



**DIRECTOR OF PUBLIC  
PROSECUTIONS**

**NORTHERN TERRITORY  
OF  
AUSTRALIA**

**A N N U A L**

**R E P O R T**

**2009-2010**

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**OFFICE OF THE  
DIRECTOR OF PUBLIC PROSECUTIONS  
NORTHERN TERRITORY**

**TWENTIETH ANNUAL REPORT**

**FOR YEAR ENDED 30 JUNE 2010**

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**Director of Public Prosecutions  
Northern Territory**

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Australia

30 September 2010

The Hon Delia Lawrie MLA  
Attorney-General  
Parliament House  
State Square  
DARWIN NT 0800

Dear Attorney-General

**ANNUAL REPORT 2009-2010**

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 Office of the Director of Public Prosecutions for the period 1 July 2009 to 30 June 2010.

The Guidelines issued and published pursuant to s.25 of the *Director of Public Prosecutions Act* can be viewed on the ODPP website at [www.nt.gov.au/justice/dpp](http://www.nt.gov.au/justice/dpp), or a hard copy can be provided on request. A new Guideline 8.16A has been introduced this year to better facilitate the disclosure to Defence of the recorded statements of children and is published in this report at page 45.

The Guidelines provide prosecutors with guidance on the factors to be taken into account in making the various decisions which arise in respect of prosecutions. They are intended to also inform the public generally of the considerations upon which those decisions are made.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Richard Coates', with a large loop at the start and a long horizontal stroke at the end.

RICHARD COATES





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## OFFICE LOCATIONS

### 1. **NORTHERN REGIONAL OFFICE DARWIN (Head Office)**

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  
Centrepont Building  
Cnr Hartley St & Gregory Tce  
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 Tce  
KATHERINE NT 0850  
PO Box 1295  
KATHERINE NT 0851

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



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## MISSION STATEMENT

*The mission of the Office of the Director of Public Prosecutions is to provide the people of the Northern Territory of Australia with an independent, professional and effective criminal prosecution service that:*

- *operates with integrity*
- *is fair and just to both victims and the accused and*
- *is sensitive to the needs of victims, witnesses and to the interests of the community on whose behalf it acts.*



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## MISSION STATEMENT (IN KRIOL)

### Wed bla DPP-mob

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.





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## DIRECTOR'S OVERVIEW

In last year's report I foreshadowed that Police would be establishing a Police Prosecutions Division which would assume primary responsibility for Summary Prosecutions. That has now occurred and as a result there is no longer a section of this report detailing the work conducted by Police Prosecutors in Darwin and Alice Springs.

In Darwin the Office's Summary Prosecutors accept the referral of contested hearing files from Police Prosecutions and those files are now included as matters completed in Summary and Youth Jurisdictions in the Professional Activities section of this report. When our Summary Prosecutors attend Court on behalf of Police Prosecutions in Alice Springs, Katherine or Circuit that activity is recorded as one *duty lawyer day* even though the prosecutor may have had carriage of numerous cases on that sitting day.

In future I will be looking at the feasibility of a more accurate measure of the significant workload of the Summary Prosecutors operating in Alice Springs and on Circuit.

A number of important milestones occurred during the year. The Assistant Director, Nanette Rogers was appointed Senior Counsel. Nanette has been with the ODPP since 2000 and has made an enormous contribution to justice in Central Australia and indeed to the operations of this Office throughout the Territory. She is a skilled advocate and is sensitive to the disadvantage Aboriginal witnesses and victims face when giving evidence. The Office is very proud of her well deserved achievement.

The year also saw our other Nannette, Nannette Hunter the WAS Co-ordinator announce her retirement. Nannette has grown the witness service from the one worker to a staff of 12 in the 14 years she has been with us. The service is well regarded nationally, and has made a real difference to the way victims and witnesses interact with the criminal justice system.

Another milestone was the appointment of our former General Counsel Jenny Blokland to the Supreme Court in May this year. Justice Blokland held the position of General Counsel between 1998 and 2000. She had also previously worked with Legal Aid and I have no doubt that her knowledge of criminal law gleaned from the coalface will help inform her decisions.

The Government has announced its intention to introduce legislation to reform the committal process. I welcome the move as it will reduce the number of witnesses

needlessly required to give evidence at the preliminary hearing and also better focus the minds of the prosecution and defence on the critical issues for trial.

I have included in this report at page 45 an amendment to the Director's Guidelines. Guideline 8.16A has been introduced to better facilitate the disclosure to Defence of the recorded statements of children.

I express my sincere thanks and appreciation to all staff for their significant and sustained efforts on behalf of this Office this past year.

### **Directions**

Pursuant to the *Director of Public Prosecutions Act* there is provision for the Attorney-General to provide directions to the DPP as to the general policy that we follow in the performance and function of the Director. Any such direction shall be in writing and should be included in the Annual Report. I formally note that no direction has been issued by the Attorney-General during the year under review. I formally also note that the Attorney-General has not sought to interfere in the conduct of the Director's function. As a result I have been able to enjoy appropriate professional independence in exercising the powers confirmed by the *Director of Public Prosecutions Act*.

RICHARD COATES  
Director of Public Prosecutions

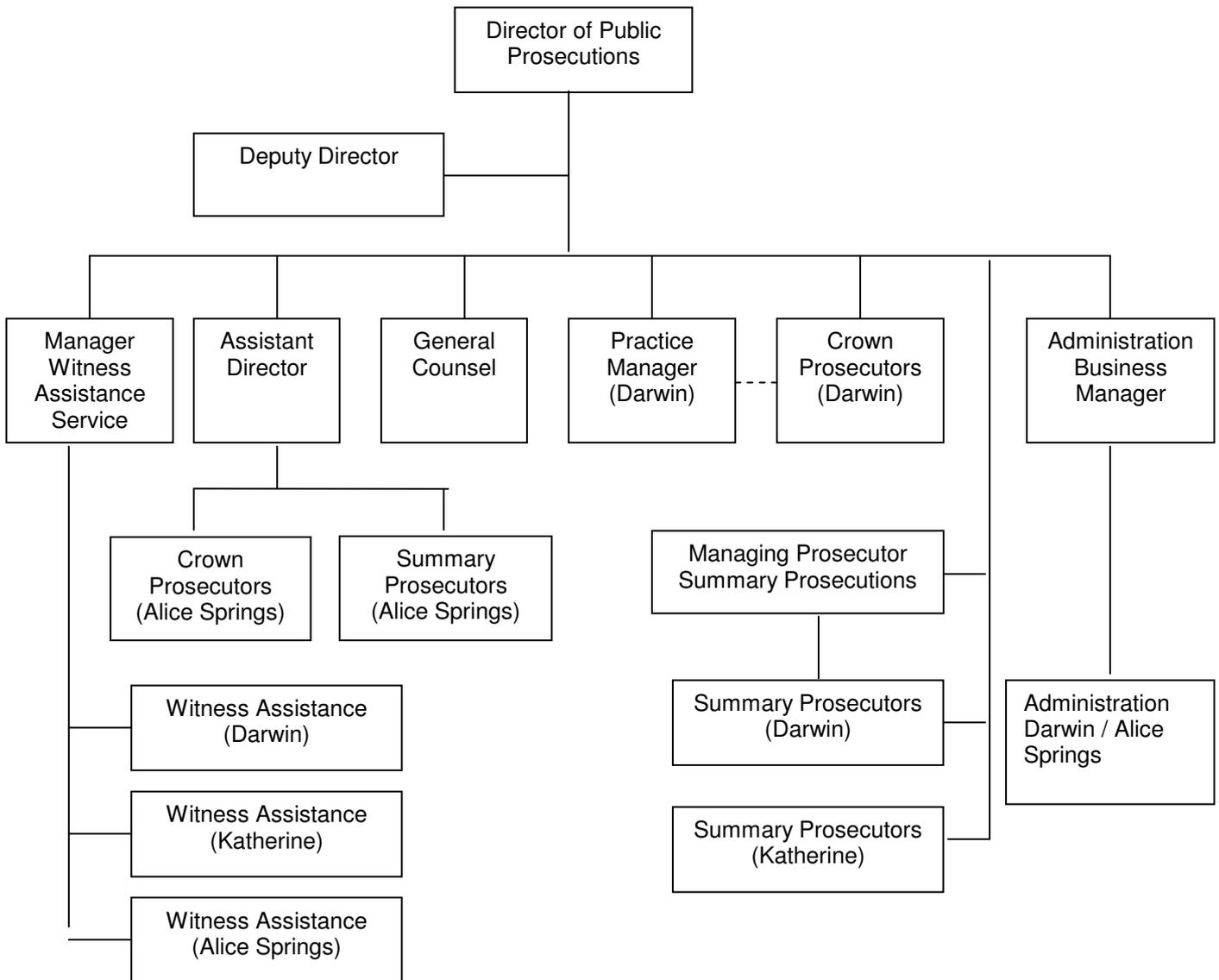
30 September 2010



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## ODPP ORGANISATION CHART







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## FUNCTIONS OF THE DIRECTOR OF PUBLIC PROSECUTIONS

The major responsibilities of the Director of Public Prosecutions (hereinafter referred to as the Director) may be identified 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 forfeit 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
- (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 2010 the total number of staff was 66.37. There is a decrease of one legal staff member being the Indigenous Law Cadet. The cadet is now employed in conjunction with the Solicitor for the Northern Territory. There is an increase in the number of Witness Assistance staff which has enabled the office to continue to improve the support provided to witnesses in remote areas.

Level	Total	Female	Male
Director	1		1
ECO3	4	1	3
ECO2	1	1	
ECO1	4		4
EO3	1		1
P4	4	2	2
P3	4.6	2	2.6
P2	7.8	2	5.8
P1	5	2	3
GRADT/Indigenous Cadet	1	1	
<b>Total Legal Staff</b>	<b>33.4</b>	<b>11</b>	<b>22.4</b>
P4	1	1	
P2	3	2	1
AO5	4.5	3.5	1
AO3	2	1	1
<b>Total WAS Staff</b>	<b>10.5</b>	<b>7.5</b>	<b>3</b>
EO1	1		1
AO8	0.87		0.87
AO5	5	5	
AO4	4	4	
AO3	11.6	11.6	
<b>Total Support Staff</b>	<b>22.47</b>	<b>20.6</b>	<b>1.87</b>
<b>GRAND TOTAL</b>	<b>66.37</b>	<b>39.1</b>	<b>27.27</b>





## OUTPUT PERFORMANCE MEASURES

Performance Measures		2009-10 Estimate	2009-10 Actual	2008-09 Actual	2007-08 Actual
<b>Quantity</b>	New Matters	1400	<b>1603</b>	1590	1377
	Finalisations				
	-Supreme Court pleas	220	<b>268</b>	254	214
	-Supreme Court trials	50	<b>63</b>	60	52
	-Supreme Court withdrawn	50	<b>46</b>	53	48
	-not committed to the Supreme Court	20	<b>2</b>	N/A	N/A
	-Summary hearings/pleas	815	<b>735</b>	N/A	N/A
	-Summary withdrawn	245	<b>229</b>	N/A	N/A
	-Appeals at all levels	75	<b>57</b>	58	62
	WAS Clients	1100	<b>1363</b>	1024	946
	Duty lawyer days	1000	<b>1283</b>	N/A	N/A
	CPF File hours provided by SFNT	3385	2524	N/A	N/A
	<b>Quality</b>	Matters committed to the Supreme Court	90%	<b>99%</b>	N/A
Findings of guilt (including guilty pleas) in Supreme Court		90%	<b>89%</b>	91%	87%
Findings of guilt (including guilty pleas) in Summary		90%	<b>90%</b>	98%	97%
Convictions after trial or hearing		80%	<b>71%</b>	90%	84%
Files where CPF order obtained		80%	<b>72%</b>	N/A	N/A

<b>Timeliness</b>	Filing of indictments within 28 days of committal	65%	<b>62%</b>	67%	60%
	Supreme Court matters withdrawn less than 28 days before a trial was to commence	65%	<b>58%</b>	N/A	N/A
	CPF matters finalised in Local Court within 12 months	90%	<b>69%</b>	N/A	N/A
	CPF matters finalised in Supreme Court within 24 months	90%	<b>50%</b>	N/A	N/A



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## PROFESSIONAL STAFF

### **FARAH MEHTA**

### **SUMMARY PROSECUTOR**

Farah graduated from the University of Western Australia in 2007 with a Bachelor of Arts / Bachelor of Laws (Hons), which included one year studying International Human Rights & Humanitarian Law at Uppsala University, Sweden.

She spent a year as an Associate to a Justice of the WA Supreme Court, Court of Appeal, and then finished her articulated clerkship at a corporate litigation firm. She was a duty lawyer for Legal Aid WA from 2009 until commencing her recent position in Summary Prosecutions in May 2010.

### **SANDY LAU**

### **PROSECUTOR**

Sandy received her Bachelor of Law degree from the Queensland University of Technology in 2008. She also holds a Graduate Diploma in Legal Practice and a Graduate Diploma in Legal Studies. She is currently finishing her Master of Laws degree via the Queensland University of Technology. Sandy also holds a Bachelor of Business degree from the University of Queensland.

Sandy completed the Barrister Practice Course in Queensland in 2010 through the Queensland Bar Association. Prior to joining the NT DPP, she has been working for the last 18 months in the QLD DPP.

### **BEN HUMPHRIS**

### **SUMMARY PROSECUTOR**

Ben holds a Bachelor of Commerce from Curtin University, WA and graduated from the Queensland University of Technology in 2009 with a Bachelor of Laws and Graduate Diploma in Legal Practice.

Ben's legal career commenced with him working as a clerk with Corrs Chambers Westgarth and Queensland Rail Corporate Counsel. Ben commenced employment with the Queensland ODPP before moving to Darwin in late 2009 to undertake his position as a Summary Prosecutor

## **WILLWIN WANG**

## **SUMMARY PROSECUTOR**

Willwin graduated from Flinders University in South Australia in 2009 with a Bachelor of Laws and Legal Practice and a Bachelor of Information Technology. He commenced his legal career in 2007 at the Crown Solicitor's Office in South Australia as an archiving clerk. At the end of 2008, he accepted an eight week summer clerkship with the Office of the Director of Public Prosecutions in South Australia. At the start of 2009, he was employed at a boutique family law firm in Adelaide before accepting the Prosecutor's position at the NT ODPP in October 2009.

## **IMOGEN TAYLOR**

## **PROSECUTOR**

Imogen studied at the Australian National University, during which time she completed an Aurora Internship with the Yamatji Land and Sea Council in Perth and worked as a paralegal and volunteer co-ordinator at the local Aboriginal Legal Service. Imogen completed her legal placement at the Canberra Welfare Rights and Legal Centre before graduating with a Bachelor of Arts (majoring in Sociology and Anthropology) and a Bachelor of Laws in 2008. In 2009 she moved to the Territory to work as a graduate clerk with the Department of Justice and in 2010 commenced working with the Office of Director of Public Prosecutions as a junior prosecutor.

## **STEVE ROBSON**

## **CROWN PROSECUTOR**

Having been engaged in courts administration with the NSW Attorney General's Department since 1980, in 1994 Steve graduated with a Bachelor of Laws (Hons) degree from the University of Technology, Sydney. He was admitted to the NSW Supreme Court Roll as a Legal Practitioner the same year. In the mid to late 1990s he conducted criminal and civil litigation practices with the State Crown Solicitor's Office. From 2000 he served as the Commission Solicitor for the NSW Police Integrity Commission, advising the Commission on the exercise of its functions and powers in detecting and investigating police corruption and authoring a number of Commission reports and publications. After sitting the Bar exams in 2005 he was admitted in NSW as a Barrister and practiced chiefly in criminal law. Steve joined the Alice Springs office as a Crown Prosecutor in November 2009.

**MICHAEL MCCOLM****SENIOR CROWN PROSECUTOR**

After completing degrees in accounting and law at the University of New South Wales in 1979, Michael McColm was admitted as a solicitor in NSW and after several years with the Legal Aid Commission and the Office of the Director of Public Prosecutions in NSW he was called to the Bar on 5 August 1988. At the Bar he had a predominately criminal practice, accepting both defence and prosecution briefs. In September 2004 he took up a position as a Senior Prosecutor in the Solomon Islands and was later the Acting Deputy Director of Public Prosecutions, before taking up the position as Deputy Director of Public Prosecutions in Bermuda in February 2008. He commenced with this Office in December 2009 as a Senior Crown Prosecutor in Alice Springs.





## PROFESSIONAL ACTIVITIES

### General Workload

<b>WORKLOAD OVERVIEW</b>	<b>2009/10</b>	<b>2008/09</b>	<b>2007/08</b>
New Matters	1603	973	780
New Phases	1634	1589	1377
Court Appearances	7233	7704	6895
Duty Lawyer days	1283	n/a	n/a
<b>MATTERS COMPLETED IN SUMMARY &amp; YOUTH JURISDICTIONS<sup>1</sup></b>			
Guilty (including guilty pleas)	654	266	192
Committed	320	307	266
Not Guilty/Not Committed	81	8	14
Withdrawn	229	67	88
Total CSJ & Youth Matters	1284	648	560
<b>MATTERS COMPLETED IN SUPREME COURT</b>			
S/C Pleas	268	254	214
S/C Trial guilty	29	31	19
S/C Trial not guilty	24	20	26
S/C Trial Mistrial	10	9	7
Nolle Prosequi	34	40	39
S297 (no true bill)	12	13	9
Total S/C (not incl 297A)	365	354	305

<sup>1</sup> In previous years figures only included the matters conducted by Crown Prosecutors. Under the new arrangements with police these figures now also include all contested summary matters in Darwin which have been referred by police to Summary Prosecutions.

<b>SUPREME COURT PLEAS COMPLETED BY WAY OF EX OFFICIO INDICTMENT</b>			
Commenced	59	76	65
Completed	53	70	62

<b>APPEALS</b>	<b>2009/10</b>	<b>2008/09</b>	<b>2007/08</b>
<b>JUSTICE APPEALS</b>			
Commenced	51	52	58
Completed	34	38	46
<b>COA &amp; CCA</b>			
Commenced	31	21	17
Completed	20	19	16
<b>HIGH COURT OF AUSTRALIA</b>			
Commenced	3	2	1
Completed	3	1	0

## 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 together with 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 ODPP 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 2008 to 30 June 2009*

**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 upon the  
papers  
2009/2010**

	Sentence	Conviction
Granted	5 (7)	5 (1)
Refused	7* (4)	4** (1)
Total	12 (11)	9 (2)

\* Six applicants applied to have their applications re-heard and determined by the Court of Criminal Appeal constituted by three judges.

\*\* Two applicants applied to have their applications re-heard and determined by the Court of Criminal Appeal constituted by three judges.

Tables B and C below summarise the results of appeals from and to the Supreme Court 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  
2009/2010**

	Conviction	Sentence	Other
Allowed	5 (1)	2 (5)	0 (0)
Dismissed	3 (2)	8 (1)	0 (1)
Total	8 (3)	10 (6)	0 (1)

**Outcome of prosecution appeals and references from the Supreme Court to the Court of Criminal Appeal/Court of Appeal/Full Court  
2009/2010**

	Sentence	Other
Allowed	1 (2)	0 (1)
Dismissed	1 (0)	0 (0)
Total	2 (2)	0 (1)

**Outcome of referral of question of law to Full Court pursuant to section 21 of the Supreme Court Act  
2009/2010**

Decided in favour of prosecution	1
Decided in favour of defence	1



convicted of rape and murder in 1989. At that time the court had no power to fix a non-parole period for the offence of murder. The **Sentencing (Crime of Murder) and Parole Reform Act** 2003 (the 2003 Reform Act) which was enacted in 2004 imposed an automatic 20 year non-parole period in respect of “a prisoner” who, at the commencement of the 2003 Reform Act was serving a life sentence for murder, absent certain aggravating and other circumstances. The Act allowed the Director of Public Prosecutions (the DPP) to apply to the Supreme Court to fix a non-parole period of at least 25 years or to refuse to fix any period where aggravating circumstances were found (including, relevantly, that the murder occurred as part of a course of conduct which included sexual assault).

In April 2005, Bakewell was transferred from the Northern Territory to South Australia to serve the remainder of his sentence there. He was transferred pursuant to the provisions of the **Prisoners (Interstate Transfer) Act** (NT) (“the NT Transfer Act”). Section 23 of the NT Transfer Act provides that when a prisoner is transferred to another jurisdiction, “ ... from the time the prisoner arrives (in the other jurisdiction) every Territory sentence ceases to have effect in the Territory except for the purpose of ... an appeal against or review of a ... sentence made, imposed or fixed by a court of the Territory.” The **Prisoners (Interstate Transfer) Act** (SA) (“the SA Transfer Act”) has a corresponding provision to the effect that from the time the prisoner arrives in South Australia from the Northern Territory the Territory sentence of imprisonment is deemed to have been imposed on the prisoner by a corresponding court of South Australia. Section 28 of the SA Transfer Act provides, in effect, that where a sentence or minimum term is varied or quashed on a review by or appeal to a Territory court, the sentence or minimum term is deemed to have been varied to the same extent by a corresponding South Australian court. When Bakewell was transferred from the Northern Territory to South Australia his life sentence was taken to include a non-parole period (or minimum term) of 20 years.

In 2007, while Bakewell was serving his sentence in South Australia, the NT DPP made an application to the Supreme Court to increase Bakewell’s non-parole period from 20 to 25 years because of the existence of a specified circumstance of aggravation. The circumstance of aggravation relied upon by the DPP was that specified in s.19(3)(b) of the 2003 Reform Act, namely, that the act or omission that caused the victim’s death was part of a course of conduct by the prisoner that included conduct, either before or after the victim’s death, that would have constituted a sexual offence against the victim. The application was opposed on numerous grounds including, inter alia, that s.23 of the NT Transfer Act did not apply to Bakewell as the application filed by the DPP was neither an appeal against nor a review of a sentence passed by a court of the Territory. Section 19(3) of the 2003 Reform Act as then in force provided that the Supreme Court “*must fix a non-parole period of 25 years*” if any prescribed circumstances of aggravation applied to the crime of murder.

The Supreme Court (Southwood J) held that the court did have jurisdiction to hear the DPP’s application and overruled Bakewell’s objections. See **DPP v Bakewell** [2007] NTSC 49, 21 NTLR 171. Southwood J found that the aggravating circumstance having been established (that is, the sexual assault), he had no discretion but to revoke the appellant’s 20 year non-parole period and impose a 25 year period. See **DPP v Bakewell** [2007] NTSC 51.

Bakewell then appealed to the Court of Appeal which reversed the decision of Southwood J. The Court held that Southwood J erred in concluding he was bound to revoke the 20 year period and fix a term of 25 years once the circumstance of aggravation was found to exist. The Court held that the discretion in s.19(3) of the 2003 Reform Act to dismiss the DPP's application was unconstrained. The Court set aside the order of Southwood J fixing a non-parole period of 25 years and fixed a non-parole period of 20 years. See **Bakewell v The Queen (No 2)** [2008] NTCCA 3, 22 NTLR 164 a note of which can be found on the ODP website under the heading Decisions Delivered 1 July 2007-30 June 2008.

The DPP unsuccessfully applied to the High Court for special leave to appeal from the decision of the Court of Criminal Appeal. The proposed ground of appeal was that the Court of Criminal Appeal erred in holding that a court considering an application by the DPP under s.19 of the 2003 Reform Act had discretion to dismiss that application notwithstanding that a prescribed circumstance of aggravation was found to exist. See **R v Bakewell** [2008] HCASL 551.

The 2003 Reform Act was further amended in 2008 to make it clear that the court had no discretion to dismiss an application by the DPP to increase a non parole period to 25 years if a prescribed circumstance of aggravation was found to exist. The 2008 amendment also allowed the DPP to make a second application to increase Bakewell's non-parole period from 20 to 25 years. The DPP made the application which was objected to on numerous grounds. The Full Court of the Supreme Court resolved these objections in the DPP's favour. See **Bakewell v R (No 3)** [2008] NTSC 51, 22 NTLR 174 delivered 11 December 2008.

Bakewell then applied to the High Court for special leave to appeal from the decision of the Full Court. Special leave to appeal was granted on 1 May 2009. See **Bakewell v R** [2009] HCATrans075. Special leave to appeal was granted to argue the following question:

Whether subsections 19(9) and 19(10) of the 2003 Reform Act as amended by the 2008 amendments are constitutionally invalid by conferring on the Supreme Court a function which substantially undermines the institutional integrity of the Court and which is inconsistent with the Court's role as a repository of Federal jurisdiction.

Prior to the hearing of the appeal the High Court indicated that it first wished to hear argument on the issue of whether the Supreme Court of the Northern Territory retained jurisdiction to revoke Bakewell's non-parole period and to fix a new non-parole period once Bakewell had been transferred to South Australia under the NT Transfer Act. The Court heard argument on this issue which it regarded as determinative of the appeal and deferred hearing any argument on the constitutional issues raised by the special leave question until this preliminary question was answered. The Court reserved its decision.

The High Court unanimously resolved the preliminary issue in favour of Bakewell holding that neither s.19 of the 2003 Reform Act as amended in 2008 nor the provisions of the NT Transfer Act applied to Bakewell after his transfer to South Australia and that the Supreme Court of the Northern Territory did not have authority to revoke the non-

parole period of 20 years fixed by the Act and did not have authority to fix a non-parole of 25 years or any other period. In particular the High Court held that:

1. The references in the Transfer Acts to an appeal against or review of a sentence or minimum term imposed direct attention to proceedings in which the correctness of the sentence passed or minimum term fixed is in issue. They are not terms apt to include fresh proceedings for the redetermination of a sentence or minimum term according to criteria that differ from those that were to be applied when that sentence or term was fixed. Proceedings of the kind instituted by the DPP against the appellant were not proceedings for a "review" of the non-parole period imposed upon the appellant by operation of s 18(a) of the 2003 Reform Act. The DPP did not seek any reconsideration or re-examination of the sentence imposed by the sentencing judge or of that sentence as subsequently modified by statute. Rather, what was provided for by s 19 was the institution of a new and separate proceeding for the revocation of what has been fixed by law and a determination of the minimum term according to criteria distinct from and additional to, the single criterion that engaged the imposition of a non-parole period under s.18(a): that, at the commencement of the 2003 Reform Act, the prisoner was serving a life sentence for murder.
2. Further the Supreme Court could only make an order in respect of a person who at the time of the application was a "prisoner". The term "prisoner" when used in the 2003 Reform Act should be understood as meaning a prisoner serving a sentence under and in accordance with Northern Territory law. The appellant did not meet this criterion. At the time the DPP made the application from which the present appeal arose, the appellant was serving in South Australia a sentence deemed to have been imposed on him by the law of South Australia. He was no longer serving a sentence under or in accordance with the law of the Northern Territory. He was no longer a "prisoner" for the purposes of the 2003 Reform Act.

The orders made by the Full Court of the Supreme Court of the Northern Territory were set aside with the result that Bakewell's sentence of imprisonment for life was taken to include a non-parole period of 20 years.

**Step v Atkins & Manager Library Services Palmerston City Council**  
**5 August 2009**  
**Hayne & Crennan JJ**  
**[2009] HCASL 151**

A note of the proceedings in the Court of Summary Jurisdiction, Supreme Court and Court of Appeal can be found in the 2008-2009 Annual Report. In summary, the applicant who had been charged with assault at the Palmerston Public Library during working hours issued a summons directed to the second respondent seeking production of a document being a list of the names of persons who were using the Palmerston Public Library computers over a time frame which embraced the time of the alleged offence. The purpose of the exercise was to assist the applicant identify potential witnesses to the alleged assault. The Librarian produced the list to the court but objected to the production of the list to the appellant. The magistrate refused to grant the appellant leave to inspect the documents. The applicant then unsuccessfully appealed the magistrate's decision to the Supreme Court and to the Court of Appeal.

The Court of Appeal unanimously held that the appeal to the Supreme Court and to the Court of Appeal had been incompetent. See **Step v Atkins & Anor** [2008] NTCA 5 delivered 1 August 2008. A note of that decision can be found on the ODPP website under the heading Decisions Delivered 1 July 2008-30 June 2009.

On 20 November 2008, the applicant applied to the High Court of Australia for special leave to appeal against the decision of the Court of Appeal. The application for special leave was prepared by the applicant in person and not by a legal practitioner. The High Court Rules require an unrepresented applicant to present his or her argument to the Court in the form of a draft notice of appeal and written case, which, unless the Court of a Justice otherwise directs shall not be served on any person who was a party to the proceedings in the court below. As at 30 June 2009, the Court had not made any order as contemplated by the Rules, nor had the Court determined the application for special leave.

On 5 August 2009 the High Court sitting in Canberra (Hayne and Crennan JJ) dismissed the application for special leave holding that there was no reason to doubt the correctness of the conclusion reached in the Court of Appeal that the appeal to that court was incompetent. Even if the appeal was competent the applicant's written submissions did not raise any question of principle which would warrant consideration by the High Court.

**PDW v R**

**Notice of Discontinuance filed 25 February 2010**

A Darwin Supreme Court jury found the applicant not guilty of one count of indecently dealing with a child under the age of 16 years (count 1), guilty of one count of performing an act of gross indecency on a person (count 2), guilty of one count of having sexual intercourse with another person without her consent (count 4), guilty of one count of indecently dealing with a child under the age of 16 years (count 5) and

guilty of one count of maintaining a relationship of a sexual nature with a child under the age of 16 years with circumstances of aggravation (count 6).

The jury was unable to reach a verdict in respect of one count (count 3) which charged the applicant with having sexual intercourse with another person without her consent.

No convictions were recorded and no orders were made in respect of any of the jury's findings.

After the verdict and before proceeding to sentence, the trial judge posed a number of questions of law for consideration by the Full Court pursuant to s.408 of the **Criminal Code**. PDW also appealed to the Court of Criminal Appeal against the findings of guilt in respect of counts 2, 4, 5 and 6.

On 31 July 2009, the Court, in addition to answering the questions of law, allowed PDW's appeal, quashed the findings of guilt in respect of counts 2, 4, 5 and 6 and ordered a re-trial on each of these counts. See **R v PDW, PDW v R** [2009] NTSC 38, [2009] NTCCA 10, 25 NTLR 72.

Even though PDW was successful in the Court of Criminal Appeal, he then applied to the High Court for special leave to appeal against the decision of the Court of Criminal Appeal claiming that the Court of Criminal Appeal had made an error in law in dealing with one of the grounds of appeal and that the Court should have entered findings of not guilty instead of ordering a re-trial. In particular the applicant claimed that the Court of Criminal Appeal when dealing with the ground that the jury's verdicts of guilty were unreasonable or could not be supported having regard to the evidence did not analyse the evidence led at trial in accordance with the principles enunciated by the High Court in the case of **M v The Queen** (1994) 181 CLR 487. It was submitted that in coming to its conclusion the Court of Criminal Appeal failed to take into account relevant considerations and further took into account irrelevant considerations

The application for special leave was opposed by the Crown.

After written submissions had been filed but before the application had been listed for hearing, the Director of Public Prosecutions filed a nolle prosequi in respect of counts 2, 3, 4, 5 and 6 thereby discontinuing the further prosecution of the outstanding charges.

On 25 February 2010 PDW discontinued his application for special leave by filing a notice of discontinuance.

**Ladd v R**

**12 March 2010  
French CJ & Crennan J  
[2010] HCA Trans 046**

On 8 October 2008 an Alice Springs Supreme Court jury found Ladd guilty of murder. He was sentenced to life imprisonment with a non-parole period of twenty years.

Ladd subsequently appealed against his conviction to the Court of Criminal Appeal. That appeal was dismissed (by majority) on 20 May 2009. See **Ladd v R** [2009] NTCCA 6, 157 NTR 29.

Ladd then applied for special leave to appeal to the High Court in relation to two grounds of appeal. The first ground was whether recklessness as to death must be proved where intention to cause serious harm is relied on by the Crown to prove murder under section 156 of the **Criminal Code**. The second ground of appeal concerned the directions given by the trial judge to the jury on the meaning of 'beyond reasonable doubt'.

The application for special leave was heard before French CJ and Crennan J on 12 March 2010. The respondent was not called upon to make oral submissions. French CJ delivered the reasons for refusing special leave and said:

*On 8 October 2008, the applicant was convicted of the murder of his wife, contrary to section 156 of the Criminal Code (NT). His appeal to the Court of Criminal Appeal was dismissed by a majority on 20 May 2009. He has applied for special leave on two grounds. He complains, first, that the trial judge should have directed the jury that if not satisfied that he had intended to cause his wife's death, but satisfied that he had intended to cause her serious harm, it also had to be satisfied that he was reckless in relation to causing her death before a verdict of guilty of murder could be returned.*

*The second complaint is that the trial judge erred in his directions on the standard of proof by directing the jury (a) that it is not required of the Crown to prove its case beyond all doubt, and (b) directing the jury in a manner that suggested it should analyse any doubts it had in order to determine whether they were reasonable.*

*As to the matter of intention, the offence of murder is defined by section 156. A person is guilty of that crime if:*

- (a) the person engaged in conduct; and*
- (b) that the conduct causes the death of another person; and*
- (c) the person intends to cause the death of, or serious harm to, that or any other person by that conduct.*

*The Chief Justice held, Mildren J agreeing that the fault element for engaging in conduct under paragraph (a) is intention. The fault element for the resulting death of another is established in section 156(1)(c). That has two alternative*

*aspects: an intention to cause death and an intention to cause serious harm. His Honour rejected the submission that there is an additional element, a requirement of recklessness, in the case of an intention to cause serious harm. In our opinion, there is no reason to doubt the correctness of the decision of the Court of Criminal Appeal on that question of construction.*

*As to the direction on the standard of proof, read in the context of the repeated references to proof beyond reasonable doubt, the direction was sufficient to properly inform the jury of its task. It was not compromised, when viewed as a whole, by the exclusion of a standard that would require the Crown to prove its case beyond all doubt. Special leave will be refused.*



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## **WITNESS ASSISTANCE SERVICE**

### **DARWIN**

Support to victims of crime, witnesses and their families has been provided within the Office of the Director of Public Prosecutions (ODPP) since 1995. The Victim Support Unit was established in April 1997. In 2004, the name of the unit was changed to the Witness Assistance Service (WAS).

The WAS team consists of nine witness assistance officers.

In Darwin: Nannette Hunter, WAS co-ordinator; Colleen Burns, Aboriginal support co-ordinator; Jenny Davie, Kenny Hewitt (who replaced Ken James); Ken James (who is on a transfer to the Aboriginal Interpreter Service); Marion Blackburn (replacing Treena Monroe); and Treena Monroe (who is on a transfer to the Department of Health and Families)

In Alice Springs: Susan Cooper, WAS co-ordinator (South) who took up the position in February, Ronda Ross and the newly recruited Debbie Ledbetter.

In Katherine: Michael Devery, WAS co-ordinator.

WAS in Darwin also had wonderful administrative support from Rose Cigobia and in Katherine from Kylie Northey who replaced Raima Baker.

The WAS role has been detailed in previous reports. It is repeated here to illustrate the range of services offered to victims of crime, witnesses and their families.

### **Support**

This involves court preparation and can include court tours, demonstrations of vulnerable witness facilities and observations of court sittings. Support regularly involves accompanying witnesses to court and can include being with a witness in a closed circuit television room, behind a screen or in a closed court.

## **Information**

WAS notifies victims of crime about the service and invites them to make contact. Witnesses are provided with several publications at the appropriate time. These include the Northern Territory Charter for Victims of Crime, the WAS pamphlet and the Victim Impact Statement booklet. WAS also gives information about the time, date and place of court appearances, the stage that the matter is up to and whether attendance by the witness is required. In December 2000 we began writing to referred victims whose matters would be dealt with by Summary Prosecutions Darwin. In the past year 222 of these witnesses were contacted. This is significantly different from the 2008/09 figures and is explained by receiving fewer referrals from Summary Prosecutions but targeted at those victims most likely to require assistance, ie victims of personal violence.

## **Referral**

Victims, witnesses and their families can be referred to appropriate agencies for counselling including specialist sexual assault or domestic violence counselling, psychologists or psychiatrists. WAS has established and maintains contact with a wide variety of agencies.

## **Explanation**

The explanation of legal processes, language and rules of evidence is vital. The aim is to explain technical legal language in plain English. When people have a better understanding and are given timely information about what is happening in relation to court proceedings, they report a higher level of satisfaction with their experience of the criminal justice system.

## **Liaison**

WAS acts as a point of reference for victims, witnesses and their families. Liaison between police and witness, prosecutor and witness, police and prosecutor or counsellor and witness is a valuable function.

## **Victim Impact Statements**

WAS assists victims of crime to prepare victim impact statements (VIS). Victims of crime have the right to present to the court a statement detailing the effect the crime had on their lives. This can include a comment to the court on the appropriate orders that the court may make. VIS were introduced in the Northern Territory in March 1997. Since then many people have decided to participate in the criminal justice system by exercising their right. Since the beginning of this scheme WAS has assisted over 3500 victims to prepare a VIS.

## **Executive Committee**

WAS members participate in the Executive Committee of the ODPP. WAS representation on the committee is rotated on a quarterly basis.

## **Professional Staff Meetings**

WAS members attend these meetings.

## **Training and Community Education**

Members of WAS regularly give presentations to groups of people who come into contact with witnesses in their workplace.

## **Parole Board**

The Parole Board continues to request input from victims into the considerations of the Board.

## **Prosecutors**

WAS in Darwin gives all new prosecutors, and many other new staff members, whether recruited to SPD or ODPP, an orientation presentation about the role of WAS.

## **Publications**

WAS is responsible for two publications, a booklet, *Victim Impact Statements* and a pamphlet, *Witness Assistance Service* and a DVD in English and Kriol,

## **Bush Courts**

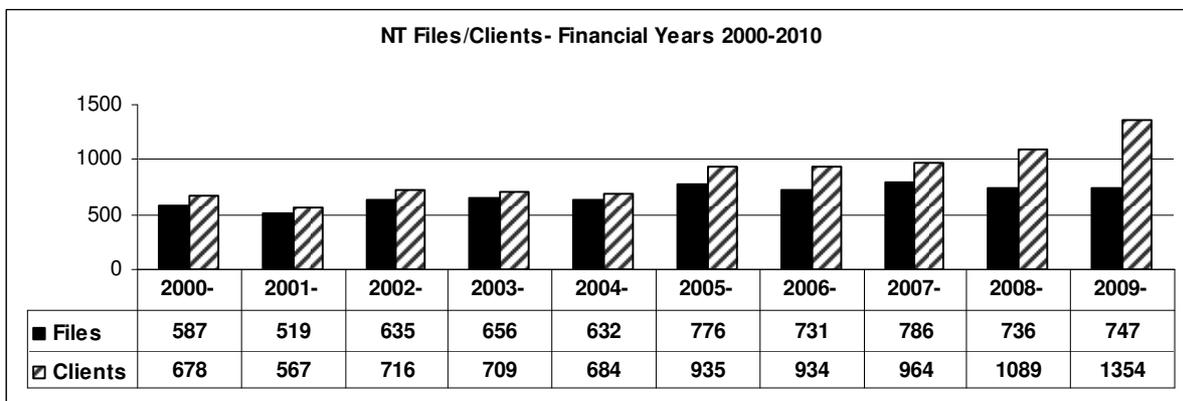
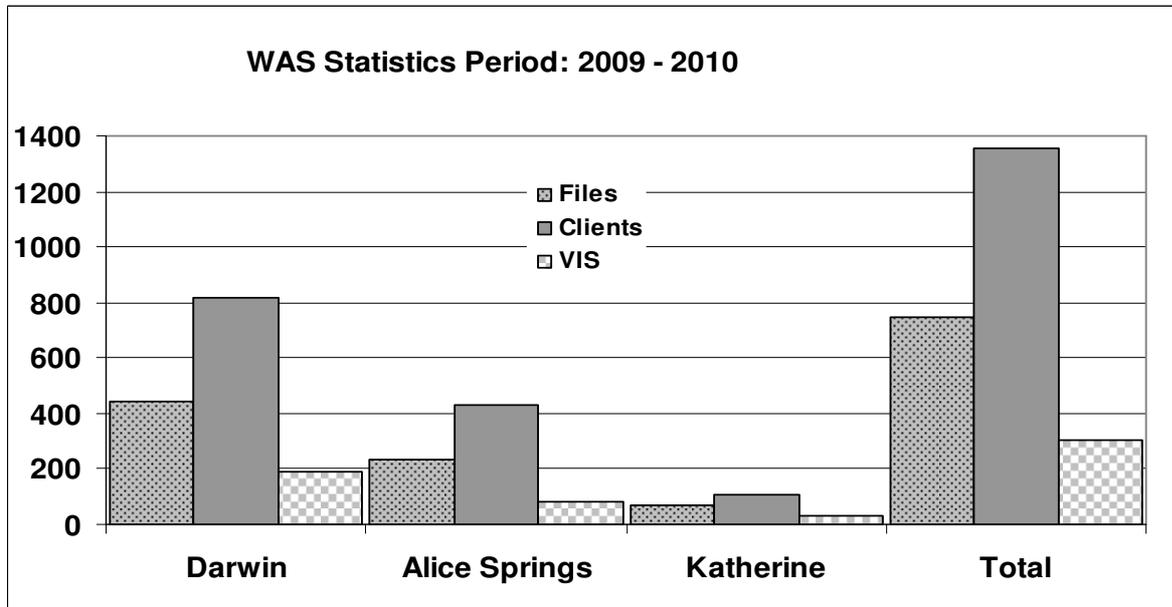
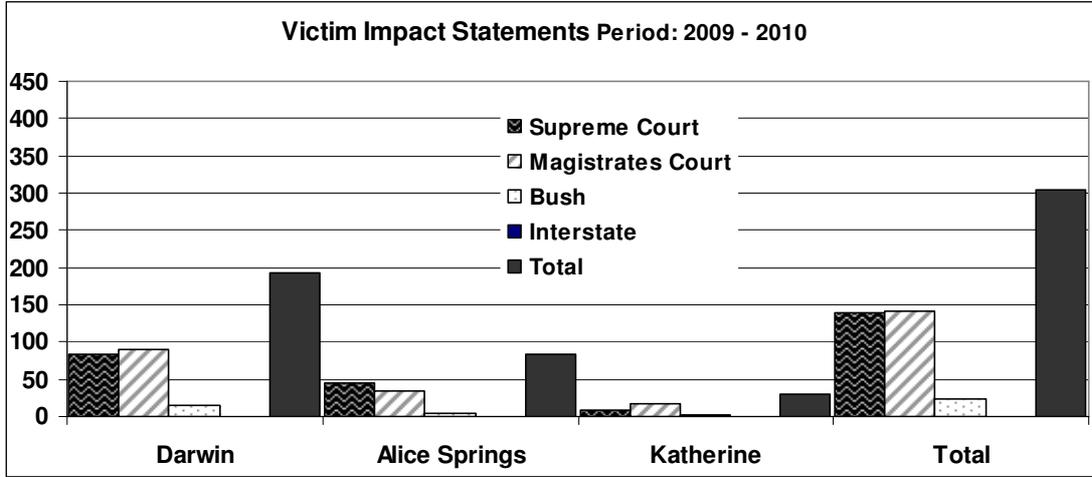
WAS officers have continued to provide services to remote communities. Each member of the WAS team has worked at a number of communities to support witnesses appearing in Bush Courts. This is a demanding and time consuming aspect of our work.

## **WAS Statistics**

The workload of WAS again increased in 2009-2010 as measured by the statistics for files and clients. A new landmark of almost 1,300 clients was achieved. It is no wonder WAS staff felt busier than ever.

The two new staff announced in 2008/09 contributed to the ability of the service to meet the growing demand for our services.

**FILES – CLIENTS – VICTIM IMPACT STATEMENTS**



## **ALICE SPRINGS**

The Alice Springs Office has been busy over the last financial year with visiting WAS officers and the employment of a second Witness Assistance Service Officer (Debbie Ledbetter). The new position was made available at the beginning of the financial year however was only filled in May 2010.

The bush circuit calendar and capacity to visit communities increased to a total of 52 days spent in communities either attending court or meeting with victims and witnesses in preparation for court. Over the coming 12 months, with full staffing, Alice Springs WAS plans to maintain our frequency of visits to Tennant Creek as well as introduce regular visits to other bush courts visited less frequently in the past.

Staff has continued to attend and provide information at meetings with many government and non government services in the region, including the Sexual Assault Referral Centre (SARC), Mobile Outreach Service (MOS), Women's Information Service and NPY Women's Council. Training was also provided to the NT Police Prosecutors on how to effectively use the service.

Information sharing and networking efforts are having a positive impact in the referral data for the 09/10 period. In previous years the majority referrals have been generated through ODPP matters. Over the past 12 months we have received a total of 464 referrals, with over half of these originating from police or other sources outside of the ODPP.

## **KATHERINE**

On 21 April 2008 the Katherine Witness Assistance Service (KWAS) was officially opened with two staff, a co-ordinator and part-time administrative support. KWAS moved into new premises on 4/5/10 and Kylie Northey commenced on same date replacing Raima Baker.

### **Bush Courts**

KWAS provides core services to victims, witnesses and their families many of whom are Aboriginal within the Katherine region. KWAS attends bush courts at; Ngukurr, Kalkaringji, Lajamanu, Barunga and Timber Creek.

The Ngukurr, Kalkarindji and Lajamanu courts sit every 2 months for 2 days. Timber Creek also sits every 2 months but for only 1 day. Barunga sits every 4 to 5 months for 1 day.

KWAS circuits used to include Borroloola and Elliott; however these regional centres are now covered by Darwin and Alice Springs respectively.

KWAS has spent 28 days out bush for the financial year, however only assisted with 3 Victim Impact Statements. The reality is that police are assisting a lot more with VIS's than in the past.



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## **ABORIGINAL SUPPORT**

The Aboriginal Support Co-ordinator has been in this position for eleven years and has seen a lot of staff changes, in particular staff in WAS. The current WAS Co-ordinator Nannette Hunter is retiring after fourteen years at the WAS helm. There has also been a number of changes in various WAS positions. At present we have five full time staff and one part time in Darwin, three full time staff in Alice Springs and one full time member in Katherine with a part time Professional Assistance.

The Aboriginal Support Co-ordinator is on the Indigenous Reference Group which continues to develop the Department of Justice Indigenous Employment and Career Development Strategy (IECDS). This strategy will be finalised soon. One of the main aims of the IRG is the recruitment and retention of Indigenous staff within the Department of Justice.

There are six Indigenous staff employed within the ODPP.

### **Indigenous Staff**

Colleen Burns	Aboriginal Support Co-ordinator, Darwin
Nigel Browne	Crown Prosecutor, Darwin
Michael Devery	WAS Co-ordinator, Katherine
Jack A'Hang	Aboriginal Liaison Officer, Alice Springs
Ronda Ross	WAS Officer, Alice Springs
Gillian Taylor	Professional Assistant, Alice Springs

### **Networking**

The Aboriginal Support Co-ordinator continues to network with various government and non government agencies who are connected to court work in Darwin and remote community Bush Courts.

Our office has extensively used the services Aboriginal Interpreter Services for interpreting and translating in and out of court. We have also used the valuable services of the North Australian Aboriginal Family Violence Legal Services who also provide support to victims of family violence in remote communities.

## **Bush Courts**

The WAS staff in Darwin have done approximately 163 days out at Bush Courts. This certainly shows WAS' commitment to remote communities to ensure victims and witnesses have the support that they require.

## **Darwin and Alice Springs Court Days**

The Aboriginal Support Co-ordinator spent 124 days in court in both Darwin and Alice Springs throughout this past year. There were 95 Files opened with 179 Clients. These stats do not include other WAS staff case load which we pick up when staff are on Rec Leave, Bush Courts or other court commitments.

Overall, another busy year and I can confidently say that WAS staff have made a strong commitment in their work with Indigenous clients in the Darwin, Katherine and Alice Springs regions.



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## **NEW GUIDELINE**

### **8.16A**

When the prosecution intends to rely on the recorded statement of a child in accordance with 105AA of the *Justices Act* or 21A and 21B of the *Evidence Act* and counsel for the defendant requests a copy of that recorded statement, it will be supplied subject to counsel undertaking to abide by the following conditions:

- a) that the DVD of the recorded statement will remain in the custody of counsel or the instructing solicitor who will not cause or allow any copies to be made of the DVD;
- b) that the DVD of the recorded statement will only be viewed by counsel and if necessary, his or her instructing solicitor;
- c) that the defendant not be permitted to view the DVD of the recorded statement other than in the presence of counsel or the instructing solicitor and when necessary an interpreter;
- d) that counsel will return the DVD of the recorded statement to the ODPP immediately in the event that counsel's instructions are terminated and otherwise within 30 days of the proceedings being concluded.