northern Territory are conducted by the Australian Government Solicitor, Hobart and Darwin.

None of the DPP’s regional offices are currently headed by a woman although both the Adelaide and Townsville Offices were headed by a woman for a time.

Numbers of men and women in the DPP

When the DPP was set up, prosecution was regarded as a male preserve. In 1985 the first Director said:

“For some reason traditionally the ranks of prosecutors have been predominantly male. There are a number of factors advanced for this state of affairs. These include the belief still quite widely held that it was somewhat unseemly for a female to be involved in sordid criminal matters. Neither myself nor any of my staff hold that view. However we have found that when we advertise for jobs few

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2 Director of Public Prosecutions Act 1983 s.18(2)
women apply. Whether this is due to lack of interest, or experience, or confidence I do not know."\(^3\)

The picture has changed since then. There are now more lawyers in the DPP, more women lawyers, and more of the women lawyers are at senior levels. For example:

- in 1987, the first year when a breakdown of staff into male and female was readily available, there were 112 lawyers of which 35% were women\(^4\). At 30 June 1996 there were 186 lawyers of which 43% were women\(^5\);

- in 1987 there were no women lawyers in the Senior Executive Service (SES), now there are 10 women lawyers in the bottom rung of the SES, about 35% of the SES;

- in 1987 most of the women lawyers were at the most two junior levels of the lawyers, with seven women, or only 6% of the total lawyers, at the Principal Legal Officer level, the then feeder stream for the SES. Now at the bottom two ranges, the Legal 1 (Lower) and Legal I (Upper), there are more women lawyers than male lawyers\(^6\). At the higher band of Legal 2 while there are still more men than women lawyers, women make up 40% of the lawyers. This level is now a feeder for the SES.

Further good news is that recently the DPP was recognised as having implemented “good practice” in EEO within the Commonwealth Public Service\(^7\). The DPP has exceeded the Commonwealth Public Service targets for the year 2000 in employing women in the Senior Executive Service and at the Senior Officers Grade A and B levels\(^8\). The Senior Officers Grade A and B levels are also feeder groups for the SES.

Nevertheless there are still no women at the top two SES bands of the DPP and more women than men are employed in the lowest ranking jobs. Women make up 54% of the total staff of the DPP. There are 153 women in the DPP who are not lawyers compared with only 85 men who are not lawyers. Most of these women are employed doing administrative work at relatively low levels.

State DPPs and UK DPP
A similar state of affairs appears to exist in all of the state DPPs and the UK DPP. A quick perusal of the State DPPs’ annual reports showed that Tasmania’s, Queensland’s and South Australia’s DPPs’ annual reports did not provide a breakdown of male and female

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3 *Prosecution As A Career Option* Temby, I. Conference of the Australasian Law Students Association 24 May 1985
5 The figures for 1995-96 were kindly supplied by Pam Ford of the DPP’s Head Office at very short notice. They will shortly be published in the *Director of Public Prosecutions Annual Report* 1995-96
6 Legal 1 (Lower) - 17 female lawyers and 12 male lawyers, at Legal I (Upper) - 22 female and 20 male, the higher band of Legal 2, female 31 and male 46.
officers. There were detailed breakdowns of male and female staffing figures in the NSW and Victorian DPP’s annual report.

In the ACT DPP there were seven female lawyers and 15 male at 30 June 1995. In the Northern Territory at 30 June 1994 there were three female Crown prosecutors and eight male. The UK DPP’s report for 1994-95 stated that 62% of the DPP’s staff were women but only 4.4% of the staff in grades 1 to 5 were women. It is not clear from the report what grades 1 to 5 equate to in Australian terms.

The private legal profession and judiciary
Women in the DPP are probably doing a little better than women lawyers in the private profession where women also hold less of the senior jobs. In 1992, the most recent figures I could find, for example, only 8% of the 521 resident partners in law firms in Western Australia were women. Only 14% of sole practitioners, 4% of consultants and 8% of barristers were women. There were no Queens Counsel in WA9.

In 1992 women made up 23% of the practising legal profession in Victoria and New South Wales10. Female lawyers were more likely to be employees in private practice or corporate lawyers or academics, while male lawyers were more likely to be partners in law firms or barristers.

This imbalance is also reflected in the composition of the judiciary. The former Commonwealth Attorney-General said in 1993 that judges were overwhelmingly male, former members of the bar, appointed in their early fifties and products of the non-government education system and that men of Anglo-Saxon or Celtic background held nearly 90% of all federal judicial offices11.

Women lawyers attracted to Government sector
The WA study found that in 1992 in WA women comprised 20% of the private legal profession but 36% of the WA Government legal service. It seems that government legal positions attract large numbers of women, partly, I think, because of better maternity leave and part-time employment conditions of service, anti-discrimination legislation and EEO practices. Anecdotal evidence from women lawyers in the DPP is that these factors played a significant part in numerous able and highly qualified women lawyers joining the DPP.

Part-time work
Some DPP lawyers and non-lawyers, both men and women, work part-time. There are a considerable number of part-timers in one of the DPP’s offices who are involved in prosecution work such as appearing in court. To all accounts this works quite well.

There is some anecdotal evidence that when a large number of women at fairly senior levels work part-time, junior full-time staff can feel that they are doing the harder work for less reward. This can cause resentment and undermine team spirit.

9Chief Justice Nicholson of the Western Australian Supreme Court quoted in The Parliament of the Commonwealth of Australia, Gender Bias and the Judiciary Report by the Standing Committee on Legal and Constitutional Affairs May 1994 at page 93
11 quoted in Gender Bias in the Judiciary Senate Standing Committee on Legal and Constitutional Affairs Parliament of the Commonwealth of Australia May 1994 at page xvi
My personal experience is that it is easy to mark time when you work part-time because of
the type of work supervisors tend to give you. Some supervisors think that part-time work
does not sit well with prosecutions work. For that reason, part-timers have carried out a
number of projects such as writing the Annotated Proceeds of Crime Act, the Guidelines
and Directions Manual and the Social Security Prosecution Manual for the DPP. These
are all very important projects. However, they are not high profile and they are out of the
main stream. Speaking as the author of the Guidelines and Directions Manual, my
experience is that they also carry no great kudos. It is therefore fairly easy for part-timers
to lose skills and confidence, particularly in relation to court work.

However, I think part-time work is still very useful for both staff and the DPP overall
because, at the very least, it often makes it possible for highly trained staff to remain in
the DPP rather than leave.

Interestingly, when part-time work was first introduced, there was some concern expressed
by public service unions that management might force staff to work part-time. That fear
has not been realised in the DPP. Staff chose to work part-time for a variety of reasons,
often associated with family responsibilities. DPP Management has always agreed to part-
time work but so far has never initiated it.

Impact of cutbacks to the DPP
The DPP, like all of the Commonwealth Public Service has faced a series of cut backs in
its budget. Since July 1993 the DPP’s staff numbers have been falling and are now back
to the numbers in 1990. Further reductions are planned. At the same time the numbers of
lawyers leaving the DPP is not great. This is particularly the case in some offices, due to
lack of opportunities in the private legal profession.

That means that the opportunities for promotion are reducing and have, at least for the
time being, dropped away almost completely. Therefore the immediate prospects for
further promotion of women lawyers to more senior positions is not favourable. This is
likely to be disappointing for women lawyers who left the private sector in frustration for
what they perceived to be greater opportunities for them in the government sector.

At the end of this paper is a table which sets out the figures of DPP male and female
officers at each level as at 30 June 1996 compared with earlier years. The breakdown of
male and female officers before 1987 is not available. There is a general feeling around
the Commonwealth Public Service that women with young families are most likely to take
the redundancy packages being offered. If that is the case, next year’s figures for the DPP
could be rather different.

Work of DPP prosecutors
The lawyers in the Commonwealth DPP:

- act as solicitors for barristers who prosecute;
- conduct summary prosecutions and committals in their own right;
• appear as in house counsel in indictable matters;

• provide advice to Commonwealth agencies on questions of criminal law and civil remedies; and

• provide advice to the Director on questions of law and policy, including the exercise of the director's statutory powers such as the power to grant an indemnity against prosecution and to grant an ex officio indictment.

The prosecutor's personality
To be a successful prosecutor, it helps to have certain personality characteristics. There is, of course, no one personality type for all prosecutors. I think, however, that you will find the following features occurring reasonably often amongst prosecutors.

*Thick-skinned, determined and argumentative*

Australia's criminal justice system is a competitive one with almost no room for consensus. The prosecution presents its case first and watches the defence pick holes in it. The prosecution must disclose its case to the defence prior to the hearing so that it can prepare its defence. With certain exceptions there is no reciprocal duty on the defence. Courts seem to operate under the assumption that the prosecution has unlimited resources, time and skills to prepare its case when nothing is further from reality.

It takes a thick skin to get up in court every day and watch days, weeks or months of hard work attacked and fall apart, perhaps unfairly, all in public. All advocates have to have a thick skin. Prosecutors need a particularly thick one.

Like politicians, advocates have to be tenacious in presenting their case. A prosecutor or defence lawyer is not paid to tentatively suggest something to a court or jury and give up after the first couple of minutes. Prosecutors are usually determined people.

They must also be argumentative. That is part of their job after all and many of them love nothing more than a verbal joust. This can become very tiring if you have to deal with them on a regular basis outside of court but it is invaluable in court.

At the end of the day, these are the qualities you would want in your legal representative.

*Words are the tools of a prosecutor's trade*

Words are the tools of the lawyer's trade and like any tradespeople they love to bring them out, polish them up and admire them. They are enthusiastic about words and will use them wherever possible. Prosecutors are usually not the strong silent types of romantic fiction.

This focus on words makes lawyers pedantic. Our laws are written in words and their meaning is hotly debated when the need arises, especially when a person's liberty is at stake. It is no wonder that lawyers take words seriously and attempt to use them with a precision and skill not called for elsewhere.
Many common words have special meanings for lawyers. Words such as "shall", "should" and "may" have precise meanings for lawyers. Even more irritatingly, they expect other people who are not lawyers to know these special meanings.

Lawyers tend to look for the literal meaning of words. They are more interested in what the words say then what the person who wrote them meant to say. This can be very irritating but again, it is what they are paid to do. Accordingly, the opportunities for misunderstanding, confusion and frustration are considerable when lawyers and people from other disciplines get together on a written task.

Dictionaries grace all DPP bookshelves. The Office has an Opinions Index which contains copies of written legal opinions by DPP lawyers since 1984. It contains such gems, which are fortunately rare, as a ten page advice on the meaning of “civil proceedings” and “criminal proceedings” which quotes 35 cases, Blackstone’s 1829 Commentaries on the laws of England, Stephens 1883 History of the Criminal law of England, Devlin’s The Enforcement of Morals and Shakespeare’s Hamlet and concludes that “there is no clear cut answer to the question posed”!

Prosecutors usually love their work and are committed to their job

Finally, it seems to me that prosecutors usually love their work and are very committed to it. They tend to be staunch believers in the criminal justice system and the role of the DPP. Many of them are not only career public servants but also career DPP officers. They are hard working, reliable and capable lawyers.

The independence of the DPP

Over the years the DPP has conducted a number of controversial and highly publicised prosecutions and has had to wear a number of resulting criticisms. As an organisation it is proud of its independence. No paper on the DPP is complete without a discussion of the reasons for the nature of that independence.

A DPP has existed in the United Kingdom since 1879 and in Victoria since 1982. Prior to 1984 Commonwealth prosecutions were however conducted by officers of the Commonwealth Attorney-Generals’ Department.

In 1984 the DPP was set up as an independent statutory office. The DPP effectively took over the work of the Special Prosecutors to prosecute bottom of the harbour tax cases and parts of the Attorney-General’s Departments Deputy Crown Solicitor’s Offices.

The DPP remains answerable to Parliament and the Attorney-General can direct the DPP in its work. This direction has to be in writing, published in the Gazette and tabled in Parliament. So far there have been three such directions, none relating to a specific case.

12 Director of Public Prosecutions Act 1983 s.8(1)
13 Director of Public Prosecutions Act 1983 s.8(3)(a)
14 Director of Public Prosecutions Act 1983 s.8(3)(b)
15 One in 1987 was issued at the request of the DPP and concerned the provision of information to a Parliamentary Committee, the second in 1992 concerned the relations between the DPP and the Australian
The Commonwealth and State DPPs have a written Prosecution Policy which sets out guidelines for the making of important decisions in the prosecution process, such as the decision not to proceed with a prosecution, to grant an ex officio indictment or an indemnity against prosecution. The Commonwealth’s Policy\textsuperscript{16} has been tabled twice in the Commonwealth Parliament. The Policy is a very important document for DPP lawyers who refer to it regularly. A copy of the Policy is available from any DPP Office. I attach a list of contact phone numbers for the DPP Offices at the end of the paper.

The reasons usually cited for establishing the Commonwealth DPP include:

- the need to revitalise and re-organise Commonwealth prosecution processes\textsuperscript{17};
- the need to restore public confidence in Commonwealth criminal law enforcement;
- the need for increased independence of the prosecutorial process\textsuperscript{18}; and
- to render Commonwealth criminal law, “particularly in relation to organised crime and corruption, effective, expeditious and just”\textsuperscript{19}.

The perception that there was a need to restore public confidence in Commonwealth criminal law enforcement arose from the reports of the Royal Commissions conducted by Mr FX Costigan\textsuperscript{20} and Mr Justice Stewart\textsuperscript{21} and the special prosecutors Gyles and Redlich.

For example, Royal Commissioner Costigan in his fourth interim report on the Activities of the Federated Ship Painters and Dockers Union outlined the "lamentable history of non prosecution" which occurred in the Perth Office of the Deputy Crown Solicitor in relation to a "bottom of the harbour" tax prosecution which came to the attention of the Australian Taxation Office almost a decade earlier. Justice Stewart found that there were obstacles to the effective prosecution of organised crime.

The independence of the DPP means that once the AFP delivers a brief of evidence to the DPP, the DPP becomes responsible for all decisions in the prosecution process. This includes the decision:

- whether to prosecute;
- on what charge to prosecute;

\textsuperscript{16} Prosecution Policy of the Commonwealth Australian Government Publishing Service Canberra 1990
\textsuperscript{17} Australia, Senate 1983 Debates, vol.S100. p 2496 per Senator Gareth Evans, Second Reading Speech for the Director of Public Prosecutions Bill 1983
\textsuperscript{18} Australia, Senate 1983 Debates, vol S 100.p 2670 per Senator P Durack, Statement in Support of the Director of Public Prosecutions Bill 1983
\textsuperscript{19} Australia, Senate 1983 Debates, vol.S 100.p 2497 per Senator Gareth Evans, Second Reading Speech for the Director of Public Prosecutions Bill 1983
\textsuperscript{20} Costigan Royal Commission into the Activities of the Federated Ship Painters and Dockers Union 1984, AGPS, Canberra
\textsuperscript{21} The Hon. Mr Justice DG Stewart Royal Commission on Inquiry into Drug Trafficking Report AGPS 1983
• what witnesses to call;
• whether to indemnify a witness; and
• whether to file an ex officio indictment.

These decisions are made in accordance with the Prosecution Policy of the Commonwealth. The Policy provides, for example, that not every suspected criminal offence must be prosecuted\textsuperscript{22}. The DPP must consider whether the public interest requires the prosecution\textsuperscript{23}. These decisions can be both complex and difficult. The Policy lists, for example, 20 types of matters that might be taken into account in deciding whether the public interest requires a prosecution.

As a matter of law, the police do not instruct the DPP. Nor does any other Commonwealth agency. Nevertheless, prosecution does not occur in a vacuum.

This means that police have every right to see the prosecution as a team effort where their views will be given great weight. Prosecutors should and do listen carefully to the views of the police who investigated a case on issues such as what evidence and witnesses should be called. The final decision on the course of the prosecution, once the DPP receives a brief of evidence, is always the DPP's.

It also means that the DPP must make decisions such as whether to prosecute a particular case, in the light of Commonwealth agencies’ enforcement strategies. An agency that is responsible for the regulation of an area such as nursing homes, will have an enforcement strategy and will be knowledgeable about the prevalence of certain offences in that industry. That agency’s views on the importance of a particular prosecution, for example, its likely deterrent effect, is a vital factor for the DPP to take into account.

The DPP’s independence is very important to it, but that independence does not stop the prosecution effort being a partnership between the DPP, the police and relevant Commonwealth agencies.

\textsuperscript{22} Prosecution Policy of the Commonwealth Australian Government Publishing Service Canberra 1990 page 3
\textsuperscript{23} Prosecution Policy of the Commonwealth page 5
### ANNEXURE 1

**NUMBERS OF MEN AND WOMEN WORKING AT THE DPP AS AT 30 JUNE OF EACH YEAR**

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\(^{24}\) LO - legal Officer, the junior level, abolished in 1990, replaced by Legal 1 Lower  
\(^{25}\) F - female  
\(^{26}\) M - male  
\(^{27}\) SLO - Senior Legal Officer, more senior than a Legal Officer replaced by Legal 1 Upper in 1990  
\(^{28}\) PLO - Principal Legal Officer, most senior lawyer level below SES, replaced by Legal 2 in 1990  
\(^{29}\) ASSOC DIR - Associate Director  
\(^{30}\) Includes all positions other than legal positions, includes one SES administrative position
LIST OF DPP CONTACT ADDRESSES

Commonwealth Director of Public Prosecutions - Head Office
PO Box 3104, Canberra City,
CANBERRA ACT 2601
ph: (06) 2065 666
fax: (06) 2065688
Director: Mr Michael Rozenes QC
Assoc. Director: Mr Edwin J Lorkin
First Deputy
Director: Mr Peter Walshe

Commonwealth DPP - Melbourne Office
GPO Box 21A,
MELBOURNE VIC 3001
ph: (03) 9605 4333
fax: (03) 9670 4295
Deputy Director: Mr Mark Pedley

Commonwealth DPP - Sydney Office
Locked Bag A4020,
SYDNEY SOUTH NSW 2001
ph: (02) 321 1100
fax: (02) 264 8241
Deputy Director: Mr Tony Wadick

Commonwealth DPP - Perth Office
GPO Box B92
PERTH WA 6001
ph: (09) 264 7264
fax: (09) 264 7266
Deputy Director: Mr Ian Bermingham

Commonwealth DPP - Adelaide Office
PO Box 2562
ADELAIDE SA 5001
ph: (08) 238 2600
fax: (08) 231 8257
Deputy Director: Mr Paul Foley

Commonwealth DPP - Brisbane Office
GPO Box 847
BRISBANE QLD 4001
ph: (07) 224 9444
fax: (07) 229 4124
Deputy Director: Mr Paul Evans